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# CONFIRMATION HEARING ON FEDERAL APPOINTMENTS

## HEARING

BEFORE THE

## COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

JULY 24, 2001

**Serial No. J–107–32**

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# CONFIRMATION HEARING ON FEDERAL APPOINTMENTS

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**TUESDAY, JULY 24, 2001**

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

The committee met, pursuant to notice, at 2:02 p.m., in Room SD-226, Dirksen Senate Office Building, Hon. Russell Feingold, presiding.

Present: Senators Feingold, Leahy, Hatch, Specter, and Sessions.

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

Senator FEINGOLD. The hearing will come to order, and I would like to welcome everyone to this Senate Judiciary Committee nominations hearing.

Today we will hear from one of President Bush's nominees to the United States Court of Appeals, William Jay Riley, of Nebraska, and from two nominees for important positions at the Department of Justice: Deborah J. Daniels, of Indiana, to be Assistant Attorney General for the Office of Justice Programs; and Sarah V. Hart, of Pennsylvania, to be Director of the National Institute of Justice.

I would like to congratulate all of you on your nominations, and it is an honor to have you here today.

Before we begin the hearing, the confirmation of Mr. Riley, I would like to first recognize Senator Lugar, who is here to speak on behalf of one of the nominees, I assume Deborah Daniels. Is that correct? Senator, you may begin.

## PRESENTATION OF DEBORAH J. DANIELS, OF INDIANA, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL FOR THE OFFICE OF JUSTICE PROGRAMS BY HON. RICHARD G. LUGAR, A U.S. SENATOR FROM THE STATE OF INDIANA

Senator LUGAR. Thank you very much, Mr. Chairman. It is a pleasure and honor to introduce Deborah Daniels to the Judiciary Committee as an outstanding nominee to be Assistant Attorney General for the Office of Justice Programs.

I was privileged to have Debbie as a talented colleague in my office nearly 30 years ago when I was mayor of Indianapolis. Throughout her career, she has demonstrated an extraordinary commitment to public and community service, and she has achieved great success in each of her endeavors.

Debbie is well prepared to lead the Office of Justice Programs. From 1988 until 1993, she served as United States Attorney for the Southern District of Indiana.

She served as Vice Chair of the Attorney General's Advisory Committee of the United States Attorneys. In recognition of her aptitude in organizing efforts with state and local law enforcement, she earned the Attorney General's Award for Excellence in Law Enforcement Coordination.

While serving as U.S. Attorney, Debbie was called upon to become the first Director of the Executive Office for Weed and Seed within the Deputy Attorney General's office. As you all know, the Weed and Seed program is an integral component of the Office of Justice Programs. Under her guidance, the Weed and Seed program was enormously successful in reducing violent crime and drug activity in high-crime neighborhoods and in helping revitalize those neighborhoods.

As Director of the Executive Office, Debbie became accomplished in working with the Justice Department's Programs sub-agencies and several Cabinet agencies. For these efforts, she received the Attorney General's Award for Excellence in Management.

Back in Indiana, Debbie implemented the Weed and Seed effort in Indianapolis, and the program remains a model of success today.

Her experience as U.S. Attorney and with Weed and Seed led her to the position of Executive Director of the Greater Indianapolis Progress Committee. This coalition of corporate and not-for-profit leaders worked with the public sector to advance neighborhood and regional economic development and to enhance public safety. As Executive Director, she helped coordinate Coburn Place, which provides transitional housing for victims of violence and their children.

In addition to her public service record, Debbie's community activities exemplify her commitment to justice. She has led efforts to provide pro bono legal services to neighborhood and community-based organizations and to residents of central-city neighborhoods in Indianapolis. She has worked as an advocate for those with mental illnesses and developmental disabilities and has helped lead the Children's Bureau of Indianapolis as it provides services to children and their families.

Debbie has worked diligently and successfully in each of her positions. I am confident she will continue her exemplary service as Assistant Attorney General for the Office of Justice Programs.

Mr. Chairman, I thank you very much for this opportunity to introduce an outstanding candidate, Deborah Daniels, to the committee.

Senator FEINGOLD. I thank you, Senator Lugar, very much for that very strong endorsement. It is good to have you here.

[The prepared statement of Senator Lugar follows:]

STATEMENT OF HON. RICHARD G. LUGAR, A U.S. SENATOR FROM THE STATE OF INDIANA ON THE NOMINEE OF DEBORAH J. DANIELS TO THE U.S. DEPARTMENT OF JUSTICE

I am pleased to introduce Deborah Daniels to the Judiciary Committee as an outstanding nominee to be Assistant Attorney General for the Office of Justice Programs.

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In addition to her public service record, Debbie's community activities exemplify her commitment to justice. She has led efforts to provide pro bono legal services to neighborhood and community-based organizations and to residents of central-city neighborhoods in Indianapolis. She has worked as an advocate for those with mental illnesses and developmental disabilities, and she has helped lead the Children's Bureau of Indianapolis as it provides services to children and their families.

Debbie has worked diligently and successfully in each of her positions, and I am confident that she will continue her exemplary service as Assistant Attorney General for the Office of Justice Programs.

Mr. Chairman, I thank you for this opportunity to introduce Deborah Daniels to the Committee on the Judiciary.

Senator FEINGOLD. Now we will turn to our two distinguished Senators from Nebraska, who will be speaking on behalf of Mr. Riley. First, I would like to recognize Senator Chuck Hagel.

## PRESENTATION OF WILLIAM JAY RILEY, OF NEBRASKA, NOMINEE TO BE U.S. CIRCUIT COURT JUDGE FOR THE EIGHT CIRCUIT BY HON. CHUCK HAGEL, A U.S. SENATOR FROM THE STATE OF NEBRASKA

Senator HAGEL. Mr. Chairman, thank you. I appreciate the committee's attention in scheduling this hearing on the nomination of William Jay Riley to the Eighth U.S. Circuit Court of Appeals.

Mr. Chairman, I recommend Bill Riley without reservation. If approved by this committee and confirmed by the United States Senate, I know that he will be an excellent addition to the Eighth Circuit and will serve with distinction. He will bring to the bench the knowledge, experience, and temperament he has acquired throughout his distinguished career.

Bill Riley received his undergraduate degree from the University of Nebraska in 1969 and graduated with distinction in 1972 from the University of Nebraska College of Law. Interestingly enough, Mr. Chairman, Bill began his career by clerking for an Eighth Circuit Court of Appeals judge, the Honorable Donald P. Lay. Who would have guessed that a few years ago—30, to be exact—that 30

years later Bill would be nominated to serve that same court, only this time as a judge on the Eighth Circuit Court of Appeals.

Since 1973, Bill has practiced law with the firm of Fitzgerald, Schorr, Barmettler & Brennan of Omaha, where he is now chairman of the firm's litigation department. Bill has had a varied trial practice including business litigation, Federal securities law, U.S. copyright, trademark, and patent suits, ERISA claims, corporate environmental pollution claims, and various contract disputes.

I will add for the record, Mr. Chairman, an additional amount of his background and qualifications and experience. In addition to his active trial practice, Bill also teaches trial practice as an adjunct professor at Creighton University School of Law. He is married to Norma J. Riley, who I will ask Mr. Riley in a moment to introduce his family, who is here with us. They have three children: Brian, who also is with us, Kevin, and Erin. And, in particular, I would like to recognize Bill's mother, Marian Riley. We never overlook mothers, do we, Mr. Chairman?

So, with that, with the permission of the committee, Mr. Chairman, I would ask Mr. Riley to ask his family to stand and say hello.

Mr. RILEY. Mr. Chairman, this is my wife, Norma; my son, Brian; my mother, Marian; also two very good friends from Omaha, Chuck Kluver and Mary Kluver.

Senator FEINGOLD. We welcome all of you, and you look proud and you should be proud. Thank you very much for being here.

Senator HAGEL. I would like to make an additional note, Mr. Chairman, about Norma Riley. Norma is highly successful in her own regard, where she has been involved in the Omaha community over many years. She is currently executive director of the Omaha Public Library Foundation. She has also been on the board of trustees for the Omaha Community Playhouse, executive committee at the Omaha Symphony Guild, and many, many other good causes.

Mr. Chairman and members of the committee, Bill Riley is fully prepared for the challenges that lay ahead for the Eighth Circuit. He possesses the integrity, the experience, the intellect, and temperament to be an exceptional Federal judge. If confirmed, Bill will be replacing retired senior Judge C. Arlen Beam. Judge Beam's dedication to the rule of law and faithfulness to the bench is an inspiration to all of us, and Judge Beam will be missed. We thank him for his distinguished service to our judicial system.

Mr. Chairman, I recommend William Jay Riley without reservation to this committee. If given the opportunity, I know he will excel with this high responsibility as he has done with every responsibility he has accepted in his life.

Thank you.

Senator FEINGOLD. Thank you very much, Senator Hagel.

I note the arrival of the chairman of the full committee, Senator Leahy.

Senator Leahy?

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

Chairman LEAHY. Just briefly, Mr. Chairman. One, I want to thank you for juggling everybody's time to be able to hold this

hearing, and I would just say to Mr. Riley, when you have Senator Hagel and Senator Nelson on your side, you are already a long way towards being home. And if for no other reason, I can then stop them from bugging me on the floor.

[Laughter.]

Chairman LEAHY. But Senator Hagel and Senator Nelson are two very good friends, and they have spoken so well of you that I wanted to get this as another one of the ones on the calendar before we recess.

I would say to Deborah Daniels, you couldn't have a better mentor or better recommendation than from Dick Lugar. Senator Lugar is well respected on both sides of the aisle. He is a senior member of the U.S. Senate, and, again, his recommendation carries enormous weight.

So that is all I had to say. You can tell, Mr. Chairman, they are moving me out of the undecided category.

[Laughter.]

Chairman LEAHY. I would also say that with Senator Specter as one of the people speaking on her behalf that that certainly doesn't hurt either.

What I was saying, Arlen, is that with you, Dick Lugar, Chuck Hagel, and Ben Nelson being those recommending a couple of the different nominees here, it is easy to move me out of the undecided category.

Senator FEINGOLD. Thank you, Mr. Chairman.

Now I will turn to Senator Specter, a distinguished member of this committee, and also, I suspect, somebody who wants to speak on behalf of Sarah Hart. Senator Specter?

## PRESENTATION OF SARAH V. HART, OF PENNSYLVANIA, NOMINEE TO BE DIRECTOR OF THE NATIONAL INSTITUTE OF JUSTICE BY HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Thank you very much, Mr. Chairman. It is my pleasure to introduce a very distinguished Pennsylvanian, Sarah Vandenbraak Hart, who has been nominated for the position of Director of the National Institute of Justice. Ms. Hart graduated with a bachelor of science degree in criminal justice from the University of Delaware and her J.D. degree from Rutgers-Camden and has had really quite a remarkable career. She served for 7 years in the Philadelphia District Attorney's office as an assistant DA, and that is a job I once held. People have asked me what my favorite job has been, and it is assistant DA, not DA or Senator, if I may be pardoned in this august chamber.

She handled some very important litigation involving the oversight of the Philadelphia prisons, one of the landmark cases, and more recently, she has been chief counsel for the Pennsylvania Department of Corrections since 1995. Her detailed curriculum vitae will be made a part of the record officially, and I think one of the most remarkable things about Ms. Hart is that while she has pursued this very, very impressive professional career, she has raised four children, the oldest of whom is 12 and the youngest is—5?

Ms. HART. It seems like only yesterday, 12 to 22.

Senator SPECTER. Twelve to 22. Well, as you can see, I judge more by appearance than by resume.

[Laughter.]

Senator SPECTER. Ms. Hart has her family with her today. I know her husband is here. Would you introduce them to the committee, please?

Ms. HART. With your permission and with the permission of the Chair, thank you. This is my husband of 17 years, Henry Hart, who also served as a prosecutor in Philadelphia's DA's office; our oldest daughter, Jackie Vandenbraak; my youngest daughter, Tessa Hart; my son, Richard Hart, who is 16; my son, Alexander Hart, who is 14; and also here with me today are my parents, Gerald and Margaret Baseden. And I am delighted for this, and thank you.

Senator SPECTER. Well, thank you very much, Ms. Hart.

Senator FEINGOLD. We welcome all of you and thank you all for being here today.

Senator SPECTER. Mr. Chairman, just one other comment. Ms. Hart told me that her husband worked while I was DA as a clerk in the office, and that gives me an opportunity at this time to ask him whatever happened to that last memorandum you were supposed to do?

[Laughter.]

Mr. HART. It is in the mail, Senator.

Senator SPECTER. Thank you very much, Mr. Chairman, for taking me at this time.

Senator FEINGOLD. Senator Specter is very thorough, as we all know.

I want to thank Senator Nelson for his patience. I now turn to the junior Senator from Nebraska, and then we will turn to the Senators who arrived on the panel as well after that.

Senator Nelson?

## PRESENTATION OF WILLIAM JAY RILEY, OF NEBRASKA, NOMINEE TO BE U.S. CIRCUIT COURT JUDGE FOR THE EIGHTH CIRCUIT BY HON. BEN NELSON, A U.S. SENATOR FROM THE STATE OF NEBRASKA

Senator NELSON. Thank you, Mr. Chairman and members of the committee. It is a real pleasure for me to be here with my colleague from Nebraska, Senator Hagel, in a very strong bipartisan way to appear before this committee in support of the nomination of William Jay Riley to the Eighth Circuit Court of Appeals.

I also want to thank the committee for acting on this nomination quickly. I certainly believe that Mr. Riley exemplifies the kind of nominee that we would like to see put forth for these very important judgeships. He is not only a highly qualified person for this position, but he has earned broad bipartisan support and respect in Nebraska as well. And I believe he will be an excellent judge, and it is my pleasure to be able to support his nomination.

I have known Bill Riley since our law school days at the University of Nebraska College of Law. Even then, early in his career, he displayed the intellect and the leadership qualities that he has carried with him throughout his professional life.

During law school, he served as editor-in-chief of the Nebraska Law Review and graduated with distinction in 1972. Senator Hagel

has also pointed out the irony of his first job being in the Eighth Circuit Court of Appeals as a clerk. Since then, he has established himself as a respected trial lawyer specializing in civil litigation. He began practicing at a prestigious law firm in Nebraska where he now serves as Chair of the litigation department.

Mr. Riley is a member of the Nebraska and Omaha Bar Associations. He is a fellow of the Nebraska State Bar Foundation, and he has served as Chair of the Federal Practice Committee for the U.S. District Court in Nebraska.

In addition to serving on these professional organizations, he has also been chosen by his peers as a leader in the legal community. He has served in a variety of capacities on the American Board of Trial Advocates, whose membership is determined on a peer-selection process based on participation in civil jury trials and upon reputation as an advocate. He was also selected in 1992 to be a fellow on the American College of Trial Lawyers. Selection for the college is made by State and national trial lawyers and is limited to 1 percent of the lawyers in the State who are deemed to be outstanding in their profession and who have high ethical and moral standards and excellent character.

He has been listed for several years in "Who's Who in American Law" as well as in "Best Lawyers in America" and has received an AV rating from Martindale-Hubbell, which is the highest rating a lawyer can receive.

In addition to these professional accomplishments, he has taken time to pass on his experience and legal expertise to aspiring young lawyers. For the past 10 years, he has served as an adjunct professor at Creighton University College of Law in Omaha teaching trial practice. He is a master and charter member of the Robert M. Spires Inns of Court, which is a program involving judges and experienced lawyers who mentor young trial lawyers and students.

As State Chair of the American College of Trial Lawyers, he established the first Nebraska State mock trial competition between Nebraska's two law schools—the University of Nebraska College of Law and Creighton Law School. In addition, he has coached students and judged high school mock trial competitions. It is clear that his dedication to the education of young lawyers shows the extent of his commitment to fostering excellence and respect for the legal profession.

In addition to his professional accomplishments, he has been actively involved in the community. He has participated for more than 25 years in the Boy Scouts of America, including serving as a Scout Master for 10 years. He has served as a juvenile diversion leader for young boys and girls who have been charged with nonfelony crimes, and he has offered legal services at reduced rates or free of charge to financially disadvantaged members of the community.

Not only does Bill Riley possess the legal intellect, experience, and expertise to be an excellent judge, he has also displayed throughout his career the highest of ethical standards to which our judges must be held. His qualifications, his reputation, and the bipartisan support that his nomination has generated make him an ideal candidate for the Eighth Circuit judgeship.

I hope the committee will continue to act expeditiously on this nomination. I have a great deal of respect for Bill Riley, and I am honored to be here to speak on his behalf today.

I should also point out that Norma Riley is in an investment club with my wife, Diane, not one of their most successful ventures, but we enjoy a good personal relationship. And from my own personal knowledge and my own personal experience, over 30 years-plus, I can tell you that Bill Riley is the kind of judge we want to have in America.

Thank you very much.

Senator FEINGOLD. Let me thank both the Senators from Nebraska for their strong statements on behalf of the nominee and for their attendance.

Senator FEINGOLD. Now I would like to turn to our distinguished ranking member, Senator Hatch.

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

Senator HATCH. Well, I would like to thank both Senators from Nebraska for the excellent statements that they have made, and, Mr. Riley, you are very fortunate to have both of them supporting you as strongly as they have, and I have no doubt you deserve everything they have said about you. So I appreciate you both.

It is both an honor and a pleasure to be here this afternoon with three extremely well-qualified nominees, and I would like to congratulate all three of you for being selected by President Bush to serve in these three important positions. All of you have distinguished yourselves with hard work and great intellect, and I think you will do a great service to the citizens of our country and will do a great service upon confirmation.

As has been stated, our sole judicial nominee today is William Jay Riley, who has been nominated for the Eighth Circuit Court of Appeals. Mr. Riley graduated in 1972 from Nebraska Law School where he was editor-in-chief of the Nebraska Law Review and was Order of the Coif, very high honors for any law school. And after graduation, he served as a law clerk for the court to which he has now been nominated before entering private practice. Mr. Riley has been an active member of the legal profession and with his outstanding legal credentials, he will be a fine addition to the Eighth Circuit Court of Appeals, and we are very proud to support your nomination.

Turning to our Department of Justice nominees, Deborah J. Daniels is President Bush's nominee to be the Assistant Attorney General for the Office of Justice Programs. The Office of Justice Programs is in charge of developing the Nation's capacity to prevent crime, improving the criminal and juvenile justice systems, increasing knowledge about crime, and, of course, assisting crime victims. Ms. Daniels will be a superb leader of OJP. She graduated with honors from Indiana University School of Law and has served as the U.S. Attorney for the Southern District of Indiana. In 1992, she became the first executive director of the Executive Office for Weed and Seed, which is part of OJP.

Our final nominee, Sarah Hart, is a similarly outstanding choice to serve as Director of the National Institute of Justice. The NIJ

is the research and development agency of the U.S. Department of Justice, and it is dedicated to researching crime control and justice issues. Sarah Hart has plenty of experience in this area. She spent 7 years prosecuting criminal cases in Philadelphia and 9 years litigating over consent decrees governing the management of Philadelphia prisons. Throughout her career, Ms. Hart has worked extensively to expand the rights of crime victims.

So, again, it is a great pleasure to welcome the three of you to the committee. I look forward to working with Chairman Leahy, Chairman Feingold here, and others to make sure the committee and the full Senate hold timely votes on your nominations.

I am happy to have Senator Sessions here, and I appreciate his diligence on the committee.

Senator FEINGOLD. Well, I thank the ranking member for his attendance and his statement, and I am wondering if the Senator from Alabama would like to make a statement. Senator Sessions?

**STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA**

Senator SESSIONS. Thank you, Mr. Chairman. I was particularly here because of Deborah Daniels, who I served with as United States Attorney for a number of years. Her fellow United States Attorney members from around the country elected her Vice Chairman of the Attorney General's Advisory Committee. She served in that position with great skill and demonstrated extraordinary people skills. No one of the whole group was better liked than Deborah, and I am delighted to see her take on the position that she will be assuming.

I think the position she will be assuming will call on her experience in a great way, and she will do a great job.

Thank you.

Senator FEINGOLD. Thank you, Senator Sessions.

In addition, Senator Santorum of Pennsylvania contacted us this morning and informed us that, while he is unable to be here todAy, he will submit a statement for the record on behalf of Ms. Hart.

Finally, without objection, we will place in the record a statement on behalf of Ms. Daniels from the other Senator from Indiana, Senator Evan Bayh, who was also unable to attend.

Now we will hear from Mr. Riley.

Mr. Riley, will you please stand and raise your right hand to be sworn? Do you swear or affirm that the testimony you are about to give before this committee will be the truth, the whole truth, and nothing but the truth?

Mr. RILEY. I do.

Senator FEINGOLD. You may proceed.

**STATEMENT OF WILLIAM JAY RILEY, OF NEBRASKA, NOMINEE TO BE U.S. CIRCUIT COURT JUDGE FOR THE EIGHTH CIRCUIT**

Mr. RILEY. Thank you, Mr. Chairman. If I may introduce not only the people who are here, I would like to make mention of my other two children who could not be here today: Erin Riley, my daughter, who is at the University of Nebraska Medical School in the physician's assistant program and is studying at the present time; my son, Kevin Riley, who is also working and unable to come;

as well as my daughter-in-law, Kris Riley, and two grandchildren, Michael and Jacob. So thank you.

I also want to thank both Senators Hagel and Nelson for their support, their kind words, and also I want to thank the committee for holding a prompt hearing. I know that you all have busy schedules, and I thank you for that.

Thank you.

[The biographical information of Mr. Riley follows.]

WILLIAM JAY RILEY

## I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

   **William Jay Riley, a/k/a "Bill"**

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

   **Residence:**

   **Omaha, NE 68144-2102**

   **Office:**

   **Fitzgerald, Schorr, Barmettler & Brennan, P.C., L.L.O.**
   **1100 Woodmen Tower**
   **1700 Farnam Street**
   **Omaha, NE 68102-2002**

3. Date and place of birth.

   **March 11, 1947**
   **Lincoln, Nebraska**

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

   **Married over 35 years to:**

   **Norma Jean (Mason) Riley**
   **Executive Director**
   **City of Omaha Public Library Foundation**
   **W. Dale Clark Library**
   **215 South 15th Street**
   **Omaha, NE 68102**

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

**University of Nebraska (Lincoln)**
**14th and R Streets**
**Lincoln, Nebraska 68588**

**1965-1969 - Political Science major; History and English minors - Bachelor of Arts (June 1969)**

**Nebraska Law School (Lincoln)**
**1875 North 42nd Street**
**McCollum Hall, Room 103**
**Lincoln, Nebraska 68583-0902**

**1969-1972 – Juris Doctor (May/June 1972)**

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

**Clerk, Trade Book Sales, Nebraska Bookstore, 1300 Q Street, Lincoln, Nebraska 68508, January 1966 to September 1971**

**Inserter, Lincoln Journal Star, 906 P Street, Lincoln, Nebraska 68508, January 1966 to Spring 1973**

**Law Clerk, Stinson, Mag & Fizzell, Kansas City, Missouri, Summer 1971**

**Law Clerk, The Honorable Donald P. Lay, Eighth Circuit Court of Appeals, Omaha office, July 1972 - July 1973**

**Fitzgerald, Brown, Leahy, Strom, Schorr & Barmettler a/k/a Fitzgerald, Schorr, Barmettler & Brennan, P.C., L.L.O, July 1, 1973 to present – currently an officer, director, shareholder and chair of the trial department**

**Creighton University, College of Law, 2133 California, Omaha, NE 68178, (402) 280-2872, January 1991 spring semesters to present – Adjunct Professor**

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, (3A Deferment).**

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

**Phi Beta Kappa – 1969 – University of Nebraska (Lincoln)**

**Editor-in-Chief, *Nebraska Law Review*, Nebraska Law School – 1971-1972 with scholarship**

**Order of the Coif – 1972 – Nebraska Law School**

**Fellow, American College of Trial Lawyers – October 31, 1992; Nebraska State Chair 1997-1999; member of State Committee 1995 to present**

**Associate, American Board of Trial Advocates – September 17, 1994; President, Nebraska Chapter, 2000; Treasurer, 1998 to present**

**Board Certified in Civil Trial Advocacy by the National Board of Trial Advocacy, November 23, 1994, recertified in 1999**

**Master and Charter Member, Robert M. Spire Inns of Court, September 1994 to present**

**Fellow, Nebraska State Bar Foundation, Class of 1995; Lifetime Fellow – January 28, 2000**

***Best Lawyers in America* and *Best Lawyers in Omaha* listing 2001**

***Who's Who in American Law* recognition for many years**

***Martindale-Hubbell* rating – AV (highest rating)**

**Award of Merit, May 22, 1987, Mid-America Council, Boy Scouts of America**

**The Silver Beaver Award, November 25, 1991, Mid-America Council, Boy Scouts of America**

**Admiral in The Great Navy of the State of Nebraska, March 13, 1989.**

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

*Nebraska State Bar Association* – **member since June 1972**
**Chair, Ethics Committee, 1996-1998, committee member many years**
**Delegate, House of Delegates, 1998 to present**

*Omaha Bar Association*
**President, 2000-2001**
**Treasurer, 1997-1998**
**Executive Council, 1996 to present**

**Federal Practice Committee, Chair 1992-1994, United States District Court for the District of Nebraska**

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

**Lobbying Organizations:**

*American College of Trial Lawyers (ACTL)*
**Fellow, 1992 to present**
**State Chair – 1997-1999**
**State Committee Member – 1995 to present**
**(some lobbying nationally)**

*American Board of Trial Advocates*
**Associate**
**President, Nebraska Chapter, 2000**
**Treasurer, 1998 to present**
**(some lobbying nationally)**

**The Nature Conservancy (probably lobbying nationally, maybe locally)**

**Adventure Cycling (lobbying nationally maybe)**

**Rails to Trails Association (lobbying possibly)**

**Republican Party**

**Other Organizations:**

*Robert M. Spire Inns of Court*
**Master and Charter Member – September 1994 to present**

**Downtown Kiwanis – off and on for several years**

**Mid-America Council, Boy Scouts of America, for over 25 years**
**Scoutmaster, Troop 444, 1979-1989**
**Council Membership Chair, 1995-1998**
**Juvenile Diversion Leader - 1997**

**Grazers International Hiking Club (local friends group)**

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

**Supreme Court of the State of Nebraska – June 27, 1972 to the present (no lapses)**

**U.S. District Court for the District of Nebraska – June 27, 1972 to the present (no lapses)**

**U.S. Court of Appeals, Eighth Circuit – October 18, 1974 to the present (no lapses)**

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

**Comment: *To Require That a Majority of the Supreme Court Determine the Outcome of Any Case Before It*, 50 Neb.L.Rev. 622 (Summer 1971);**

**Omaha Bar Association Newsletter, President's Message:**

**September 2000; December 2000 – "Proud to Be a Lawyer" and "OBA Canon 8 Committee Responds on Judge Reagan Retention"; March 2001; May 2001 – "American Freedom"**

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

**Good. Last physical exam – April 20, 2001.**

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

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

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

17. Legal Career:

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

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

           **Yes. The Honorable Donald P. Lay, Eighth Circuit Court of Appeals, July 1972 to July 1973.**

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

           **No.**

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

           **Fitzgerald, Schorr, Barmettler & Brennan, P.C., L.L.O, 1700 Farnam Street, 1100 Woodmen Tower, Omaha, Nebraska 68102. Associate 1973-1979, partner/shareholder 1979 to present, Chair of Trial Department since January 1996.**

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

           **Civil trial practice.**

**I began my career generally handling insurance defense cases and small business cases in Omaha municipal court. From there I proceeded to try cases primarily in the Nebraska state courts with some in the Nebraska federal courts, mostly in insurance defense and business litigation. Over the years I then tried more plaintiffs' personal injury cases representing the plaintiff. Gradually, the percentage of business litigation, both as a plaintiff and as a defendant, grew to consume most of my caseload and trials. These cases were generally equally divided between state courts and federal courts. In the more recent years, most of my cases have either been resolved by mediation or otherwise been settled. In larger business litigation, the cases rarely are tried.**

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

**My clients originally consisted of insurance companies such as INA (Insurance Company of North America) and businesses such as American Beef Packers, Inc. I then represented some individuals in personal injury and employment claims against their employers. I represented medium-size businesses, educational institutions and cities: Ellison Educational Equipment, Inc.; Commercial Federal Bank; FirsTier Bank, N.A. (now US Bank); Lindsay Manufacturing Co.; Oriental Trading Company; Omaha Edible Oils Company; Creighton University; Metropolitan Community College and City of LaVista. I represented Father Flanagan's Boys' Home and Village of Boys Town in certain cases. I represented small businesses such as Ridges, L.P.; TTI Technologies, Inc.; Enterprise Electric; Standard Beauty Supply and Tomorrow's Heritage. I represented clients against the City of Omaha for a police pursuit personal injury, and against the City of Columbus, the State of Nebraska and the City of Omaha on condemnations. I represented national companies locally such as Entergy Corporation; Chrysler Corporation; Mercedes Benz Corporation (Daimler); Eon Labs Manufacturing, Inc.; R.J. Reynolds Tobacco Holdings Co.; FMC Corporation and Quaker State Oil Company. During most of 1999 and 2000 I was consumed by one large case filed by Entergy against Union Pacific Railroad pending in the United States District Court for the District of Nebraska and involving coal shipment contracts from the Powder River Basin in Wyoming to the Entergy power plants in Arkansas. The case was settled after a**

**favorable partial summary judgment and shortly before the jury trial commenced. The settlement was quite large and quite confidential.**

**My specialization is civil litigation generally, with experience in business litigation, contract disputes, insurance defense, personal injury claims and product liability, malpractice defense of lawyers, accountants and doctors, federal securities law violations, U.S. copyright, trademark and patent suits, ERISA claims, and employment discrimination. I have two criminal jury trials – an arson defense in state court and a corporate environmental pollution charge defended in federal court.**

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

**As my cases and practice involved larger matters, the court appearances became less frequent.**

2. What percentage of these appearances was in:

(a) federal courts; **approximately 45%**

(b) state courts of record; **approximately 55%**

(c) other courts.

3. What percentage of your litigation was:

(a) civil; **99%**

(b) criminal. **1%**

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

**Fifty-two trials to verdict or judgment of cases with any significance (that I can recall). I was sole counsel or lead trial counsel in all 52 cases. I have been associate counsel (second chair) in a few others, particularly early in my career.**

5. What percentage of these trials was:

(a) jury; **32 jury trials = 62%**

(b) non-jury. **20 non-jury trials = 38%**

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

(a) the date of representation;

(b) the name of the court and the name of the judge or judges before whom the case was litigated; and

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

1. ***Josephine Upah v. Ancona Bros. Co., et al.*, 246 Neb. 608, 521 N.W.2d 906 (1994). I represented a sister in a suit against her three brothers and the family corporation alleging a conspiracy to defraud the sister out of her rightful share of the family business. After a 9-day jury trial in the District Court of Douglas County, Nebraska, during May 1991, before The Honorable Keith Howard (now retired), 9212 California Plaza, Suite 309, Omaha, NE 68114, I received a fraud verdict in the amount of $3.766 million. I was the sole trial counsel for the plaintiff on the case. The defendants were represented at trial by Michael McCormack, now a Nebraska Supreme Court Justice, 2218 State Capitol, P.O. Box 98910, Lincoln, NE 68509-8910, (402) 471-4345.**

**The defendant Ancona Bros. Co. filed a Chapter 11 Reorganization proceeding, and I litigated that proceeding against the corporation in the United States Bankruptcy Court for the District of Nebraska, before bankruptcy Judge Timothy J. Mahoney, P.O. Box 428 DTS, Omaha, NE 68101-0428, (402) 661-7480, including a 3-1/2 day confirmation hearing. The corporation was represented in the bankruptcy proceeding by Jerrold Strasheim (a former bankruptcy judge), Baird Holm, 1500 Woodmen Tower, Omaha, NE 68102-2069, (402) 636-8206. A plan was later confirmed.**

**On appeal, the defendants were represented by several lawyers including Mr. Strasheim and his partner Gerald Laughlin of Baird Holm (402) 636-8262 and Fredric Kauffman of Cline Williams, 233 South 13th Street, Suite 1900, Lincoln, NE**

**68508-2095, (402) 474-6900. On appeal, the judgment was reduced substantially due to the statute of limitations.**

2. ***Bauermeister v. McReynolds, et al.*, 254 Neb. 118, 575 N.W.2d 354 (1998). I represented one of the defendants, Timothy J. McReynolds, an attorney, in a claim to rescind or reform a joint venture agreement and to reduce the attorneys fees of Mr. McReynolds as excessive. The case was tried to the court in the District Court of Douglas County, The Honorable Robert V. Burkhard, 1701 Farnam Street, Omaha, NE 68183-0001, (402) 444-7009.**

   **The non-jury trial lasted 13 days during the months of November and December 1993 and January and February 1994. The case involved the placement and award of the Douglas County Landfill, and the trial was monitored by the FBI and the Omaha Police Department who were each investigating potential impropriety in obtaining the Douglas County Landfill by the parties to the litigation. The media covered this matter on a daily basis during trial. The FBI and the OPD never pursued any charges and found no evidence of wrongdoing. The trial court granted a partial verdict for the plaintiff and against my client.**

   **I appealed the case to the Nebraska Supreme Court which reversed the trial court and found in favor of my client on all issues.**

   **I was the sole counsel representing Mr. McReynolds. The other defendants were represented by Steve Achelpohl, 1823 Harney Street, Suite 1010, Omaha, NE 68102-1913, (402) 346-1900, and Michael A. Nelsen, Hillman, Forman & Nelsen, 7171 Mercy Road, Suite 650, Omaha, NE 68106-2669, (402) 397-8051. The plaintiff was represented by Charles Wagner, 500 South 18th Street, Omaha, NE 68102, (402) 348-1069.**

3. ***Schoessow, Inc. v. Sinca Industries, Inc.*, in the United States District Court for the District of Nebraska (CV89-0-199). This case was tried to a jury (in Omaha) before The Honorable Richard G. Kopf, 100 Centennial Mall North, Suite 586, Lincoln, NE 68508, (402) 437-5252. The case involved patent validity and infringement. I represented the plaintiff, and after a 5-day jury trial from January 11-15, 1993, the jury returned a verdict in favor of the plaintiff finding the patent valid, finding the patent infringed and awarding damages in the amount of $630,000. The defendant was represented by John Beehner of Omaha, now deceased, and by David Copple, Copple & Rockey, P.C., 2425 Taylor Avenue, P.O. Box 78, Norfolk, NE 68702-0078, (402) 371-4100. I was lead trial counsel with the assistance of my partner, Bruce D. Vosburg, who practices intellectual property law.**

4. ***Commercial Federal Mortgage Corporation v. Federal Home Loan Mortgage Corporation, et al.* (8:96CV518), United States District Court for the District of Nebraska. This was a non-jury trial to The Honorable Joseph F. Bataillon, Roman**

**L. Hruska Courthouse, 111 South 18th Plaza, Suite 3259, Omaha, NE 68102-1322, (402) 661-7302, involving breach of contract and fraud. I represented the plaintiff, Commercial Federal Mortgage Corporation, and after a 4-day trial from December 8 to December 11, 1998, the court entered judgment in favor of my client, including an award of all attorneys fees, against Freddie Mac, and separately the court found in favor of Freddie Mac against Today's Bank East (Mercantile Bank). The case was appealed to the Eighth Circuit Court of Appeals and was settled on appeal on June 24, 1999.**

**I was sole counsel for the plaintiff. Freddie Mac was represented by Washington, D.C. counsel, Hyacinth Grey Kucik, Freddie Mac, 8200 Jones Branch Drive, McLean, VA 22102, (703) 903-2000, in-house attorney with Freddie Mac, and Today's Bank East (Mercantile Bank) was represented by W. David Wells, Thompson Coburn, One Mercantile Center, St. Louis, MO 63101, (314) 552-6118.**

5. ***FirsTier Bank, N.A. Omaha v. Landpaving Company, et al.* (CV89-0-275) in the United States District Court for the District of Nebraska before The Honorable William G. Cambridge (now retired), (402) 333-2717. This was a non-jury case in which I represented the plaintiff, FirsTier Bank, and in which the defendants made a substantial counterclaim for ERISA, RICO and fraud claims against the bank. This was one of the first, if not the first, ERISA decisions in the United States. The other parties were represented by D.C. "Woody" Bradford, Bradford, Coenen & Welsh, 1620 Dodge Street, Suite 1800, Omaha, NE 68102-1500, (402) 342-4200 and James E. Bachman, 9202 W. Dodge Road, Suite 302, Omaha, NE 68114-3318, (402) 390-0900. After a 4-day trial in approximately December 1991, the court returned a judgment in favor of FirsTier Bank. That decision was appealed to the Eighth Circuit Court of Appeals and was affirmed. *FirsTier Bank v. Landpaving Company*, 16 F.3d 907 (8th Cir. 1994).**

6. ***Erwin v. Mercedes Benz Corp.* I defended Mercedes Benz in this case filed in the United States District Court for the District of Nebraska (Omaha). The case was tried to a jury before The Honorable William G. Cambridge (now retired), (402) 333-2717. The plaintiff alleged a breach of contract against Mercedes Benz in that the Mercedes was defective in its appearance, particularly the paint, which breached the contract and was therefor unmerchantable. The jury returned a favorable verdict for Mercedes Benz after a 3-day trial from September 12 to September 14, 1989. I was sole counsel for Mercedes Benz and the plaintiff was represented by David Buelt, Ellick Jones, 8805 Indian Hills Drive, Suite 280, Omaha, NE 68114-4070, (402) 390-0390.**

7. ***Securities and Exchange Commission v. American Beef Packers*. This was a non-jury case tried for 5 days from April 4 to April 8, 1977 before The Honorable Warren K. Urbom (now senior judge), United States District Court for the District of Nebraska, 100 Centennial Mall North, Suite 507, Lincoln, NE 68508-3876, (402)**

**437-5231. This case involved securities fraud and other violations alleged against American Beef Packers involving its dealings with USDA inspectors and its purchase of livestock for slaughter with unfunded checks resulting in the filing of a Chapter 11 Reorganization proceeding. The court found a few violations against American Beef Packers, but granted no relief to the SEC as against the company. The SEC was represented by an in-house attorney, and I do not recall his name.**

8. ***Anthony Sacher v. Ross Ernst* (Doc. 912, No. 564). This was a jury trial in the District Court of Douglas County, Nebraska before The Honorable Robert V. Burkhard, 1701 Farnam Street, Omaha, NE 68183-0001, (402) 444-7009. This was a wrongful death action. I represented the defendant who ran over a pedestrian with his car while swerving to avoid a minivan full of children. After a 3-day jury trial from August 1 to August 3, 1994, the jury returned a defendant's verdict. The plaintiff's estate was represented by Michael A. Smith, 1210 Golden Gate Drive, Papillion, NE 68046-2845, (402) 593-2230.**

9. ***Commercial Savings Bank v. Hawkeye Federal Savings Bank and Commercial Federal Bank*, (LACV 033620). This was a common law trademark infringement case brought in the Iowa District Court for Carroll County. I represented Commercial Federal Bank. This was a monumental case to determine whether Commercial Federal Bank could use its name in Iowa. After a 1-day trial, the court entered judgment in favor of Commercial Federal Bank. Commercial Savings Bank appealed the case to the Iowa Supreme Court which affirmed the judgment of the trial court at 592 N.W.2d 321 (1999). I tried the case, and my partner, Bruce Vosburg, argued the appeal. The plaintiff was represented by Michael G. Voorhees, 801 Grand, Suite 3200, Des Moines, IA, (515) 388-3667.**

10. ***Ernie E. Mead v. Raymond Mackovicka.* I defended this personal injury action brought in the District Court of Douglas County, Nebraska (Doc. 932, No. 905) which was tried to a jury before The Honorable Robert V. Burkhard, 1701 Farnam Street, Omaha, NE 68183-0001, (402) 444-7009, from January 29 through January 31, 1997. Mr. Mackovicka had run a red light and collided with the plaintiff's vehicle. The plaintiff was a passenger in the car of his landlord/girlfriend. Mr. Mackovicka was a farmer from central Nebraska visiting Omaha, and he was unfamiliar with the area of the accident. The judge directed a verdict on liability against Mr. Mackovicka. The jury returned a verdict with an award of zero (0) damages. The plaintiff was represented by Steven J. Lefler, Lefler & Mullen, 319 South 17th Street, Suite 700, Omaha, NE 68102, (402) 341-1080.**

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit

any information protected by the attorney-client privilege (unless the privilege has been waived.)

1. **During most of the years 1999 and 2000, I represented two subsidiaries of Entergy Corporation, Entergy Services, Inc. and Entergy Arkansas, Inc., as lead trial counsel in an action filed by Entergy against Union Pacific Railroad in Louisiana and transferred to the United States District Court for the District of Nebraska. The case was assigned to The Honorable Lyle E. Strom, P.O. Box 607 DTS, Omaha, NE 68102-0607, (402) 661-7320. Judge Strom granted a partial summary judgment in favor of Entergy, *Entergy Services, Inc. v. Union Pacific Railroad Co.*, 35 F.Supp.2d 746 (D. Neb. 1999), and the balance of the case was settled approximately two months before the jury trial commenced. This case involved many fascinating fact issues and issues of contract law, railroad regulations and energy regulations. I became educated on railroads, electric power and coal production and transportation from the Powder River Basin in Wyoming to the Entergy power plants in Arkansas. Our railroad counsel was C. Michael Loftus of Slover & Loftus, 1224 Seventeenth Street, N.W., Washington, D.C. 20036, (202) 347-7170. The Union Pacific was represented locally by Bartholomew L. McLeay of Kutak Rock, The Omaha Building, 1650 Farnam Street, Omaha, NE 68102-2186, (402) 346-6000, and nationally by Harris Weinstein and Corinne A. Goldstein of Covington & Burling, 1201 Pennsylvania Avenue, N.W., Washington, D.C. 20044-7566, (202) 662-6000. The parties reached a confidential settlement. The settlement was extremely valuable to Entergy.**

2. **I was co-counsel and at times lead counsel with my partner, William J. Brennan, on the case of *Lindsay Manufacturing v. Hartford Accident & Indemnity Co.* filed in the United States District Court for the District of Nebraska (8:90CV610). The case was assigned to the Honorable Thomas M. Shanahan, 215 North 17th Street, P.O. Box 457 DTS, Omaha, NE 68101-0457, (402) 661-7310. We represented Lindsay Manufacturing who sued Hartford on its general liability insurance policy covering Lindsay. Hartford defended on its pollution exclusion under that policy. Lindsay had an EPA Super Fund Site cleanup. The case involved complicated insurance issues and environmental issues of fact and law. The cleanup costs were in the millions of dollars. Hartford obtained a summary judgment which we appealed and which was reversed by the Eighth Circuit Court of Appeals. *Lindsay Manufacturing Co. v. Hartford Accident & Indemnity Co.*, 118 F.3d 1263 (8th Cir. 1997), *reversing* 911 F.Supp. 1249 (D.Neb. 1995). The case was later settled favorably to Lindsay.**

   **Hartford was represented by William M. Lamson, Jr., Lamson, Dugan & Murray, 10306 Regency Parkway Drive, Omaha, NE 68114-3743, (402) 397-7300. Another defendant, DeKalb Energy, Inc., was represented by Wayne J. Mark, Fraser, Stryker, 409 South 17th Street, Suite 500, Omaha, NE 68102-2663, (402) 341-6000.**

3. *Ellison Educational Equipment, Inc. v. Tekservices, Inc.*, 903 F.Supp. 1350 (D.Neb. 1995). I represented Ellison Educational Equipment in a copyright infringement lawsuit against Tekservices, Inc. We obtained a preliminary injunction in the United States District Court for the District of Nebraska (CV 90-0-833), from the Honorable Lyle E. Strom, P.O. Box 607 DTS, Omaha, NE 68101-0607, (402) 661-7320. We asserted that the defendant had violated the copyrights of Ellison's die cutouts, and we established for the first time the right to copyright those images. The case was settled after the preliminary injunction and certain discovery was completed. The defendant was represented by Michael A. Nelsen, Hillman, Forman & Nelsen, 7171 Mercy Road, Suite 650, Omaha, NE 68106-2669, (402) 397-8051. I was second chair as local counsel in this case until the client became upset at its counsel from California. Ellison fired that attorney and, in the middle of the trial, I took over the case on behalf of Ellison.

4. *Roselyn Cappiello v. City of Omaha* (Doc. 901, No. 578). From approximately 1990 to 1993, I represented a wife and mother, Roselyn Cappiello, in a lawsuit filed in the District Court of Douglas County, Nebraska, before The Honorable Michael McGill, now at Father Flanagan's Boys' Home, (402) 498-1013, against the City of Omaha involving a police pursuit. The Omaha Police initiated the pursuit of a man who had run a stop sign, and after traveling through residential areas of north Omaha at speeds of up to 100 miles per hour, the suspect ran into the rear of Roselyn Cappiello's car and the whiplash broke Mrs. Cappiello's neck paralyzing her from the shoulders down. The suspect was drunk. After substantial investigation and discovery, the case was settled with a consent judgment against the City of Omaha in an amount ($1,550,000) in excess of the legislative cap on personal injury damages. At the time, this was the largest judgment ever entered against the City of Omaha in a personal injury action. Roselyn Cappiello has remained a vibrant citizen. The Mayor of the City of Omaha, recognizing the strength of Mrs. Capiello's character, appointed her to various commissions, including a Police commission, and Mrs. Cappiello is now the President of MADD. Roselyn Cappiello and her husband, Michael, live at 6901 Starlite Drive, Omaha, Nebraska 68152, (402) 571-6083. The City of Omaha was represented by Thomas O. Mumgaard, 1819 Farnam Street, Suite 804, Omaha, Nebraska 68183-0001, (402) 444-5137.

5. As the Nebraska State Chair of the American College of Trial Lawyers, I established the first annual Nebraska State Mock Trial Competition between Nebraska's two law schools, Nebraska Law School and Creighton Law School, beginning in February 2000. The second annual competition occurred in February 2001.

6. As Chair of the Ethics Committee of the Nebraska State Bar Association, 1996-1998, I sheparded a non-discrimination amendment to the Nebraska Code of Professional Responsibility through the Ethics Committee and the House of

**Delegates.**

7. **Between 1992 and 1994, as Chair of the Federal Practice Committee for the United States District Court for the District of Nebraska, I organized and presented on two occasions an educational seminar for lawyers practicing in the federal courts in Nebraska.**

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

   **For 24 months, I will be paid in equal installments my proportionate share of the net asset value of my firm, Fitzgerald, Schorr, Barmettler & Brennan, P.C., L.L.O. I also have a retirement profit sharing plan and 401(k) plan at Fitzgerald, Schorr, Barmettler & Brennan, P.C., L.L.O.**

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

   **I will not sit on any cases in which Fitzgerald, Schorr, Barmettler & Brennan, P.C., L.L.O. is involved for, at least, two years, probably three years. I will follow the judicial disqualification rules for all matters, always seeking to avoid a conflict of interest or the appearance of impropriety.**

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

   **Yes. Adjunct Professor, Creighton University, College of Law, teaching trial practice one night per week (Thursday, 6:00 p.m. to 9:10 p.m.), spring semesters, with compensation of $1,500.**

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

**See attached Financial Disclosure Report.**

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

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

AO-10 (w)
Rev. 1/2000

# FINANCIAL DISCLOSURE REPORT
## Nomination Report

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

| 1. Person Reporting (Last name, first, middle initial) | 2. Court or Organization | 3. Date of Report |
|---|---|---|
| R[illegible], William J. | Eighth Circuit Court of Appeal | 05/24/2001 |
| **4. Title** (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) | **5. Report Type (check type)** | **6. Reporting Period** |
| U.S. Circuit Judge, Nominee | X Nomination, Date 05/23/2001<br>___ Initial ___ Annual ___ Final | 01/01/2000 to 04/30/2001 |
| **7. Chambers or Office Address** | **8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.** | |
| 1100 Woodmen Tower<br>1700 Farnam Street<br>Omaha, NE 68102 | Reviewing Officer _____ Date _____ | |

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

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

___ NONE (No reportable positions.)

| | POSITION | NAME OF ORGANIZATION / ENTITY |
|---|---|---|
| 1 | Officer, director & shareholder | Fitzgerald, Schorr, Barmettler & Brennan, P.C., L.L.O. |
| 2 | Partner | Fitzgerald, Schorr, Barmettler & Brennan |
| 3 | Member/partner | Riley Quest, L.L.C. |

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

___ NONE (No reportable agreements.)

| | DATE | PARTIES AND TERMS |
|---|---|---|
| 1 | 03/2001 | Creighton University, College of Law, Adjunct Faculty teaching trial practice, Thursday evenings, spring 2002 |
| 2 | 1/1/93 | Net asset value payout upon termination at Fitzgerald, Schorr, Barmettler & Brennan, P.C., L.L.O., former law firm, no control after termination |
| 3 | 4/1/75 | Profit Sharing and 401(k) Retirement Plan, Fitzgerald, Schorr, Barmettler & Brennan, P.C., L.L.O., former law firm, no control of plan after termination |

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

___ NONE (No reportable non-investment income.)

| | DATE | SOURCE AND TYPE | GROSS INCOME (yours, not spouse's) |
|---|---|---|---|
| 1 | 1999 | Fitzgerald, Schorr, Barmettler & Brennan, P.C., L.L.O. | $112,077 |
| 2 | 2000 | Fitzgerald, Schorr, Barmettler & Brennan, P.C., L.L.O. | $105,114 |
| 3 | 2001 | Fitzgerald, Schorr, Barmettler & Brennan, P.C., L.L.O. | $7,200/month |
| 4 | '99 | Creighton University, College of Law | $1,500 |

| FINANCIAL DISCLOSURE REPORT | Riley, William J. | Date of Report 05/24/2001 |
|---|---|---|

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

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

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

## V. GIFTS

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

| | SOURCE | DESCRIPTION | VALUE |
|---|---|---|---|
| ☐ NONE (No such reportable gifts.) | | | |
| 1 | Exempt | | |
| 2 | | | |
| 3 | | | |

## VI. LIABILITIES

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

| | CREDITOR | DESCRIPTION | VALUE CODE* |
|---|---|---|---|
| ☒ NONE (No reportable liabilities.) | | | |
| 1 | None | | |
| 2 | | | |
| 3 | | | |
| 4 | | | |
| 5 | | | |
| 6 | | | |

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

FINANCIAL DISCLOSURE REPORT | Name of Person Reporting: Riley, William J. | Date of Report: 05/24/2001

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

| A. Description of Assets (including trust assets) | B. Income during reporting period | | C. Gross value at end of reporting period | | D. Transactions during reporting period | | | | |
|---|---|---|---|---|---|---|---|---|---|
| *Place "(X)" after each asset exempt from prior disclosure.* | (1) Amount Code (A-H) | (2) Type (e.g., dividend, rent or interest) | (1) Value Code (J-P) | (2) Value Method Code (Q-W) | (1) Type (e.g., buy, sell, partial sale, merger, redemption) | If not exempt from disclosure: (2) Date: Month-Day | (3) Value Code (J-P) | (4) Gain Code (A-H) | (5) Identity of buyer/seller (if private transaction) |
| NONE (No reportable income, assets, or transactions.) | | | | | | | | | |
| 1 First National Bank of Omaha Accounts | A | Interest | K | T | Exempt | | | | |
| 2 Mass Mutual Life Insurance - Cash Values | | None | L | T | Exempt | | | | |
| 3 Riley Quest, L.L.C. (Family Farm minority interest) | | None | K | W | Exempt | | | | |
| 4 Marsico Growth & Income Fund | A | Dividend | J | T | Exempt | | | | |
| 5 Janus Mercury Fund | A | Dividend | J | T | Exempt | | | | |
| 6 Triple "O" Investment Club | A | Div. & Int. | J | T | Exempt | | | | |
| 7 -Ameritrade Holding | | | | | Exempt | | | | |
| -Berkshire Hathaway | | | | | Exempt | | | | |
| 9 -CISCO Systems | | | | | Exempt | | | | |
| 10 -Disney (Walt) Co. | | | | | Exempt | | | | |
| 11 -Eloyal Corporation | | | | | Exempt | | | | |
| 12 -General Electric | | | | | Exempt | | | | |
| 13 -Keebler Foods Co. | | | | | Exempt | | | | |
| 14 -LCA Vision, Inc. | | | | | Exempt | | | | |
| 15 -Level 3 Communications | | | | | Exempt | | | | |
| 16 -Medtronic, Inc. | | | | | Exempt | | | | |
| 17 -Pfizer, Inc. | | | | | Exempt | | | | |

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

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

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

**FINANCIAL DISCLOSURE REPORT** | Name of Person Reporting: Riley, William J. | Date of Report: 05/24/2001

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

| A. Description of Assets (including trust assets) | B. Income during reporting period | | C. Gross value at end of reporting period | | D. Transactions during reporting period | | | | |
|---|---|---|---|---|---|---|---|---|---|
| *Place "(X)" after each asset exempt from prior disclosure.* | (1) Amount Code (A-H) | (2) Type (e.g., dividend, rent or interest) | (1) Value Code (J-P) | (2) Value Method Code (Q-W) | (1) Type (e.g., buy, sell, partial sale, merger, redemption) | If not exempt from disclosure: (2) Date: Month-Day | (3) Value Code (J-P) | (4) Gain Code (A-H) | (5) Identity of buyer/seller (if private transaction) |
| ☐ NONE (No reportable income, assets, or transactions.) | | | | | | | | | |
| 18 -Procter & Gamble | | | | | Exempt | | | | |
| 19 -SITEL Corporation | | | | | Exempt | | | | |
| 20 -Technology Solutions | | | | | Exempt | | | | |
| 21 -Transaction Systems | | | | | Exempt | | | | |
| 22 -Transcrypt International | | | | | Exempt | | | | |
| 23 -Union Pacific | | | | | Exempt | | | | |
| 24 -Vlasic Foods International | | | | | Exempt | | | | |
| -WorldCom, Inc. | | | | | Exempt | | | | |
| 26 IRA #1 | A | Dividend | M | T | Exempt | | | | |
| 27 -Janus Twenty Fund | | | | | Exempt | | | | |
| 28 -Janus Growth & Income | | | | | Exempt | | | | |
| 29 -Weitz Value Fund | | | | | Exempt | | | | |
| 30 -Marsico Focus Fund | | | | | Exempt | | | | |
| 31 IRA - #2 | A | Dividend | L | T | Exempt | | | | |
| 32 -Janus Olympus Fund | | | | | Exempt | | | | |
| 33 -Janus Mercury Fund | | | | | Exempt | | | | |
| 34 -American Century Income & Growth Fund | | | | | Exempt | | | | |

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

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

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

**FINANCIAL DISCLOSURE REPORT**

Name of Person Reporting: Riley, William J.

Date of Report: 05/24/2001

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

| A. Description of Assets (including trust assets) | B. Income during reporting period | | C. Gross value at end of reporting period | | D. Transactions during reporting period | | | | |
|---|---|---|---|---|---|---|---|---|---|
| *Place "(X)" after each asset exempt from prior disclosure.* | (1) Amount Code (A-H) | (2) Type (e.g., dividend, rent or interest) | (1) Value Code (J-P) | (2) Value Method Code (Q-W) | (1) Type (e.g., buy, sell, partial sale, merger, redemption) | If not exempt from disclosure: (2) Date: Month-Day | (3) Value Code (J-P) | (4) Gain Code (A-H) | (5) Identity of buyer/seller (if private transaction) |
| ☐ NONE (No reportable income, assets, or transactions.) | | | | | | | | | |
| 35 -Marsico Growth & Income Fund | | | | | Exempt | | | | |
| 36 IRA - #3 | A | Dividend | J | T | Exempt | | | | |
| 37 -Janus Fund | | | | | Exempt | | | | |
| 38 -Janus Twenty Fund | | | | | Exempt | | | | |
| 39 Dain Rauscher 403(b) Account | A | Div. & Int. | K | T | Exempt | | | | |
| 40 -Fidelity Adv. Gr. Opp. - T Fund | | | | | Exempt | | | | |
| 41 -Evergreen Gro. - A Fund | | | | | Exempt | | | | |
| 42 First National Bank of Omaha - Profit Sharing & 401(k) FSB&B | D | Div. & Int. | O | T | Exempt | | | | |
| 43 -U.S. Government Obligation Money Market Fund at FNB | | | | | Exempt | | | | |
| 44 -Alliance World Dollar Government Fund II | | | | | Exempt | | | | |
| 45 -Berkshire Hathaway, Inc. Class A & Class B Common | | | | | Exempt | | | | |
| 46 -Commercial Federal Corp. Common | | | | | Exempt | | | | |
| 47 -Euro Disneyland SCA common | | | | | Exempt | | | | |
| 48 -Baron Asset Fund | | | | | Exempt | | | | |
| 49 -Fidelity Dividend Growth Fund | | | | | Exempt | | | | |
| 50 -Janus Growth & Income Fund | | | | | Exempt | | | | |
| 51 -Janus Worldwide Fund | | | | | Exempt | | | | |

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

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

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

**FINANCIAL DISCLOSURE REPORT** | Name of Person Reporting: Riley, William J. | Date of Report: 05/24/2001

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

| A. Description of Assets (including trust assets) | B. Income during reporting period | | C. Gross value at end of reporting period | | D. Transactions during reporting period | | | | |
|---|---|---|---|---|---|---|---|---|---|
| *Place "(X)" after each asset exempt from prior disclosure.* | (1) Amount Code (A-H) | (2) Type (e.g., dividend, rent or interest) | (1) Value Code (J-P) | (2) Value Method Code (Q-W) | (1) Type (e.g., buy, sell, partial sale, merger, redemption) | If not exempt from disclosure: (2) Date: Month-Day | (3) Value Code (J-P) | (4) Gain Code (A-H) | (5) Identity of buyer/seller (if private transaction) |
| ☐ NONE (No reportable income, assets, or transactions.) | | | | | | | | | |
| 52 -Janus Olympus Fund | | | | | Exempt | | | | |
| 53 -Janus Mercury Fund | | | | | Exempt | | | | |
| 54 -Marsico Focus Fund | | | | | Exempt | | | | |
| 55 -Marsico Growth & Income Fund | | | | | Exempt | | | | |
| 56 -Rydex Series Trust OTC Fund | | | | | Exempt | | | | |
| 57 -Weitz Value Fund | | | | | Exempt | | | | |
| 58 -Weitz Hickory Fund | | | | | Exempt | | | | |
| 59 | | | | | | | | | |
| 60 | | | | | | | | | |
| 61 | | | | | | | | | |
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| 68 | | | | | | | | | |

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

2 Value Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000 N=$250,001-$500,000
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(Col. C2) U=Book Value V=Other W=Estimated

| FINANCIAL DISCLOSURE REPORT | Name of Person Reporting<br>Riley, William J. | Date of Report<br>05/24/2001 |
|---|---|---|

## VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

*(Indicate part of report.)*

PART 2: Parties and Terms re: , cntd ...

r

| FINANCIAL DISCLOSURE REPORT | Name of Person Reporting | Date of Report |
|---|---|---|
| | Riley, William J. | 05/24/2001 |

SECTION HEADING. (Indicate part of report.)
Information continued from Parts I through VI, inclusive.

PART 1. POSITIONS (cont'd.)

| Line | Position | Name of Organization/Entity |
|---|---|---|
| | Partner | Sedona Property Group |
| 5 | Adjunct Professor | Creighton University, College of Law |
| 6 | Delegate to House of Delegates | Nebraska State Bar Association |
| 7 | Member, Ethics Committee | Nebraska State Bar Association |
| 8 | President, Executive Council member | Omaha Bar Association |
| 9 | Member, Nebraska State Committee | American College of Trial Lawyers |
| 10 | Past President & current Treasurer, Nebraska Chapter | American Board of Trial Advocates |
| 11 | Master | Robert M. Spire Inns of Court |

PART 2. AGREEMENTS (cont'd.)

| Line | Date | Parties and Terms |
|---|---|---|
| 4 | 1/1/15 | Fitzgerald, Schorr, Barmettler & Brennan Partnership - capital account payout, no control after termination |

PART 3. NON-INVESTMENT INCOME (cont'd.)

| Line | Date | Source and Type | Gross Income |
|---|---|---|---|
| 5 | 2000 | Creighton University, College of Law | $1,500 |
| 6 | 2001 | Creighton University, College of Law | $1,500 |
| 7 | 1999 | City of Omaha Public Library Foundation | |
| 8 | 2000 | City of Omaha Public Library Foundation | |
| 9 | 2001 | City of Omaha Public Library Foundation | |

| FINANCIAL DISCLOSURE REPORT | Name of Person Reporting | Date of Report |
|---|---|---|
| | Riley, William J. | 05/24/2001 |

## IX. CERTIFICATION

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

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

Signature [signature] Date May 24, 2001

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

**FILING INSTRUCTIONS**

**Mail original and three additional copies to:**

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

**FINANCIAL STATEMENT**

NET WORTH

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

| ASSETS | | LIABILITIES | |
|---|---|---|---|
| Cash on hand and in banks **(approx.)** | **15,000** | Notes payable to banks-secured | **0** |
| U.S. Government securities-add schedule | **0** | Notes payable to banks-unsecured | **0** |
| Listed securities-add schedule | **0** | Notes payable to relatives<br>**Marian F. Riley (mother) Note and Mortgage (see below)** | |
| Unlisted securities--add schedule | **0** | Notes payable to others | **0** |
| Accounts and notes receivable: | **0** | Accounts and bills due | |
| Due from relatives and friends<br>**Kevin Riley due to Norma Riley (approx.)** | **3,200** | Unpaid income tax | |
| Due from others | **0** | Other unpaid income and interest | |
| Doubtful | **0** | Real estate mortgages payable-add schedule<br>**Marian F. Riley Note & Mortgage** | **60,000** |
| Real estate owned-add schedule<br>**Home (estimated)** | **150,000** | Chattel mortgages and other liens payable | **0** |
| Real estate mortgages receivable | **0** | **Other debts-itemize:** | |
| Autos and other personal property **(estimated)** | **30,000** | **Mass Mutual policies loan** | **1,800** |
| Cash value-life insurance<br>**William & Norma (approx.)** | **95,500** | | |
| Other assets itemize: | | | |

| | | | |
|---|---|---|---|
| **Riley Quest, L.L.C. (family farm minority interest – estimated)** | **18,000** | | |
| **Triple O Investment Club (Norma – approx.)** | **2,000** | | |
| **Mutual Funds**<br>**Marsico Growth & Income (approx.)**<br>**Janus Mercury (approx.)** | <br>**3,200**<br>**10,300** | | |
| **IRAs – William (Mutual Funds) (approx.)** | **82,000** | | |
| **IRAs – Norma (Mutual Funds) (approx.)** | **34,700** | | |
| **Fitzgerald, Schorr, Barmettler & Brennan, P.C., L.L.O.**<br>**Retirement (Profit Sharing & 401(k)) – William (approx.)** | **805,000** | | |
| **403(b) – Norma (Mutual Funds) (approx.)** | **23,800** | | |
| | | Total liabilities | **61,800** |
| | | Net worth | **1,210,900** |
| Total Assets | **1,272,700** | Total liabilities and net worth | **1,272,700** |
| CONTINGENT LIABILITIES | | GENERAL INFORMATION | |
| As endorser, co-maker or guarantor | **0** | Are any assets pledged? (Add schedule) **No.** | **0** |
| On leases or contracts | **0** | Are you defendant in any suits or legal actions? **No.** | **0** |
| Legal Claims | **0** | Have you ever taken bankruptcy? **No.** | **0** |
| Provision for Federal Income Tax | **0** | | |
| Other special debt | **0** | | |

## III. GENERAL (PUBLIC)

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

**For over 25 years I have participated in the Boy Scouts of America, including as a Scoutmaster from August 1979 to August 1989, for Troop 444, in Omaha and as the Council Membership Chair for the Mid-America Council 1995-1998 (eastern Nebraska and southwest Iowa). I worked with boys who were disadvantaged economically and others who were disadvantaged because of their family situation. My goal was to provide them with a positive and uplifting experience in Scouting, including the outstanding role models of other Scouts and the Scout leaders.**

**In 1997, I served as one of two juvenile diversion leaders for a group of young boys and girls ages 13 to 17 who had been charged with non-felony crimes. Many of the students were disadvantaged in several different ways. I met with these youth one night every other week for 6 months. We presented a program to address their bad habits and to establish better habits.**

**On occasion, I represent men and women who do not have the financial ability to pay for the legal services they need. I provide that legal service either on a contingent fee basis, on a reduced hourly rate or sometimes without charge, depending on the circumstances.**

**I have coached high school students in mock trial competitions over the years at the successive high schools of Omaha Burke High School, Ralston High School and Millard North High School. In more recent years, I have served as a judge in the high school mock trial competitions. I have also served as a judge on the mock trial competitions at the law school level.**

**As the State Chair of the American College of Trial Lawyers, I established the first annual Nebraska State Mock Trial Competition between Nebraska's two law schools, Nebraska Law School and Creighton Law School, commencing in February 2000. The first competition was a tie. In February 2001, Creighton Law School won.**

**As the Chair of the Ethics Committee for the Nebraska State Bar Association, 1996-1998, I shepherded a non-discrimination amendment to the Nebraska Code of Professional Responsibility through the Ethics Committee and the House of Delegates, and then informally advised the Nebraska Supreme Court (Justice John M. Gerrard, 2219 State Capitol, P.O. Box 98910, Lincoln, NE 68509-8910, (402)**

**471-3736) on the provision's language content. The purpose of the amendment was to establish clearly that once a Nebraska lawyer is employed in a professional capacity, the lawyer should not engage in adverse discriminatory treatment of litigants, witnesses, lawyers, judges, judicial officers or court personnel on the basis of the person's race, national origin, gender or religion. DR1-102(A)(5).**

**As a parent, I have coached baseball, basketball and soccer, and Norma and I have served as PTO presidents.**

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

   **None that I know. For years I was involved with the Mid-America Council, Boy Scouts of America, including as a Scoutmaster of Troop 444 from August 1979 to August 1989.**

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

   **No. I submitted a letter of interest and a curriculum vitae to Senator Chuck Hagel. Later I interviewed with Senator Hagel as did others. I also have interviewed with the White House Counsel's office, the Federal Bureau of Investigation and the Department of Justice staff, and each has investigated me.**

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

   **No. N/A**

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

   The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has

become the target of both popular and academic criticism that alleges that the judicial branch has usurped-many of the prerogatives of other branches and levels of government.

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

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

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

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

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

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

**"Judicial activism" as characterized in this question should not be and is not within the constitutional province of the judiciary. Within our constitutional separation of powers, the judiciary has the obligation to determine the facts of a particular case, apply the appropriate law to those facts and arrive at a result that is supported by those facts and the applicable law. The Congress establishes the laws, the Executive Branch enforces those laws and the judiciary applies those laws to individual cases within the framework of our Constitution. The judiciary also must protect the constitutional rights of each citizen to the extent that the Congress, the Executive Branch or the states violate those constitutional rights. The judiciary should not make policy or law. Predictability should be one of the fundamentals in judicial interpretation. This can be obtained by avoiding "judicial activism."**

Senator FEINGOLD. All right. Any other comments you would like to make at this point?

Mr. RILEY. No other comments. Thank you.

Senator FEINGOLD. Let me begin, then, by just asking you a few questions, and then, Senator Sessions, if you wish to follow.

You have had a very distinguished career as a lawyer in private practice in Omaha. I do note that virtually all of your work has been on the civil side. Could you discuss a little bit your experience with and familiarity with criminal law and procedure?

Mr. RILEY. As you well know, Mr. Chairman, my practice has been primarily in the civil area. I have done a little bit of criminal work over the years. I have had one State court jury trial, an arson case, defending the accused. I have also had a Federal court case under the Environmental Protection Act where I defended a corporation in a criminal proceeding. I have also handled on a pro bono court appointment over the years revocation of parole of a gentleman. And that, other than some advice of clients over the years on criminal matters, those are my only court appearances and trials in the criminal area.

Senator FEINGOLD. Let me ask you now what you think are the most significant matters that you have handled as a private lawyer.

Mr. RILEY. Well, I have been very fortunate to have some outstanding cases and clients to represent. I would have to say probably one of the most intriguing cases that I ever had was to represent an elderly woman who in my—my side of the case was her three brothers had defrauded her out of her inheritance from their common parents. I tried that to a jury trial. It raised real issues of women's rights because the issue was that the brothers didn't think that their sister could handle the business. And so it became a very challenging case that way.

At the end, we obtained a judgment of $3.766 million against the three brothers. They immediately filed bankruptcy with their corporation, so then we ended—that was in State court, the original trial, and then it ended up in Federal court, in the bankruptcy court in Nebraska, where I learned how to try a case in a bankruptcy court, and handled that matter through there, were successful, and then the appeal in the State court, the Nebraska Supreme Court took away the majority of our judgment, leaving us—leaving her with not much left. And then our process after that was to—in effect pro bono, was to try to get her services on Medicare and so forth to take care of her after that.

I have had others representing a woman who was rear-ended in North Omaha in a police pursuit, and I am proud about that for this reason: that we not only got at that time the highest judgment against the City of Omaha at the time, but the woman, who became quadriplegic from the neck down, had enough money to reorient her life, to have a home where she could live, and became active in Omaha matters, is now the president or the outgoing president of MADD, and is serving on the Police Commission in Omaha, and has a very active life because she has the wherewithal to live that life and to do the things that are quite challenging to somebody that is as disabled as she is.

Senator FEINGOLD. I thank you for those examples. I enjoyed hearing them.

One of the traits that I am looking for—and I think most Senators are looking for in judges—is open-mindedness and fair-mindedness. I would like judges to be willing to listen to arguments and change their minds about an issue if the law and the facts warrant it.

Could you give me an example from your legal career where you have changed or reversed position based on the arguments that you have heard in court on the information that a client or another lawyer has presented to you?

Mr. RILEY. Well, as an advocate, you are usually not changing your mind. You are restructuring your argument to answer the question that maybe you didn't anticipate. But you are correct, Mr. Chairman, that sometimes you have to turn to your client and say, you know, we have assessed it this way and we are not—that isn't what the facts show.

I can't pick out any single case, but I can tell you that's happened over the years, and I've been certainly willing to see the need to change a position.

Senator FEINGOLD. How about an example in your career where you have had to take an unpopular stand or represented, let's say, an unpopular client and stood by it under pressure?

Mr. RILEY. I don't know—probably some people would say one of the most unpopular people to defend is a lawyer. And I defended a lawyer in a suit in State court in Nebraska to the court. At the time, every night—it took 13 days of trial, and every night there was a story in the paper that was very critical of him and very critical of what he had done. We ended up winning part of the case at trial. We appealed it to the Nebraska Supreme Court, and we—"we" meaning he and I—ended up with a total victory at the end.

But that case was really defending the rights of a lawyer as against the community that was lined up against him.

Senator FEINGOLD. Fair enough. I do have a few more questions, but I would now turn to Senator Sessions to see if he has any questions.

Senator SESSIONS. Thank you, Mr. Chairman.

I would just note that Mr. Riley was editor-in-chief of the Law Review at Nebraska. That is quite an accomplishment and probably the highest honor a graduating law student can achieve, is to be editor of the school's Law Review. And I think that is something of note.

Clerking on the circuit with Judge Lay, quite a respected member of the court, and being selected to clerk on a court of appeals I think, after you graduate from law school, is an indication of the academic skill and integrity that you have shown during your time in law school. So I think both of those are indicators of great potential for your service. Your background as being a litigator I think will add to the bench also.

You talked about the Supreme Court reversing your judgment. I know how heart-breaking that must have been for the lawyer who was going to receive a part of that, as well as your client. Are you willing to reverse or reduce a judgment that doesn't comply with the law?

Mr. RILEY. Well, having been there before, I'll tell you, I will look very closely before I would do something like. But I would certainly do that. If the facts and the law, one or the other or both, do not support it, I would reverse it. But I think a lot of deference needs to be paid to the trial court.

Senator SESSIONS. Well, how much deference to the trial court? What if the trial court has not followed the law in a significant respect?

Mr. RILEY. When it comes—my understanding, if I am confirmed, that the—when it comes to the legal issues, that's something that the circuit court, the appellate court looks at very carefully and will re-examine. When it comes, obviously, as I think, Senator Sessions, you know from your experience, if it's a factual issue on the credibility of witnesses, who do you believe, that's something that the appellate court needs to pay deference to the trial court.

Senator SESSIONS. You are familiar with the BMW case, where the Supreme Court held that an excessive punitive damages award violates the Constitution where there was no standards for the assessment of those damages whatsoever and where the lower court could not articulate a basis for the amount of the award. How would you feel about that?

Mr. RILEY. Senator, I would have to tell you that I am not familiar with the BMW case other than excerpts or discussions on it. I really don't—haven't analyzed it to tell you one way or another what I feel about it.

Senator SESSIONS. I would just say this: I think a good litigator, a good trial lawyer, has every potential of making a great judge. And your academic background is just extraordinary. I can see why the President and the Senators from Nebraska support your nomination. I will support your nomination.

I do also ask that you realize that you no longer are charging out as an advocate, but you will be a judge who will have to make some tough decisions to maintain the level of consistency in courts and verdicts throughout the system.

Thank you, Mr. Chairman.

Senator FEINGOLD. I thank you, Senator.

Let me ask just a few more questions. Mr. Riley, during your screening by the administration prior to your nomination, who did you meet with to discuss the possibility of being nominated?

Mr. RILEY. Are you talking about from the—not from the Senators, but from—

Senator FEINGOLD. For example, the President, the Attorney General, the White House Counsel.

Mr. RILEY. I met with the White House Counsel's Office, with Courtney Elwood and with—his name escapes me—Tim Flanigan. I also was interviewed by Bill Howard of the Justice Department, and, of course, the FBI background check that I was interviewed, and I can't remember the FBI agent that was there. And, of course, the American Bar Association.

Senator FEINGOLD. Do you consider yourself to have a judicial philosophy? And if you do, what is it?

Mr. RILEY. I'm not certain what you mean by that. Do I have a political agenda? No, I do not have a political agenda. I'm not look-

ing to go to the Eighth Circuit, if I'm confirmed, to change any law, to push any political agenda.

As a judicial philosophy, my philosophy is that an appellate court, having been there on the other side of the bar, that the appellate judges need to be very cautious and review the facts and the law, apply them, the applicable law to those facts, and not create some new ruling from that—from my case or whoever's case is there.

Senator FEINGOLD. Finally, just give me a sense of who are some of the judges you have appeared before as a lawyer that you have admired and why.

Mr. RILEY. I have appeared between a lot of—before a lot of judges, and I would preface it by saying I've had a lot of them, and I don't mean to exclude anybody. But, obviously, our senior Federal judges, Warren Urbom and Lyle Strom, in Nebraska, our trial court judges, are just outstanding. And I could tell you many reasons why. Our chief judge in Nebraska, Rich Kopf, who I've also tried cases in front of, is an outstanding judge.

I have tried cases, because of my age, with some outstanding judges that are now retired in the State court system as well as the Federal court system.

As you may know from background you have, our senior Federal judge in Nebraska, Lyle Strom, is my former partner and my mentor. I carried his briefcase for several years and obviously have a tremendous amount of respect for him.

Senator FEINGOLD. Well, I thank you and I congratulate you and your family. Unless Senator Sessions has further questions, thank you so much, Mr. Riley.

Mr. RILEY. Thank you.

Senator SESSIONS. Congratulations.

Mr. RILEY. Thank you.

Senator FEINGOLD. Now I would like to invite our second panel to come forward: Ms. Daniels and Ms. Hart. We will start with Ms. Daniels.

Deborah Daniels is currently a partner in the firm of Krieg DeVault LLP in Indianapolis, Indiana. She is a native of Atlanta, Georgia, and a graduate of DePauw University and Indiana University School of Law at Indianapolis. She was United States Attorney for the Southern District of Indiana from 1988 to 1993. She has been nominated to be Assistant Attorney General for the Office of Justice Programs, sometimes known as OJP.

OJP was formed in the Department in 1984. Its mission is to provide leadership in developing the Nation's capacity to prevent and control crime, improve the criminal and juvenile justice systems, increase knowledge about crime and related issues, and assist crime victims. OJP has five bureaus and offices: the Bureau of Justice Assistance, the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, and the Office of Victims of Crime.

Ms. Daniels, welcome. Congratulations. Would you please stand and raise your right hand to be sworn? Do you swear or affirm that the testimony you are about to give before this committee will be the truth, the whole truth, and nothing but the truth?

Ms. DANIELS. I do.

Senator FEINGOLD. You may proceed.

**STATEMENT OF DEBORAH J. DANIELS, OF INDIANA, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, OFFICE OF JUSTICE PROGRAMS, DEPARTMENT OF JUSTICE**

Ms. DANIELS. Thank you, Mr. Chairman, Senator Sessions. With the chairman's indulgence, I do have a brief opening statement to tell you a little about myself. I, of course, am honored and humbled to be appearing before you today. I want to thank the committee for convening this hearing and including me in the group of nominees being considered.

I want to express my gratitude to President Bush and the Attorney General, Attorney General Ashcroft, for having brought me thus far to you and placing their confidence in me.

I am particularly delighted that Senator Lugar was able to be here today, and I express my gratitude to him. I also appreciated Senator Hatch's comments and the very kind comments of Senator Sessions, my former colleague.

I have spent a great deal of my personal life as well as my professional career serving my community's more vulnerable members. Specifically, I've concentrated my professional and my private volunteer efforts on assisting victims of crime, in particular, women and children, persons with mental illness and developmental disabilities, and the poor. I've used my role as a law enforcement professional not as an end in itself, but as a means to a greater good, that is, an improved quality of life for individuals and families.

I am a strong believer in the principles that research should inform public policy and that Government should be accountable and a good steward of the funds entrusted to its care.

I further believe that it's essential to measure outcomes in order to determine whether what we do is working; if it's working, to replicate it around the country; and if it's not working, to take appropriate action.

I can think of no better opportunity to put these principles into practice, and in doing so to benefit society at large, than to serve as Assistant Attorney General for the Office of Justice Programs. I greatly appreciate the committee's consideration of me for that critical position, and I'd be delighted to answer any questions that you have.

[The biographical information of Ms. Daniels follows.]

I.BIOGRAPHICAL INFORMATION (PUBLIC)

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

Deborah J. Daniels (married name: Mannweiler)

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

Residence: Indianapolis, Indiana 46250

Office: Krieg DeVault LLP
One Indiana Square, Suite 2800
Indianapolis, Indiana 46204

3. Date and place of birth.

02/16/51, Atlanta, Georgia.

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

Married, to Lyle J. Mannweiler.
Spouse occupation: Journalist
Spouse employer: *The Indianapolis Star*
307 North Pennsylvania Street
Indianapolis, Indiana 46204

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

DePauw University:
Attended September, 1969 to May, 1973.
Degree: B.A., with honors, 1973.

Indiana University School of Law at Indianapolis:
Attended September, 1973 to May, 1977.
Degree: J.D., cum laude, 1977.

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an

officer, director, partner, proprietor, or employee since graduation from college.

| | |
|---|---|
| 1973-1975: | City of Indianapolis, Office of the Mayor (Scheduling Assistant to Mayor Richard G. Lugar) |
| 1975-1978: | City of Indianapolis, Office of Corporation Counsel (Legal intern, 1975-1977; Assistant Corporation Counsel, 1977-1978) |
| 1978-1979: | The Health and Hospital Corporation of Marion County, Indiana (Chief Public Health Counsel) |
| 1979-1988: | Office of the Marion County, Indiana Prosecutor |

Positions held:

- Deputy Prosecutor, 1979-1988
- Chief Grand Jury Deputy, 1980-1981
- Chief Counsel, 1981-1988

Supervisory authority over:

- Grand Jury Section, 1980-1981
- Sex Offense and Child Abuse Section, 1984-1986
- Municipal Court Operations, 1986-1988
- Elder and Dependent Abuse and Exploitation Investigations and Prosecution, 1986-1988
- Victim Assistance, 1986-1988
- Domestic Violence Prosecutions, 1986-1988

1988-1993: United States Department of Justice: United States Attorney, Southern District of Indiana

- Member, Attorney General's Advisory Committee of United States Attorneys (AGAC), 1989-1991; Vice Chair, 1990 and 1991

- Chair, Investigative Agencies Subcommittee, AGAC, 1992-1993

- Member, Office Management Subcommittee, AGAC, 1989 and 1992-93

•Member, Sentencing Guidelines Subcommittee, AGAC, 1988-1993

•Chair of Department-wide committee on prosecutorial ethics, 1991-1992

•First Director, Executive Office for Weed & Seed, Office of the Deputy Attorney General, 1992-1993

•Representative of all U.S. Attorneys on National Crime Information Center (NCIC) Advisory Board, 1989-1993

1993-1994: Self-employed attorney

1994-1996: The Greater Indianapolis Progress Committee, Inc. (Executive Director)

1996-Present: Krieg DeVault LLP (formerly Krieg DeVault Alexander & Capehart, LLP) (Of Counsel, 1996-1999; Partner, 2000-Present)

I have also served in a volunteer capacity on certain not-for-profit corporate boards:

• Indiana Sports Corporation (Board member, 1995-present)
• Noble, Inc. (Board member, 1996-present)
• The Neighborhood Christian Legal Clinic, Inc. (Board member, 1994-present)
• United Way of Central Indiana, Inc. (Board member, 1999-present)
• United Way/Community Service Council of Central Indiana, Inc. (Board member, 1995-present)
• North Central High School (Indianapolis, IN) Alumni Association (Board member, 1996-present; former Vice President)
• The Children's Bureau of Indianapolis, Inc. (Board member, 1989-1997)
• Community Organizations Legal Assistance Program, Indianapolis, IN, 1994-1999 (Vice Chair, 1998-1999)
• The Greater Indianapolis Progress Committee, Inc. (1997-2000)
• The Mental Health Association in Indiana (Board member, 1999-2001)

• The Indiana Mental Health Memorial Foundation (Board member, 1997-present, and Vice Chair of Board)
• Safe Haven Foundation Advisory Board(services to domestic violence victims), 1997-1998
•Julian Center Advisory Board (services to domestic yiolence victims), 1985-1987

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

None.

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

•Adjunct Fellow, Hudson Institute (Chair, Crime Control Policy Center), 1993-present
•Most Influential Women in Indianapolis, 1996 (selected through survey of community and business leaders)
•National Public Service Award, Society for American Archaeology, 1994
•Attorney General's Award for Excellence in Management, 1993
•Attorney General's Award for Exemplary Law Enforcement Coordination, 1991
•86 People to Watch in '86, *Indianapolis Monthly* magazine, 1986
•Men and Women Under 40 Building a Better Indianapolis, *Indianapolis* magazine, 1985

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

•Indianapolis Bar Association (current member)
*Member, Women and the Law Committee, 1996-1998
*Member, Health Law Committee, 1997-present
•Indiana Bar Association (current member)
*Member, Health Law Committee, 1998-present
•Seventh Circuit Bar Association (former member)
•American Bar Association (former member)

•Committee for Revision of Civil Rules, District Court for the Southern District of Indiana, 1991

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

Organizations active in lobbying:

Noble, Inc. (advocates for the developmentally disabled): Board member

United Way/Community Service Council of Central Indiana, Inc. (funder of community services in Central Indiana): Board member

The foregoing organizations are both Indiana-based, and are therefore primarily involved in legislative lobbying on the state level, but through their national organizations have some involvement at the Congressional level.

Organizations to which I belong:

a. Board Memberships:

Current Board Memberships

•The Children's Bureau of Indianapolis, Inc. (Advisory Board Member)
•Indiana Sports Corporation (Board member)
•Noble, Inc. (Board member)
•The Neighborhood Christian Legal Clinic, Inc. (Board member)
•United Way of Central Indiana, Inc. (Board member)
•United Way/Community Service Council of Central Indiana, Inc. (Board member)
•The Indiana Mental Health Memorial Foundation (Board member and Vice Chair of Board)
•North Central High School (Indianapolis, IN) Alumni Association (Board member, former Vice President)

Recent Board memberships:

• The Children's Bureau of Indianapolis, Inc., 1989-1997
• Community Organizations Legal Assistance Program, Indianapolis, IN, 1994-1999 (Vice Chair, 1998-1999)
• The Greater Indianapolis Progress Committee, Inc., 1997-2000

- The Mental Health Association in Indiana, 1999-2001
- Safe Haven Foundation Advisory Board(services to domestic violence victims), 1997-1998

b. Organizational Memberships:

- The Rotary Club of Indianapolis, Inc.
- Tabernacle Presbyterian Church, Indianapolis, IN (Member, Sanctuary Choir)
- The National Association of Former United States Attorneys (former President, former Board member)
- The Federalist Society
- American Health Lawyers Association
- Health Care Compliance Association
- Indianapolis/Marion County, Indiana Coalition for Human. Services Planning (former member)
- Marion County, Indiana Child Protection Team (former member and chair)

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

I have been admitted to the following courts, and my membership has never lapsed since admission.

- Indiana Supreme Court (Admitted October, 1977)
- United States District Court, Southern District of Indiana (Admitted October, 1977)
- United States Court of Appeals, Seventh Circuit (Admitted October, 1977)
- United States Supreme Court (Admitted March, 1987)

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

Daniels, D.: The Child Sexual Abuse Victim as a Witness. Course materials for conference on "Legal Role of the Expert: A Focus on Child Abuse". Indiana University School of Medicine, Indiana Commission on Forensic Science, 1986. [Copy unavailable to author]

Daniels, D. (contributing author): Investigation and Prosecution of Child Abuse (Toth, P. and Whalen, M., Ed.). Alexandria, Virginia, National Center for the Prosecution of Child Abuse, American Prosecutors' Research Institute, 1987.

Daniels, D. A Rape Victim's Right to Anonymity. *The Indianapolis Star*, April 25, 1991.

Daniels, D. Testimony Before the Committee on the Judiciary, United States Senate, Concerning Pornography Victims Compensation Act (S.983), July 23, 1991.

Daniels, D.: Indiana Justice System Can't Identify Repeat Offenders. Indianapolis, Indiana, Indiana Policy Review, Vol. 2, No. 6, Indiana Policy Review Foundation, September, 1991.

Daniels, D. House Crime Bill is One to Kill. *The Indianapolis News*, October 21, 1991.

Daniels, D.: What You Should Know About Practicing in the Federal Courts. Indianapolis, Indiana, YLS-Network Newsletter, Indiana State Bar Association, Young Lawyers Section, June, 1992.

Daniels, D.: U.S. Attorney Says There Should be No Dispute Between Lawyers, Bush Administration. *The Indiana Lawyer*, October 22, 1992.

Daniels, D.: Reclaiming Communities from Crime. *The Indianapolis Star*, January 7, 1993.

Daniels, D.: Commentary: Former U.S. Attorney Disagrees with Some of Reno's Views. *The Indiana Lawyer*, August 11-August 24, 1993.

Daniels, D.: The Key to Reducing Violent Crime. *The Indianapolis Star*, November 23, 1993.

Daniels, D.: Sentencing Guidelines and Prosecutorial Discretion: The Justice Department's "Clarification" of the Thornburgh Memo. University of California Press, Federal Sentencing Reporter, Vol. 6, No. 6, May/June 1994.

Daniels, D.: Revitalizing Our Communities: Safety First. The National Policy Forum, Washington, D.C., Commonsense, Vol. 1, Winter, 1994.

Daniels, D.: Cooperating in Update of HUD Housing. *The Indianapolis Star*, July 22, 1996.

Daniels, D.: El Dee Project Shows Federal/City Cooperation. *Indianapolis Business Journal*, August 5-11, 1996.

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

My health is excellent. My last physical examination was conducted in August, 2000.

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

I have stated my public offices, all of which were appointive, in reverse chronological order, beginning with the most recent. I have never been a candidate for elective public office.

•United States Attorney, Southern District of Indiana, 1988-1993; appointed, by President Ronald Reagan with the advice and consent of the United States Senate.

•Director, Executive Office for Weed & Seed, Office of the Deputy Attorney General, 1992-1993 (detailed during tenure as United States Attorney); appointed, by Deputy Attorney General, United States Department of Justice.

•Deputy Prosecutor, Marion County Prosecuting Attorney's Office, Indianapolis, Indiana, 1979-1988

- •Chief Grand Jury Deputy, 1980-1981
- •Chief Counsel, 1981-1988

•Supervisor:
Sex Offense/Child Abuse Section, 1984-1986
Municipal Court Operations, 1987-1988
Victims Assistance, 1987-1988
Elder and Dependent Abuse/Exploitation, 1987-1988
Domestic Violence Prosecutions, 1987-1988

All the foregoing appointments during my tenure with the Marion County Prosecutor's Office were by the then-Marion County, Indiana Prosecutor, Stephen Goldsmith.

•Chief Public Health Counsel, The Health and Hospital Corporation of Indianapolis, Indiana (a municipal corporation), 1978-1979; appointed, by President of corporation.

•Assistant Corporation Counsel, City of Indianapolis, 1977-1978, appointed by Corporation Counsel, City of Indianapolis.

•Scheduling Assistant to Mayor Richard G. Lugar, 1973-1975; appointed by Mayor of Indianapolis.

15. Legal Career:

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

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

**Response**: I have never served as law clerk to a judge.

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

**Response**: I practiced law alone from May, 1993 to March, 1994, from 7304 Riley Court, Indianapolis, Indiana 46250. I also conducted a minor amount of private practice as a sole practitioner during the period from August, 1994 through June, 1995, from the same address, concurrently with the holding of a separate non-law-related position (see below).

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with

which you have been connected, and the nature of your connection with each;

**Response:**

January, 1975 to October, 1977: Law Clerk, Office of the Corporation Counsel, City of Indianapolis, 200 East Washington Street, Suite 1601, Indianapolis, IN 46204.

October, 1977 to May, 1978: Assistant Corporation Counsel, Office of the Corporation Counsel, City of Indianapolis, 200 East Washington Street, Suite 1601, Indianapolis, IN 46204.

May, 1978 through December, 1978: Public Health Counsel, The Health and Hospital Corporation of Marion County, Inc., 3838 North Rural Street, Indianapolis, IN 46205.

January, 1979 through December, 1987: Deputy Prosecuting Attorney (Chief Grand Jury Deputy, 1980-1981; Chief Counsel 1981-1987), Office of the Marion County Prosecutor, 200 East Washington Street, Suite 560, Indianapolis, IN 46204.

January, 1988 through April, 1993: United States Attorney for the Southern District of Indiana, United States Department of Justice; current office address 10 West Market Street, 21st Floor, Indianapolis, IN 46204. Concurrently held position as Director, Executive Office for Weed & Seed, Office of the Deputy Attorney General, 1992-1993.

March, 1994 to October, 1996: (Non-lawyer position) Executive Director, The Greater Indianapolis Progress Committee, Inc., 22 East Washington Street, Indianapolis, IN 46204.

October, 1996 to present: Krieg DeVault LLP (formerly Krieg DeVault Alexander & Capehart, LLP), One Indiana Square, Suite 2800, Indianapolis, IN 46204.

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

**Response:**

October, 1977 to May, 1978: Totally civil practice, in the area of municipal government. The practice consisted primarily of legal research, writing and advisory work, with lesser participation in civil trial work (state level) and appellate argument (federal level).

May, 1978 through December, 1978: Civil and criminal practice, in the area of local ordinance enforcement, coupled with legal advisory work for a municipal corporation. Regular trial work.

January, 1979 through December, 1987: Wholly criminal practice (prosecution). Regular trial work on the felony level; some appellate work; legal advisory function; policy-making.

January, 1988 to April, 1993: Civil and criminal practice, primarily in the nature of oversight of litigation on the part of employees; some direct participation in litigation, some appellate practice.

May, 1993 to March, 1994: Primarily civil and administrative enforcement work in the areas of housing laws, other civil laws affecting neighborhood quality of life; legislative advisory work in the area of drug dealer eviction, enforcement of housing laws, gun permit laws.

March, 1994 to October, 1996: Engaged in non-legal, administrative position which involved some work with organization of local court system and jail overcrowding issues, but no litigation or other legal advisory work; some minor private practice during same time period, advising a potential licensee with the State of Indiana on the license application process (included in sole practice periods listed above).

October, 1996 to present: Primarily health care and governmental relations practice, involving representation of health care providers in Medicaid and Medicare issues; and legislative and administrative liaison work on the local, state and, to a lesser degree, federal level. Minor involvement in litigation matters, internal corporate investigations.

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

**Response:**

October, 1977 to May, 1978: Represented a municipal corporation on a full-time basis.

May, 1978 through December, 1978: Represented a municipal corporation on a full-time basis.

January, 1979 through December, 1987: Client was the people of the State of Indiana during the time I served in the Office of the Prosecuting Attorney for Marion County, Indiana.

January, 1988 to April, 1993: Client was the people of the United States of America.

April, 1993 to March, 1994: Represented public agencies including the City of Indianapolis and the Indianapolis Bond Bank, on a contractual basis.

March, 1994 to October, 1996: Very little legal representation; primary employment was as Executive Director of a not-for-profit corporation. Represented a developer partnered with a gaming company for a portion of 1994-1995, seeking a riverboat gaming license in Indiana.

October, 1996 to present: Clients include health care providers (hospitals, mental health care providers, etc.); providers of human services (elder care providers, providers of services for the developmentally disabled, etc.); Indiana's prosecuting attorneys; private corporations seeking to do business with public entities; some private corporations engaged in litigation or potential litigation.

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

**Response:** I appeared in court infrequently, but occasionally, in the period during which I served as Assistant Corporation Counsel (1977-1978). I appeared in court frequently as Public Health

Attorney and during my service as a deputy prosecuting attorney (1978-1987). During my service as United States Attorney (1988-1993), I appeared in court occasionally. During the time period from 1993 to the present, I have not appeared in court.

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

**Response:** All appearances prior to my service as United States Attorney (1977-1987) were in state courts of record, with the exception of one appearance in the Seventh Circuit Court of Appeals. All appearances during my service as United States Attorney (1988-1993) were in federal trial and appellate courts.

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

**Response:**

October, 1977-May, 1978: 100% civil.
May, 1978-December, 1978: 50% civil, 50% criminal.
January, 1979-December, 1987: 100% criminal.
January, 1988-April, 1993: On a supervisory level, approximately 60% civil, 40% criminal. On a personal participation level, 90% criminal, 10% civil.
May, 1993-October, 1996: 100% civil.
October, 1996 to present: 100% civil.

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

**Response:** Approximately one hundred (100): approximately ninety (90) as sole counsel, approximately five (5) as chief counsel; approximately five (5) as associate counsel.

5. What percentage of these trials was:
jury;

**Response:** Approximately twenty-five percent (25%).

non-jury.

**Response:** Approximately seventy-five percent (75%).

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

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

**Response:**

The following represent cases of significance in which I actively participated as sole or co-counsel. While I have included certain matters which settled prior to trial or in which my participation did not involve the trial of an underlying cause, these cases involved substantial pre-trial litigation and trial preparation.

I litigated actively in an earlier part of my career, but, as indicated above, have not been involved in litigation other than in a supportive role in recent years. Therefore, the cases listed are not of recent vintage.

(1)
Case Name: Goldsmith v. 4447 Corporation et al.
Cause No.: C83-346
Reported: 4447 Corporation v. Goldsmith, 504 N.E.2d 559 (Ind. 1987)
Court: Hamilton Circuit Court
Presiding Judge: The Honorable Judith S. Proffitt

Appealed to: Indiana Court of Appeals, Indiana Supreme Court
Co-counsel: J. Gregory Garrison
Garrison & Kiefer
7351 Shadeland Station, #201
Indianapolis, IN 46256
317-842-8283

Appellate co-counsel:
Stephen Goldsmith
Baker & Daniels
300 N. Meridian Street
Indianapolis, IN 46204
317-237-1401

Opposing counsel:
John H. Weston
Weston, Garrou & DeWitt
900 Wilshire Bundy Plaza
12121 Wilshire Boulevard
Los Angeles, CA 90025-1176
310-442-0072

Dates of Litigation:

Complaint filed August 1, 1983 (Marion County, IN Circuit Court); defense change of venue granted August 5, 1983; defense interlocutory appeal taken November, 1983; decision rendered by Indiana Court of Appeals, June 12, 1985; reported at 479 N.E. 2d 578; transfer granted, decision rendered by Indiana Supreme Court on March 2, 1987, reported at 504 N.E.2d 559.

Summary of case:

The Marion County Prosecutor, as Plaintiff, filed a civil Racketeer Influenced and Corrupt Organizations (RICO) action against the defendants, a group of individuals and interlocking corporations primarily controlled by Burton Gorelick of Durand, Michigan, allegedly one of the largest distributors of obscene materials in the country at that time. The complaint alleged that the defendants had engaged in a pattern of racketeering activity by repeated sales of obscene materials to undercover police. Relief sought included forfeiture by the defendants of most of their assets connected with such sales. The case was eventually consolidated with a similar case filed by the Allen County Prosecuting Attorney against the same major defendants.

During the lengthy investigation of this case and the pre-trial period, my role was primarily an organizational one. In my position as a deputy prosecuting attorney, I coordinated the efforts of the investigative team and the trial team; I also worked in cooperation with federal investigators and with the United States Attorney's Office (Southern District of Indiana), which in January, 1984 began investigating a suspicious fire at one of the targeted locations, ultimately obtaining federal RICO indictments and convictions against some of the defendants in the local lawsuit.

As Chief Counsel during the appellate phase, I participated with others in preparation of the State's brief and argument before the Indiana Appellate and Supreme Courts.

This case has significance because it was one of the first cases of its kind in the nation, premising a civil RICO action on a pattern of racketeering activity consisting of the repeated distribution of obscenity. The decision of the Indiana Supreme Court, finding that the First Amendment is not impacted when an enterprise invests the profits of illegal activity in potentially protected materials, cleared the way for meaningful prosecutorial action against organized crime operations of various types, including drug sales, obscenity distribution and other lucrative operations frequently engaged in by members of organized crime networks.

(2)
Case Name: State of Indiana v. Elizabeth Lynn Miller
Cause No.: CR86-183E
Court: Marion Superior Court, Criminal Division, Room 5
Presiding Judge: The Honorable Roy F. Jones

Co-Counsel: Kathleen M. Sweeney
Currently: Marion County Public Defender's Office
200 East Washington Street
Indianapolis, IN 46204
317-327-3758

Opposing Counsel: Brent Westerfeld
813 Broad Ripple Avenue
P.O. Box 30379
Indianapolis, IN 46230
317-253-5200

Dates of Litigation: Criminal information filed July 24, 1986; conviction July, 1987.

Summary of case:

This case involved a phenomenon little-known outside the medical community, commonly titled Munchausen Syndrome. Persons affected by this syndrome make numerous visits to physicians, presenting false symptoms of illness based on an apparent desire for attention from the medical community. A far more harmful version of the disorder manifested itself in this case: Munchausen Syndrome By Proxy. In the case of Elizabeth Miller, the defendant was alleged to have created symptoms of illness in her infant daughter, subjecting her to numerous painful tests and placing her life in serious jeopardy. The defendant was criminally charged with Attempted Murder and Neglect of a Dependent.

In my position as Chief Counsel for the Marion County, Indiana Prosecutor's Office, I during this time period served as well as Supervisor of the Child Abuse Unit of the office. I offered to prepare and try the case with the assigned deputy prosecutor. I participated actively in the investigatory stage, filing decision, trial preparation, witness interrogation and extensive pre-trial hearings. Ultimately, it was determined that an sentence resolution which enabled the perpetrator to obtain treatment for her disorder and protected her children from her until they became old enough to protect themselves was the best outcome for all; therefore, we agreed to settle the case through a plea agreement, which protected the children from their mother during their vulnerable, younger years; enabled her to receive treatment for her disorder; and allowed her to be with her children and to provide maternal love and affection when they reached an appropriate age and she had dealt with her affliction.

This case required the acquisition of a depth of knowledge of both psychological and medical matters and the cataloguing of voluminous amounts of evidence. More importantly, perhaps, it represents an example of a situation in which a serious wrong must be addressed, but the equities of the matter require the striking of a delicate balance between competing interests, including:

(a) The responsibility of society to hold accountable those who deliberately injure others;

(b) The need of the perpetrator for intensive psychological therapy in order to overcome her disorder and in order to protect present and potential future offspring from harm;
(c) The need of the child victim and her older sibling for maternal love and care; and
(d) The concerns of the medical community and mental health advocates that people suffering from psychological or mental disorders are in need of treatment, not imprisonment.

(3)
Case name: State of Indiana v. David Blue
Cause No.: CR83-116C
Court: Marion Superior Court, Criminal Division, Room 3
Presiding Judge: The Honorable Charles C. Daugherty
Appealed to: Indiana Supreme Court
Co-Counsel: Janice Lesniak (then Steindorff)
Deputy Prosecuting Attorney
Marion County Prosecutor's Office
200 East Washington Street, Suite 560
Indianapolis, IN 46204
317-327-5313
Opposing Counsel:
Craig L. Wellnitz
Coates, Hatfield, Calkins & Wellnitz
One Indiana Square, Suite 2335
Indianapolis, IN 46204
317-637-2577

Dates of Litigation:
Criminal Information filed May 17, 1983; conviction following jury trial, March, 1984; conviction affirmed by Indiana Supreme Court March 10, 1987, reported at 504 N.E.2d 583.

Summary of case:

This case, involving the murder of a former close associate of the defendant, was assigned to my eventual co-counsel. As the date for trial approached, she expressed concern about the difficult proof problems involved in the case, and I volunteered to prepare and try the case with her. Evidentiary difficulties included: (1) a total lack of eyewitnesses to the crime, and (2) the recantation and refusal to cooperate on the part of the primary State's witness. We built a strong circumstantial case by carefully tracing the defendant's whereabouts during the hours and days immediately preceding the murder, his sole access

to the apartment where the murder took place, and the reconstruction of his incriminating activities immediately after the murder. We were also able to conduct direct examination of the recanting witness in such a way that her original statement became admissible under Indiana case law permitting, certain limited circumstances, the admission of repudiated statements. The conviction and ninety-year prison sentence imposed on the defendant were upheld by the Indiana Supreme Court in a published opinion.

(4)
Case name: State of Indiana v. Anthony Durham
Cause No.: M981-90254, M981-90255, M981-90256
Court: Municipal Court of Marion County, IN, Room 15
Presiding Judge: The Honorable Richard E. Sallee
Appealed to: Indiana Court of Appeals

Co-counsel: Jay Rodia, Deputy Attorney General
Current address:
Office of Legal Counsel
Indiana Department of Environmental Management
Indiana Government Center North, Room 1307
Indianapolis, IN 46204
317-232-4859

Opposing counsel:
Marcus C. Emery
[Current address unavailable]

Dates of Litigation:
Criminal Information filed February 18, 1981; jury trial, October 29, 1981 (mistrial); retrial by jury, March 4-5, 1982 (guilty verdict but negative finding on habitual criminal sentencing count); defense Motion to Dismiss Habitual Offender Count filed March 1, 1983 and granted by Court; State's Motion to Correct Error filed on April 8, 1983 and granted; decision rendered by Indiana Court of Appeals January 9, 1984, reported at 458 N.E.2d 287; defendant's petition to transfer granted and decision rendered by Indiana Supreme Court June 15, 1984, reported at 464 N.E.2d 321 (rehearing denied July 27, 1984).

Summary of case:

As Chief Counsel, I was requested to develop and pursue the State's argument for appeal of the trial court's dismissal of the habitual offender (similar to "three-strikes-and-out" statutes in other states) count after a jury had originally made

a finding that the defendant should not be sentenced under this provision. I wrote the State's Motion to Correct Errors, and assisted the Indiana Attorney General's Office in pursuing the matter through the appellate stage.

My efforts in this case led to the making of new law in the State of Indiana on the status of the habitual offender allegation as a sentence enhancement factor only, rather than a separate offense or element of an offense, clarifying the State's ability to retry a defendant on this count even following a negative jury verdict. In addition, through this case, the Indiana Supreme Court clarified the applicability of the doctrine of prosecutorial vindictiveness, finding that the doctrine did not apply where there was no increase in the number or severity of the charges filed after the defendant's successful appeal.

(5)
Case name: State of Indiana v. Joe R. Norman
Cause No.: CR80-012B
Court: Marion Superior Court, Criminal Division, Room 1
Presiding Judge: The Honorable John W. Tranberg

Opposing Counsel:
John A. Young
36 South Pennsylvania Street
Indianapolis, IN 46204-3647
317-633-4200

Dates of Litigation:
Criminal Information filed on February 12, 1980; conviction September 23, 1980; sentenced November 24, 1980.

Summary of Case:

Joe R. Norman, a prominent contractor, was accused in this public corruption case of offering a bribe to a City inspector. The inspector was asked, in exchange for a sum of money, to overlook the fact that the contractor was using an inferior grade of gravel on a sewer project, and was not laying the sewer pipes according to specifications. When the inspector reported the bribe, I was assigned to coordinate the investigation and prosecute the ensuing case. I worked closely with representatives of the Army Corps of Engineers in examining the defendant's prior projects in addition to the then-current one,

as he had suggested that the approach he took in this project was his common practice.

This case represents not only an extended public corruption investigation and prosecution, but also an exercise in creative sentencing. Understanding the likelihood that a judge (not bound by the federal sentencing guidelines) would not sentence the defendant to prison, but determined to underscore the seriousness of the crime, we developed a creative sentencing mechanism requiring a combination of work-release and the contribution of the defendant's services to the Indiana Minority Business Enterprise, to teach contracting and bidding skills to minority contractors.

(6)
Case name: State of Indiana v. William Morgan
Cause number: CR79-320C
Court: Marion Superior Court, Criminal Division, Room 3
Presiding Judge: The Honorable Charles C. Daugherty (now retired)
Co-Counsel: David L. Walsh
Current: 5449 N. Pennsylvania Street, Indianapolis, IN 46220; 317-257-7758
Opposing Counsel: Owen M. Mullin, Indianapolis, IN (now retired)
Dates of representation: 1979-1981

Summary of argument:

The defendant was charged with Murder for the stabbing death of another person at a party. Difficulties at trial included: minimal opportunity for witnesses to see the stabbing, due to darkness, inebriation of many potential witnesses, and the sudden occurrence of the stabbing, which many attendees did not notice; and the ill-advised hypnosis, by police, of two witnesses, potentially tainting their trial testimony; and questions regarding the validity of a search of the defendant's home at the time of his arrest, which search had uncovered incriminating evidence incuding the weapon.

All the above issues had to be litigated, before and during the trial. Ultimately, we were successful in obtaining a conviction before a jury, for Voluntary Manslaughter and Battery.

(7)
Case name: U.S. v. Daniel A. White and Judith A. White
Cause No.: IP87-110-CR
Reported: U.S. v. White, 886 F. 2d 1318 (7th Cir. 1989); appeal after remand, U.S. v. White, 970 F. 2d 328 (7th Cir. 1992).

Court: U.S. District Court, Southern District of Indiana; Seventh Circuit Court of Appeals
Presiding Judge: The Honorable Larry J. McKinney

Co-Counsel: Linda S. Chapman
Current address: 1124 Cameron Road
Alexandria, VA 22308
(ofc) 202-693-7329
(res) 703-765-3910

Opposing Counsel:
Richard Kammen
McClure, McClure & Kammen
235 N. Delaware Street
Indianapolis, IN 46204
317-236-0400

Dates of representation: Indictment filed November 27, 1987; conviction after jury trial April 19, 1988; appeal filed June 3, 1988; remanded September 7, 1989; evidentiary hearing February 19-21 and March 1, 1991; finding for Government October 8, 1991; Notice of Appeal filed October 17, 1991; District Court ruling upheld August 3, 1992.

Summary of the Case:

The defendants were originally indicted, tried and convicted of bankruptcy fraud. On appeal, their attorney alleged a violation of the attorney-client privilege, resulting in a denial of the defendants' right to procedural due process. While I did not try the underlying case, which was indicted prior to my entry on duty as United States Attorney, I litigated the issues on remand (evidentiary hearing followed by brief and argument on appeal), in defense of the Assistant United States Attorneys who were accused by the defendants/appellants of violating their due process rights. The case on remand involved an intricate recreation of a lengthy and complex series of events and records, coupled with extensive legal analysis of the law on attorney-client privilege. Ultimately, the Seventh Circuit Court of Appeals found for the Government, holding that there had been no violation of the attorney-client privilege and no violation of the rights of the defendants/appellants.

(8) United States v. Richard L. White
Cause No.: IP87-123-CR
Reported: Remand, 879 F.2d 1509 (7th Cir. 1989); appeal after remand, 950 F.2d 426 (7th Cir. 1991).
Court: U.S. District Court, Southern District of Indiana; Seventh Circuit Court of Appeals

Presiding Judge: The Honorable Sarah Evans Barker
Co-Counsel: Linda S. Chapman, then-Assistant U.S. Attorney
Current address: 1124 Cameron Road
Alexandria, VA 22308
(ofc) 202-693-7329
(res) 703-765-3910

Opposing Counsel: Royal B. Martin
Martin, Brown & Sullivan, Ltd.
321 S. Plymouth Court, 10th Floor
Chicago, IL 60604
312-360-5000

Dates of Representation: Indictment filed November 20, 1987 against both defendant and spouse; conviction following jury trial March, 1988; appealed by defendant White only; remanded to District Court for evidentiary finding; District Court Order finding for Government after evidentiary hearing, September 7, 1990; affirmed by Seventh Circuit Court of Appeals, December 6, 1991.

Summary of case:

This was a companion case to U.S. v. Daniel A. White and Judith A. White, described above. Brothers Daniel, Richard and Philip White owned a company by the name of White Petroleum, Inc. The company and the individuals, along with their wives, declared bankruptcy in 1983. The bankruptcy fraud cases resulting in the convictions which led to these appeals stemmed from the corporate and individual bankruptcy filings. The defendants had utilized the same bankruptcy attorney, and similar allegations relating to violation of attorney-client privilege surfaced in both White appeals. In this case, as in the Daniel/Judith White case, the District Court, following an evidentiary hearing, entered an Order affirming defendant/appellant's conviction. The cases were heard separately, however, in separate courts by different judges, and separately appealed. I handled the evidentiary hearing, and briefed and argued the appeal, for the same reason I pursued the Daniel/Judith White case personally: to represent and defend the fine attorneys who worked for me in the United States Attorney's Office. Again, we were successful in obtaining a decision for the Government on appeal, affirming the District Court's ruling that no violations of the defendant's rights had occurred.

(9)
Case name: U.S. v. Marathon Oil Company
Cause no.: IP91-68-CR

Court: U.S. District Court, Southern District of Indiana
Presiding Judge: The Honorable S. Hugh Dillin
Co-counsel: Charles Goodloe, Assistant U.S. Attorney
Southern District of Indiana
10 West Market Street, 21st Floor
Indianapolis, IN 46204
317-226-6333
Opposing counsel:
David Mernitz
305 Mitchell Mountain Road
Westcliffe, CO 81252
(719) 783-9595

Summary of the case:

This investigation began following an explosion in a residence downstream from an oil refinery owned by Marathon Oil Company. The immediate response of investigative authorities to the situation was not what it could have been, and I became involved after that point in analyzing the evidence which we did have, and preparing to try the case with the assigned Assistant United States Attorney. The case eventually was resolved through a guilty plea by the company to a felony violation of the Clean Water Act and a fine of $900,000. My concern about the ability of federal, state and local authorities to respond quickly and effectively to environmental violations led to my development of a multi-disciplinary Environmental Task Force (see below).

(10)
Case name: U.S. v. Michael Ray Gogel, James Patrick Tempel, William Patrick Lamar
Cause no.: EV88-7-CR
Court: U.S. District Court, Southern District of Indiana
Presiding Judge: The Honorable Gene E. Brooks
Co-Counsel: Larry A. Mackey
Barnes & Thornburg
1313 South Meridian Street
Indianapolis, IN 46204
317-236-1313

Opposing counsel: Unavailable through electronic court records

Dates of representation: February, 1988 through July, 1988.

Summary of the case:

The defendants were indicted for the burning of a cross directly in the path of a high school basketball team bus from Evansville Bosse High School, a team which included a high percentage of African-American athletes and which had traveled to a rural southern Indiana town for a game. I involved myself personally in this case in order to send a strong message that hate crimes would not be tolerated by the Justice Department. I prepared the case for trial, interviewed all the young victims as well as other witnesses, analyzed the legal issues which presented themselves, and responded to defense motions. Ultimately, the defendants pled guilty in the case.

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

a. Examples of significant litigation matters in which I was closely involved, but did not personally try or prepare to try the case, include:

(1) U.S. v. Heilbrunn, et al.: This case involved the indictment of 34 people in late 1987 in what was at that time the largest single drug conspiracy ever prosecuted in the Southern District of Indiana. The case required, among other things, the gathering of evidence from other countries; the extradition of three (3) defendants from Austria; and the trial of an attorney charged with having participated in the conspiracy. I became closely involved with the details of the case, analyzing the evidence in order to make determinations as to, for example, the sufficiency of the evidence to prove conspiracy on the part of the attorney--a matter in which extreme care and caution was required in order to avoid inappropriately charging and trying an attorney for conduct intrinsic to his duties as a lawyer, as opposed to direct participation in an illegal scheme.

(2) U.S. v. Nicholas Sufana: Beginning with my entry on duty as United States Attorney in January, 1988, I participated actively in the development of evidence in relation to allegations of misconduct on the part of bankruptcy attorneys and a bankruptcy judge in the Southern District of Indiana. Ultimately, in May, 1989, former Chief Bankruptcy Judge Nicholas Sufana pled guilty to soliciting and receiving a $10,000 cash gratuity in 1985, while he was still on the bench, from an

individual whom Sufana routinely appointed to handle liquidations and auctions in federal bankruptcy matters.

(3) U.S. v. Gerald Surface: This was an investigation of a county prosecuting attorney who was believed to have been "selling" dismissals of operating while intoxicated cases and other cases. The case, despite its significance and importance to the integrity of the criminal justice system in that county and throughout the State of Indiana, had been permitted to languish for some time in the office prior to my entry on duty. I reassigned the case and became actively involved in personally reviewing and helping to direct the investigation. Within just over two (2) years of my entry on duty as United States Attorney, we obtained an indictment in the case, and the conviction and sentencing of both the former county prosecutor and his co-conspirator, a local defense attorney. While I did not directly participate in the trial, my personal efforts were critical to our success in the case.

These cases, along with certain of the cases listed in the answer to Question #16, are representative of cases in the United States Attorney's Office in which I personally involved myself, both for the purpose of seeing justice done and for the purpose of seeing investigations to a prompt conclusion. I considered the speedy conduct and conclusion of investigations to be essential not only to the swift administration of justice, but also in order to minimize the damage to an individual who might not ultimately be indicted: damage often resulting from a lengthy and public investigation. Other such cases in which I became actively involved as United States Attorney included other public corruption matters, tax evasion allegations, civil rights matters and fraud against the government.

b. Examples of legal/law-related matters not involving litigation include:

(1) Task Force on Child Abuse: In the late 1980s, as United States Attorney, I chaired a task force of federal and local justice system participants to analyze the obstacles to the protection of children from sexual abuse. The work of the task force originated an eventually successful effort to create and maintain a child abuser registry in the State of Indiana.

This work built upon work I did while in the Marion County Prosecutor's Office in the 1980s, developing innovations in

the criminal justice system such as a method for providing closed-circuit televised testimony for child abuse victims. I was also instrumental in the establishment of a Children's Advocacy Center, providing a multidisciplinary approach to child abuse investigations, in a non-threatening setting, with the intent of minimizing the trauma to the victim often inflicted by the justice and child protection systems. In the mid-1980s, I chaired the Marion County, Indiana Child Protection Team, a statutorily-authorized entity composed of representatives of various disciplines for the purpose of examining and improving the child protection system.

(2) Violent Offenses Against Women and Children: As Chief Counsel to the Marion County Prosecutor, I directly supervised the Sex Offense and Child Abuse Section, and tried cases with the deputies who worked for me. We instituted special training for local hospital personnel, both in sensitive treatment of rape victims and the recognition of child abuse symptoms, as well as the system improvements described in Point (1) above.

(3) Advisory Board, American Prosecutors Research Institute National Center for the Prosecution of Child Abuse: In the mid-1980s, as a result of my work on the local level in child physical and sexual abuse prosecutions, I was named to this board, participating in the development of training protocols for child abuse investigation and prosecutions, and the development of a comprehensive manual on the subject.

(4) Domestic Violence innovations: My work in the Marion County, Indiana Prosecutor's Office in the mid-1980s in the area of domestic violence included seminal research conducted in cooperation with a nationally-renowned researcher from Indiana University, to determine the most effective prosecution and sentencing policies from the standpoint of reducing recidivism and empowering abuse victims. We also successfully pursued state legislation making it easier for police to arrest domestic violence offenders and for victims of abuse to obtain and enforce protective orders against their abusers. Later, in the mid-1990s, I chaired a committee of the Indianapolis Mayor's Commission on Family Violence and was instrumental in the establishment of a large transitional housing facility for victims of domestic abuse and their children.

I have served on advisory boards for other providers of services to victims of domestic violence.

(5) Elder and Dependent Abuse and Exploitation: In the mid-1980s, as Chief Counsel for the Marion County, Indiana Prosecutor, I established a Dependent Abuse and. Exploitation investigative and prosecution unit in the office, which I personally supervised.

(6) Victims Assistance: In my role as Chief Counsel to the Marion County Prosecutor, I directly supervised all victims' assistance efforts within the office, creating a home-like atmosphere for victims to receive services and await court appearances, and hiring, for the first time, victim advocates within the Prosecutor's Office. As United States Attorney, I hired the first Victims' Assistance Coordinator in the office. I also created an annual award for Distinguished Service to Victims of Crime, for which we sought nominations throughout the Southern District of Indiana, to honor a person who went above and beyond the call of his/her regular duties to serve victims of crime. I personally presented the award annually, in a public ceremony.

(7) Reorganization of Marion County, Indiana court system: In the mid-1990s, legislation was passed which purported to "unify" the Indianapolis, Indiana court system. However, there was significant waste and duplication in the operation of the courts, which continued to act totally independently of each other. I designed a series of recommendations to reduce duplication and achieve cost savings, which could be applied to unmet needs of the court system.

(8) Neighborhood Revitalization: In early 1992, during my tenure as United States Attorney for the Southern District of Indiana, I was personally responsible for the initiation of a Weed & Seed effort in Indianapolis.

In July of 1992, while still serving as United States Attorney, I was asked by the Deputy Attorney General, George J. Terwilliger, III, to serve as the first Director of the newly-formed Executive Office for Weed & Seed, which at that time was within the Office of the Deputy Attorney General. See more detailed description, below.

I have been involved in other neighborhood revitalization efforts in the years since 1993. For example, in 1993-1994, I wrote proposed drug-dealer-eviction legislation for the Mayor of Indianapolis, and provided testimony in legislative committees urging its passage. During that same time period, I helped local officials revise their housing code enforcement process (see below), and worked with local residents and law enforcement officials to clean up abandoned properties and bulldoze dangerous abandoned houses. In 1996, I was personally requested by neighborhood representatives from throughout Indianapolis' urban neighborhoods to facilitate a series of discussions for the purpose of developing a resident-driven campaign against street-level drug dealing.

(9) Redesign of housing enforcement process in Marion County, Indiana: During the 1990s, while I was engaged in the private practice of law, I was hired by the City of Indianapolis to apply my background and legal skills to improving the ability of the City to clean up street drug markets, evict drug dealers from rental housing, and enforce housing laws. I designed a more streamlined method of enforcing the housing laws administratively, and worked with police and housing inspectors, as well as public health authorities, to find creative ways to evict drug dealers and force the cleanup of private property in neighborhoods plagued by illegal drug sales.

(10) Environmental Crimes Task Force: In 1991, as United States Attorney for the Southern District of Indiana, I created a collaborative task force on environmental violations, involving not only law enforcement authorities from the federal, state and local level but also agencies with civil and administrative authority over environmental violations at all three levels. By bringing these agencies together, cross-training them, and encouraging the sharing of information, we were able to detect more environmental violations, and deal with them in the most effective way, customizing our approach to each case, and reducing traditional "turf" issues through a collaborative approach. We had a good deal of success with this concept during my tenure, much of which was based on our own office's willingness to share information and credit with other agencies on the state and local level.

(11) Health Care Fraud Task Force: In 1991-1992, while serving as United States Attorney, I created a Health Care Fraud Task Force. This was the period during which the Department of Justice was recognizing and beginning to respond to a serious problem of health care fraud which had been detected, in particular in the Medicaid program. We trained attorneys and investigative agents in the intricacies of health care fraud, and brought together a health care fraud task force, along the lines of the environmental task force described in Point (10) above.

c. Other matters of an administrative nature reflecting on my capabilities and qualification for the position of Assistant Attorney General, Office of Justice Programs:

In my previous career with the U.S. Department of Justice, I engaged in additional efforts which speak to my qualifications for the particular position for which I have been nominated. They include:

(1) Development of Weed and Seed project in Indianapolis: The Department of Justice created "Operation Weed and Seed" in 1990-1991, originally funding 16 pilot sites around the country for this innovative neighborhood revitalization project, which brought together the public, private and not-for-profit sector, working closely with neighborhood residents to "weed out" crime and "seed" the neighborhood with opportunity. In early 1992, I sought out the Mayor of Indianapolis and proposed to begin such a project in Indianapolis, with no new funding but utilizing the collaborative approach of Operation Weed and Seed. This project ultimately proved to be one of the most successful Weed and Seed sites in the country; its citizen leaders now speak on a national level about neighborhood revitalization, in addition to having spread their formula for success to other neighborhoods in the City of Indianapolis. While I believe the real credit for this achievement is owed to the residents whose vision and drive accomplished so much, I am pleased to have been involved with the original effort to bring this effort to fruition.

(2) Service as first Director of the Executive Office for Weed and Seed, Office of the Deputy Attorney General, U.S. Department of Justice:

In mid-1992, I was requested by the Deputy Attorney General, George J. Terwilliger, III, to serve as the first

Director of a new Executive Office for Weed and Seed (EOWS), to operate out of the Deputy's office. EOWS developed and provided training on a national level. We also developed a comprehensive Operations Manual, explaining the Weed and Seed process to communities throughout the nation. We developed, at my suggestion, an "Official Recognition" process to encourage communities to begin to develop and customize their own collaborations without funding, but with the hope that they would attract appropriate funding as they developed workable methods of rejuvenating their communities. EOWS, under my personal direction, also was responsible for convening representatives of various federal agencies in an Interagency Working Group, collaborating at a high level to coordinate potential funding opportunities in order to maximize the effective use by communities of available federal funds, and reduce overlap and duplication. This multi-agency working group also was responsible for approving, as a group, applications for Official Recognition; this process insured that communities would take into account and seek to utilize and coordinate the broader aspects of programmatic and other assistance available through multiple and diverse agencies on the federal level.

I served as Director of EOWS from July, 1992 until my departure from the position of United States Attorney, in April, 1993. During that time, we made remarkable strides in the directions described above, and "Operation Weed and Seed" has continued to assist communities throughout the country to the present day.

(3) Attorney General's Advisory Committee of United States Attorneys and Chair, Investigative Agencies Subcommittee:

Within a year of my entry on duty as United States Attorney for the Southern District of Indiana, I was selected by the Attorney General to serve on the Attorney General's Advisory Committee of United States Attorneys (AGAC). I served a three-year term, during the final two years of which I served as Vice Chair of the AGAC, elected by my peers. I also chaired the Investigative Agencies Subcommittee of the AGAC, from 1991-1992. This required the convening of the leadership of investigative agencies such as the FBI, DEA and IRS Criminal Investigative Division (CID) to discuss with a small group of United States Attorneys issues of concern on a national basis with

respect to the conduct of criminal investigations. I was a member of certain other AGAC committees, listed elsewhere in this questionnaire response.

(4) Chair, Department-wide task force on prosecutorial ethics:

In the early 1990s, I was asked to chair a Department-wide effort to examine the issue of contact by Department of Justice attorneys with uncharged individuals who might be represented by counsel. The two-year effort culminated in the publication of a proposed Department of Justice regulation on contact with persons represented by counsel. This was an area fraught with difficulty and legitimate ethical concern, and one in which Department of Justice attorneys were in need of instruction, but also of protection, from attacks on their licenses to practice law based on actions which were in fact legally and ethically sound.

(5) Advisory Policy Board, National Crime Information Center: In 1989, I was named by the Director of the Federal Bureau of Investigation to serve as the only United States Attorney on the Advisory Policy Board of the National Crime Information Center (NCIC). In this capacity, in which I served throughout my tenure as United States Attorney, I worked closely with state law enforcement officials from throughout the country on policy related to the development and scope of the NCIC's record-keeping and access policies.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

**Response**:

a. Deferred income: I have a small deferred annuity plan with Mutual of America, stemming from a prior employment. The account contains less than $15,000, and it is my intention to roll it over into another qualified retirement account. I also have an

annuity savings account in the State of Indiana Public Employees Retirement Fund (a defined benefit pension plan), accumulated during my service with local government in the 1970s and 1980s. This account contains approximately $22,000; it is my intention to roll these funds over as well, into a qualified retirement account.

Through my law firm, I participate in a defined benefit pension plan through the American Bar Association Retirement Program; the account contains approximately $25,000, and my participation in this pension plan will terminate at the point when I terminate my partnership in Krieg DeVault LLP. I also have a 401K deferred income plan through the American Bar Association Retirement Fund. This account has a current value of approximately $25,000; my participation in the fund will terminate with the termination of my partnership in the law firm of Krieg DeVault LLP. Both of these accounts will be rolled over at that time into a qualified retirement account.

b. Future compensation: Upon the termination of my partnership in the law firm of Krieg DeVault LLP, I will receive a lump sum payment of my capital account, in the amount of approximately $1300.

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

**Response:**

I do not anticipate any conflicts of interest in either litigation or financial arrangements. If a potential conflict should arise, it would be my intention to consult with ethics officials within the Department of Justice, and take whatever action would be necessary in order to resolve any such conflict.

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

**Response:** No.

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

   **Response**: See enclosed copy of the financial disclosure report required by the Ethics in Government Act of 1978.

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

   **Response**: See attached net worth statement.

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

   **Response**:

   a. General: I have been active as a volunteer for several political campaigns over the years, on behalf of Republican candidates, for local, state and federal office. Specific campaigns have included:

   Stephen Goldsmith campaigns for Marion County, Indiana Prosecutor, 1978, 1982 and 1986: In the 1978 campaign, I served as Research Chair.

   Richard G. Lugar campaigns for Mayor of Indianapolis in 1971; U.S. Senate in 1974 and 1976; fundraising efforts in subsequent campaigns. My involvement in the early campaigns was as a campaign volunteer, preparing correspondence, etc. during evening and weekend hours; my involvement since 1976 has been limited to occasional fundraising events.

   Stephen Goldsmith campaign for Governor of Indiana, 1996. My involvement was in the research area; again, I had no title or position with the campaign.

   Stephen Carter campaigns for Attorney General of Indiana, 1996 and 2000. Volunteer research work and informal advisory capacity.

George W. Bush for President campaign, 2000. I had no official position with this campaign, but volunteered to assist with criminal justice research, and with liaison to law enforcement organizations.

b. Specific campaigns in which I have held an official position:

Scott C. Newman campaigns for Marion County, Indiana Prosecutor, 1994 and 1998: Campaign Chairman.

Sue Anne Gilroy campaign for Mayor of Indianapolis, 1999: Campaign Treasurer. Also assisted on a volunteer basis with research in law enforcement and other areas.

III. GENERAL (PUBLIC)

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

**Response:**

a. From 1994 to 1999, I served on the Board of Directors of the Community Organizations Legal Assistance Project (COLAP), a not-for-profit pro bono legal services organization which provides free legal services to neighborhood-based organizations seeking to improve the quality of life in their community. I also provided some direct services to community organizations through COLAP.

b. From its inception in 1994 to the present, I have served on the Board of Directors of the Neighborhood Christian Legal Clinic, a pro bono legal services organization for the provision of direct services to residents of inner-city neighborhoods. I have also provided some direct service to clients of the legal clinic during the course of my service on the Board.

2. Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion - through either formal membership requirements or the practical implementation of membership policies? If so, list,

with dates of membership. What you have done to try to change these policies.

Response: I belong to no such organizations. When I was a child, my family joined a swim club which later was alleged to have discriminated in its membership practices. I dropped my membership in the club when I reached adulthood, specifically because of those allegations.

# FINANCIAL STATEMENT

## NET WORTH

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

| ASSETS | | | | LIABILITIES | | | |
|---|---|---|---|---|---|---|---|
| Cash on hand and in banks | 21, | 000 | 00 | Notes payable to banks—secured | | 00 | 00 |
| U.S. Government securities—add schedule | 18, | 000 | 00 | Notes payable to banks—unsecured | | 00 | 00 |
| Listed securities—add schedule | 247, | 200 | 00 | Notes payable to relatives | | 00 | 00 |
| Unlisted securities—add schedule | | 00 | 00 | Notes payable to others | | 00 | 00 |
| Accounts and notes receivable: | | | | Accounts and bills due | | 00 | 00 |
| Due from relatives and friends | | 00 | 00 | Unpaid income tax | | 00 | 00 |
| Due from others | | 00 | 00 | Other unpaid tax and interest | | 00 | 00 |
| Doubtful | | 00 | 00 | Real estate mortgages payable—add schedule | 41, | 500 | 00 |
| Real estate owned—add schedule | 245, | 000 | 00 | Chattel mortgages and other liens payable | | 00 | 00 |
| Real estate mortgages receivable | | 00 | 00 | Other debts—itemize: | | | |
| Autos and other personal property | 40, | 000 | 00 | Krieg DeVault LLP | | | |
| Cash value—life insurance | 17, | 000 | 00 | (furniture purchase loan) | 7, | 000 | 00 |
| Other assets—itemize: | | | | | | | |
| Retirement Accounts | | | | | | | |
| Applicant | 254, | 950 | 00 | | | | |
| Spouse | 284, | 200 | 00 | Total liabilities | 48, | 500 | 00 |
| | | | | Net worth | 1,068, | 850 | 00 |
| Total assets | 1,117, | 350 | 00 | Total liabilities and net worth | 1,117, | 350 | 00 |

| CONTINGENT LIABILITIES | | | | GENERAL INFORMATION | | | |
|---|---|---|---|---|---|---|---|
| As endorser, comaker or guarantor | | 00 | 00 | Are any assets pledged? (Add schedule.) | No | | |
| On leases or contracts | | 00 | 00 | Are you defendant in any suits or legal actions? | No | | |
| Legal Claims | | 00 | 00 | Have you ever taken bankruptcy? | No | | |
| Provision for Federal Income Tax | | 00 | 00 | | | | |
| Other special debt | | 00 | 00 | | | | |

**SCHEDULES**
**Addendum to Financial Statement: Net Worth**
**Deborah J. Daniels**

| **Assets** | | **Value** |
|---|---|---|
| 1. | U.S. Government Securities | |
| | Series EE Bonds | $ 18,000 |
| 2. | Listed Securities (held jointly with spouse) | |
| | Eli Lilly & Co. | $ 25,400 |
| | John Hancock Regional Bank Fund | $ 27,600 |
| | Prudential Active Balanced Fund, Class A | $ 30,600 |
| | Prudential Active Balanced Fund, Class B | $ 16,800 |
| | Prudential Equity Fund, Class A | $ 34,000 |
| | Prudential Equity Fund, Class B | $ 21,700 |
| | Prudential Global Growth Fund, Class A | $ 20,500 |
| | Prudential Global Growth Fund, Class B | $ 5,100 |
| | Prudential Jennison Growth Fund, Inc., Class B | $ 65,500 |
| | TOTAL | $247,200 |
| 3. | Real Estate Owned (jointly with spouse) | |
| | Primary residence, Indianapolis, IN | $230,000 |
| | Time share condominium interest, Key West, FL | 15,000 |
| | TOTAL | $245,000 |
| 4. | Retirement Accounts: Applicant | |
| | Phoenix Zweig Managed Assets Fund CLC | $ 17,150 |
| | Prudential Active Balanced Fund, Class B | $ 35,000 |
| | Prudential Equity Fund, Class B | $ 27,300 |
| | Prudential Value Fund, Class B | $ 27,700 |
| | Putnam Investors Fund CLA | $ 53,600 |
| | Prudential Jennison Growth Fund, Inc., Class B | $ 7,900 |
| | ABA Members Retirement Program: Pension | $ 27,000 |
| | ABA Members Retirement Program: 401(k)* | $ 24,500 |

*Value of 401(k) divided equally between: Value Equity Fund, Growth Equity Fund, Aggressive Equity Fund, and International Equity Fund.

Retirement Accounts: Applicant (continued from prior page)

| | |
|---|---|
| Indiana Public Employees Retirement Fund | $ 22,000 |
| Mutual of America (tax deferred annuity)* | $ 12,800 |
| *Value of annuity divided equally between: Composite Fund, Calvert Social Balanced Fund, Interest Accumulation Account | |
| TOTAL | $254,950 |

5. Retirement Accounts: Spouse

| | |
|---|---|
| Central Newspapers, Inc. 401(k) | |
| Stable Value Fund | $123,300 |
| Large Cap Value Fund | $ 57,000 |
| Large Cap Growth Fund | $ 49,300 |
| Central Newspapers, Inc. Defined Benefit Pension Plan | $ 54,600* |
| *Value of total contributions | |
| TOTAL | $284,200 |

IM-346148-1

**U.S. Department of Justice**

*Washington, D.C. 20530*

JUN 6 2001

Ms. Amy L. Comstock
Director
Office of Government Ethics
Suite 500
1201 New York Avenue, NW
Washington, DC 20005-3919

Dear Ms. Comstock:

In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, I am forwarding the financial disclosure report of Deborah J. Daniels who has been nominated by the President to serve as Assistant Attorney General, Office of Justice Programs, Department of Justice. We have conducted a thorough review of the enclosed report.

The conflict of interest statute, 18 U.S.C. § 208, requires that Ms. Daniels recuse herself from participating personally and substantially in a particular matter in which she, her spouse, or anyone whose interests are imputed to her under the statute has a financial interest. She has a financial interest in her law firm, Krieg DeVault, LLP through her participation in a defined benefit plan offered by the firm. She will separate from the firm, upon confirmation, and pursuant to her partnership agreement will receive a full return of her capital account calculated through the date of her separation from the firm. The firm also will return her contributions to its pension plan for 2001. She will receive these payments by December 31, 2001. We have counseled her to obtain advice about disqualification or to seek a waiver before participating in any particular matter that could affect her financial interests including her law firm until she has received the return of her capital account and her pension contributions and until she has rolled over her interest in the defined benefit plan.

208(b)(2) in 5 CFR 2640.201(c) she would be permitted to participate in particular matters of general applicability such as rulemaking which affect all states, including the State of Indiana.

We have advised her that because of the standard of conduct on impartiality at 5 CFR 2635.502 she should seek advice before participating in a particular matter having specific parties in which a member of her household has a financial interest or in which someone with whom she has a covered relationship is or represents a party. She will have a covered relationship with her law firm and with her clients. Upon confirmation, Ms. Daniels has agreed to resign from all of the positions she still holds with the organizations listed on Schedule D of the enclosed report. She understands that for at least 1 year she should seek advice before participating in matters involving any of these organizations.

Based on the above agreements and counseling, I am satisfied that the report presents no conflicts of interest under applicable laws and regulations and that you can so certify to the Senate Judiciary Committee.

Sincerely,

Janis A. Sposato
Acting Assistant Attorney General
for Administration and
Designated Agency Ethics Official

Enclosure

SF 278 (1 ,00)
5 C.F.R. Pa... ..o 34
U.S. Office of Government Ethics

# Executive Branch Personnel PUBL ..INANCIAL DISCLOSURE REPORT

Form A(
OMB No. - 0001

| | | | | | |
|---|---|---|---|---|---|
| Date of Appointment, Candidacy, Election, or Nomination *(Month, Day, Year)* | **Reporting Status** (Check Appropriate Boxes) | Incumbent ☐ | Calendar Year Covered by Report | New Entrant, Nominee, or Candidate ☒ | Termination Filer ☐ / Termination Date *(If Applicable)(Month, Day, Year)* |
| **Reporting Individual's Name** | Last Name: DANIELS | | | First Name and Middle Initial: DEBORAH J. | |
| **Position for Which Filing** | Title of Position: ASSISTANT ATTORNEY GENERAL | | | Department or Agency *(If Applicable)*: Office of Justice Programs, Department of Justice | |
| **Location of Present Office** (or forwarding address) | Address *(Number, Street, City, State, and ZIP Code)*: Krieg DeVault Alexander & Capehart, LLP* One Indiana Square, #2800, Indianapolis, IN 46204 | | | Telephone No. *(Include Area Code)*: 317-238-6255 | |
| Position(s) Held with the Federal Government During the Preceding 12 Months *(If Not Same as Above)* | Title of Position(s) and Date(s) Held: None | | | | |
| **Presidential Nominees Subject to Senate Confirmation** | Name of Congressional Committee Considering Nomination: Senate Judiciary Comm. | | | Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No | |
| **Certification** I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge. | Signature of Reporting Individual: [signature] | | | Date *(Month, Day, Year)*: 04/27/01 | |
| **Other Review** (If desired by agency) | Signature of Other Reviewer: [signature] | | | Date *(Month, Day, Year)*: 5/8/01 | |
| **Agency Ethics Official's Opinion** On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below). | Signature of Designated Agency Ethics Official/Reviewing Official: [signature] | | | Date *(Month, Day, Year)*: 6/5/01 | |
| **Office of Government Ethics Use Only** | Signature: | | | Date *(Month, Day, Year)*: | |

Comments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*

* Name of law firm will change on May 7, 2001 to "Krieg DeVault, LLP"

*(Check box if filing extension granted & indicate number of days _____)* ☐

Annotations per conversations w/ filer. [signature] - DEO/DOJ

*(Check box if comments are continued on the reverse side)* ☐

**Fee for Late Filing**
Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a $200 fee.

**Reporting Periods**
**Incumbents:** The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

**Termination Filers:** The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

**Nominees, New Entrants and Candidates for President and Vice President:**

**Schedule A**--The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.

**Schedule B**--Not applicable.

**Schedule C, Part I** (Liabilities)--The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

**Schedule C, Part II** (Agreements or Arrangements)--Show any agreements or arrangements as of the date of filing.

**Schedule D**--The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Agency Use Only: 4/30/01

OGE Use Only

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U.S. Office of Government Ethics

Reporting Individual's Name: Deborah J. Daniels

# SCHEDULE A



**Assets and Income** — BLOCK A

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse).

None ☐

**Valuation of Assets** at close of reporting period — BLOCK B

**Income:** type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

| | Asset | None (or less than $1,001) | $1,001 - $15,000 | $15,001 - $50,000 | $50,001 - $100,000 | $100,001 - $250,000 | $250,001 - $500,000 | $500,001 - $1,000,000 | Over $1,000,000* | $1,000,001 - $5,000,000 | $5,000,001 - $25,000,000 | $25,000,001 - $50,000,000 | Over $50,000,000 | Excepted Investment Fund | Excepted Trust | Qualified Trust | Type: Dividends | Type: Rent and Royalties | Type: Interest | Type: Capital Gains | Amount: None (or less than $201) | $201 - $1,000 | $1,001 - $2,500 | $2,501 - $5,000 | $5,001 - $15,000 | $15,001 - $50,000 | $50,001 - $100,000 | $100,001 - $1,000,000 | Over $1,000,000* | $1,000,001 - $5,000,000 | Over $5,000,000 | Other Income (Specify Type & Actual Amount) | Date (Mo., Day, Yr.) Only if Honoraria |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Examples | Central Airlines Common | | | | x | | | | | | | | | | | | x | | | | | | x | | | | | | | | | | |
| | Doe Jones & Smith, Hometown, State | | | | x | | | | | | | | | | | | | | | | | | | | | | | | | | | Law Partnership Income $130,000 | |
| | Kempstone Equity Fund | | | | | | x | | | | | | | x | | | | | | | | | | x | | | | | | | | | |
| | IRA: Heartland 500 Index Fund | | | | | | | x | | | | | | x | | | | | | | | | | | x | | | | | | | | |
| 1 | Eli Lilly & Co. | | | X | | | | | | | | | | | | | X | | | | | X | | | | | | | | | | | |
| 2 | J. Hancock Regional Bank Fund B | | | X | | | | | | | | | | X | | | | | | | | | X | | | | | | | | | | |
| 3 | Prudential Global Growth Fund A | | | X | | | | | | | | | | X | | | | | | | X | | | | | | | | | | | | |
| 4 | Prudential Global Growth Fund B | | X | | | | | | | | | | | X | | | | | | | | | | X | | | | | | | | | |
| 5 | Prudential Equity Fund A | | | X | | | | | | | | | | X | | | | | | | | X | | | | | | | | | | | |
| 6 | Prudential Equity Fund B | | | X | | | | | | | | | | X | | | | | | | | | | X | | | | | | | | | |

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot Be Used.

SF 278 (Rev. [illegible]/2000)
5 C.F.R. Part [illegible]
U.S. Office of Government Ethics

Reporting Individual's Name: Deborah J. Daniels

# SCHEDULE A continued
(Use only if needed)



**Assets and Income** — BLOCK A

**Valuation of Assets** at close of reporting period — BLOCK B

**Income:** type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

| # | Assets and Income (Block A) | None (or less than $1,001) | $1,001 - $15,000 | $15,001 - $50,000 | $50,001 - $100,000 | $100,001 - $250,000 | $250,001 - $500,000 | $500,001 - $1,000,000 | Over $1,000,000* | $1,000,001 - $5,000,000 | $5,000,001 - $25,000,000 | $25,000,001 - $50,000,000 | Over $50,000,000 | Excepted Investment Fund | Excepted Trust | Qualified Trust | Type: Dividends | Type: Rent and Royalties | Type: Interest | Type: Capital Gains | Amount: None (or less than $201) | $201 - $1,000 | $1,001 - $2,500 | $2,501 - $5,000 | $5,001 - $15,000 | $15,001 - $50,000 | $50,001 - $100,000 | $100,001 - $1,000,000 | Over $1,000,000* | $1,000,001 - $5,000,000 | Over $5,000,000 | Other Income (Specify Type & Actual Amount) | Date (Mo., Day, Yr.) Only if Honoraria |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | Prudential Jennison Growth Fund B | | | | X | | | | | | | | | X | | | | | | | | | | X | | | | | | | | | |
| 2 | Prudential Active Balanced Fund A | | | X | | | | | | | | | | X | | | | | | | X | | | | | | | | | | | | |
| 3 | Prudential Active Balanced Fund B | | | X | | | | | | | | | | X | | | | | | | | | | X | | | | | | | | | |
| 4 | Prudential MoneyMart Assets | | | X | | | | | | | | | | X | | | | | | | | | X | | | | | | | | | | |
| 5 | IRA: Phoenix ZW Mgd. AFG | | | X | | | | | | | | | | X | | | | | | | | | | X | | | | | | | | | |
| 6 | IRA: Prudential Equity Fund B | | | X | | | | | | | | | | X | | | | | | | | | | X | | | | | | | | | |
| 7 | IRA: Prudential Active Balanced Fund B | | | X | | | | | | | | | | X | | | | | | | | | X | | | | | | | | | | |
| 8 | IRA: Prudential Value Fund B | | | X | | | | | | | | | | X | | | | | | | | | X | | | | | | | | | | |
| 9 | IRA: Putnam Investors A | | | X | | | | | | | | | | X | | | | | | | | | X | | | | | | | | | | |

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot Be Used.

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5 C.F.R. Pa... 534
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Reporting Individual's Name: Deborah J. Daniels

# SCHEDULE A continued
(Use only if needed)



**Assets and Income** — BLOCK A

**Valuation of Assets** at close of reporting period — BLOCK B

**Income:** type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

| # | Assets and Income (BLOCK A) | None (or less than $1,001) | $1,001 - $15,000 | $15,001 - $50,000 | $50,001 - $100,000 | $100,001 - $250,000 | $250,001 - $500,000 | $500,001 - $1,000,000 | Over $1,000,000* | $1,000,001 - $5,000,000 | $5,000,001 - $25,000,000 | $25,000,001 - $50,000,000 | Over $50,000,000 | Excepted Investment Fund | Excepted Trust | Qualified Trust | Type: Dividends | Type: Rent and Royalties | Type: Interest | Type: Capital Gains | Amount: None (or less than $201) | $201 - $1,000 | $1,001 - $2,500 | $2,501 - $5,000 | $5,001 - $15,000 | $15,001 - $50,000 | $50,001 - $100,000 | $100,001 - $1,000,000 | Over $1,000,000* | $1,000,001 - $5,000,000 | Over $5,000,000 | Other Income (Specify Type & Actual Amount) | Date (Mo., Day, Yr.) Only if Honoraria |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | SEP: Prudential Equity Fund B | | X | | | | | | | | | | | X | | | | | | | | | X | | | | | | | | | | |
| 2 | SEP: Prudential Jennison Growth B | | X | | | | | | | | | | | X | | | | | | | | X | | | | | | | | | | | |
| 3 | State of Indiana Public Employees Retiremt. Fund Defined Benefit | | | X | | | | | | | | | | | | | | | | | X | | | | | | | | | | | | |
| 4 | Mutual of America (TaxDef'd. Ann.): Composite Fund | | X | | | | | | | | | | | X | | | | | | | X | | | | | | | | | | | | |
| 5 | Mutual of Am. (TDA): Scudder Capital Growth Fund | | X | | | | | | | | | | | X | | | | | | | X | | | | | | | | | | | | |
| 6 | Mutual of Am. (TDA): Calvert Social Balanced Fund | | X | | | | | | | | | | | X | | | | | | | X | | | | | | | | | | | | |
| 7 | Mutual of Am.(TDA): Interest Accumulation Account | | X | | | | | | | | | | | | | | | | | | X | | | | | | | | | | | | |
| 8 | ABA Members Retirement Program*(pension) defined benefit | | | X | | | | | | | | | | | | | | | | | X | | | | | | | | | | | | |
| 9 | ABA Members Retirement Program*(401K): see p. 5 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot Be Used.

*ABA Members Retirement Program (pension and 401K) are through Krieg DeVault Alexander & Capehart, LLP

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5 C.F.R. Part ... 2634
U.S. Office of Government Ethics

Reporting Individual's Name: Deborah J. Daniels

# SCHEDULE A continued
(Use only if needed)



**Assets and Income** — BLOCK A

**Valuation of Assets** at close of reporting period — BLOCK B

**Income:** type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

| # | Assets and Income (BLOCK A) | None (or less than $1,001) | $1,001 - $15,000 | $15,001 - $50,000 | $50,001 - $100,000 | $100,001 - $250,000 | $250,001 - $500,000 | $500,001 - $1,000,000 | Over $1,000,000* | $1,000,001 - $5,000,000 | $5,000,001 - $25,000,000 | $25,000,001 - $50,000,000 | Over $50,000,000 | Excepted Investment Fund | Excepted Trust | Qualified Trust | Type: Dividends | Type: Rent and Royalties | Type: Interest | Type: Capital Gains | Amount: None (or less than $201) | $201 - $1,000 | $1,001 - $2,500 | $2,501 - $5,000 | $5,001 - $15,000 | $15,001 - $50,000 | $50,001 - $100,000 | $100,001 - $1,000,000 | Over $1,000,000* | $1,000,001 - $5,000,000 | Over $5,000,000 | Other Income (Specify Type & Actual Amount) | Date (Mo., Day, Yr.) Only if Honoraria |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | ABA Mbrs. 401K:Value Equity | | X | | | | | | | | | | | X | | | | | | | | X | | | | | | | | | | | |
| 2 | ABA Mbrs. 401K: Growth Equity | | X | | | | | | | | | | | X | | | | | | | X | | | | | | | | | | | | |
| 3 | ABA Mbrs. 401K: Aggressive Equity | | X | | | | | | | | | | | X | | | | | | | X | | | | | | | | | | | | |
| 4 | ABA Mbrs. 401K: International Equity | | X | | | | | | | | | | | X | | | | | | | X | | | | | | | | | | | | |
| 5 | Krieg DeVault Alexander & Capehart,LLP,Indianapolis,IN | | X | (capital account & pension contributions for 2001) | | | | | | | | | | | | | | | | | | | | | | | | | | | LawPtnship Income $151,285 | |
| 6 | (S) Central Newspapers, Inc. (CNI) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | salary | |
| 7 | (S) CNI Savings Plus (Deferred Comp. 401K): | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 8 | Stable Value (PRIMCO) | | | | | X | | | | | | | | X | | | | | | | | | | | | X | | | | | | |
| 9 | Large Cap Value (Diversified Investment Advisors) | | | | X | | | | | | | | | X | | | | | | | X | | | | | | | | | | | |

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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# SCHEDULE A continued
(Use only if needed)



**Assets and Income** — BLOCK A

**Valuation of Assets** at close of reporting period — BLOCK B

**Income:** type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

| # | Assets and Income (BLOCK A) | None (or less than $1,001) | $1,001 - $15,000 | $15,001 - $50,000 | $50,001 - $100,000 | $100,001 - $250,000 | $250,001 - $500,000 | $500,001 - $1,000,000 | Over $1,000,000* | $1,000,001 - $5,000,000 | $5,000,001 - $25,000,000 | $25,000,001 - $50,000,000 | Over $50,000,000 | Excepted Investment Fund | Excepted Trust | Qualified Trust | Type: Dividends | Type: Rent and Royalties | Type: Interest | Type: Capital Gains | Amount: None (or less than $201) | $201 - $1,000 | $1,001 - $2,500 | $2,501 - $5,000 | $5,001 - $15,000 | $15,001 - $50,000 | $50,001 - $100,000 | $100,001 - $1,000,000 | Over $1,000,000* | $1,000,001 - $5,000,000 | Over $5,000,000 | Other Income (Specify Type & Actual Amount) | Date (Mo., Day, Yr.) Only if Honoraria |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | (S) CNI Savings Plus(cont'd from previous page) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2 | (Montag & Caldwell) Large Cap Growth ^ | | | X | | | | | | | | | | X | | | | | | | X | | | | | | | | | | | | |
| 3 | (S) Central Newspapers, Inc. Common | X | | | | | | | | | | | | | | | X | | | X | | | | X | | | | | | | | | |
| 4 | U.S. Series EE Savings Bonds | | | X | | | | | | | | | | | | | | | X | | | X | | | | | | | | | | | |
| 5 | Northwestern Mutual Whole Life Insurance Policy | | | X | | | | | | | | | | | | | X | | | | | | X | | | | | | | | | | |
| 6 | (S) Gannett Co., Inc. (Pension:defined benefit) | | | | X | | | | | | | | | | | | | | | | X | | | | | | | | | | | | |
| 7 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 8 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 9 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot Be Used.

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5 C.F.R. Part ...
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Reporting Individual's Name: Deborah J. Daniels

# SCHEDULE C



## Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None [X]

| | Creditors (Name and Address) | Type of Liability | Date Incurred | Interest Rate | Term if applicable | Category of Amount or Value (x): $10,001 - $15,000 | $15,001 - $50,000 | $50,001 - $100,000 | $100,001 - $250,000 | $250,001 - $500,000 | $500,001 - $1,000,000 | Over $1,000,000* | $1,000,001 - $5,000,000 | $5,000,001 - $25,000,000 | $25,000,001 - $50,000,000 | Over $50,000,000 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Examples | First District Bank, Washington, DC | Mortgage on rental property, Delaware | 1991 | 8% | 25 yrs. | | | X | | | | | | | | |
| | John Jones, 123 J St., Washington, DC | Promissory note | 1999 | 10% | on demand | | | | | X | | | | | | |
| 1 | | | | | | | | | | | | | | | | |
| 2 | | | | | | | | | | | | | | | | |
| 3 | | | | | | | | | | | | | | | | |
| 4 | | | | | | | | | | | | | | | | |
| 5 | | | | | | | | | | | | | | | | |

*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

## Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None [ ]

| | Status and Terms of any Agreement or Arrangement | Parties | Date |
|---|---|---|---|
| Example | Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00. | Doe Jones & Smith, Hometown, State | 7/85 |
| 1 | Public Employees Retirement Fund, State of Indiana (Pension Fund [defined benefit plan]: contribs. to remain in fund until retiremt. or rollover to another fund) | State of Indiana | 1/77 |
| 2 | ABA Members Retirement Program (Pension: contribs. will be rolled over to a qualified retirement account upon separation from law firm) | Krieg DeVault Alexander & Capehart, LLP | 10/96 |
| 3 | ABA Members Retirement Program (401K: contribs. will be rolled over to a qualified retirement account upon separation from law firm) | Krieg DeVault Alexander & Capehart, LLP | 10/96 |
| 4 | Pursuant to law firm partnership agreement, will receive lump sum payment of capital account calculated to date of separation, and | Krieg DeVault Alexander & Capehart, LLP Michael E. Williams, Managing Partner | 1/00 |
| 5 | pension contributions for 2001. Payment will be made by 12/31/01. | | |
| 6 | | | |

Prior Editions Cannot Be Used.

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# SCHEDULE D



## Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

*=Will resign upon confirmation

None ☐

| | Organization (Name and Address) | Type of Organization | Position Held | From (Mo., Yr.) | To (Mo., Yr.) |
|---|---|---|---|---|---|
| Examples | Nat'l Assn. of Rock Collectors, NY, NY | Non-profit education | President | 6/92 | Present |
| | Doe Jones & Smith, Hometown, State | Law firm | Partner | 1/85 | 1/00 |
| 1 | Krieg DeVault Alexander & Capehart, LLP, Indianapolis, IN | Law firm | Partner * | 1/00 | Present |
| 2 | Noble, Inc., Indianapolis, IN | Non-profit human services | Director * | 9/95 | Present |
| 3 | The Mental Health Association in Indiana, Inc. Indianapolis, IN | Non-profit human services | Director * | 6/99 | Present |
| 4 | The Indiana Mental Health Memorial Foundation, Inc., Indianapolis, IN | Non-profit human services | Director*, Vice Chair* | 6/98 | Present |
| 5 | Indiana Sports Corp./Indiana Sports Marketing Indianapolis, IN | Non-profit amateur athletics | Director * | 6/95 | Present |
| 6 | United Way and United Way Community Service Council of Central IN, Indianapolis, IN | Non-profit human services | Director * | 9/95 | Present |

## Part II: Compensation in Excess of $5,000 Paid by One Source

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

**Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.**

None ☐

| | Source (Name and Address) | Brief Description of Duties |
|---|---|---|
| Examples | Doe Jones & Smith, Hometown, State | Legal services |
| | Metro University (client of Doe Jones & Smith), Moneytown, State | Legal services in connection with university construction |
| 1 | See Attachment A (client list) | Legal services |
| 2 | Krieg DeVault Alexander & Capehart, LLP, Indianapolis, IN | Legal services |
| 3 | | |
| 4 | | |
| 5 | | |
| 6 | | |

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| Reporting Individual's Name | SCHEDULE D | Page Number |
|---|---|---|
| Deborah J. Daniels | | 9 of 9 |

## Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature. *=Will resign upon confirmation

None ☐

| | Organization (Name and Address) | Type of Organization | Position Held | From (Mo., Yr.) | To (Mo., Yr.) |
|---|---|---|---|---|---|
| Examples | Nat'l Assn. of Rock Collectors, NY, NY | Non-profit education | President | 6/92 | Present |
| | Doe Jones & Smith, Hometown, State | Law firm | Partner | 7/85 | 1/00 |
| 1 | Neighborhood Christian Legal Clinic | Non-profit pro bono legal services | Director* | 8/94 | present |
| 2 | North Central High School Alumni Association | Non-profit educational | Director* | 8/96 | present |
| 3 | The Children's Bureau of Indianapolis, Inc. | Non-profit human services | Member, Advisory Bd.* | 6/97 | present |
| 4 | Community Organizations Legal Assistance Program | Non-profit pro bono legal services | Director, Vice Pres. | 8/94 | 9/99 |
| 5 | Greater Indianapolis Progress Committee, Inc. | Non-profit community development | Director | 1/97 | 1/00 |
| 6 | Hudson Institute | Non-profit research | Adjunct Fellow* | 6/93 | present |

## Part II: Compensation in Excess of $5,000 Paid by One Source

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

**Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.**

None ☐

| | Source (Name and Address) | Brief Description of Duties |
|---|---|---|
| Examples | Doe Jones & Smith, Hometown, State | Legal services |
| | Metro University (client of Doe Jones & Smith), Moneytown, State | Legal services in connection with university construction |
| 1 | (See page 8) | |
| 2 | | |
| 3 | | |
| 4 | | |
| 5 | | |
| 6 | | |

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**ATTACHMENT A**
**SF 278** (p. 1 of 2)

**List of Significant Clients**
**(Billings of $5,000 or more in reporting period 1/1/99 to present)**
**Deborah J. Daniels**

| Client | Brief Description of Duties |
|---|---|
| 1. American Senior Communities/Basic American Industries<br>Indianapolis, IN | Governmental relations services |
| 2. Anesthesia Consultants of Indianapolis, Inc.<br>Indianapolis, IN | Legal services |
| 3. Association of Indiana Prosecuting Attorneys<br>Indianapolis, IN | Governmental relations services |
| 4. Behavioral Healthcare Corp.<br>Nashville, TN | Governmental relations services |
| 5. Buildspec, Inc.<br>Springfield, MO | Legal services |
| 6. David B. Edgeworth, Terrence D. Edgeworth,<br>Michael B. Edgeworth and Margaret Edgeworth Randall<br>Bloomington, IN | Legal services |
| 7. First Farmers Bank and Trust<br>Converse, IN | Legal services |
| 8. Greater Educational Opportunities Foundation<br>Indianapolis, IN | Governmental relations services |
| 9. The Health & Hospital Corporation of Marion County, Inc.<br>Indianapolis, IN | Legal services |
| 10. Indiana Attorney General<br>Indianapolis, IN | Legal services and governmental relations services |
| 11. Landustrie Sneek BV<br>Sneek, The Netherlands | Legal services |
| 12. The Methodist Hospitals, Inc.<br>Gary, IN | Legal services; governmental relations services |
| 13. Noble of Indiana, Inc.<br>Indianapolis, IN | Legal services; governmental relations services |
| 14. Lake County, Indiana Hospitals (jointly*):<br>The Methodist Hospitals, Inc. (Gary, IN)<br>Community Hospital (Munster, IN)<br>St. Mary Medical Center (Hobart, IN)<br>St. Catherine Hospital (East Chicago, IN)<br>St. Margaret Hospital (Hammond, IN)<br>St. Anthony Medical Center (Crown Point, IN) | Legal services; governmental relations services |

*Applicant has not incurred fees for these specific services in the amount of $5,000 or more for any individual hospital involved in this representation, but has incurred fees in that amount for the group.

| | |
|---|---|
| 15. Eglen, Ph.D., Jan Alan<br>Terre Haute, IN | Legal services |
| 16. Marion County Auditor<br>Indianapolis, IN | Governmental relations services |
| 17. Marion County Prosecutor<br>Indianapolis, IN | Governmental relations services |
| 18. Truck-Lite, Inc.<br>Falconer, N.Y. | Legal services |
| 19. TTI of Indiana, Inc.<br>Indianapolis, IN | Governmental relations services |

Senator FEINGOLD. Thank you, Ms. Daniels. We will turn to the questions after we have heard from Ms. Hart. She is our final nominee for the Office of Director of the National Institute of Justice, which is one of the five offices that I mentioned within the OJP.

So I take it you have had an opportunity to meet your new boss sitting next to you?

Ms. HART. Yes, I have, Senator.

Senator FEINGOLD. NIJ's role is to provide objective, independent, non-partisan, evidence-based knowledge and tools to meet the challenges of fighting crime and dispensing justice, particularly at the State and local levels. The NIJ uses the social and physical sciences to research the impact of crime, develop technologies and standards for fighting and preventing crime, evaluate existing strategies and programs, and assist policymakers. NIJ often works through the panels of scientists, researchers, and practitioners who review applications and make recommendations to the Director about funding decisions.

Ms. Hart is a native of Birmingham, England, and currently serves as chief counsel of the Pennsylvania Department of Corrections. She is a 1976 graduate of the University of Delaware and a 1979 graduate of the Rutgers-Camden School of Law. She worked for many years for the Philadelphia District Attorney's office, as Senator Specter mentioned, so it is also a pleasure to have you here, Ms. Hart, and if you would rise, stand, raise your right hand to be sworn. Do you swear or affirm that the testimony you are about to give before the committee will be the truth, the whole truth, and nothing but the truth?

Ms. HART. I do.

Senator FEINGOLD. You may proceed.

**STATEMENT OF SARAH V. HART, OF PENNSYLVANIA, NOMINEE TO BE DIRECTOR OF THE NATIONAL INSTITUTE OF JUSTICE**

Ms. HART. Thank you very much, Senator Feingold. With your permission, I would like to give a brief opening statement.

Senator FEINGOLD. Please.

Ms. HART. I would like to thank President Bush and Attorney General Ashcroft for their confidence in me. I am extremely grateful to be nominated to be the Director of the National Institute of Justice, and I'd also like to thank you, Senator Feingold, Mr. Chairman, for convening this hearing today.

As this committee knows, the National Institute of Justice is greatly respected in the criminal justice community. NIJ earned this respect because of its integrity, objectivity, and quality work. If confirmed, I will be committed to ensuring that NIJ continues with this proud tradition.

If confirmed, I intend to make sure that the public derives the greatest possible benefit from NIJ and its work. NIJ's role in the evaluation of Federal criminal justice programs helps ensure that the public gets the maximum return on tax dollars spent. It also promotes public safety and public confidence.

If confirmed, I will make sure that NIJ objectively reports when programs work, when they don't, and whether we can do something to fix them.

As a criminal justice professional, I have long been familiar with NIJ's work. It has promoted constructive improvements and encouraged innovative approaches to reducing crime. And much of its current efforts hold tremendous promise for the future. For example, if confirmed, I look forward to working to maximize the benefits of DNA technology. As I see this, DNA technology is a complete win-win situation. It helps solve some of our most serious crimes. It ensures reliable verdicts. It often leads to guilty pleas that spare our fragile victims the trauma of trial. And it helps ensure that repeat offenders, some of our most serious offenders, are incapacitated and unable to commit further crimes in the community.

I want to work with this administration and this committee to improve our criminal justice system, and I hope this committee will do me the honor of recommending my confirmation.

Thank you very much, Senator Feingold.

[The biographical information of Ms. Hart follows.]

I.BIOGRAPHICAL INFORMATION (PUBLIC)

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

Sarah Vandenbraak Hart
Sarah Baseden Vandenbraak
Sarah Jane Baseden

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

Place of Residence: Philadelphia, Pennsylvania

Office Addresses: 2520 Lisburn Rd.
Camp Hill, PA 17001-0598

55 Utley Drive
Camp Hill, PA 17001-0598

1355 West Cheltenham Avenue
Elkins Park, PA 19027

3. Date and place of birth.

February 10, 1955. Birmingham, England.

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

Married to Henry Hart, III.

Spouse's occupation: Attorney.

Spouse's business addresses:

Office of the Inspector General
Suite 1105, The Bellevue
200 S. Broad Street, Philadelphia, PA. 19102

Office of the Inspector General
333 Market Street
Harrisburg, PA

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

College:
University of Delaware
Sept. 1972-June 1976
B.S. Criminal Justice (June 1976)

Law School:
Rutgers-Camden School of Law
August 1976-May 1979
J.D. (May 1979)

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

Chief Counsel
Pennsylvania Department of Corrections
2520 Lisburn Rd.
Camp Hill, PA 17001-0598
(Appointed by the Governor's General Counsel)
(1995 to present).

Incoming President of the Board of Directors
Crime Victims Law Institute
Northwestern School of Law
Of Lewis & Clark College
(I agreed in 2000 to become the incoming President of this organization. Following the announcement of the intent to nominate in April 2001, I gave notice of my intent to withdraw from this commitment.)

Philadelphia District Attorney's Office
1421 Arch Street
Philadelphia, PA 19102
(1979 to 1995)

Student coffee concession
Rutgers Camden School of Law
North Fifth Street
Camden, NJ
(probably 1976-77)

A Wilmington Law Firm
(I cannot recall the name)
Wilmington, DE
(part-time during law school, probably in 1977-78)

Crestview Swim Club
Graylyn Crest
Wilmington, DE
(summer employment after college, probably 1976-77)

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

   I was never in the military.

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

   None.

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

   Incoming President of the Board of Directors
   Crime Victims Law Institute
   Northwestern School of Law
   Of Lewis & Clark College
   (I agreed in 2000 to become the incoming President of this organization. Following the April 2001 announcement of the intent to nominate, I gave notice of my intent to withdraw from this commitment.)

   Member, Appellate Procedural Rules Committee
   Pennsylvania Supreme Court
   (1999 to present)

Chairman, Sentencing and Corrections Subcommittee
Criminal Law Practice Group
The Federalist Society for Law and Public Policy Studies
(1999 to present)

Co-Chair, Federalism Committee
Governor's Office of General Counsel
(1999-2000)

Corrections Committee
National Association of Attorneys General
(1996-2000)

Legal Issues Committee
American Correctional Association
(Vice Chair 1998 to 2000; Member 2000 to 2001)

Pennsylvania District Attorneys Association
(Member for most years from 1980 to present)

Pennsylvania Bar Association
(Member approximately 1998 to present)

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

I believe that the following organizations of which I am a member engage in lobbying activity: The Pennsylvania Bar Association, The Pennsylvania District Attorney's Association, and The American Correctional Association.

Other organizations of which I am a member are: The Federalist Society for Law and Public Policy Studies, and The Appellate Procedural Rules Committee of the Pennsylvania Supreme Court. In addition, I was previously designated to be the incoming President of the Board of Directors of the Crime Victims Law Institute but have given notice of my intent to withdraw from this commitment.

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

The Pennsylvania Supreme Court (10/16/79 to present);

The United States District Court for the Eastern District of Pennsylvania (6/16/82 to present);

The United States District Court for the Middle District of Pennsylvania (2/9/98 to present);

The United States District Court for the Western District of Pennsylvania. (11/25/96 to present);

The United States Supreme Court (3/4/86 to present); and

The United States Court of Appeals for the Third Circuit (8/10/82 to present)

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

PLRA: A Step in the Right Direction, Corrections Today (August 1998) (copy attached).

Bail, Humbug! Why Criminals Would Rather Be In Philadelphia, Policy Review (Summer 1995) (copy attached).

No Room at the Jail, USA Today (August 1995) (copy attached).

Limits on the Use of Defensive Force to Prevent Intramarital Assaults, 10 Rut.Cam.L.J. (1979) (copy attached).

Department of Corrections Attorneys Defeat 20-Year-Old Consent Decrees, On Point (April 1999) (copy attached).

PLRA Protects Prison Managers and Inmates, The Corrections Professional (1996) (copy attached).

CLR Interview: A PLRA Architect Gives Her Views on the Meaning of the New Law, Correctional Law Reporter (August/September 1996) (copy attached).

All speeches and presentations I have given on constitutional law or legal policy were based on notes and not a prepared text. I did not retain copies of the notes. To the best of my knowledge, there are no press reports of the speeches or presentations. However, there is a published summary of a presentation I made at the Hudson Institute in 1994 or 1995 relating to the Philadelphia prison case. In addition, last year I organized and moderated two programs for the Federalist Society: *Prisons and the ADA* and *DNA and the Criminal Justice System.*

In the course of my public service career, I have testified before various legislative committees, including this Committee. I am aware of two press reports relating to my testimony. Prison Litigation Reform Act Gets Bumpy Start, According to Congressional Witnesses, West's Legal News (10/7/96); Prison Cap a Dunce Cap? Witness says 1986 Deal with U.S. Court Practically Gives Pushers a Vending License, Philadelphia Daily News (9/29/94) (Copies of available testimony and press reports attached).

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

My health is good. My last complete physical examination was on June 4, 2001.

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

Assistant District Attorney
Philadelphia District Attorney's Office
1421 Arch Street
Philadelphia, PA 19102
Appointed 1979-Resigned 1995

Chief Counsel
Pennsylvania Department of Corrections
2520 Lisburn Rd.
Camp Hill, PA 17001-0598
(Appointed by the Governor's General Counsel in 1995 and currently hold this position).

I have not been a candidate for public office.

15. Legal Career:

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

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

I have not served as a clerk to a judge.

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

I have not practiced alone.

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

Assistant District Attorney
Philadelphia District Attorney's Office
1421 Arch Street
Philadelphia, PA 19102
Appointed Nov. 1979-Resigned Sept. 1995
(Served as Chief of the Civil Litigation Unit from 1985 until 1995)

Chief Counsel
Pennsylvania Department of Corrections
2520 Lisburn Rd.
Camp Hill, PA 17001-0598
(Appointed by the Governor's General Counsel in Sept. 1995 and currently hold this position).

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

| | |
|---|---|
| 1979-1986: | Criminal and appellate practice. |
| 1986-1995: | Civil litigation/criminal justice. |
| 1995-present: | Legal advice, office management, appellate matters, civil litigation, criminal justice policy. |

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

Typical clients: Commonwealth of Pennsylvania, prosecutors, corrections officials.

Specialized areas: Prison litigation/appellate litigation/criminal justice issues.

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

Since 1995, I have appeared in court occasionally.
I previously appeared in court frequently.

2. What percentage of these appearances was in:

(a) federal courts;
(b) state courts of record;
(c) other courts.

1979-1986-I appeared almost exclusively in state court. I estimate that 95% of my appearances were in state court and 5% were in federal courts.

1986-1995-I appeared primarily in federal court. I estimate that 70% of my appearances were in federal court and 30% were in state courts.

Since 1995, I have occasionally appeared in both federal and state courts.

3. What percentage of your litigation was:

(a) civil;
(b) criminal.

1979-86: I do not know, but I estimate that 90% of my litigation was criminal and 10% was civil.

1986-1995. I do not know, but I estimate that 80% of my

litigation was civil and 20% was criminal. However, most of my civil litigation related to criminal justice matters.

1995-present. I do not know but I estimate that 95% of my litigation has been civil (although much of this litigation related to criminal justice issues) and 5% was criminal.

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

The majority of my work has related to appellate and motions practice. However, I tried felony criminal cases in the Philadelphia Court of Common Pleas in the mid-1980's. I do not know the number of criminal cases I tried to verdict but I estimate that it is no less than 50. I tried one or two criminal jury trials.

I have successfully obtained dismissal or a judgment in favor of the defense in approximately 50 civil cases. Most were won on the basis of dispositive motions. However, some were won based on evidentiary hearings or trial, with one trial before a federal civil jury.

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

I do not know. I estimate that 95-98% were non-jury trials.

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

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

(1) Philadelphia prison cap litigation.

a. Case name: Harris v. Pernsley (also know as Harris v. Reeves, Harris v. Levine, Harris v. City of Philadelphia).

b. Name of Court: United States District Court for the Eastern District of Pennsylvania. (There were also appellate proceedings before the United States Court of Appeals for the Third Circuit and certiorari petitions filed in the United States Supreme Court.)

c. Judge or Judges: Honorable Norma L. Shapiro.

d. Docket number: 82-1847.

e. Citations to reported cases: This litigation resulted in thousands of court filings and numerous reported decisions. The reported opinions most directly relevant to the matters litigated on behalf of the District Attorney are as follows. *Harris v. Reeves*, 946 F.2d 214 (3d. Cir. 1991), *cert. denied sub nom., Abraham v. Harris*, 112 S.Ct 1516 (1992); *Harris v. Pernsley*, 113 F.R.D. 615 (E.D. Pa. 1986), *aff'd* 820 F.2d 592 (3d Cir. 1987), *cert. denied*, 484 U.S. 947 (1987). *See also*, *Harris v. City of Philadelphia*, 47 F.3d 1342 (3d. Cir 1995). *Harris v. Pernsley*, 654 F. Supp. 1057 (1987).

f. Party or parties represented: Lynne Abraham (Philadelphia District Attorney) and Ronald D. Castille (then-Philadelphia District Attorney).

g. Nature of participation in litigation: Intervention proceedings and challenges to court orders and consent decrees (primarily requiring the release of inmates).

h. Capsule summary:

By intervention proceedings and challenges to the Federal court orders and consent decrees, the District Attorney's Office sought to prevent the mass release of inmates who were lawfully incarcerated pursuant to state court orders. The law enforcement concerns about these federal court orders are detailed in the enclosed Policy Review article. The following is a brief summary.

In 1986, then-mayor W. Wilson Goode decided to settle class action challenging the conditions in the Philadelphia prisons rather than proceed to trial. The resulting federal consent decree did not address medical care or other conditions in the city's prisons. Rather, it sought to limit the overall number of

prisoners. Specifically, it forbade pretrial detention for defendants accused of broad categories of crime. Instead of individualized bail review, with Philadelphia judges considering a criminal defendant's dangerousness to others or his risk of flight, the consent decree required a "charge-based" system of prison admissions. Suspects charged with so-called "non-violent" crimes-- including stalking, car jacking, robbery with a baseball bat, burglary, drug dealing, vehicular homicide, manslaughter, terroristic threats, and gun charges -- were not subject to pretrial detention.

These federal consent decrees effectively prevented Philadelphia judges from considering other relevant matters in making pretrial detention determinations. Specifically, they could not consider a defendant's prior record, his history of failing to appear in court, his mental-health history, his ties to the community, or his drug or alcohol dependency.

The federal court orders adversely affected Philadelphia's already struggling criminal-justice system. A study conducted by John Goldkamp and Kay Harris, nationally recognized experts on the bail process, found, for example, that 76 percent of all Philadelphia drug dealers became fugitives within 90 days of their arrest. Nationally, only 26 percent of drug dealers became fugitives within one year of their arrest. By comparison, only 3 percent of Philadelphia defendants charged with aggravated assault—a crime not subject to the release provisions of the federal consent decree—failed to appear for court.

This federally mandated pretrial detention system caused dramatic increases in Philadelphia's fugitive rate. For example, in the first six months of 1994, over 11,000 new bench warrants (the arrest document issued when a criminal defendant does not appear for a court hearing) were issued for defendants released under the federal consent decrees, representing 74 percent of all the bench warrants issued during this period. Under the consent decree, the number of fugitives in Philadelphia nearly tripled from 18,000 to almost 50,000, equivalent to a year's worth of criminal prosecutions.

The inmates released by the federal court order also continued to commit further crimes. Court statistics showed that, in one 18-month period (1993 and the first six months of 1994), Philadelphia police rearrested 9,732 defendants released because of the consent decree. These defendants were charged with 79 murders, 959 robberies, 2,215 drug dealing crimes, 701 burglaries, 2,748 thefts, 90 rapes, 14 kidnapping charges, 1,113 assaults, 264 gun-law violations, and 127 drunk-driving incidents.

These crimes could not all be attributed to the federal consent decrees, as many defendants would have been released under normal Pennsylvania procedures. But studies indicated that the inmates released pursuant to the consent decree were more likely to become fugitives and commit new crimes.

Goldkamp and Harris found that pretrial detainees released under the consent decree committed crimes at more than twice the rate of defendants released under state-court bail programs. Within 90 days of release, 18 percent of federally released defendants were rearrested for new crimes, compared with an 8 percent rearrest figure for comparable state bail programs.

Because of these harms, the District Attorney's Office sought to intervene in the litigation and sought to terminate the prisoner release provisions of the consent decrees. The trial court denied both of these intervention motions and those orders were affirmed on appeal. The trial court, however, granted the District Attorney the status of "objector." This permitted to District Attorney's Office to make specific requests for amendments to the consent decrees in order to minimize their adverse effects. Numerous modifications and exceptions to the court orders were granted pursuant to these objections.

When I left the District Attorney's Office, the prison cap orders were still in effect but the federal court indicated that it would allow local officials to take control of the detention process. A few months later, the federal court ended the prison cap, based upon the local court system's adoption of revised bail guidelines. (I aided in the revision of these guidelines.) Finally, after the passage of the Prison Litigation Reform Act, the federal court terminated all of the consent decrees.

i. Final disposition: Consent Decrees terminated in 2000.

j. Dates of representation: 1986-95.

k. Co-counsel: (I had numerous colleagues in the District Attorney's Office who worked on various aspects of this case. The following are the attorneys who had major involvement in the litigation.)

Gaele Barthold, Esquire
Cozen & O'Connor
The Atrium
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Laurie Magid, Esquire
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299 North Spring Mill Rd.
Villanova, PA
(610) 519-6498

Ronald Eisenberg
Deputy District Attorney
1421 Arch Street
Philadelphia, PA 19102
(215) 686-5700

l. Other counsel:

David Richman, Esquire
Philip Lebowitz, Esquire
Pepper Hamilton,LLP
Suite 3000, 2 Logan Square
Philadelphia, PA 19103-2799
(215) 981-4000

David Wolfsohn, Esquire
Mark Aronchik, Esquire
Hangley, Aronchik, Segal & Pudlin
12th Floor
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Richard Gold, Esquire
Guy Vilim, Esquire
Gold & Vilim
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(215) 546-5464

James B. Jordan, Esquire
Assistant General Manager
Loss Prevention
South Eastern Pennsylvania Transportation Authority
1234 Market Street, 10th Floor
Philadelphia, PA 19107
215/580-3783

(2) Litigation to terminate longstanding state prison consent decrees.

a. Case name: *Imprisoned Citizens Union v. Shapp* (also known as *Imprisoned Citizens Union v. Ridge*).

b. Name of Court: United States District Court for the Eastern District of Pennsylvania. (Appellate proceedings before the United States Court of Appeals for the Third Circuit).

c. Judge or Judges: The Honorable Jan E. DuBois. (In the Court of Appeals, Judges Slovitor, Sirica, and Alito).

d. Docket number: Eastern District Nos. 70-3054, 70-2545, 71-513, 71-1006. Court of Appeals, No. 98-1536.

e. Citations to reported cases: *Imprisoned Citizens Union v. Shapp*, 11 F. Supp. 586 (E.D.Pa. 1998). *Imprisoned Citizens Union v. Ridge*, 169 F.3d 1978 (1999).

f. Party or parties represented: The Defendants (Governor Tom Ridge and officials of the Pennsylvania Department of Corrections).

g. Nature of participation in litigation: Motion to terminate longstanding consent decrees based upon 18 U.S.C. § 3626.

h. Capsule summary:

This class action prisoner litigation was originally filed in the 1970's. It resulted in several consent decrees that controlled many aspects of the Department's prison operations. Because these consent decrees came to require outdated and counterproductive prison practices, the Department sought to terminate the decrees based on the Prison Litigation Reform Act (PLRA). 18 U.S.C. § 3626. The prisoners, represented by the American Civil Liberties Union, opposed relief on the ground that the PLRA was unconstitutional. The prisoners also sought contempt sanctions. The prisoners specifically noted that they did not claim that any current prison conditions were unconstitutional.

In 1998, Judge DuBois terminated all of the consent decrees, rejecting the ACLU's constitutional challenges. *Imprisoned Citizens Union v. Shapp*, 11 F. Supp. 586 (E.D.Pa. 1998). Specifically, he found that the PLRA's termination provisions did not violate the separation-of-powers doctrine (by allegedly encroaching on the power of the federal courts). He rejected the claim that the PLRA violated the due process clause, concluding that prisoners had no "vested right" in a consent decree and that the PLRA did not improperly impair a contractual obligation of the state. He also found that the PLRA did not violate the equal protection clause because prisoners were not a suspect class, the PLRA did not burden the prisoners access to courts, and that the PLRA

was a "perfectly rational means" to accomplish the legitimate goal of limiting federal court oversight of state prisons. Judge DuBois also denied the ACLU's motions for contempt sanctions, finding that there was no purpose to be served by compelling future compliance with a consent decree that should be terminated under the PLRA.

The Court of Appeals affirmed Judge DuBois's order in a published opinion. *Imprisoned Citizens Union v. Ridge*, 169 F.3d 1978 (1999). The Court of appeals rejected all of the prisoners' challenges to the constitutionality of the PLRA. The ACLU did not seek further review.

i. Final disposition: Consent decrees terminated.

j. Dates of representation: 1997-99.

k. Co-counsel: Francis Filipi, Senior Deputy Attorney General
Litigation Section
15th Floor
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(717) 783-1471

l. Other counsel: Stefan Presser
American Civil Liberties Union of Pennsylvania
Suite 701
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Philadelphia, PA 19107
(215) 592-1513

(3) Affirmative litigation to compel the state to provide timely treatment for Philadelphia juveniles.

a. Case name: *Castille v. Department of Public Welfare.*

b. Name of Court: Commonwealth Court of Pennsylvania.

c. Judge or Judges: Honorable James Gardner Colins.

d. Docket number: No. 2533 C.D. 1988.

e. Citations to reported cases: None.

f. Party or parties represented: Ronald D. Castille, then-Philadelphia District Attorney.

g. Nature of participation in litigation: Lead counsel for Petitioner.

h. Capsule summary:

I represented the District Attorney in this action seeking to compel the Commonwealth of Pennsylvania to timely place Philadelphia juveniles in treatment facilities. At the time, Philadelphia's only secure juvenile detention facility was severely overcrowded. A substantial cause of this overcrowding was the state's refusal to accept custody of adjudicated delinquents who had been committed by a court order to state treatment facilities. Many Philadelphia juveniles were waiting up to six months for their placement, despite a state statute requiring the state to make alternative facilities available if the state facilities were full.

After an evidentiary hearing, Judge Colins issued an order requiring the state to accept custody of the juveniles or make alternative treatment arrangements. After a series of contempt actions, Judge Colins issued a specific order requiring the state to place the juveniles in treatment programs within ten days of their court commitment order or face substantial fines (per day, per juvenile). Following the entry of that order, the state made additional funding available for the placement of Philadelphia juveniles. This caused a substantial reduction in the population of Philadelphia's juvenile detention facility.

The state continues to provide substantial funding for these treatment programs. Last year, the state provided $21 million in funding for the treatment programs required by the *Castille* court order.

i. Final disposition: Judgment in favor of the Petitioner (Ronald D. Castille).

j. Dates of representation: 1988-90.

k. Co-counsel:

Katherine Echternach, Assistant United States Attorney
United States Attorneys Office
615 Chestnut Street,Suite 1250
Philadelphia, PA 19106
(215) 861-8200

Albert Toczydlowski, Deputy District Attorney
1421 Arch Street
Philadelphia, PA 19102
(215)-686-8000

l. Other counsel: Myra Sacks, Assistant Counsel
Department of Public Welfare
PO Box 2675
309 Health & Welfare Building
Harrisburg, PA 17105
717-975-3424

(4) Request to amend Pennsylvania Supreme Court's speedy trial rule.

a. Case name: *In re Petition of Ronald Castille.*

b. Name of Court: Pennsylvania Supreme Court.

c. Judge or Judges: The full court.

d. Docket number: 69 E.D. Misc. Dkt. 1988

e. Citations to reported cases: None.

f. Party or parties represented: Ronald D. Castille, District Attorney of Philadelphia.

g. Nature of participation in litigation: Co-counsel for Petitioner.

h. Capsule summary:

On December 31, 1987, the Pennsylvania Supreme Court amended its speedy trial rule, Pa. R.Crim P. 1100. This amendment, which was issued without a proposed rule or opportunity to comment, fundamentally changed the requirements for releasing pre-trial detainees on bail and discharging criminal cases if criminal defendants were not brought to trial within specific time periods. Specifically, the rule change eliminated the prosecution's right to extend the time periods for trial where the case could not be brought to trial because of judicial delay.

At the time the rule changed, the Philadelphia District Attorney's Office had 105 homicide cases in jeopardy of discharge because they had not been tried within one year of the arrest. All of these cases could not be tried because of the crowded homicide docket. We requested a study by a well-respected accounting firm that analyzed the records of the Philadelphia courts. The study confirmed that the Philadelphia court system lacked the capacity to try criminal cases in the time periods established by the rule change. The study also predicted how many criminal cases would be lost and how many criminal

defendants would be released on bail with this new rule.

The petition we filed in the Pennsylvania Supreme Court requested that the Court exercise its ruling-making, administrative, and supervisory powers to amend the rule. Within a few days of the filing of this petition, the Supreme Court directed the Philadelphia courts not to rule on any Rule 1100 motions until the Supreme Court had the opportunity to consider the matter. Several months later, the Supreme Court amended the rule in accordance with the request in the petition. Our petition was then denied. However, to the best of my knowledge, no criminal cases were lost based on the December 31, 1987 amendment.

i. Final disposition: Petition denied after the Supreme Court amended Pa.R.Crim P. 1100. The amendments addressed the concerns raised in the petition.

j. Dates of representation: 1988.

k. Co-counsel:

Gaele McLaughlin Barthold
Cozen & O'Connor
The Atrium
1900 Market Street
Philadelphia, PA 19103
(215) 665-4107

Ronald Eisenberg, Deputy District Attorney
Philadelphia District Attorneys Office
1421 Arch Street
Philadelphia, PA 19102
(215) 686-5700

l. Other counsel: None. (Parties served with petition filed no response.)

(5) Affirmative litigation to compel that state to accept custody of Philadelphia prisoners.

a. Name of Case: Abraham v. Department of Corrections.

b. Name of Court: Commonwealth Court of Pennsylvania.

c. Judge or Judges: Original proceeding before the Honorable David Craig. Motion to open preemptory judgment before a panel consisting of Judges Craig, Doyle and Lord. Appeal before the full Pennsylvania Supreme Court.

d. Docket number: No. 166 M.D. 1991.

e. Citations to reported cases: *Abraham v. Department of Corrections*, 150 Pa.Cmwlth 81, 615 A.2d 814 (1992) *aff'd* 535 Pa. 122, 634 A.2d 214 (1993).

f. Party or parties represented: Lynne Abraham, Philadelphia District Attorney.

g. Nature of participation in litigation: Lead counsel on behalf of Petitioner.

h. Capsule summary:

The District Attorney filed this action against the Pennsylvania Department of Corrections and various state officials claiming that the state was required to accept custody of numerous inmates housed in the Philadelphia prison system. Primarily, the case involved whether consecutive sentences could be "aggregated" for purposes of determining the place of confinement. (Under Pennsylvania law, prisoners serving sentences of less than 2 years must be incarcerated in the county. Prisoners serving sentences between 2 and 5 years can be incarcerated in either the state or county prison systems. Prisoners serving sentences of 5 or more years must be incarcerated in the state prison system.)

The District Attorney contended that the Pennsylvania Department of Corrections had a mandatory duty to aggregate any consecutive sentences in determining whether the prisoner should be housed in either the state or county prison system. The District Attorney contended that the state's failure to accept custody of inmates with these aggregated sentences was contributing to the increased prison population in the Philadelphia prison system. The District Attorney also contended that, because a federal court consent decree required mass releases of pretrial detainees in order to meet a population cap, there was irreparable harm.

Initially, the District Attorney prevailed on this claim and the Commonwealth Court determined that the Department of Corrections should aggregate all sentences. The Department then filed a motion to open this judgment. A panel of the Commonwealth Court reconsidered the prior order and determined that only some, but not all, consecutive sentences should be aggregated. The District Attorney appealed this order and the Pennsylvania Supreme Court affirmed without an opinion.

i. Final disposition: Partial judgment granted for District Attorney.

j. Dates of representation: 1991-93.

k. Co-counsel: Gaele McLaughlin Barthold
Cozen & O'Connor
The Atrium
1900 Market Street
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l. Other counsel: Francis Filipi
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(717) 232-5533

William Fairall
Deputy Chief Counsel
Department of Corrections
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Camp Hill, PA 19703
(717) 731-0444

(6) Appellate litigation relating to the constitutionality of law prohibiting display of explicit sexual materials to minors.

a. Case name: American Booksellers, Inc. v. Rendell.

b. Name of Court: Pennsylvania Superior Court.

c. Judge or Judges: Superior Court panel consisting of Judges Rowley, Popovich and Montgomery.

d. Docket number: No. 863, Philadelphia 1982.

e. Citations to reported cases: *American Booksellers Association, Inc. v. Rendell*, 332 Pa. Super. 537, 481 A.2d 919 (1984).

f. Party or parties represented: Edward G. Rendell, Philadelphia District Attorney, and other law enforcement defendants.

g. Nature of participation in litigation: Lead counsel.

h. Capsule summary:

I represented the District Attorney and other law enforcement defendants on appeal in an injunctive/declaratory judgment action. In this test case, the plaintiffs sought a declaration that a recently enacted Pennsylvania law was unconstitutional on First Amendment grounds. Specifically, plaintiffs challenged Pennsylvania's law prohibiting the display of explicit sexual material to minors (18 Pa.C.S.A.§ 5903). The plaintiffs claimed that the new law was impermissibly overbroad and vague.

i. Final disposition: Order of lower court affirmed. Court upheld the constitutionality of 18 Pa.C.S.A.§ 5903.

j. Dates of representation: 1983-84.

k. Co-counsel: Eric B. Henson, Assistant United States Attorney
United States Attorneys Office
615 Chestnut Street
Suite 1250
Philadelphia, PA 19106
(215) 861-8200

l. Other counsel: Michael A. Bamberger
Sonnenschein, Nath & Rosenthal
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New York, NY 10020
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(7) Appellate litigation seeking to overrule opinion creating a *per se* rule that a crime victim must testify at suppression hearings.

a. Case name: Commonwealth v. Thompkins.

b. Name of Court: Superior Court of Pennsylvania.

c. Judge or Judges: *en banc* court consisting of Judges Cercone, Cavanaugh, Rowley, Wieand, McEwen, Cirillo, and Montemuro.

d. Docket number: No. 1465 October Term, 1979.

e. Citations to reported cases: *Commonwealth v. Thompkins*, 311 Pa. Super. 357, 457 A.2d 925 (1983) (*en banc*).

f. Party or parties represented: Commonwealth of Pennsylvania.

g. Nature of participation in litigation: Lead counsel.

h. Capsule summary:

I represented the Commonwealth in this *en banc* Superior Court appeal that raised a variety of claims concerning the criminal conviction. This case is significant because we urged the Superior Court to overrule a prior opinion requiring an identifying witness testify at any pretrial suppression hearing challenging the admissibility of identification evidence. We argued that such a *per se* rule was not necessary to ensure the constitutionality of such evidence and that it unnecessarily subjected some crime victims (such as a child victim or a frail sexual assault victim) to additional harms.

i. Final disposition: Judgment of sentence affirmed. Court overruled *Commonwealth v. Lee*, 262 Pa. Super. 280, 396 A.2d 755 (1978).

j. Dates of representation: 1981-83.

k. Co-counsel: Eric B. Henson, Assistant United States Attorney
United States Attorneys Office
615 Chestnut Street
Suite 1250
Philadelphia, PA 19106
(215) 861-8200

l. Other counsel: Marilyn Gelb, Esquire (retired).

(8) *Pro bono* representation relating to rape victim privacy rights.

a. Case name: Commonwealth v. Wilson.

b. Name of Court: Court of Common Pleas, Westmoreland County, Criminal Division.

c. Judge or Judges: Honorable Richard E. McCormick, Jr.

d. Docket number: No. 2414 C 1999.

e. Citations to reported cases: None.

f. Party or parties represented: Rape victim and her mother.

g. Nature of participation in litigation: Lead counsel on motion for protective order.

h. Capsule summary:

In this rape/incest prosecution I represented the rape victim and her mother on a *pro bono* basis at the request of the Pennsylvania Coalition Against Rape. The trial court had entered an order allowing the criminal defendant and his attorney to inspect the home and bedroom of the victim in order to prepare for cross-examination at trial. The court order also barred the victim and her mother from their own home during this inspection.

During the course of this representation, I also learned that the defense attorney had obtained confidential records (employment, school, and medical records etc.) of the victim and her mother through the use of *ex parte* subpoenas. The trial court granted our motion for a protective order on both issues, finding that these defense actions improperly interfered with the privacy rights of the victim and her mother.

i. Final disposition: Protective order granted.

j. Dates of representation: 2000.

k. Co-counsel: Diane Moyer, Esquire
Pennsylvania Coalition Against Rape
125 North Enola Drive
Enola, PA 17025
(717) 728-9740

l. Other counsel: Patricia Elliot, Assistant District Attorney
District Attorney's Office
2 North main Street
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(724) 830-3949

Francis Murrman
16 E. Otterman Street
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(724) 837-7535

(9) Amicus appellate brief concerning the Prison Litigation Reform Act.

a. Case name: Miller v. French.

b. Name of Court: United States Supreme Court.

c. Judge or Judges: Full Court.

d. Docket number: Nos. 99-224 and 99-582.

e. Citations to reported cases: *Miller v. French,* 530 U.S. 327 (2000). (Although there are other reported opinions in this case, I did not participate in other aspects of the litigation.).

f. Party or parties represented: The Association of State Correctional Administrators (ASCA) (amicus curiae).

g. Nature of participation in litigation: Counsel of record.

h. Capsule summary:

Indiana filed a motion to terminate a 1982 federal court injunction entered in a prisoner class action involving the Pendleton Correctional Facility. Indiana relied on the Prison Litigation Reform Act that provided for the termination of prospective relief, including an injunction, if it did not meet new standards set forth in 18 U.S.C. § 3626. The PLRA's automatic stay, 18 U.S.C. § 3626 (e)(2), provided that the filing of a termination motion "shall operate as a stay" of that prospective relief beginning 30 days after the filing of the termination motion and ending when the court rules on the motion.

The prisoners moved to enjoin the operation of the automatic stay on the ground that it violated due process and separation of powers principles. The district court enjoined the stay, Indiana appealed, and the United States intervened to defend the constitutionality of the automatic stay. The Seventh Circuit affirmed, holding that, while the PLRA precluded the courts from exercising their equitable powers to enjoin the stay, the automatic stay provisions were unconstitutional on separation of powers grounds.

In the United States Supreme Court, the United States contended that the federal courts retained the equitable power to "stay" the PLRA's automatic stay provisions. Specifically, the United States claimed that the PLRA did not abrogate the inherent power of the court to allow prospective relief to continue in effect while it decided the termination motion. The United States argued that this construction was necessary to avoid the issue of the constitutionality of the automatic stay provision. ASCA, Indiana and the States contended that the PLRA did not authorize a federal court stay under these circumstances. The Supreme Court agreed with this position. It held that Congress intended to make operation of the PLRA's automatic stay provision mandatory, precluding the courts from exercising their equitable powers to enjoin the operation of the automatic stay.

The prisoners claimed that the PLRA's automatic stay provision violated separation of powers principles. Specifically, they argued that the automatic stay provisions legislatively suspended a final judgment of an Article III court in violation of *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, and *Hayburn's Case*, 2 Dall. 409. The Supreme Court rejected this argument, holding that the PLRA did not address "final" judgments. Rather, the automatic stay provisions addressed continuing, executory decrees that remained subject to continuing court supervision. Thus, these ongoing decrees were subject to changes in the underlying law. The Supreme Court's holding was thus consistent with the positions taken by Indiana, the States and ASCA that the PLRA's automatic stay provisions were constitutional.

i. Final disposition: Decision of the Seventh Circuit Court of Appeals reversed.

j. Dates of representation: 2000.

k. Co-counsel: Peter Hobart
Assistant Counsel
Department of Corrections
55 Utley Drive
Camp Hill, PA 17001
(717) 731-0444

l. Other counsel: Numerous amicus briefs were filed in this matter. Below is a listing of counsel for the parties.

Jon Laramore
Deputy Attorney General
219 State House
Indianapolis, IN 46204
(317)233-6582

Kenneth J. Falk
Indiana Civil Liberties Union
1031 E. Washington St.,
Indianapolis, IN 46202
(317) 635-4059.

(10) Appellate litigation establishing requirement for evidentiary hearings.

a. Case name: Commonwealth v. Pettus.

b. Name of Court: Pennsylvania Supreme Court.

c. Judge or Judges: Full Court (Judges O'Brien, Roberts, Nix, Larsen, Flaherty and Kauffman).

d. Docket number: No. 254 January Term, 1979.

e. Citations to reported cases: *Commonwealth v. Pettus*, 492 Pa. 558, 424 A.2d 1332 (1981).

f. Party or parties represented: The Commonwealth of Pennsylvania.

g. Nature of participation in litigation: Lead counsel.

h. Capsule summary.

This appeal arose out of a third degree murder conviction. At the time of the crime, the defendant was seventeen years of age. The defendant claimed on appeal that his trial counsel should be deemed *per se* inffective for failing to file a decertification petition, requesting that the homicide case be transferred to juvenile court.

On appeal, the Pennsylvania Supreme Court rejected the argument that the failure to file a decertification petition was *per se* ineffective representation by counsel. In addition, the Court established a new requirement for ineffectiveness claims. Specifically, where a new attorney asserted an ineffectiveness claim, he was required to "set forth an offer to prove at an evidentiary hearing sufficient facts upon which a reviewing court can conclude that trial counsel may have, in fact, been ineffective." *Commonwealth v. Pettus*, 492 Pa. at 563, A.2d at 1335. Prior to this time, an evidentiary hearing would be granted unless the record established the basis for counsel's actions.

i. Final disposition: Judgment of sentence affirmed.

j. Dates of representation: 1980-81.

k. Co-counsel: Robert B. Lawler
Wilbraham, Lawler, and Buba
Suite 3100
1818 Market Street
Philadelphia, PA 19103
(215) 564-4141

l. Other counsel: Robert G. Schwartz
Juvenile Law Center
6th Floor
801 Arch Street
Philadelphia, PA 19107
(215) 625-0551

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

As a Philadelphia prosecutor I worked on numerous projects designed to protect the public and victims of crime. Often, the particular persons who benefited most from my work were persons living in impoverished, crime-ridden neighborhoods. For example, I helped develop a joint program with the Philadelphia Bar Association to provide representation for local citizens plagued by nuisance bars (that were often centers for violent crime and drug dealing). As a prosecutor, I also litigated various legal issues designed to provide additional protection for crime victims. Such issues included privacy rights for crime victims, ensuring victims compensation to pay for funeral expenses for murder victims, and to protect crime victims from unnecessary court appearances. I also devoted substantial time to preventing the automatic release of pretrial detainees charged with drug dealing, as those individuals often posed a substantial threat to persons living in impoverished neighborhoods with open drug dealing operations.

As Chief Counsel for the Department of Corrections, I worked to ensure that state prisons were safe and secure for both prisoners and staff. I provided substantial assistance in drafting state legislation requiring prisons to provide current medical records and medication for inmates transferred between prisons. I established a joint video conferencing program with the federal courts to promote legal access for inmates in remote locations. I have worked to improve the inmate grievance and discipline systems to ensure that they fairly resolved legitimate inmate concerns without duplicative and

unnecessary proceedings. Most importantly, I have worked ensure that any claim, from whatever source, involving medical needs or inmate safety is promptly reviewed to ensure the health and safety of the inmate.

I have also made substantial efforts to improve the legal system and the practice of law. I have provided substantial assistance in drafting legislation to improve the criminal justice system, including prison litigation reform, enhancing the collection of victims restitution, sentencing reform, and community empowerment. I was appointed by Mayor Rendell to help revise Philadelphia's bail guidelines. (These revised guidelines, that ensured better supervision of pretrial defendants, were later implemented by the Philadelphia court system.) I currently serve as a member of the Pennsylvania Supreme Court's Appellate Procedural Rules Committee, where I have worked to improve the rules governing state appellate practice. I have also organized and taught continuing legal education on appellate advocacy, ethics, criminal justice issues and prison litigation.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

   My husband and I both have vested pensions with the City of Philadelphia. This is a defined benefit plan that will allow us to begin collecting pensions at age 55.

   Pennsylvania has just amended its laws governing state employee pensions. This new law, that lowers the time period an employee to be eligible for a vested pension from ten to five years, will become effective on July 1, 2001. If I am still a state employee on that date, I will become eligible for pension benefits from the Commonwealth of Pennsylvania. My husband would also become eligible for a vested state pension on that date.

   There are no other arrangements for future compensation.

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

   If any potential conflict-of-interest arises, I will consult with the Department of Justice ethics official.

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

   No.

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

   SF-278 attached.

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

Statement attached.

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

Yes. I served as an unpaid policy volunteer for the Bush-Cheney campaign in 1999-2000. I evaluated Department of Justice policies and identified potential federal initiatives.

**U.S. Department of Justice**

*Washington, D.C. 20530*

MAY 25 2001

Ms. Amy L. Comstock
Director
Office of Government Ethics
Suite 500
1201 New York Avenue, NW
Washington, DC 20005-3919

Dear Ms. Comstock:

In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, I am forwarding the financial disclosure report of Sarah V. Hart, who has been nominated by the President to serve as Director, National Institute of Justice (NIJ), Department of Justice.

We have conducted a thorough review of the enclosed report. The conflict of interest statute, 18 U.S.C. 208, requires that Ms. Hart recuse herself from participating personally and substantially in a particular matter in which she, her spouse, minor children or anyone whose interests are imputed to her under the statute, has a financial interest. We have counseled her to obtain advice about disqualification or to seek a waiver before participating in any particular matter that could affect her financial interests. Ms. Hart will resign from her position with the Pennsylvania Department of Corrections upon confirmation as Director, NIJ. Ms. Hart's continuing interests in the defined benefit plans of the State of Pennsylvania and the City of Philadelphia, constitute financial interests. However, there is a regulatory exemption pursuant to 18 U.S.C. Section 208(b)(2) found at 5 CFR 2640.201(c) under which Ms. Hart would be permitted to participate in particular matters of general applicability such as rulemaking which affect all states or local governments, including the State of Pennsylvania and City of Philadelphia.

We have advised Ms. Hart that because of the standard of conduct on impartiality at 5 CFR 2635.502 she should seek advice before participating in a particular matter involving specific parties in which a member of her household has a financial interest or in which someone with whom she has a covered relationship is or represents a party. Ms. Hart will have a covered relationship with her former employer and her spouse's employer. If confirmed, Ms. Hart will resign from the positions she currently holds that are listed on Schedule D Part I. She understands that for a minimum of 1 year after resignation she should seek advice before participating in a matter than can affect these organizations and other organizations with which she has a covered relationship.

Based on the above agreements and counseling, I am satisfied that the report presents no conflicts of interest under applicable laws and regulations and that you can so certify to the Senate Judiciary Committee.

Sincerely,

Janis A. Sposato
Acting Assistant Attorney
General for Administration and
Designated Agency Ethics Official

Enclosure

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

# Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved:
OMB No. 3209 - 0001

| | | | | | |
|---|---|---|---|---|---|
| Date of Appointment, Candidacy, Election, or Nomination *(Month, Day, Year)* | Reporting Status (Check Appropriate Boxes) | Incumbent ☐ | Calendar Year Covered by Report | New Entrant, Nominee, or Candidate ☑ | Termination Filer ☐ Termination Date *(If Applicable) (Month, Day, Year)* |
| Reporting Individual's Name | Last Name: Hart | | | First Name and Middle Initial: Sarah V | |
| Position for Which Filing | Title of Position: Director | | | Department or Agency *(If Applicable)*: National Institute of Justice, Department of Justice | |
| Location of Present Office (or forwarding address) | Address *(Number, Street, City, State, and ZIP Code)*: 2520 Lisburn Road, Camp Hill, PA 19119 | | | Telephone No. *(Include Area Code)*: 717-975-4864 | |
| Position(s) Held with the Federal Government During the Preceding 12 Months *(If Not Same as Above)* | Title of Position(s) and Date(s) Held: none | | | | |
| Presidential Nominees Subject to Senate Confirmation | Name of Congressional Committee Considering Nomination: Judiciary | | | Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☑ No | |
| Certification: I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge. | Signature of Reporting Individual: Sarah V. Hart | | | Date *(Month, Day, Year)*: May 7, 2001 | |
| Other Review (If desired by agency) | Signature of Other Reviewer: Mary Boudon | | | Date *(Month, Day, Year)*: 5/24/01 | |
| Agency Ethics Official's Opinion: On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the block below). | Signature of Designated Agency Ethics Official/ Reviewing Official: James Mostafa | | | Date *(Month, Day, Year)*: 5/25/01 | |
| Office of Government Ethics Use Only | Signature | | | Date *(Month, Day, Year)* | |

Comments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*

*(Check box if filing extension granted & indicate number of days _____)* ☐

*(Check box if comments are continued on the reverse side)* ☐

**Fee for Late Filing**
Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a $200 fee.

**Reporting Periods**
**Incumbents:** The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

**Termination Filers:** The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

**Nominees, New Entrants and Candidates for President and Vice President:**

**Schedule A** -- The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of date of filing.

**Schedule B** -- Not applicable.

**Schedule C, Part I** (Liabilities)--The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

**Schedule C, Part II** (Agreements or Arrangements)--Show any agreements or arrangements as of the date of filing.

**Schedule D**- The reporting period is the preceding **two** calendar years and the current calendar year up to the date of filing.

Agency Use Only

OGE Use Only

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Reporting Individual's Name: Hart, Sarah V.

# SCHEDULE A

Page Number: 2 / 6

**Assets and Income** — BLOCK A

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse).

None ☐

**Valuation of Assets** at close of reporting period. — BLOCK B

**Income:** type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

| Assets and Income (Block A) | None (or less than $1,001) | $1,001 - $15,000 | $15,001 - $50,000 | $50,001 - $100,000 | $100,001 - $250,000 | $250,001 - $500,000 | $500,001 - $1,000,000 | Over $1,000,000 * | $1,000,001 - $5,000,000 | $5,000,001 - $25,000,000 | $25,000,001 - $50,000,000 | Over $50,000,000 | Excepted Investment Fund | Excepted Trust | Qualified Trust | Type: Dividends | Type: Rent and Royalties | Type: Interest | Type: Capital Gains | Amount: None (or less than $201) | $201 - $1,000 | $1,001 - $2,500 | $2,501 - $5,000 | $5,001 - $15,000 | $15,001 - $50,000 | $50,001 - $100,000 | $100,001 - $1,000,000 | Over $1,000,000 * | $1,000,001 - $5,000,000 | Over $5,000,000 | Other Income (Specify Type & Actual Amount) | Date (Mo., Day, Yr.) Only if Honoraria |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Examples: Central Airlines Common | | | | X | | | | | | | | | | | | X | | | | | | X | | | | | | | | | | |
| Examples: Doe Jones & Smith, Hometown, State | | | X | | | | | | | | | | | | | | | | | | | | | | | | | | | | Law Partnership Income $120,000 | |
| Examples: Kempstone Equity Fund | | | | | X | | | | | | | | X | | | | | | | | | | X | | | | | | | | | |
| Examples: IRA: Heartland 500 Index Fund | | | | | | | X | | | | | | X | | | | | | | | | | | X | | | | | | | | |
| 1 Commonwealth of PA, Department of Corrections, Camp Hill PA | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | annual salary $97,300 | |
| 2 S Commonwealth of PA, Office of the Inspector General, Harrisburg, PA (spouse) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | salary | |
| 3 Philadelphia Federal Credit Union, Philadelphia, PA (IRA) | | ✓ | | | | | | | | | | | | | | | | ✓ | | | ✓ | | | | | | | | | | | |
| 4 Philadelphia Federal Credit Union, Philadelphia, PA (spouse) (IRA) | | | ✓ | | | | | | | | | | | | | | | ✓ | | | | ✓ | | | | | | | | | | |
| 5 City of Phila., Board of Pensions and Retirement, Phila., PA. Defined benefit plan (CII) | | | ✓ | | | | | | | | | | | | | | | | | ✓ | | | | | | | | | | | | |
| 6 S City of Phila., Bd of Pensions and Retirement, Phila.PA (spouse)Defined benefit plan (CII) | | | ✓ | | | | | | | | | | | | | | | | | ✓ | | | | | | | | | | | | |

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Reporting Individual's Name: Hart, Sarah V.

# SCHEDULE A continued
(Use only if needed)



**Assets and Income** — BLOCK A

**Valuation of Assets** at close of reporting period. — BLOCK B

**Income:** type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

| # | Assets and Income (BLOCK A) | None (or less than $1,001) | $1,001 - $15,000 | $15,001 - $50,000 | $50,001 - $100,000 | $100,001 - $250,000 | $250,001 - $500,000 | $500,001 - $1,000,000 | Over $1,000,000 * | $1,000,001 - $5,000,000 | $5,000,001 - $25,000,000 | $25,000,001 - $50,000,000 | Over $50,000,000 | Excepted Investment Fund | Excepted Trust | Qualified Trust | Type: Dividends | Type: Rent and Royalties | Type: Interest | Type: Capital Gains | Amount: None (or less than $201) | $201 - $1,000 | $1,001 - $2,500 | $2,501 - $5,000 | $5,001 - $15,000 | $15,001 - $50,000 | $50,001 - $100,000 | $100,001 - $1,000,000 | Over $1,000,000 * | $1,000,001 - $5,000,000 | Over $5,000,000 | Other Income (Specify Type & Actual Amount) | Date (Mo., Day, Yr.) Only if Honoraria |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 7 | Legg Mason Wood Walker, Inc. Carlise PA (daughter) L.M. Money Market | | | ✓ | | | | | | | | | | | | | | | ✓ | | | | ✓ | | | | | | | | | | |
| 8 | PA State Employees Retirement System (spouse) Defined benefit plan--not vested. | | | ✓ | | | | | | | | | | | | | | | ✓ | | | | ✓ | | | | | | | | | | |
| 9 | PA State Employees Retirment System. Defined benefit plan--not vested. | | | ✓ | | | | | | | | | | | | | | | ✓ | | | | ✓ | | | | | | | | | | |
| 10 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 11 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 12 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 13 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 14 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 15 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Do not complete Schedule B if you are a new entrant, nominee, or Vice Presidential or Presidential Candidate

Reporting Individual's Name: Hart, Sarah V.

# SCHEDULE B

Page Number: 4 / 6

## Part I: Transactions

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

None ☐

| | Identification of Assets | Transaction Type (x): Purchase | Sale | Exchange* | Date (Mo., Day, Yr.) | Amount of Transaction (x): $1,001 - $15,000 | $15,001 - $50,000 | $50,001 - $100,000 | $100,001 - $250,000 | $250,001 - $500,000 | $500,001 - $1,000,000 | Over $1,000,000* | $1,000,001 - $5,000,000 | $5,000,001 - $25,000,000 | $25,000,001 - $50,000,000 | Over $50,000,000 | Certificate of divestiture |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Example | Central Airlines Common | X | | | 2/1/99 | | | X | | | | | | | | | |
| 1 | | | | | | | | | | | | | | | | | |
| 2 | | | | | | | | | | | | | | | | | |
| 3 | | | | | | | | | | | | | | | | | |
| 4 | | | | | | | | | | | | | | | | | |
| 5 | | | | | | | | | | | | | | | | | |

* This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

## Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260, and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☐

| | Source (Name and Address) | Brief Description | Value |
|---|---|---|---|
| Examples | Nat'l Assn. of Rock Collectors, NY, NY | Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty) | $300 |
| | Frank Jones, San Francisco, CA | Leather briefcase (personal friend) | $300 |
| 1 | | | |
| 2 | | | |
| 3 | | | |
| 4 | | | |
| 5 | | | |

Prior Editions Cannot Be Used.

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Reporting Individual's Name: Hart, Sarah V.

# SCHEDULE C



## Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None ☐

| | Creditors (Name and Address) | Type of Liability | Date incurred | Interest Rate | Term if applicable | $10,001 - $15,000 | $15,001 - $50,000 | $50,001 - $100,000 | $100,001 - $250,000 | $250,001 - $500,000 | $500,001 - $1,000,000 | Over $1,000,000 * | $1,000,001 - $5,000,000 | $5,000,001 - $25,000,000 | $25,000,001 - $50,000,000 | Over $50,000,000 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Examples | First District Bank, Washington, DC | Mortgage on rental property, Delaware | 1991 | 8% | 25 yrs. | | | X | | | | | | | | |
| | John Jones, 123 JSt., Washington, DC | Promissory note | 1999 | 10% | on demand | | | | | X | | | | | | |
| 1 | Bank One, Wilmington, DE | Line of Credit | 1997 | 14% | 228.mo. | ✓ | | | | | | | | | | |
| 2 | MBNA, Wilmington DE | line of credit | 1992 | 16.99% | 164 months | ✓ | | | | | | | | | | |
| 3 | Germantown Friends School, Philadelphia PA | school loans | 1994 | 4-8% | 5years | ✓ | | | | | | | | | | |
| 4 | Citibank, Wilmington DE | school loan | 1998 | 10.5% | to be determine | ✓ | | | | | | | | | | |
| 5 | | | | | | | | | | | | | | | | |

Category of Amount or Value (s)

* This category applies only if the underlying liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

## Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None ☐

| | Status and Terms of any Agreement or Arrangement | Parties | Date |
|---|---|---|---|
| Example | Pursuant to partnership agreement, will recieve lump sum payment of capital account & partnership share calculated on service performed through 1/00. | Doe Jones & Smith, Hometown, State | 7/85 |
| 1 | City of Phila. defined benefit plan. Filer eligible to begin drawing benefits at age 55. No further contributions will be made by filer or the City. | City of Philadelphia, PA | 11/79 |
| 2 | Commonwealth of PA defined benefit plan. Filer is not vested and no further contributions will be made by filer or Commonwealth upon filer's resignation. Filer intends to leave benefits in plan. | State of Pennsylvania | 09/95 |
| 3 | | | |
| 4 | | | |
| 5 | | | |
| 6 | | | |

Prior Editions Cannot Be Used.

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| Reporting Individual's Name | SCHEDULE D | Page Number |
|---|---|---|
| Hart, Sarah V. | | 6 / 6 |

## Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

| | Organization *(Name and Address)* | Type of Organization | Position Held | From *(Mo., Yr.)* | To *(Mo., Yr.)* |
|---|---|---|---|---|---|
| Examples | Nat'l Assn. of Rock Collectors, NY, NY | Non-profit education | President | 6/92 | Present |
| | Doe Jones & Smith, Hometown, State | Law firm | Partner | 7/85 | 1/00 |
| 1 | Commonwealth of Pennsylvania, Office of General Counsel, Department of Corrections, Camp Hill, PA (will resign upon confirmation) | State Government | Chief Counsel | 09/95 | present |
| 2 | Pennsylvania Coalition Against Rape, Enola, PA | non-profit | pro bono counsel | 04/00 | 06/00 |
| 3 | Crime Victim Law Institute, Portland Oregon (will resign as incoming President upon confirmation) | non-profit | designated as incoming President of the Board of Directors | 12/00 | present |
| 4 | Commonwealth of Pennsylvania, Office of General Counsel, Harrisburg, PA | State Government | Co-Chair, Federalism Subcommittee | 01/99 | 11/00 |
| 5 | American Correctional Association, Laurel MD | professional association | Vice Chair, Legal Issues Committee | 09/98 | 09/00 |
| 6 | Federalist Society for Law and Public Policy Studies (will resign as Subcommittee Chair upon confirmation) | non-profit, educational foundation | Chairman, Sentencing & Corrections Subcommittee, Crim. Law Prac. Group | 01/00 | present |

## Part II: Compensation in Excess of $5,000 Paid by One Source

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

**Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.**

None ☐

| | Source *(Name and Address)* | Brief Description of Duties |
|---|---|---|
| Examples | Doe Jones & Smith, Hometown, State | Legal services |
| | Metro University (Client of Doe Jones & Smith), Moneytown, State | Legal services in connection with university construction |
| 1 | Commonwealth of PA, Department of Corrections, Camp Hill, PA | Legal services on behalf of the Commonwealth of Pennsylvania and the Department of Corrections |
| 2 | | |
| 3 | | |
| 4 | | |
| 5 | | |
| 6 | | |

Prior Editions Cannot Be Used

OGE/PureEdge, version 1.0.1 (3-30/01)

III. GENERAL (PUBLIC)

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

Throughout my career in public service I have, as part of my duties, worked to protect all members of our society, including those whom some might consider "disadvantaged." I also note that Pennsylvania's Rule of Professional Conduct 6.1 (Pro Bono Publico Service) requires that I " render public interest legal service" including "service by activities for improving the law, [and] the legal profession...." In addition, the American Bar Association has recognized that, since government sector lawyers may be restricted from performing certain *pro bono* activities, a government lawyer may fulfill his or her annual responsibility to perform *pro bono* services by participating in activities for improving the law, the legal system, or the legal profession. I have devoted substantial portions of my legal career to these goals and have fulfilled my ethical obligations as follows.

In addition my substantial efforts to improve the criminal justice system (see Answer 17, Part I), I have also provided *pro bono* services to the Pennsylvania Coalition Against Rape and the Crime Victims Law Institute. My efforts focused on protecting the interests of crime victims. In addition, I provided *pro bono* representation to a rape victim and her mother. This representation addressed whether a rapist's fair trial rights entitled him to a court order allowing him and his attorney to inspect the victim's bed room and barring the victim from her own home. In addition, I successfully obtained a court order barring the defense attorney from issuing *ex parte* subpoenas for the victim's confidential records. I estimate that, in the last calendar year, I devoted over 50 hours to such efforts.

In addition to legal services and government employment, have served my community through volunteer work at schools and day care centers. I have officiated at children's athletic events. I have also previously helped with religious instruction for children.

2. Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion – through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies.

In the 1960's, as a child, I belonged to the Girl Scouts of America. The Girl Scouts of America discriminates based on sex. I have not done anything to try and change this policy.

# FINANCIAL STATEMENT

## NET WORTH

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

| ASSETS | | | LIABILITIES | | |
|---|---|---|---|---|---|
| Cash on hand and in banks | 4,000 | | Notes payable to banks—secured | 84,000 | |
| U.S. Government securities—add schedule | NONE | | Notes payable to banks—unsecured | NONE | |
| Listed securities—add schedule | NONE | | Notes payable to relatives | NONE | |
| Unlisted securities—add schedule | NONE | | Notes payable to others | NONE | |
| Accounts and notes receivable: | | | Accounts and bills due | 1,000 | |
| Due from relatives and friends | NONE | | Unpaid income tax | NONE | |
| Due from others | NONE | | Other unpaid tax and interest | ** | |
| Doubtful | NONE | | Real estate mortgages payable—add schedule * | 161,000 | |
| Real estate owned—add schedule* | 280,000 | JT | Chattel mortgages and other liens payable | NONE | |
| Real estate mortgages receivable | NONE | | Other debts—itemize: | | |
| Autos and other personal property | 70,000 | | Educational bills | 5450 | |
| Cash value—life insurance | NONE | | Loans to Financial Inst. | 34,900 | |
| Other assets—itemize: | | | medical/dentist bills | 2,000 | |
| IRA's | 61,700 | | | | |
| Phila. Pensions | 70,380 | | | | |
| PA. Pension | 49,600 | | Total liabilities | 288,600 | |
| | | | Net worth | 256,080 | |
| Total assets | 544,680 | | Total liabilities and net worth*** | 544,680 | |

| CONTINGENT LIABILITIES | | | GENERAL INFORMATION | | |
|---|---|---|---|---|---|
| As endorser, comaker or guarantor | NONE | | Are any assets pledged? (Add schedule.) | NO | |
| On leases or contracts | NONE | | Are you defendant in any suits or legal actions? | NO | |
| Legal Claims | NONE | | Have you ever taken bankruptcy? | NO | |
| Provision for Federal Income Tax | NONE | | | | |
| Other special debt | NONE | | | | |

* Personal Residence, Philadelphia, PA. Jointly owned with spouse.
**See Part IV, Answer 4.
***Note: Daughter, aged 21, has money market account worth approximately $15,000. In addition, she has educational loans totaling approximately $25,000. As she does not live in our household, these amounts have not been included in the itemized statement.

Senator FEINGOLD. I thank you as well, Ms. Hart. Normally I would proceed with the questions now, but I know that Senator Sessions has an important engagement coming up shortly, so I would ask that he begin the questioning of the two.

Senator SESSIONS. Thank you. Thank you, Mr. Chairman, and thank you for having these hearings. We can see, I think, from both of these nominees just how important their positions are, and it is great that they will be able to be on board soon. We need to be doing, in my view, a better job of moving nominations, but I think at least we are getting forward here on these two. And each of you have important staffs and important roles to play.

Debbie, I was just looking at your background. Of course, you have been a Federal prosecutor for quite a number of years and were so successful in that, but your civic activities indicate, as you said, a tremendous interest in solving the problems, as some say, the root cause of crime, whatever, however we want to say it, such as the United Way of Central Indian, a board member, the Indiana Mental Health Memorial Foundation, the Children's Bureau of Indianapolis, the Neighborhood Christian Legal Clinic; Noble, Inc., that advocates for the developmentally disabled; the Mental Health Association of Indiana, the Greater Indianapolis Progress Committee, Community Organizations Legal Assistance Program, Safe Haven Foundation Advisory Board, providing relief services for victims of domestic violence; the Julian Center Advisory Board, providing services to domestic violence victims; the American Health Lawyers Association; and the Indianapolis/Marion County Coalition for Human Services,. and the Marion County Child Protection Team, all of which you have been a board member or leader in those organizations.

I think that goes well with the Office of Justice Programs, which is a tremendous bureaucracy or governmental agency. We have gone in the last 8 years from about a $600,000 budget to a $4 billion budget. That is a tremendous increase, and we need to ensure that every dollar that is spent is furthering our ability to protect innocent victims and to drive down crime in an effective and logical way.

First, let me ask you, are you willing to make some tough decisions to make sure that the agency utilizes all those dollars well?

Ms. DANIELS. Thank you, Senator Sessions, for the question. I have been asked that sort of question on previous occasions, for example, when I was to become U.S. Attorney, in fact, possibly because of my stature. Some might wonder about the degree of my resolve, but I think, as you may know, I have demonstrated that resolve time and time again.

I think it is essential that—first, we have a wonderful opportunity here to do a great deal of good in this country, and the Office of Justice Programs has a lengthy tradition of doing exactly that. You are right that the size of the organization, both in terms of personnel and budget, has grown tremendously as a result of crime legislation in the 1990s. I see that as an exciting opportunity as well and a welcome challenge.

We need to make sure, as I indicated in my opening comments, that we're doing everything we can to be good stewards of the taxpayers' dollars, and to me that means a number of things, includ-

ing, as you indicated, maximizing the number of dollars that are getting out to actually serve people in the communities. So we need to minimize our bureaucracy as we do that, and that would, I'd consider, be part of my charge.

Senator SESSIONS. Your predecessor, President Clinton's nominee, expressed some strong convictions that some reorganization and efficiencies could be achieved in the organization. Mr. Chairman, I was chairman of the subcommittee at that time. We did not achieve that. It is not that any group would have their mission diminished, but after a period of years, you really have to make sure that the system is working effectively to deliver on the goals that it has. And the goal is not to further a bureaucracy, but the goal is to serve people who are victims of crimes and help people who have involved themselves in crime to get out of crime and clean up their lives.

So I think you have great skill in that, and I can't think of a better person to do it. But it will take some of that strength that you mentioned because anytime there is a little change, people will resist. I would just say to you, if you propose a good program for reform, I would be supportive of it, and I think others will, too.

I will ask one more question before I run. You were chosen to head the Weed and Seed program, which I personally spent many hours on as United States Attorney, and I know you did. Do you think that has some potential for expansion? And to what extent does your office have supervision of that?

Ms. DANIELS. Well, Senator, as you know, the Weed and Seed office, which was originally in the Deputy's office, has been for some years within the Office of Justice Programs as a program office. As you might expect, I do think it has tremendous potential, hopefully not just for provincial reasons because of my prior involvement, but because it provides a process for neighborhood residents literally to take back the reins of their destiny as opposed to having Government and criminals and everyone else acting upon them.

Weed and Seed has provided people with an opportunity to actually take leadership. It has been a wonderful experience in Indianapolis, to use my own back yard as an example, in which people who had not previously been involved in their neighborhood leadership bubbled to the top out of nowhere and suddenly they're the leaders in the entire community now. And they're speaking around the country, and they're teaching other people their formula for success.

So I think it has great potential for that reason. I also think that it has great potential, if approached properly, to cut across agency lines as well. There are a number of programs in other agencies besides the Justice Department which perform similar tasks to some of the things that the Justice Department does, drug elimination grants at HUD and a lot of programs at HHS. And there's a great opportunity to maximize Government resources through working with these other agencies as well.

Senator SESSIONS. Well said, and I spoke to a Weed and Seed national group a couple years ago, and I know that the Clinton administration found that it did work. And I think it has potential for further expansion.

You were involved in the very beginning and the spreading of it, and I think we can do a better job. In our community in Mobile, every time I feel discouraged about public service, I ride through the area that was designated Weed and Seed and see the park, the new school, the safe streets, the clean streets, compared to really the zone it was before that, and how, as you said, we had a town meeting and several hundred or more people came, and they just talked so passionately about what that neighborhood had been 10, 15 years before. And they took charge of it, and the Federal Government, utilizing all the agencies that it already has out there in a coordinated way, along with the city and the county and the local police departments, really helped change the quality of life for an awful lot of people. It was just a thrill. I know that you will take a lead on that.

Ms. Hart, let me just mention to you that maintaining the integrity and quality of NIJ research is critical. Fred Thompson, who before me chaired the Juvenile Justice Committee, said he wasn't sure the Federal Government's role should be anything other than doing good research and providing the best information possible to our local communities on so many issues that we can't run from Washington but that are being run from the States and counties. And I agree with that. At least, I agree that that is a primary responsibility for us. The good information that is provided can help counties, cities judges, police, prosecutors, and sheriffs who are trying to do something about their community to fight crime, it can help them make good information.

I believe NIJ's research is high quality, meets the best academic standards, and if studied hard, is very valuable to decisionmakers. I think perhaps it could be more practical, could be geared more directly to a specific problem that you know that is being considered by sheriffs, DAs, and judges. It would help them in a practical way.

I think there are some gaps, Ms. Hart, with regard to statistics and evaluations. I believe in the drug court system, but we found that OJP had not completed effective peer-reviewed scientific evaluations of drug courts to find out what it is that works, what it is that does not work, what kind of drugs courts are most effective, because they are spreading all over the country. If we could have the best information possible, then these communities could make fewer mistakes.

So I think that is the kind of thing we are talking about. Your decisions on research can impact so positively around the entire country in ways that go beyond even Federal dollars that are being spent.

Thank you, Mr. Chairman, and I am sorry to have to run.

Senator FEINGOLD. Thank you for your attendance and involvement, Senator Sessions, and now I will ask some questions of Ms. Daniels.

Ms. Daniels, as Assistant Attorney General for the Office of Justice Programs, you will be responsible for the management and oversight of an organization that seeks to aid in the prevention and control of crime. As you are aware, drug-related crime comprises a significant part of all crime. An increasing number of conservatives, including my colleague, Senator Hatch, and DEA Adminis-

trator Nominee Asa Hutchinson, have indicated that they are committed to a balanced approach to the fight against drugs, which includes interdiction, prevention, education, and treatment.

OJP already incorporates this philosophy in some of its programs, such as the drug courts program and the Office of Juvenile Justice and Delinquency Prevention's drug abuse prevention program.

Now, you have expressed in the past strong support for rigorous prosecution and also mandatory minimum sentences for drug offenders. In an article in the Atlantic Monthly in September 1994, you were quoted as saying that, despite prison overcrowding, life sentences may be appropriate even where "only marijuana" is involved because drug abuse is a serious problem.

Do you agree that a comprehensive approach to combating drug abuse that includes prevention, treatment, and enforcement is needed?

Ms. DANIELS. Thank you for the question, Senator Feingold. I have spent, as I indicated, a number of years working with law enforcement as more of a means to a greater good. And when I said that, what I meant was that what we are working toward is a better place for people to live. In fact, back when I was a U.S. Attorney, I was in contact with Professor Mark Kleiman, who I think is kind of the father of drug courts, in the hope of developing drug courts in Indianapolis. Over the years, we actually have been able to do that, and I'm very pleased that we have.

I did jot down and make a note of Senator Sessions' comment that we need to make sure that we're evaluating the success of those efforts. But I strongly believe that we need to help people who have a problem to resolve that problem and become productive members of society. In the same way, I'm very interested in the prisoner re-entry program that is being funded by the Office of Justice Programs Correction Office. I have read about that. I know that there is a solicitation out now. I think it is essential that, while we take firm action in the law enforcement side, that we also provide treatment for people who have a problem, that when people are coming out of prison they have a means of re-entering the system in a productive way as opposed to the traditional $75 and a bus ticket that tends to lead them right back into the problems they faced when they got there.

So, yes, sir, I do agree with you on that.

Senator FEINGOLD. I appreciate that answer, and I am wondering if we could just clarify whether you believe juvenile justice prevention efforts and alternatives to incarceration like the drug courts program are actually priorities for the OJP and if you could give me a sense of what relative weight you would give to the various components of the comprehensive approach.

Ms. DANIELS. Senator, I have followed with interest the work of this committee with regard to juvenile justice over the years, in fact, as well as, as you indicated, a growing perhaps realization on the part of many that we may not have done enough in the rehabilitation area in some prior years. And I'm gratified to see that as well for the reasons I stated.

I've done a lot of work with abused children, as you can tell from some of the things in my background materials, and I know as well

as anyone, I think, that the same children may enter the door of the juvenile system as children in need of services one day and may enter that door as delinquents another day. And I have actually been engaged in collaborating on research that, while we all thought there was a cycle of violence and we all thought that child abuse was a risk factor for delinquency, future violence or other criminal activity, in fact, this research showed that that was actually true. And so our instincts were correct in that case.

I am very committed to an approach to juvenile justice that involves—while it should involve an understanding on the part of young people who I think need this kind of understanding that there are consequences for their acts, at the same time one of the most important things I think we can do for youth who are at risk of criminal activity is mentoring and some of these other activities that I know that OJP and the OJJDP portion of that office are engaged in.

I am eager, if confirmed, to get more involved in learning about the JUMP program, seeing how effective that is, what else we can do in those kinds of areas.

Senator FEINGOLD. Thank you.

Switching to another topic, last week Senator Murray of Washington and I were joined by a number of other Senators in sending a letter to the Attorney General, Attorney General Ashcroft, describing the critical need for support for tribal law enforcement in justice programs and inviting him to visit a reservation.

You probably have not had a chance to see this letter, but as the office you will hold oversees a number of programs presently used by tribal governments and since you are listening to a Senator who has 11 federally recognized tribes in my State, I would like to just ask you a couple of questions.

Have you ever traveled to reservations and viewed the status of law enforcement? And if so, which ones have you visited? And have any of them been in the upper Midwest?

Ms. DANIELS. Senator, with regard to tribal matters, I actually had quite a bit of exposure to the issues related to those matters while a U.S. Attorney because, as Vice Chair of the Attorney General's Advisory Committee, I was the liaison to the subcommittee which dealt with Indian affairs, as they called it. And I traveled to South Dakota for that purpose on one occasion. I had a lot of meetings with the folks from the upper Midwest, from the Dakotas, from Oklahoma, from Arizona, to talk about the differing kinds of issues that arise. In some cases, there are reservations where there is Federal jurisdiction, and then in some cases—I distinctly remember this being in Oklahoma—there is not necessarily a reservation, but actually Indian lands that were identified at different times. And it becomes very difficult to determine jurisdictional issues.

I have not visited any of the specific reservations you speak of in the upper Midwest, but I recognize that to be an issue that perhaps over the years did not enjoy as much attention as it needs to. And I'd be happy to work with you and other members of the committee with regard to that matter.

Senator FEINGOLD. Would you support and encourage the Attorney General on a visit to Indian country?

Ms. DANIELS. I would love to have an invitation myself and would be happy to share with the Attorney General any information that I developed and certainly would be happy to talk to you about that further.

Senator FEINGOLD. I believe the question was whether you would encourage the Attorney General himself to do this.

Ms. DANIELS. I see no reason why I wouldn't be perfectly happy to encourage the Attorney General to pay attention to these particular issues. I don't think it will require any convincing on my part. I think he understands that those are issues of concern as well. I have no particular control over his schedule, so I am not sure that I would be able to assure you of a visit by someone other than myself.

Senator FEINGOLD. I am just asking for encouragement.

A program that I and many of my colleagues have long supported is the Boys and Girls Clubs of America. Over the years, many of us have worked in partnership with the Office of Justice Programs to ensure the expansion of the Boys and Girls Clubs in rural and inner-city Native American and suburban areas. In fact, over the past 8 years, I think that this partnership has resulted in over 1,000 new clubs being opened across America.

Have you had any direct experience with the Boys and Girls Club? And give us your opinion of this program.

Ms. DANIELS. Thank you, Senator. I have over the years, in fact, particularly with regard to my work with the Weed and Seed program, but also just in my private capacity, had fairly ample exposure to the work of the Boys and Girls Clubs. I think that in my back yard, the Boys and Girls Clubs have done a great job, and they have contributed to a broader approach to some of the things that we talked about a few minutes ago with regard to keeping juveniles on a path away from delinquent activity and toward productive activity. And so I strongly believe that the Boys and Girls Clubs, as well as other similar organizations, are important contributors to the opportunities for young people around the country.

Senator FEINGOLD. I am glad to hear that because I was troubled to see that initially the administration sought to cut funding for this program in their first budget submission. I am told that the Attorney General himself argued against this recommended budget cut, and I am wondering what your position on cutting funds is with regard to the Boys and Girls Clubs.

Ms. DANIELS. My position, Senator, is that Government needs to do everything it can to serve the citizens of the country in a way that is most going to benefit them. We also need to measure results of the programs we are funding. Senator Sessions made reference to drug courts. That is only one of many areas.

I firmly believe that any program that proves it is working should be encouraged through funding, should be replicated around the country, and that is my commitment to you.

Senator FEINGOLD. And it sounds to me from your previous remarks that Boys and Girls Clubs would be in that category. Is that fair to say?

Ms. DANIELS. They have ever capability of being in that category.

Senator FEINGOLD. Okay. I am not going to take that as a yes, but I will take it for what it is. Thank you very much for your re-

marks and your answers, and we look forward to moving your nomination forward.

Ms. DANIELS. Thank you.

Senator FEINGOLD. Now I would like to turn to Ms. Hart. The National Institute of Justice, as we have said, is the research and development arm of the Justice Department. Its mission is to prevent and reduce crime, improve law enforcement of the administrative justice, and promote public safety. As I understand it, the NIJ is the only Federal agency solely dedicated to researching crime control and justice issues. According to the NIJ Web site, the NIJ provides objective, independent, non-partisan, evidence-based knowledge and tools to meet the challenges of crime and justice, particularly at the State and local levels.

You have had a distinguished career not as a social scientist or in research but in the practice of law, first for the Philadelphia District Attorney's office and later as counsel for the Pennsylvania Department of Corrections. The Federal law creating the NIJ requires that the Director have justice research experience, but it appears that you do not have such experience.

Could you just tell the committee how your legal experience has prepared you to undertake the responsibilities of the NIJ Director?

Ms. HART. Thank you very much, Senator Feingold, for that question. The one thing that I learned very quickly as a lawyer, both as a prosecutor and with the State, is that when you are making criminal justice policy or recommending criminal justice policy, you need to know the facts, and that research and correct information needs to inform public policy.

During the course of my career, I have worked repeatedly on projects that have involved the use of research. I am one of these people who actually reads NIJ reports, keeps the source book from BJS in my house, and relies on them heavily in making recommendations.

For example, when I worked as a prosecutor, Mayor Rendell appointed me to be on an Alternatives to Incarceration Task Force. The idea was to come up with ways to help reduce the prison population in a manner that was safe for the members of the community.

We worked with two nationally respected experts, John Goldkamp and Kay Harris, who often worked with various agencies through OJP. They did an extensive analysis of the various bail release projects and were able to make recommendations about how we in Philadelphia could structure our bail release program in a way that not only maximized the public safety interests but also helped reduce the prison population, given that Philadelphia was financially strapped and did not have endless money to keep building prisons. It was, frankly, in my view, the only responsible way to go about making this sort of policy.

So I am a firm believer in the importance of research, the integrity of research, and that you need to listen to the answers that it gives you, whether you like them or you don't. You need to listen to them and act accordingly. You owe the public that.

Senator FEINGOLD. I thank you for that answer, and you have just been talking about the importance of the independence of the NIJ. I believe that independence includes independence from the

policymaking goals of the Justice Department. What would you do if the research conclusions were not to the liking of your superiors in the Department or were at odds with the policy positions taken by the Department?

Ms. HART. The bottom line, to me, with that is that you publish the research. I don't expect that anybody would ask me not to. Everything I know from the Attorney General in this administration is that they respect the need for objective, reliable research and they support it.

Senator FEINGOLD. Well, that is great and I appreciate what you are saying, because I have a very strong interest in one NIJ study that is already underway or at least the solicitation for the project is underway. And so I want to emphasize, as you have already indicated, the need for objectivity and the need for it at all stages of the process for conducting research, drafting solicitations, reviewing and awarding the research proposals, reviewing the results of the research, and publishing the final product.

Let me make this more concrete by asking you some questions about the study that I am following very closely. Just last Friday, the NIJ released a solicitation for research into the investigation and prosecution of homicide, examining the Federal death penalty system. I realize that you probably have not had a lot of input into this solicitation because you have not yet been confirmed. But I do think it is important to review some concerns as this is a study that you will oversee once you are confirmed. In fact, I held my first hearing as chairman of the Constitution Subcommittee on the subject of this study just a few weeks ago.

As you may know, after the release of the DOJ September 2000 report, Attorney General Reno expressed her concern about glaring racial or ethnic and geographic disparities in the Federal death penalty system. She said, "An even broader analysis must, therefore, be undertaken to determine if bias does, in fact, play any role in the Federal death penalty system." And then she directed the NIJ to conduct such an in-depth study.

During Attorney General Ashcroft's confirmation hearing, I directly asked him whether he would support the NIJ study of racial and geographic disparities. He answered unequivocally yes. The Justice Department, however, then released a report in early June with additional data about Federal capital cases and concluded, without the in-depth analysis ordered by Reno and agreed to by Attorney General Ashcroft, that racial bias does not exist.

Then on June 13th, I held the hearing that I referred to. It was a hearing on the issue and called on the Justice Department to recommit to the in-depth study initiated by Attorney General Reno, and at that hearing, Deputy Attorney General Thompson said that the Attorney General had ordered the NIJ to conduct a study and that the primary purpose of the study is the same as that which was contemplated by the Clinton administration.

Yet I find on page 3 of the solicitation which we just reviewed, the NIJ states that the June supplemental report "concluded that racial and ethnic proportions found in the pool of potential Federal capital cases and differences among the racial and ethnic proportions in different districts resulted from non-invidious causes."

So the solicitation repeats the statement from the June report but does not comment on it. In fact, in the discussion of issues to be researched and criteria for deciding on research proposals, the solicitation does not, in my view, reiterate the explicit purpose of the study as outlined by Attorney General Reno whether bias does, in fact, play any role in the Federal death penalty system.

So I am concerned about by the way the NIJ appears to have now framed the study, and I hope this does not mean that the NIJ has accepted the June report's premature conclusion that racial bias does not exist in the Federal system. I hope this does not mean that the focus of the NIJ study has now again changed since Attorney General Reno first directed the NIJ to do the study.

Let me ask you a few follow-up questions about that. Do you accept Attorney General Ashcroft's conclusion in his June supplemental report that racial bias does not exist in the Federal death penalty system and believe that the NIJ study should not address this issue?

Ms. HART. Senator Feingold, although I have—I am familiar with the reports, I have reviewed them, I have not reviewed them in depth, nor have I reviewed the background research for them. But my understanding is based on the information that was contained in those reports that they were fully supported and they were consistent with Attorney General Reno's view of how the death penalty was being applied or implemented in the Federal system.

Both of them have—both Attorney General Reno and Attorney General Ashcroft recognized that there were further issues still to be reviewed. Obviously, the NIJ study is going forward. It is a comprehensive analysis, and although I have had no input whatsoever into the formation of this solicitation, out of deference to the Senate and its confirmation process, this is a matter of extreme urgency to the Department, as I understand it, and to me personally. And I can tell you that as a prosecutor, as a public servant, and as someone who has spent their life working in the criminal justice field, that there is nothing more important than for us to be administering justice fairly. And I intend to make sure that this solicitation goes forward, that it is objective, and that it answers the questions that need to be answered and that we can answer.

Senator FEINGOLD. Well, I appreciate your specific remarks and the spirit of those remarks. And so I would ask you, do you agree that the issue, whether bias exists, is the focus of the NIJ study?

Ms. HART. I think the study, the solicitation speaks for itself, and it specifically talks about looking into issues such as ethnic and racial disparities and geographic disparities. So it obviously involves a number of issues. It's a complex undertaking. But it's—those are the areas that appear to be addressed by the solicitation.

Senator FEINGOLD. So would you agree that if a research proposal is submitted that includes a review of the question of whether bias exists, that that proposal would be entirely proper and within the scope of the research contemplated by the NIJ?

Ms. HART. Senator, as you know, the NIJ has a very, very well-tested means of evaluating proposals and whether they comply with the solicitation requests. It also has an external peer review process for analyzing those proposals. I think it would be premature for me to in any way try to make opinions about this. I

think that this process of using external peer review, relying on the staff of NIJ, who are research professionals, and relying on their recommendations is the way that this needs to be reviewed. And I intend to follow that process objectively and fairly.

Senator FEINGOLD. I am not suggesting that you would tell me that you would accept such a proposal or that is the one that should be chosen. I am just—as a person that is trying to do oversight on this issue and this study, it seems to me that if a proposal is about the question of whether bias exists, that it certainly would not be disqualified from being reviewed as a possible contender.

Ms. HART. Senator, I think that looking at this solicitation, I was particularly impressed by the lengths to which the solicitation discusses the peer-review process, this external process, and also requires that persons who were soliciting—or responding to the solicitation make very frank disclosures about their viewpoints or past history both for or against the death penalty. I think that a lot of thought has obviously gone into this in order to ensure that the process is fair and that we get the best answers that we can.

I think that looking at this, it requires looking at the entire proposal, not just simply what's one line and what one word is used, whether one wants to call it bias or disparities or whatever. I think obviously looking at the entire proposal and seeing if it fits what the solicitation has asked for and relying on the external review and the experts at NIJ will allow for a fair process and answer the questions that need to be answered.

Senator FEINGOLD. Well, I understand that. Let me just comment in response, before I ask you one more question, that given what you have said about Attorney General Reno's study and your feeling that the other comments made by Attorney General Ashcroft and others were consistent with that, I can tell you this: If what comes out of this is not basically about the issues of racial and geographic disparities, it has nothing to do with the original Reno proposal was, and I am going to meticulously watch to make sure that what comes out of this is consistent with the very core purpose that started this whole thing.

Ms. HART. I'd welcome that, Senator Feingold. If confirmed, I welcome having—working with this committee on issues, obviously. And it's clear. Attorney General Ashcroft has committed to looking at the question of racial and ethnic and geographical disparities. That's what the solicitation—the language that is used in it, and that's what will certainly be looked at.

Senator FEINGOLD. Well, that just leads to my final question. What would you do if the research conducted by the outside experts concluded that racial bias exists, a conclusion that is clearly at odds with the conclusion of the June supplemental report? Would this conclusion dissuade you from publishing the results of this study?

Ms. HART. Obviously there is a normal review process once a draft comes in through the—all of these draft research reports are subject to rigorous analysis and review by experts and peers. And that normal process is applied to any solicitation and research that NIJ does.

I expect that process to proceed with this case, to proceed fairly and objectively, and to make sure that any findings or conclusions

are amply supported by the evidence. I think that we owe the public a rigorous, objective, reliable report. This is an important issue to the American public, and we need to make sure that it is correct.

Senator FEINGOLD. But assuming all those tests are met—

Ms. HART. Assuming all those—

Senator FEINGOLD. —the conclusion, of course, that the racial bias exists would not dissuade you from publishing the results of the study. Is that fair?

Ms. HART. Senator, if a study has bad news to give to us or the American people about how we administer our criminal justice system, whether there are questions of racial and ethnic bias, those are important things that we need to know, and we should not shy away from them. And I would not shy away from them.

Senator FEINGOLD. I appreciate that answer. I recognize that you were not involved in this process. This is prospective with regard to you. But I do have to reiterate on the record that if this NIJ study does not deal with the issue of racial and geographic bias in the death penalty, it would be in violation of the specific commitments made under oath by Attorney General Ashcroft and the commitments made to me personally by Deputy Attorney General Thompson in front of this committee. And I certainly take seriously your commitment to the objectivity in the role of your agency, and I expect you will do a very good job at it.

I want to thank both of you very much. I expect that these nominations will be expedited and that you will be in your positions shortly, and I look forward to working with you.

The hearing is concluded.

[Whereupon, at 3:25 p.m., the committee was adjourned.]

[Submissions for the record follow.]

SUBMISSIONS FOR THE RECORD

**Statement of Hon. Evan Bayh, a U.S. Senator from the State of Indiana on the Nomination of Deborah J. Daniels to be Assistant Attorney General for the Office of Justice Programs, Department of Justice**

Mr. Chairman, unfortunately due to prior commitments, I cannot be with you today to introduce this fine Hoosier, Deborah Daniels to the Judiciary Committee. However, I would like to take this opportunity to congratulate Ms. Daniels on her nomination to be Assistant Attorney General for the Department of Justice.

Ms. Daniels has dedicated her life to serving the people of Indiana. She started her career working as an assistant to the senior Senator from Indiana while he was Mayor of Indianapolis. After earning her law degree, she worked as a prosecutor for Marion County and then as U.S. attorney for the Southern District of Indiana. In addition to her dedication to the criminal justice system, Ms. Daniels has donated her time and service to many community organizations, including the United Way, the Community Organizations Legal Assistance Program, the Greater Indianapolis Progress Committee, and the Children's Bureau of Indianapolis.

Ms. Daniels is an outstanding Hoosier. I am sure will serve the United States as ably as she has served Indiana. I urge the Committee to favorably send this nomination to the full Senate for confirmation. Thank you.

KRIEG DEVAULT ALEXANDER & CAPEHART, LLP
INDIANAPOLIS, INDIANA 46204–2079
*August 30, 2001*

The Hon. Charles E. Schumer
United States Senate
*Washington, DC 20510*

Re: Question Regarding HUD Gun Buy-Back Program

Dear Senator Schumer:

Shortly after my confirmation hearing before the Senate Judiciary Committee, you posed two questions to me in writing. I understand that you found my answer to one particular question insufficiently responsive, and I apologize for that. With your indulgence, I would like to respond more completely and specifically to the question, which read as follows:

> The Department of Housing and Urban Development recently eliminated a gun buyback program that was responsible for removing thousands of handguns from impoverished and crime-ridden communities across America. HUD eliminated the program not because it was ineffective but because it does not fit within the Department's ″core mission″. As Assistant Attorney General for the Office of Justice Programs, would you reinstate the gun buy-back program as a DOJ-funded project?

Senator Schumer, I share your concerns regarding the use of guns to victimize residents of the neighborhoods you describe, and I share your desire to reduce gun violence throughout America. If confirmed as Assistant Attorney General for the Office of Justice Programs, I will be eager to work with you to identify and implement initiatives which will achieve that goal. I am not familiar with the details of the specific gun buy-back program to, which you refer, or with the findings of any research which may have been done to analyze its effectiveness in removing guns from the hands of criminals, or in reducing gun violence generally. However, I would be pleased to examine this initiative, as well as others, and to seek to fund such initiatives as hold promise for the achievement of these outcomes.

I hope that this letter will help to clarify my earlier response, and I look forward to working with you to prevent future incidents of violence committed with firearms.

Thank you, Senator, for the opportunity to expand on my previous response.

Sincerely,

DEBORAH J. DANIELS

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