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NOMINATIONS OF BRUCE E. KASOLD, ALAN G. LANCE, SR., LAWRENCE B. HAGEL, ROBERT N. DAVIS, WILLIAM A. MOORMAN, AND MARY J. SCHOELEN, TO BE JUDGES, U.S. COURT OF APPEALS FOR VETERANS CLAIMS

HEARING

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST AND SECOND SESSIONS

MARCH 4, 2003, JUNE 17, 2003, APRIL 1, 2004 AND SEPTEMBER 30, 2004

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C O N T E N T S

MARCH 4, 2003

NOMINATIONS INCLUDING BRUCE E. KASOLD TO BE JUDGE, U.S. COURT OF APPEALS FOR VETERANS CLAIMS

SENATORS

	Page
Specter, Hon. Allen, Chairman, U.S. Senator from Pennsylvania	1
Warner, Hon. John, U.S. Senator from Virginia	1

WITNESSES

Kasold, Bruce E., nominee to be Judge, U.S. Court of Appeals for Veterans Claims	3
Prepared statement	4
Questionnaire for Presidential nominees	5
Supplemental questionnaire	8
Attachments	14

APPENDIX

Campbell, Hon. Ben Nighthorse, prepared statement	21
Bunning, Hon. Jim, prepared statement	21

JUNE 17, 2003

NOMINATIONS OF ALAN G. LANCE, SR., AND LAWRENCE B. HAGEL TO BE JUDGES, U.S. COURT OF APPEALS FOR VETERANS CLAIMS

SENATORS

	Page
Specter, Hon. Allen, Chairman, U.S. Senator from Pennsylvania	23
Craig, Hon. Larry E., U.S. Senator from Idaho	23
Crapo, Hon. Michael, D., U.S. Senator from Idaho	24
Campbell, Hon. Ben Nighthorse, U.S. Senator from Colorado	72

WITNESSES

Hagel, Lawrence B., nominee to be Judge, U.S. Court of Appeals for Veterans Claims	25
Prepared statement	26
Questionnaire for Presidential nominees	27
Supplemental questionnaire	35
Response to written questions	51
Lance, Alan G., Sr., nominee to be Judge, U.S. Court of Appeals for Veterans Claims	54
Prepared statement	54
Questionnaire for Presidential nominees	57
Supplemental questionnaire	61

Page

APRIL 1, 2004

NOMINATIONS INCLUDING ROBERT N. DAVIS TO BE JUDGE, U.S. COURT OF APPEALS FOR VETERANS CLAIMS

SENATORS

Page
Specter, Hon. Allen, Chairman, U.S. Senator from Pennsylvania 79
Cochran, Hon. Thad, U.S. Senator from Mississippi 79
Lott, Hon. Trent, U.S. Senator from Mississippi 80

WITNESSES

Robert N. Davis, nominee to be Judge, U.S. Court of Appeals for Veterans Claims .....
Prepared statement 82
Questionnaire for Presidential nominees 83
Supplemental questionnaire 88
Attachments 94
Response to written questions 110

SEPTEMBER 30, 2004

NOMINATIONS INCLUDING MARY J. SCHOELEN AND WILLIAM A. MOORMAN TO BE JUDGES, U.S. COURT OF APPEALS FOR VETERANS CLAIMS

SENATORS

Page
Specter, Hon. Allen, Chairman, U.S. Senator from Pennsylvania 117
Graham, Hon. Lindsey, U.S. Senator from South Carolina 131
Rockefeller, Hon. John D., IV, U.S. Senator from West Virginia 131

WITNESSES

Schoelen, Mary J., nominee to be Judge, U.S. Court of Appeals for Veterans Claims 117
Prepared statement 119
Questionnaire for Presidential nominees 120
Attachments 124
Supplemental questionnaire 125
Moorman, Major General William A. (Ret.), nominee to be Judge, U.S. Court of Appeals for Veterans Claims 137
Prepared statement 138
Questionnaire for Presidential nominees 139
Supplemental questionnaire 145
Attachments 151

NOMINATIONS INCLUDING BRUCE E. KASOLD TO BE JUDGE, U.S. COURT OF APPEALS FOR VETERANS CLAIMS

TUESDAY, MARCH 4, 2003

U.S. SENATE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 3 p.m., in Room SR–418, Russell Senate Office Building, Hon. Arlen Specter, Chairman of the Committee, presiding.

Present: Senators Specter, Warner, and Allen.

OPENING STATEMENT OF HON. ARLEN SPECTER, CHAIRMAN, U.S. SENATOR FROM PENNSYLVANIA

Chairman SPECTER. The Committee on Veterans' Affairs will now begin. We have the nomination of Bruce E. Kasold, Esquire, to be judge of the U.S. Court of Appeals for Veterans Claims.

I will turn immediately to the senior Senator from Virginia for the introduction of judge-to-be Kasold.

Senator Warner?

STATEMENT OF HON. JOHN WARNER, U.S. SENATOR FROM VIRGINIA

Senator WARNER. Thank you very much, Mr. Chairman and Members of the Committee. I am delighted to appear here on behalf of this distinguished nominee.

I have known Mr. Kasold for a very long time, Mr. Chairman. He was on my staff as a Congressional fellow more than 12 years ago. Later, when I was privileged to become Chairman of the Rules Committee in 1995, Mr. Kasold became our chief counsel. We steered our way through some heavy waters in those days. He was always by my side and really handled the tough questions very, very well.

He has an impressive resume. Graduated from the United States Military Academy, Mr. Kasold went on to receive his law degree from the University of Florida where he was on the Law Review and earned the prestigious order of Order of the Coith. Mr. Chairman, with all your tremendous achievements in the law, you immediately recognize in this individual an outstanding person, am I not correct?

Chairman SPECTER. You are correct. He may be overqualified.

Senator WARNER. Thank you. In addition, he received his master's in law from Georgetown University and a master's of law

equivalent from Judge Advocate General's graduate program collocated on the University of Virginia. He has over 20 years of service with the United States Army, first in the combat arms, air defense artillery, and then as a judge advocate in the Army's Judge Advocate General's Corps. Furthermore, in addition to serving as the general counsel for the Augsberg Military Command, Mr. Kasold served as assistant general counsel in the Army's Office of General Counsel. He also served as a special Assistant U.S. Attorney in military and administrative law where he prosecuted numerous criminal cases before court martial and tried cases before Federal magistrates.

After retiring from the military, Mr. Kasold worked in the private sector with the well-known firm of Holland & Knight. In 1998, Mr. Kasold moved on to his current position as chief counsel for both the Secretary of the Senate and the Sergeant at Arms. In this role, he has continued to serve the Senate, the Members and the staff on issues such as administrative claims and personnel matters. Without a doubt, Mr. Kasold's education, legal experience, and achievements make him well-suited, Mr. Chairman, and I am proud to be here on his behalf today.

Might he at this time introduce to the Chairman the numerous members of his family in attendance today?

Senator SPECTER. Thank you very much, Senator Warner for those——

Senator WARNER. If you will allow the nominee to introduce his family, Mr. Chairman?

Chairman SPECTER. By all means.

Senator WARNER. Thank you.

Mr. KASOLD. We have my wife Patricia, my mom Louise, my son Adam, and my in-laws, a host of them, Billy, Pam, my father- and mother-in-law, my niece, Doris.

Chairman SPECTER. You have a wonderful family. It is quite a turnout as a testament to you, Mr. Kasold. And that was an elegant introduction by an elegant introducer. There was only one item that I had awaited some comment on. Both of you—you and Senator Warner—have been an avid squash player.

Senator WARNER. That is correct.

Chairman SPECTER. And judge-to-be Kasold is an avid squash player.

Senator WARNER. That is correct.

Chairman SPECTER. Have you ever played squash? Are you able to testify to his capability in that important aspect?

Senator WARNER. No. When you get to be my age you transfer to tennis, and he has been a frequent tennis partner, is and will always be one. His golf game is awful.

[Laughter.]

Chairman SPECTER. You did not comment on his tennis game. I can tell you his squash game is excellent. I know you have had that knee issue, but you are too young to have given up squash, Senator Warner.

Senator WARNER. You are nice to say that. Thank you. We had many good times together.

Chairman SPECTER. And we shall have some more.

Mr. Kasold, and General Nicholson, if you will both rise I will administer the oath.

[Witnesses sworn.]

Chairman SPECTER. You may be seated, and we shall begin with Mr. Kasold. Let me state for the record, in the interest of full disclosure, that Mr. Kasold is a personal friend. For many years we have been friends and squash opponents. And both before and after his nomination, he has been a tenacious player; gives no quarter. None is asked and certainly none is given.

Mr. Kasold, do you care to make an opening statement?

Mr. KASOLD. Yes, sir, I have a brief one.

STATEMENT OF BRUCE E. KASOLD, NOMINEE TO BE JUDGE, U.S. COURT OF APPEALS FOR VETERANS CLAIMS

Thank you, Mr. Chairman. I would like to also thank Senator Warner for his kind words.

Sir, it is an honor to have been nominated by the President to serve as a judge on the United States Court of Appeals for Veterans Claims. Indeed, I can think of no greater honor than to serve those who have served our Nation in time of war and in defense of peace.

I would like to thank my wife and son, my mom and dad, for their total support and love, and my in-laws who are, indeed, a second family. I would also like to thank you, Mr. Chairman, for your support, and Senator Graham for his support in recommending to the President, along with Senators Warner, Lott, Thurmond, and Santorum, and Congressman Tom Davis. I would like to thank Chesterfield Smith and Dick Duvall of the law firm of Holland & Knight. There are many others to whom I also extend my heartfelt thanks for their support and I have noted them in my complete statement that I would ask be included in the record.

Mr. Chairman, my education and experience are highlighted in the information I have previously provided to the Committee, but I would like to share with you some personal insights and the way I try to approach life and how it might apply, should I be confirmed. First, I try to follow the Golden Rule instilled by my parents and faith, to do unto others as I would have them unto me.

Second, I try to live, work, and play by the ideals enshrined in my alma mater's motto, Duty, Honor, Country.

And third, I am a firm believer in the fact that Senator Warner has crystallized in words so often in our meetings when I worked for him, that there is no end to what we can accomplish if we work together as a team and not worry about individual glory.

Mr. Chairman, should I be confirmed to serve as a judge on the Court of Appeals for Veterans Claims, I can assure you, the Committee, the Senate, and those who come before the court that I will endeavor to give my best, and to render decisions in a fair and impartial manner based on the applicable law and facts in the case.

I again thank you, and I am prepared to answer any questions to the best of my ability.

[The prepared statement of Mr. Kasold follows:]

PREPARED STATEMENT OF BRUCE E. KASOLD, NOMINEE TO BE JUDGE, U.S. COURT OF APPEALS FOR VETERANS CLAIMS

Mr. Chairman, Senator Graham, and Members of the Committee:

It is an honor to have been nominated by the President to serve as a judge on the United States Court of Appeals for Veterans Claims. Indeed, I can think of no greater honor than to serve those who have served our Nation in time of war or in preparation therefore.

First and foremost, I would like to thank my wife and son, and my Mom and Dad, for their total support and love, and my in-laws who are indeed a second family. I would also like to thank you, Mr. Chairman, for your support and that of Senator Graham, in recommending me to the President, along with Senators Warner, Lott, Thurmond, and Santorum, and Congressman Tom Davis.

I would also like to thank Chesterfield Smith and Dick Duvall of Holland & Knight, as well as the other outstanding attorneys at Holland & Knight with whom I have had the pleasure to work. I thank Secretary of the Senate Emily Reynolds and former Secretaries of the Senate, Gary Sisco and Jeri Thomson, as well as the Sergeant at Arms, Al Lenhardt, and former Sergeant at Arms, Jim Ziglar, all terrific and supportive bosses of mine. The Senate has indeed been fortunate to have such capable leadership in its officer ranks.

Thanks, too, to Ernie Heuter, President of the National Legal Center for the Public Interest and the Federal Bar Association for their full support. Finally, my heartfelt thanks to the many fine commanders, officers, and soldiers of the United States Army, the professors at West Point, the University of Florida, Georgetown University, and the Judge Advocate General's Graduate School located at the University of Virginia, and the Sisters and teachers at St. John's and at Mercy High, both in Riverhead, NY.

Mr. Chairman, my education and experience are highlighted in the information I have previously provided to the Committee, but I would like to share with you some personal insight in the way I approach life and how it might apply should I be confirmed. First, I try to follow the golden rule, instilled by my parents and faith, to do unto others as I would have them do unto me. Second, I try to live, work, and play by the ideals enshrined in my alma mater's motto: "Duty, Honor, Country." Third, I am a firm believer in the fact, as Senator Warner often states, that there is no end to what we can accomplish if we work together as a team and not worry about individual glory.

Mr. Chairman, should I be confirmed to serve as a judge on the Court of Appeals for Veterans Claims, I can assure you, this Committee, and the Senate, and those who come before the Court, that I will endeavor to give my best and to render decisions in a fair and impartial manner, based on the applicable law and facts in the case.

I again thank you, Mr. Chairman and Members of the Committee, and I am prepared to answer any questions to the best of my ability.

RESPONSES TO QUESTIONNAIRE FOR PRESIDENTIAL NOMINEES
Part I

1. Kasold, Bruce Edward

2. 5914 Skyline Heights Court, Alexandria, VA 22311

3. Nominated to U.S. Court of Appeals for Veterans Claims

4. Nominated 21 March 2002

5. Born 26 April 1951

6. Born at New York, New York

7. Married

8. Spouse is Patricia Ann Kasold

9. One child: Adam Edward Kasold

10. Education:
London School of Business, London, England, Apr99, CCD, Apr99
Judge Advocate General's Graduate Course, '83-84, LLM Equiv. Jun84
Georgetown U Law Center, '80-82, LLM, '82
U of Florida School of Law, '76-79, JD, Jun79
USMA, West Point, '69-73, JD, Jun73

11. Honors/Awards:
Appointment to USMA - '69
Funded Legal Education Program Selectee - '76
Congressional Fellowship - '89
Legion of Merit, Defense Meritorious Service Medal, Army Meritorious Service Medal, Army Commendation Medal (2)

12. Memberships:
Pentagon Federal Credit Union, Voluntary Board Director, '89-Pres
PFCU Financial Technologies Voluntary Board Director, '96-Pres
Capitol Hill Chapter, Federal Bar Assoc., Pres-elect & Pres, '00-Pres
Federal Bar Association, Member, '98-Pres
American Bar Association, Member, '79-Pres
Federal Circuit Bar Association, Member, '98-Pres
Florida Bar Association, Member, '79-Pres
DC Bar Association, Member, '88-Pres
Disabled American Veterans, '99-Pres
AARP, '00-Pres

13. Employment: Chief Counsel to the Secretary of the Senate and Sergeant at Arms of the Senate, Washington, DC Dec '98-Pres
Chief Counsel, Senate Rules Committee, Washington, DC, Nov95-Dec98
Holland & Knight, Litigation Attorney, Washington, DC, Jan94-Nov95

14. Military Service: U.S. Army, Jun73-Jan94, 2LT-LTC, Retired LTC. Air Defense Artillery: Platoon Leader, Training Officer, Student (Fort Bliss, TX '73; Edgewood Arsenal '73-74, MD; Fort Carson, CO '74-76; U of Florida, Gainesville, FL '76-79); Judge Advocate General's Corps: Attorney, Litigator, Supervisor (Fort Belvoir, VA '79-81; Pentagon, VA '81-83; Charlottesville, VA '83-84; Augsburg, FRG '84-87; Pentagon, VA '87-94)

15. Gov't Service: Already listed.

16. Published Articles:
"Medical Care Recovery - Analysis of the Government's Right To Recover Medical Expenses" Vol 108 Mil. L. Rev. 161-210 (Spring85)
"Toward Definition of theBonafide Seniority System" Vol XXXV Florida L. Rev. 41-55 (Winter83)
"Legal & Prdcacitcal Impediments to Pro Bon Service By The Federal Attorney" Federal Bar News & Journal (Feb83)

17. Political Activities:
a) I served as an election day poll watcher and gathered names on a petition for Senator Warner. I also posted signs for Senator Warner and Congressman Davis. I contributed $75 to the George Allen for Senator campaign, $300 to the VA Republican Party, and $350 to the Bush Post Election Fund.

b) I have not been a candidate for an elective office.

18. Future Employment:
a) I will sever all relationships with my present employer if confirmed.

b) I have no plans for what I will do upon completion of this appointment.

c) I have made no commitments for employment upon completion of this appointment.

d) I intend to serve the full term of appointment.

e) n/a

19. Conflicts:

a) I am not aware of any financial arrangements, deferred compensation agreements, or other continuing financial, business, or professional dealings I have with business associates, clients, or customers who will be affected by policies which I will influence in the position to which I have been nominated.

b) I am not aware of any investments, obligations, liabilities, or other financial relationships which constitute potential conflicts of interest with the position to which I have been nominated.

c) I am not aware of any business relationship, dealing, or financial transaction which I have had during the last 5 years, whether for myself, on behalf of a client, or acting as an agent, that constitutes a potential conflict oF interest with the position to which I have been nominated.

d) I have had no lobbying activity during the past 10 years in which I have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any Federal legislation or for the purpose of affecting the administration and execution of Federal law or policy.

e) If a potential conflict of interest is disclosed to me, I will review the matter and take appropriate action, in consultation with appropriate authorities, to include divestiture of assets or withdrawal of membership if required.

20. Testifying:

a) I agree to appear and testify before any duly constituted committee of Congress upon request of such committee.

b) I agree to provide such information as is requested by such a committee, consistent with the cannons of law.

SUPPLEMENTAL QUESTIONNAIRE
FOR NOMINEES TO THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS
(To Be Made Public)

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

- American Bar Association (1979-Present); Chair/Member, Military Service Lawyers' Committee, ABA, 1979-84; Delegate/Member, Young Lawyers Division, ABA, 1979-86; Director, ABA Standing Committee On Lawyers in the Armed Forces, 1979-80.
- Federal Bar Association (1998-Present); Capitol Hill Chapter President (2001-Present), President-Elect (2000-2001) (I believe I belonged to the FBA for a few years in the 1980's but I cannot confirm this as FBA records reportedly do not go that far back if you dropped membership for a period.)
- Federal Circuit Bar Association (1998-Present).
- Florida Bar (1979-Present).
- DC Bar (1988-Present).

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

- Florida Supreme Court - 24 October 1979
- DC Court of Appeals - 18 November 1988
- Circuit Court of Appeals for the Armed Services (formerly Court of Military Appeals) - 16 November 1979

3. Judicial offices: State (chronologically) any judicial office you have held and whether you were elected or appointed to them and provide a description of the jurisdiction of each such court.

None

4. Judicial opinions: If you are or have been a judge, attach a statement providing (a) citations for the ten most significant opinions you have written, (b) a short summary of and citations for all appellate opinions either reversing your decision or confirming it with significant criticism of your substantive or procedural rulings, and (c) citations for significant opinions on federal or state constitutional issues, together with citations for any appellate court rulings on your decisions in those cases. (If any of the opinions listed were not officially reported, please provide copies of the opinions.)

N/A

5. Speeches: Attach copies of all speeches you have given on issues involving constitutional law, legal policy, or matters relating to veterans' benefits. If there were press reports of any such speeches and they are readily available to you, please provide them.

None

6. Legal career:

(a) Attach a chronological description of your law practice and experience after graduation from law school, including (1) whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk, (2) whether you practiced alone, and if so, the addresses and dates, and (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.

Resume attached.

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

I served in the Judge Advocate General's Corps from 1979-1994, during which I was a prosecutor, command legal advisor, claims adjudicator, legal assistance officer, legislative counsel, civil litigation counsel, and assistant general counsel to the Army General Counsel. I served as a commercial and government contracts litigation attorney with Holland & Knight from 1994-1995. I was Chief Counsel to the Senate Rules Committee from late 1995 to late 1998, after which I entered my present position as Chief Counsel to both the Secretary of the Senate and the Sergeant-at-Arms.

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

While in the military, typical former clients were military commanders, and soldiers and their families. While at Holland & Knight the typical client was a corporation involved in government contracting. At Rules Committee, my client was the Chairman, as well as other members of the Committee. In my current position, my clients are the Secretary of the Senate, the Sergeant-at-Arms, and their Department heads. I have a masters in labor law, a strong foundation in contract law and government contracts, and significant experience in litigation and legislative drafting.

(d) State whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court has varied over time, describe each such variance, giving dates.

I appeared in court regularly in 1980-81 and again from 1984-87. I appeared in court a few times from 1981-83 and from 1994-95. Other times, I was not litigating.

(e) 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, and identify the courts.

I have tried approximately 25 courts- martial cases as lead or sole counsel, and about 25 courts-martial cases as co-counsel, and I have supervised the trial attorney in about an additional 25 courts-martial cases. I also have tried as sole counsel, a large number of cases in Federal Magistrate's Court, and I have served as associate counsel in a few cases before the GSA Board of Contract Appeals, the Armed Services Board of Contract Appeals, and the Comptroller General.

7. Litigation:

Attach a statement describing the ten most significant litigated matters which you personally handled,. Give the citations of cases that were reported and the docket numbers and dates of those that were not. 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 the representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the names, addresses, and telephone numbers of the individuals who were co-counsel with you and principal counsel for each of the other parties.

See Attached.

8. Legal activities: Attach a statement describing the ten most significant legal activities you have pursued (other than the litigated matters referred to above). Describe the nature of your participation, but please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

See Attached.

9. Outside employment: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, please provide details.

I have no plans to continue outside employment, although I do plan to continue my voluntary service on the Board of the Pentagon Federal Credit Union and its subsidiaries. I perceive no conflict with matters within the jurisdiction of the court.

10. Party affiliation: State (a) your current political party affiliation and the place and date it was established, and (b) if you have in the past registered as being with a different party (or as an independent if not now registered as an independent), the place and inclusive dates of such registration.

I am not aware of any registered party affiliation and I understand none is maintained in Virginia, however, I have worked on behalf of Senator Warner, Senator Allen, and Congressman Davis, all of whom are Republican.

11. Memberships in certain organizations: The American Bar Association's Commentary to Canon 2 of its Code of Judicial Conduct states, "It is inappropriate for a judge to hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, or national origin." Do you currently belong, or have you belonged, to any organization which discriminates in this manner – through either formal membership requirements or the practical implementation of membership policies? If so (a) list all such organizations of which you are or were a member, (b) provide the dates of your memberships, and (c) describe in each case the efforts you made to try to change the organization's discriminatory policies or practices.

I do not currently, nor have I ever, belonged to any organization which discriminates on the basis of race, sex, religion, or national origin.

12. Services for disadvantaged persons: The American Bar Association in its Comment to Rule 6.1 of its Model Rules of Professional Conduct call for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Attach a statement describing what you have done to fulfill this responsibility, listing specific instances and the amount of time devoted to each.

See Attached.

13. Selection process: Has anyone involved in the process of selecting you as a nominee discussed with you any specific case, legal issue, or question in a manner that could reasonably be interpreted as seeking any express or implied assurance concerning your position on such case, issue, or questions? If so, please explain fully.

No one involved in the selection process has discussed any specific case, legal issue, or question in a manner that might in anyway be interpreted as seeking any assurances concerning my position on a case, issue, or question.

AFFIDAVIT

)ss

BRUCE KASOLD, being duly sworn, hereby states that he/she has read and signed the foregoing answers to the Supplemental Questionnaire for Nominees to the United State Court of Appeals for Veterans Claims, and that the information provided therein is, to the best of his/her knowledge and belief, current, accurate, and complete.

Signature of Nominee

Subscribed and sworn before me this 18th day of April, 2002

Notary Public NOTARY PUBLIC DISTRICT OF COLUMBIA

MY COMMISSION EXPIRES JANUARY 31, 2004

ATTACHMENTS
TO
SUPPLEMENTAL QUESTIONNAIRE
FOR NOMINEES TO THE UNITED STATES COURT OF VETERANS APPEALS
(To Be Made Public)

7. **Litigation Cases:** Most of my cases were tried before Federal Courts-Martial. There is no retrieval system for cases prior to 1986, and retrieval is only by Judge's name for cases I tried in 1986 and 1987. If a case number is provided, the information has been verified against the file. If no case number is provided, the information is to the best of my recollection.

- United States v. Specialist Joseph McDonagh, Federal Court Martial tried before Judge Donald Morgan. I represented the United States and worked this case from December 1984 until June 1985. Specialist McDonagh was tried, convicted, and sentenced for first degree murder. This case involved a contest over admission of confession, allegations of insanity, appearance of expert witnesses, request for government funding of expert psychological examination by defense requested expert, request for government funding of other witnesses, direct and cross examination, evidence in aggravation, extenuation, and mitigation, and arguments on guilt and sentencing. Specialist McDonagh was represented by then Captain John Slaga, 11525 Madison Ave., Cleveland, OH 44102. Tel: 216-521–7922, and civilian counsel.
- United States v. Allstate Insurance Co., 754 F.2d 662 (6th Cir. 1985), Circuit Judge Merritt writing opinion. I was lead Army counsel in the district court case (Judge Ballantine presiding; case was unreported) and wrote the briefs and argued the case supporting the government's right to recover medical expenses from no-fault insurers for injuries caused by the insured against a service member. U.S. Attorney Michael Spaulding was co-counsel on the brief. I also drafted the briefs submitted in appellate court, although the final brief was prepared by Major Whittmayer who also argued the case on appeal. The government lost this argument but this case, along with others, helped generate legislation recognizing the right of the government to recover medical expenses from no-fault insurers. Allstate was represented on appeal by John Crutchfield, et al of MacKenzie & Peden, Louisville, KY.
- United States v John Doe (rank & name not recalled), Federal Court Martial tried before Judge John Spillar. I represented the United States and worked on this case from about May 1987 until July 1987. Accused was tried, convicted, and sentenced for drug distribution. This case involved language translators, international law issues, expert testimony, chain of custody issues, direct and cross examination of witnesses, evidence in aggravation, extenuation, and mitigation, and arguments on guilt and sentencing. I believe the accused was represented by then Captain John Slaga, 11525 Madison Ave., Cleveland, OH 44102. Tel: 216-521–7922.
- United States v Staff Sergeant McDaniel, Federal Court Martial case no.

19861388, tried before Judge John Spillar on 10 December 1986. I represented the United States and worked this case from about April 1986 through post-trial review in January 1987. Sergeant McDaniel was tried, convicted, and sentenced for rape. This case involved use of testimony by video due to non-availability of a witness, expert testimony, laboratory/scientific analysis evidence, direct and cross examination, and arguments on guilt and sentencing. Sergeant McDaniel was represented by Captain Audrey Lewis.

- United States v. Specialist Torres, Federal Court Martial. I represented the United States and worked this case from about November 1985 until May 1986. Specialist Torres was tried, convicted, and sentenced for illegal drug distribution. This case involved a guilty plea, evidence in aggravation, extenuation and mitigation, and arguments on sentencing. I do not recall the judge nor who represented the accused.
- United States v John Doe (rank & name not recalled), Federal Court Martial tried before Judge John Spillar. I represented the United States and worked this case from January 1985 until June 1985. This soldier was tried, convicted, and sentenced for bad check writing. This case involved hand writing analysis testimony, direct and cross examination, evidence in aggravation, extenuation, and mitigation, and arguments on guilt and sentencing. I do not recall who represented the accused.
- Satterfield v. United States, 788 F.2d 395 (6th Cir. 1986), Circuit Judge Krupansky writing opinion. I was lead Army counsel and drafted the briefs supporting summary judgement in favor of the government based on the claim being barred by the Feres doctrine, although Anthony Steinmeyer, DOJ attorney, argued the case. Satterfield was represented by William Vest of Hendersonville, TN, et al.
- United States v. Shearer, 576 F.Supp. 672 (E.D. PA 1982), tried before Judge Hannum. I was lead Army counsel and drafted the briefs submitted to court seeking summary judgement based on the Feres doctrine, although arguments were handled by Assistant U.S. Attorney Margaret Hutchinson. This case wound its way to the Supreme Court, where the government prevailed and the decision of the Court further defined the outer edges of the Feres doctrine. Shearer was represented by William Cannon of Philadelphia, PA, 215-597-2556.
- United States v. SSG Poteat, Federal Court Martial case no. 19861106, tried before Judge John Spillar on 8 August 1986. SSG Poteat was found not guilty on charges of drug distribution. This case involved temporary recall of a soldier who had been transferred back to the United States from W. Germany. Captain Audrey Lewis was the defense counsel. Captain Julie Tingwall served as Assistant Trial Counsel.
- United States v. SP4 Theriot, Federal Court Martial case no. 19860520, tried before Judge Spillar on 27 August 1986. SP4 Theriot pled and was found guilty of illegal drug use and distribution. This case involved trial on sentencing. SP4 Theriot was represented by then Captain Everett Maynard, U.S. Army, 703-697-2016. Captain John Finger served as Assistant Trial Counsel.

8. **Significant Legal Activities (not including court):**

- Impeachment Trial of the President - co-drafted initial Senate Resolutions for impeachment proceedings and advised on process.
- Contested Election - advised Rules Committee Chair on Louisiana contested election, including merits of conducting investigation, conduct of investigation, and findings of investigation.
- Chair, Capitol Hill Chapter, Federal Bar Association - served as Vice Chair and now Chair in furtherance of program activities involving continuing legal education and national guest speakers.
- Campaign Finance Reform - orchestrated largest number of hearings since 1980s and co-drafted legislation introduced by Senator Warner.
- Procurement - co-drafted complete revision of the Senate Procurement Regulations.
- Procurement - negotiated favorable resolution to significant contract claim against the government.
- Medical Care Recovery - Revitalized affirmative claims efforts in the Army, increasing claim recoveries from about $1M to over $7M in three years; produced newsletter; conducted training, and made command visits. Wrote law review article and coordinated with DOJ with resultant legislation ultimately passed to facilitate recoveries.
- Government Liaison - served as military legal liaison to German Prosecutor in German cases involving military and dependant personnel. Visited all military and dependent personnel incarcerated in German penitentiaries in region, advising them of their rights and ensuring basic compliance with law.
- General Officer Investigations - served as primary legal advisor to Army General Counsel on all General Officer investigations.
- Military Support to Civil Authorities - served as primary legal advisor on military support to Civil Authorities, including initial advice to the White House crisis response team on use of military on St. Croix in response to civil disturbance arising after significant hurricane damage.

12. **Services:** I have served in a voluntary capacity on the Board of the Pentagon Federal Credit Union since 1989, which provides financial services to military and DOD civilian personnel and their families; this involves over one hundred hours each year, mostly in the evening. I have provided organizational and fund-raising assistance to the March of Dimes (1998), the Lukemia Society (1998-94), and now provide assistance to the Juvenile Diabetes Society (1994-Present); time involvement has varied from a few hours a year to as much as 25 hours a year. While with Holland & Knight, our firm established a pro bono section to provide such services on behalf of each firm attorney, although I was not assigned to this section. While in the Army, I provided legal assistance to military and civilian personnel and their families from 1979-80 (30% of my job) and for a 6 month period in 1984-85 (50% of my job) and from 1985-87 (10%) of my job.

Chairman SPECTER. Thank you very much, Mr. Kasold. Let us begin with your concept of the nature and extent of the Federal Government's obligation to the Nation's veterans and their survivors or dependents.

Mr. KASOLD. Sir, our Nation has always supported the veteran. President Lincoln, I think, said that it was a Nation's duty to care for the veteran who fought in wars and their families, and I fully support that view.

Chairman SPECTER. The Court of the Veterans Claims allows non-attorney practitioners to appear and argue for claimants. Contrasting attorneys with non-attorney practitioners, how would that affect your proceedings and your ultimate adjudication of a case? Also include in that the so-called pro se litigants, those who represent themselves.

Mr. KASOLD. Sir, I do not think it would affect the ultimate adjudication at all. I believe this court was designed to ensure that the veterans receive the benefits that they are entitled to. I think that actually as a judge, your case and your workload might be easier when the claimant is represented by counsel or by the Veterans Service Organizations. But I think it is the duty of the judge to assess the facts, review the case, and ensure that those benefits that the claimant is entitled to are in fact awarded. So I do not think it would impact the end results at all.

Chairman SPECTER. The judgeship is Article I as distinguished from Article III judges who have life tenure. I would be interested in your views as to what discretion as an Article I judge you would give to executive branch determinations contrasted with the approach of an Article III judge with an independence of Article III standing.

Mr. KASOLD. Sir, I do not think it would be any different. I have reviewed the hearings before this panel and Chief Judge Nebeker, the first chief judge of the court, I think addressed it the way I view it, that deference is given to an agency when it is interpreting its own organic legislation. Questions of law are determined de novo, and the legislation creating this court makes it clear that questions of fact are determined by the Board of Veterans' Appeals and overturned only when not substantiated fully.

Chairman SPECTER. Would you hesitate to reverse a Veterans' Administration decision that is consistent with long-standing VA practice but is contrary to your best reading of the words of the statute or reasonable statutory interpretation?

Mr. KASOLD. No, sir. If the best reading of the statute was A, for example, I would not hesitate to overturn an interpretation that had B. I recognize that regulations that have been around for a long time are given certain weight, but I also recognize that this court is new. It has been around for about 12 years, and that many of the regulations in the Veterans' Administration have not had a judicial review. So all of that would factor into an evaluation of any interpretations.

Chairman SPECTER. Would the potential cost of overturning a historical but arguably erroneous statutory interpretation enter your decisionmaking in such a case?

Mr. KASOLD. Sir, I do not think the cost of a decision based on clear reading of the statute would enter into a determination. If the

statute is somewhat ambiguous, cost might be a consideration as to what was really meant by the statute. But if it is clear, cost would not enter into it.

Chairman SPECTER. There is a long-standing principle, justice delayed is justice denied, and in many cases it does a veteran little good to prevail on a claim after years of decisions, appeals, remands, et cetera. Have you studied the scope of authority that veterans court judges have to sua sponte craft remedies? And in what sorts of cases, if any, should the veteran court judges directly award compensation to veteran claimants or remand the case to the VA to craft the appropriate remedy?

Mr. KASOLD. Sir, I would not say I have studied the scope of authority of the court to sua sponte award a particular remedy. I am aware that this is an appellate court. I am aware of its scope of review. I am also aware of, or at least my understanding of the legislation is that Congress intends for benefits to receive their benefits. Congress has directed the Government, through the Veterans' Administration, to assist the veteran in developing the facts necessary to support a claim. And Congress has directed the Secretary and the Board of Veterans' Claims to balance out—if it is evenly balanced, to give the benefit of the doubt to the claimant, and in your most recent legislation you directed the court to consider that requirement to have that balance.

I think as a judge, the whole purpose for this court is to ensure that the veterans receive the benefits that they are entitled to. It would certainly be my personal goal to bring that about as quickly as possible. Whether or not the case gets remanded depends on the facts of the case; whether or not you can decide it on the facts before you and the law before you depends on the individual case.

Chairman SPECTER. Public Law 107–330 provides that in deciding a case, the Court of Appeals must take into account the VA's application of the so-called "benefit-of-the-doubt rule." What is your understanding of this requirement and how would you analyze the VA's compliance with the benefit of the doubt rule?

Mr. KASOLD. Sir, my understanding is that if you have a set of facts—and I do not mean one on one side and three on the other side, but just a set of facts that leave you in some kind of doubt, that benefit of the doubt is to go to the veteran in the award of the benefits. At the appellate level, I believe Congress has made clear that we are to take that into consideration, and in assessing the case, make a determination as to whether or not that benefit of the doubt has, in fact, been given to the claimant.

Chairman SPECTER. With your 21 years of active duty in the U.S. Army, and the U.S. Senate for the last 7 years, do you believe that your almost 30 years of Government service might be seen by VA claimants as a cause for pro-Government bias? How would you deal with that perception if, in fact, you found it to exist?

Mr. KASOLD. I do not think it would be fair, but I recognize that some people may come with a view that an individual who has worked for the Government might be biased. If they were aware of my actual career, much of it in the JAG Corps for the Army, in that position you serve the Government at times and at other times you actually serve legal assistance in assisting the soldier. I actually believe most veterans would view somebody with that type of

experience, JAG experience and having knowledge of the JAG Corps, would probably have a bias that you would get a fair hearing.

But I believe the way you take care of the bias is by being fair and impartial in your dealings with claimants, from the hearings that might take place to writing a clear opinion based on fact and law so that they can understand, so that there are no biases to be taken from the opinion.

Chairman SPECTER. Mr. Kasold, I know the answer to this next question, but I am going to ask it for the record. There is a large backlog of litigation and I know from our 6:30 a.m. meetings you are always there ahead of time. Are you prepared to work hard and be prompt and do your utmost in diligence to perform your duties and to get rid of the backlog and move very promptly on judicial decisions?

Mr. KASOLD. Yes, sir.

Chairman SPECTER. Senator Thurmond made a comment in a hearing during my early days on the Judiciary Committee more than 20 years ago. There were two judges from Pennsylvania, two nominees, and Senator Thurmond said, "If you are confirmed, do you promise to be courteous?" That is translated into, if you are confirmed, do you promise to be courteous? I thought to myself that was a peculiar question because what are they going to say except yes? And not surprisingly, both nominees answered yes.

Then Senator Thurmond said, "the more power a person has, the more courteous the person should be." Translated into, the more power a person has, the more courteous the person should be. Whenever I am at a hearing for a judge nomination and Senator Thurmond is not present, and he had been on this Committee up until his term ended last January 3, when he is not here I always ask that question. I know you are about to promise to be courteous, right?

Mr. KASOLD. Yes, sir.

Chairman SPECTER. But remember that once you have on that robe you have a great deal of power. Some of the lawyers are not going to suit your fancy. Some of them may not suit anybody's fancy. And especially since you will not have lawyers, you will be having non-lawyers represent people who will not be familiar with the litigation rules, and pro se, Latin for representing yourself. So bear that in mind. Many nominees whom I have given the Thurmond admonition are to be reminded later how helpful it is to think about that when they tend to be irritated, or out of sorts, or feeling a little above the reach of common people who do not have black robes.

Mr. Kasold, I am delighted to see you here today. It has been a long struggle getting you here, for reasons which we do not need to discuss. But I am confident that your confirmation will proceed rapidly, notwithstanding the Estrada filibuster.

Chairman SPECTER. That concludes the hearing.

[Whereupon, at 4:08 p.m., the Committee was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO

Thank you, Mr. Chairman. I appreciate your convening today's hearing which will give us the opportunity to hear testimony from Bruce Kasold, nominee to be Judge, Court of Appeals for Veterans Claims, and John Nicholson, nominee to be Under Secretary for Memorial Affairs, Department of Veterans Affairs. I welcome both witnesses and look forward to their testimony.

Mr. Kasold, I understand you have spent some time here on the Hill as Chief Counsel for the Secretary of the Senate and the Rules Committee and also have experience working with the Pentagon Credit Union. Your work reviewing benefit claims and issuing decisions on appeals for the VA will be an important part of the effort to expedite the claims process. Each veteran is entitled to fair and timely consideration of his or her appeal.

And, Mr. Nicholson, I understand you are originally from Strubel, Iowa, which has a population of about 80 persons. That is even smaller than my town of Ignacio, Colorado. I think you will probably agree with me that lots of very good people come from the small towns of this Nation.

Throughout my terms in the House and Senate, I have been especially interested in seeing that we honor the memory of those who have lost their lives serving in our Nation's wars. And, one of the best ways we can do that is to recognize and protect the sanctity of veterans' memorials. In fact, I have a bill in the Senate right now that would prohibit the desecration of veterans' memorials and permit guide signs to veterans' cemeteries on Federal aid highways.

I am encouraged that the Department's study last year provided a nationwide review of conditions at our VA national cemeteries, and I am hoping that the increase in funding for the National Cemetery Administration will allow for some new cemeteries where they are needed.

I have always supported the VA's efforts to do the absolute best they can with the money they are provided. This year, however, I am enormously concerned that the VA health care system is not currently able to meet the needs of our veterans. We have an obligation to help them get the care they need and deserve.

Last month, I met with Secretary Principi to discuss the VA's enrollment cuts. Though he has had to step up to the plate to make some hard calls, I was encouraged by his commitment to our veterans. I believe our Department of Veterans Affairs is being run by someone who truly has the welfare of veterans at heart.

I believe it is important that we quickly move ahead with these nominations and give the Secretary the best help possible in tackling the tough job ahead.

Thank you, Mr. Chairman.

PREPARED STATEMENT OF HON. JIM BUNNING, U.S. SENATOR FROM KENTUCKY

Thank you, Mr. Chairman.

I am glad this Committee is acting so quickly to fill vacant positions at the Department of Veterans Affairs and the Court of Appeals for Veterans Claims. When confirmed, these nominees will help fulfill our country's commitment to our veterans and improve the services the government provides.

General Nicholson, I met with you last week and we had a good and frank discussion. I wish you the best in your new position, and I urge you, as strongly as possible, to keep this Committee informed and to always speak the truth—good or bad.

Mr. Kasold, I congratulate you on your nomination. You will hold an honored and sacred position. I know this because one of my sons is a Federal judge, and I know the rigors of the job. I trust that once confirmed, you will always be mindful of the reason you were nominated, to serve our Nation's veterans.

I wish both of you the best. Thank you, Mr. Chairman.

NOMINATIONS OF ALAN G. LANCE, SR., AND LAWRENCE B. HAGEL TO BE JUDGES, U.S. COURT OF APPEALS FOR VETERANS CLAIMS

TUESDAY, JUNE 17, 2003

U.S. SENATE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:37 p.m., in room SR–418, Russell Senate Office Building, Hon. Arlen Specter, Chairman of the Committee, presiding.

Present: Senators Specter, Campbell, Craig, and Crapo.

OPENING STATEMENT OF HON. ARLEN SPECTER, CHAIRMAN, U.S. SENATOR FROM PENNSYLVANIA

Chairman SPECTER. Good afternoon, ladies and gentlemen.

The Veterans' Affairs Committee will now proceed with the nominations of Mr. Alan G. Lance of Idaho and Mr. Lawrence B. Hagel of Virginia.

We have with us two distinguished senators from Idaho, and it is a great pleasure for me to yield to my colleague, Senator Larry Craig, the senior Senator from Idaho.

STATEMENT OF HON. LARRY E. CRAIG, U.S. SENATOR FROM IDAHO

Senator CRAIG. Mr. Chairman, thank you very much. Both Senator Crapo and I are pleased to be before the Committee today to introduce the Committee to Al Lance, President Bush's nominee for the United States Court of Appeals for Veterans Claims.

I think it is because of Al's extensive experience, both as an Attorney General of the State of Idaho, a member of the Idaho Legislature, and for years, a man who has worked his way up through the ranks of veterans organizations to become a National Commander of the American Legion, that President Bush felt he was eminently qualified to serve in this capacity.

I can speak for Al and give him, I think, the highest praise that any one person can give another and say that he is my friend and I have had the privilege of working with him over the years to know him and to trust him, to respect his positions, both his legal positions as Attorney General of the State of Idaho.

And then I watched him perform marvelously well on behalf of veterans across this Nation as he served as Commander of the American Legion.

Al and his family, and I and my wife, Suzanne, have known each other a good number of years. I respect him highly and I was extremely pleased that President Bush would nominate him and very pleased, Mr. Chairman, that you now have him before our Committee.

Al Lance will serve this Nation and the veterans of this Nation very, very well in the capacity he has been asked to serve in.

Thank you.

Chairman SPECTER. Thank you very much, Senator Craig, for coming today and for making the recommendation.

Senator Crapo?

STATEMENT OF HON. MICHAEL D. CRAPO, U.S. SENATOR FROM IDAHO

Senator CRAPO. Thank you very much, Mr. Chairman. I, too, can give Al Lance my strongest recommendation and endorsement to the Committee.

As a matter of fact, as I was walking over here from my office, I was thinking about the time I have spent with Al Lance. And this is one of those candidates for an office who come here to Washington for their hearing for whom I can honestly say I know him very well. We served in the Idaho Legislature together. When he decided to leave the legislature and run for Attorney General, I think I had already left and run for Congress or it was right in the same time frame.

We worked with each other on our respective campaigns and on behalf of many, many other candidates in Idaho for their campaigns. He has been very extensively involved in Idaho politics.

I am an attorney, as you know, and Al Lance as our Attorney General has worked very closely with me on many, many issues that have involved the State of Idaho and the Federal Government in terms of protecting States rights and standing up for the interests of the State of Idaho.

As Senator Craig has so well stated, Al has, throughout all of that time, been an unequaled advocate for our veterans. I can honestly say that, as Larry said, he is a friend, and that the President of the United States could not have made a better selection.

Chairman SPECTER. Thank you very much, Senator Crapo.

You come very, very highly recommended, Mr. Lance, and your background is outstanding. I do not want to prejudge your nomination before at least I have a chance to hear from you, but it is always supportive to have both United States senators, and especially when one of the senators, Senator Craig, is a Member of this Committee.

It seems to me on your career path you might have chosen to be headed to the U.S. Senate. But this nomination and confirmation is not a detour necessarily. It may be in line. But only time will tell. I say that only in jest. You have got two young vigorous senators here.

Senator CRAPO. We were trying to figure out which one of us you were suggesting he knock off.

Chairman SPECTER. I saw that contemplation, Senator Crapo. I know the feeling exactly, and that is why I detoured on my line of diversion.

I have a strong suspicion that Senator Craig and Senator Crapo have other duties this afternoon, other things they have to attend to. So they do not need me to tell them they are free to leave. Neither is under subpoena to be here.

Senator CRAIG. I am going to change seats and listen to Mr. Lance's testimony.

Chairman SPECTER. I have deferred my comments until we heard from two introducing senators because my responsibilities require me to stay, but at least Senator Crapo is moving onto other duties.

I welcome both Mr. Lance and Mr. Hagel to this hearing. Let me begin by asking you, Mr. Lance, to introduce any members of your family who are present.

Mr. LANCE. Thank you, Mr. Chairman, and thank you for the opportunity. My wife of 34 years, originally from Sioux Falls, South Dakota, Sherrie. Our daughter, Lisa, who graduated from Willamette Law School, is a member of the Idaho Bar, and works for the Department of the Interior as an attorney. Lisa is a lawyer and works for them there. And recently, Mr. Chairman, last month, she presented us with the newest member of our family, my son-in-law, Brian Rund. Brian is a fine young man who is finishing his master's program here at American University in Washington, DC. Brian and Lisa live in Arlington, Virginia.

Our oldest son, Mr. Chairman, Alan Jr., lives in Las Vegas, Nevada. He is not with us as a result of his conflicting schedules.

And last, but certainly not least, our youngest son, Luke who lives in Sacramento, California, and attends American River College as a business student. And when not engaged in his studies, he is a staff member for the Department of Justice Litigation Division of the Office of the Attorney General of California.

Thank you, Mr. Chairman.

Chairman SPECTER. Thank you.

Mr. Hagel, would you care to introduce any members of your family who may be present?

STATEMENT OF HON. LAWRENCE B. HAGEL, NOMINEE TO BE JUDGE, U.S. COURT OF APPEALS FOR VETERANS CLAIMS

Mr. HAGEL. Thank you, Senator.

Accompanying me today is my wife, Virginia, of 30 years and my daughter, Jennifer, who has traveled here today from Chicago, where she is a member of the national touring company of the Second City Theatre.

My son, Jack, who has also traveled here from Rhode Island He is a reporter with the Associated Press.

My son, Joseph, is also here. Joseph just graduated from high school in Fairfax, Virginia, and is headed next year on a fellowship, under the auspices of the Rotary Club, to study in Argentina for a year.

My brother, Randy, is here with his family, his wife Donna and their two children, Laura and John.

I also have a number of colleagues from the Paralyzed Veterans of America here with me. And good friends.

[The prepared statement of Mr. Hagel follows:]

PREPARED STATEMENT OF LAWRENCE B. HAGEL, NOMINEE TO BE JUDGE, U.S. COURT OF APPEALS FOR VETERANS CLAIMS

Mr. Chairman, thank you, and the Members of this Committee for convening to consider my nomination to what I believe is an extremely important position in our government.

The U.S. Court of Appeals for Veterans Claims first came to my attention in 1989 while I was serving on active duty as a Marine Corps Judge Advocate. News of the Court, then called the U.S. Court of Veterans Appeals, came by way of an article in a legal publication announcing the passage of the Veterans' Judicial Review Act.

Reading the article, I was struck with the significance of this event and of its potential impact on the administration of veterans benefits determinations. As I reflected on the newly enacted statute and gathered more information on the administration of the veterans benefits system, I came to realize that my background as a lawyer combined with my years of military service might be put to best use advocating for veterans before this new court. This course particularly appealed to me because, during my years in the Marines, I had witnessed so many exceptional examples of sacrifice and of selfless service to our country by young Americans. There appeared to be few career choices better than helping these veterans to obtain benefits earned by their dedicated service to America. Consequently, I set out to seek such a position, eventually leaving the Marine Corps to accept a position as counsel with the Paralyzed Veterans of America, joining PVA in January 1990.

From this vantage point I have appeared before the Court on behalf of veterans and Veterans Service Organizations, served on the Court's Rules Advisory Committee and participated in its judicial conferences. But most importantly, I have seen firsthand the impact of the Court on the lives of individual veterans and on the system of benefits designed to serve them. In short, over the past thirteen and one-half years, I have developed a deep appreciation for the significance of the Court's work. I do not take lightly the responsibility of the position for which I have been nominated.

This Nation has provided veterans of its armed services with a wide range of benefits. Additionally, Congress has enacted a number of procedural safeguards governing the adjudication of applications for those benefits. In simple terms, the Court's job, as an independent reviewer of agency action, is to ensure, within its assigned scope of review, that the laws enacted by Congress are followed. In the process, each veteran, whether prevailing before the court or not, must be treated fairly and with dignity. If confirmed and appointed, I pledge my best efforts to accomplish this.

In considering my qualifications for this position, I ask the Committee to be cognizant not only of my service to veterans and Veterans Service Organizations, but also of my significant involvement in other legal issues, including representing the United States in a number of capacities. This experience, which involved appearing on behalf of the government in both criminal and civil matters and advising government officials regarding legal responsibilities, is approximately equal in time to that spent representing veterans. My work as a government counsel will, I believe, help me to have a balanced perspective on the legal issues faced by the Court.

In closing, I want to thank the Committee for the opportunity to present this statement, and would be happy to answer any questions the Members of the Committee may have.

QUESTIONNAIRE FOR PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

1. **Name** Hagel (**Last**) Lawrence (**Name**) Bain (**Other**)

2. **Present address:** 3501 Pecan Place, Fairfax (**city**), VA (**state**), 22033- (**zip code**)

3. **Position to which nominated:** Associate Judge, U.S. Court of Appeals for Veterans Claims

4. **Date of nomination:** 14 February 2003

5. **Date of birth:** 27 March 1947

6. **Place of birth:** Washington, Indiana

7. **Marital status:** Married

8. **Full name of spouse:** Carmen Virginia Hagel

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

Jennifer Marie Hagel	26	(DOB 27 December 1976)
John Lawrence Hagel	23	(DOB 30 April 1979)
Joseph Bain Hagel	17	(DOB 3 July 1985)

10. **Education:**

Institution (including city and state)	Dates attended:	Degrees received:	Dates received:
George Washington University Law School Washington, DC	8/82 - 8/83	LLM (Labor Law)	1983
University of the Pacific, McGeorge School of Law Sacramento, CA	8/73 - 5/76	JD	1976
U.S. Naval Academy Annapolis, MD	6/65 - 6/69	BS	1969

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

Academic Honors

The LLM degree listed in paragraph 10 was awarded with highest honors.

Scholarships

- B.S. degree. I was selected on a competitive basis to attend the U.S. Naval Academy, where all fees and expenses were paid by the Navy.

- J.D. degree. I was selected by a competitive board to attend law school while on active duty in the U.S. Marine Corps. During the first year of school, I was in an excess leave status. Due to a change in law, the service was permitted to fund legal education after the completion of my first year of legal study. I was then selected, again on a competitive basis, for the funding of my remaining two years of law school.

- L.L.M. degree. I was selected by a competitive board to attend graduate law school at the expense of the Marine Corps.

Professional Honors

- Federal Bar Association. Exceptional Professionalism Award (1994)
- Federal Bar Association. Publication Board Special Recognition Award (1992)

Military Honors

- Meritorious Service Medal (three awards)
- Joint Service Commendation Medal
- Army Commendation Medal
- Combat Action Ribbon
- Vietnam Service Medal
- Republic of Vietnam Campaign Medal
- Vietnamese Civil Action Medal, First Class
- Vietnamese Cross of Gallantry
- National Defense Service Ribbon
- Navy Unit Commendation Ribbon
- Navy-Marine Corps Overseas Service Ribbon

12. Memberships: **List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable, and other organizations for the last 5 years and any other prior memberships or offices you consider relevant.**

Organization	Office held (if any)	Dates
Federal Bar Association	Veterans Law Section	Member 1990 (approx.) - present
	Chairman, Veterans Law Section	1994-1995
	Vice Chairman, Veterans Law Section	1993-1994
	Newsletter Editor	1992-1994
Federal Circuit Bar Association	Member Veterans Law Section	Member 1990 - 1997 (approx.)
District of Columbia Bar Association		Member of DC Bar 1991 - present
	Financial Officer of Steering Committee, Administrative Law and Agency Practice Section	Financial Officer & Member of Steering Committee 1999 - 2003
Phi Delta Phi Legal Fraternity	(unsure if still carried on rolls of this organization. have not been active since leaving law school)	1973-1976
	Vice Magister, Shields Inn	1975-1976

The Army and Navy Club		Club Member 1990 - present
	Strategic Planning Committee	Committee member 1995 - 1996 (approx.)
Knights of Columbus		1997 (approx.) - present
U.S. Naval Academy Alumni Association	Life Member	2002 - present
U.S. Naval Institute	Life Member	1969 - present
American Institute of Parliamentarians		2000 – present
National Association of Parliamentarians		2001 - present

13. Employment record:

List below all employment (except military service) since your twenty-first birthday, including the title or description of job, name of employer, location of work, and inclusive dates of employment:

1990 - present, Paralyzed Veterans of America, 801 Eighteenth Street, NW, Washington, DC 20006.

- 1999 - present. General Counsel. Chief legal officer of the corporation and responsible for all legal matters of the corporation and its subsidiaries. Responsible for supervising seven attorneys in three offices and the work of retained counsel. Provide legal advice to the corporation's board of directors, officers and senior managers.

- 1990 - 1999. Deputy General Counsel. Reported to the general counsel and performed duties of the general counsel in his absence. Represented and supervised representation of veterans regarding benefit claims before the U.S. Court of Appeals for Veterans Claims, other appellate courts, and the Department of Veterans Affairs.

14. Military service:

List below all military service (including reserve components and National Guard or Air National Guard), with inclusive dates of service, rank, permanent duty stations and units of assignment, titles, descriptions of assignments, and type of discharge.

June 1965 - June 1969

Duty Station: U.S. Naval Academy, Annapolis, MD.
Rank: Midshipman.
Assignmment Description: Student.
Discharge: Honorably discharged to accept commission in the U.S. Marine Corps.

June 1969 - January 1970

Duty Station: The Basic School, Marine Corps Base, Quantico, Virginia.
Rank: 2nd Lieutenant.
Assignment Description: Student, Infantry Officer Basic Course.

Questionnaire for Presidential Nominees: Lawrence B. Hagel
Nominated for: Associate Judge, U.S. Court of Appeals for Veterans Claims

January - March 1970

Duty Station: Company A, Headquarters Battalion, Marine Corps Base, Quantico, Virginia.
Rank: 2nd Lieutenant.
Assignment Description: Student, High Intensity Language Training (Vietnamese).

March 1970 - August 1970

Duty Station: Company E, 2nd Battalion, 4th Marine Regiment, Fleet Marine Force (headquartered in Okinawa, deployed off the coast of Vietnam in support of combat operations).
Rank: 2nd Lieutenant.
Assignment Description: Infantry Platoon Commander.

August 1970 - October 1970

Duty Station: Company G, 2nd Battalion, 5th Marine Regiment, Fleet Marine Force (Vietnam).
Rank: 2nd Lieutenant.
Assignment Description: Infantry Platoon Commander.

October 1970 - January 1971

Duty Station: Headquarters and Service Company, 2nd Battalion, 5th Marine Regiment, Fleet Marine Force (Vietnam).
Rank: 2nd Lieutenant and 1st Lieutenant.
Assignment Description: Commanding Officer (prior to assuming command, served two weeks as Company Executive Officer).

January 1971 - June 1971

Duty Station: Marine Corps Personnel Support Section, Naval Forces Vietnam.
Rank: 1st Lieutenant..
Assignment Description: Field Advisor to Army of the Republic of Vietnam Infantry Battalions.

June 1971 - August 1973

Duty Station: Marine Barracks, San Juan, Puerto Rico.
Rank: 1st Lieutenant..
Assignment Description:

- Assistant Guard Officer, Marine Barracks, U.S. Naval Station, San Juan (4 months).
- Officer-in-Charge, Marine Barracks, U.S. Naval Security Group, Sabana Seca, Puerto Rico.

August 1973 - August 1976

Duty Station: Inspector-Instructor, Motor Transport Maintenance Company , Sacrameto, California.
Rank: 1st Lieutenant and Captain.
Assignment Description:

- Student, University of the Pacific, McGeorge School of Law.
- Office of the Staff Judge Advocate, Mather Air Force Base, Sacramento (May-August 1974).
- Headquarters Battalion, 1st Marine Division (Rein), Fleet Marine Force, Camp Pendleton, California (June-August 1975); Courts Martial Trial Counsel.

August 1976 - October 1976

Duty Station: Marine Barracks, Naval Education and Training Center, Newport, Rhode Island.
Rank: Captain.
Assignment Description: Student, Naval Justice School.

October 1976 - August 1979

Duty Station: Headquarters Company, Headquarters Battalion, Marine Corps Base, Camp Pendleton, California.
Rank: Captain.
Assignment Description:

- Defense Counsel (approximately 12 months).
- Review Officer (approximately 11 months).
- Chief Trial Counsel (approximately 12 months).

August 1979 - July 1982

Duty Station: Marine Barracks, U.S. Naval Station Roosevelt Roads, Puerto Rico (Assigned to Naval Legal Services Branch Office).
Rank: Captain and Major.
Assignment Description:

- Trial Counsel and Claims Officer (approximately 33 months).
- Officer-in-Charge, Naval Legal Services Branch Office (approximately 1 month).
- Staff Judge Advocate, Cuban Haitian Task Force (approximately 2 months).

July 1982 - September 1986

Duty Station: Company B, Headquarters Battalion, Headquarters, Marine Corps, Arlington, Virginia.
Rank: Major and Lieutenant Colonel.
Assignment Description:

- Student, Master of Laws program, George Washington University Law School (12 months).
- Labor Relations Specialist (approximately 27 months).
- Deputy Director, Labor Relations Branch (approximately 12 months).

September 1986 - August 1987

Duty Station: Headquarters and Service Company, 9th Marine Amphibious Brigade, Okinawa, Japan.
Rank: Lieutenant Colonel.
Assignment Description: Staff Judge Advocate.

August 1987 - March 1990

Duty Station: Company B, Headquarters Battalion, Headquarters Marine Corps, Arlington, Virginia (assigned to General Litigation Division, Office of the Judge Advocate General of the Navy).
Rank: Lieutenant Colonel.
Assignment Description:

- Litigation Attorney.
- Deputy Director (approximately 12 months).

Note: Actual duties ceased December 1989 when period of terminal leave began.
Discharge: Retired from active duty effective March 1, 1990.

15. Government experience:

List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments other than those listed above.

In January 1995, I was appointed as a member of the Administrative Conference of the United States and served in that capacity until this organization ceased to exist as the result of the elimination of congressional funding in October of 1996.

In July 1992, I was appointed by the Court of Appeals for Veterans Claims as a member of the Court's Rules Advisory Committee. I am currently a member of that committee.

16. Published writings:

List the titles, publishers, and dates of books, articles, reports, or other published materials you have written.

- "Lessons from the Cole". *Tommy* (Newsletter of the Veterans Law Section of the Federal Bar Assn.) Issue 4, 2000.
- "Litigation Under the Freedom of Information Act". 50 AMJUR Trials 407 (1994).
- "Five Years Under the Veterans' Judicial Review Act: The VA is Brought Kicking and Screaming into the World of Meaningful Due Process". 46 Maine L.Rev. 43 (1994).
- "Tommy". *Tommy* (Newsletter of the Veterans Law Section of the Federal Bar Assn.) Spring 1992 Issue.
- I have also been a contributing writer to *Paraplegia News*, the monthly publication of the Paralyzed Veterans of America, periodically since 1990.

17. Political affiliations and activities:

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

- I am not a member of any political party and have held no office in nor rendered any service to any political party.
- Several years ago I contributed to the election campaign of my brother-in-law who ran for the City Council of Evansville, Indiana. The amount of the contribution was less than $200.

(b) List all elective public offices for which you have been a candidate and the month and year of each election involved.

None.

18. Future employment relationships:

(a) State whether you will sever all connections with your present employer, business firm, association, or organization if you are confirmed by the Senate.

Yes.

(b) State whether you have any plans after completing Government service to resume employment, affiliation, or practice with your previous employer, business firm, association, or organization.

I have no such plans.

(c) What commitments, if any, have been made to you for employment after you leave Federal service?

None.

(d) (if appointed for a term of specific duration) Do you intend to serve the full term for which you have been appointed?

Yes.

(e) (if appointed for an indefinite period) Do you intend to serve until the next Presidential election?

N/A

19. Potential conflicts of interest:

(a) Describe any financial arrangements, deferred compensation agreements, or other continuing financial, business, or professional dealings which you have with business associates, clients, or customers who will be affected by policies which you will influence in the position to which you have been nominated.

- I currently receive disability compensation and medical treatment for a service - connected disability from the Department of Veterans Affairs.
- My mother receives Dependency Indemnity Compensation from the Department of Veterans Affairs as the result of my father's death during active military service.

(b) List any investments, obligations, liabilities, or other financial relationships which constitute potential conflicts of interest with the position to which you have been nominated.

None (other than listed in my answer to question 19 (a)).

(c) Describe any business relationship, dealing, or financial transaction which you have had during the last 5 years, whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

- During the past five years, I have represented veterans and their dependents in the prosecution of claims against the Department of Veterans Affairs. No such case is currently pending before the courts.
- During the past five years, I have represented the Paralyzed Veterans of America in matters relating to the Department of Veterans Affairs, including civil litigation in U.S. District Court. I am currently listed as a named counsel in active rule-making challenges before the U.S. Court of Appeals for the Federal Circuit.

(d) Describe any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any Federal legislation or for the purpose of affecting the administration and execution of Federal law or policy.

- On a number of occasions during the past 10 years, I have provided advice to the legislative specialists at the Paralyzed Veterans of America regarding the impact of proposed legislation or the need for new legislation. That advice has been almost exclusively regarding matters relating to veterans benefits or the administrative or judicial adjudication of claims regarding those benefits.

- On a few occasions, I have met with members of the staffs of the Veterans Affairs Committees of the Senate and House of Representatives regarding veterans benefits matters.

- Since 1992, I have been part of delegations that have met annually with members of the staffs of the Senate and House of Representatives Appropriation Subcommittees responsible for funding the Veterans Consortium Pro Bono Program. On some occasions this delegation has met with individual Senators and their staff members regarding the funding of this program.

- In the Fall of 1995, I met with a staff member of Congressman Gutierez of Illinois during the course of my representation of an individual who was seeking continued medical treatment from the U.S. Navy.

(e) Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements involved.)

- If confirmed, I will withdraw from representation of all active cases after ensuring substitute representation has been obtained.

- In accordance with the cannons of judicial ethics, I would recuse myself from any case in which the nature of conflicting interests required recusal.

20. Testifying before the Congress:

(a) Do you agree to appear and testify before any duly constituted committee of the Congress upon the request of such committee?

Yes.

(b) Do you agree to provide such information as is requested by such a committee?

Yes.

SUPPLEMENTAL QUESTIONNAIRE
FOR NOMINEES TO THE UNITED STATES COURT OF VETERANS APPEALS
(To Be Made Public)

1. **Bar association:**

List all bar associations and 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.

Iowa Bar Association, 1976 - present.

California Bar Association, 1976 - present (elected inactive status in 1986).

District of Columbia Bar, 1990 - present; Financial Officer, Steering Committee of Administrative Law and Agency Practice Section (1999 - present).

Bar Association of the District of Columbia, 1991 - 1993 (approximately).

Federal Bar Association, 1990 - present; Chairman, Veterans Law Section (1994 - 1995); Vice Chairman (1993 - 1994); Newsletter Editor (1992 - 1994).

Federal Circuit Bar Association, Veterans Law Section, 1991 - 1998 (approximately).

Administrative Conference of the United States; Member (1995 - 1996).

2. **Court admissions:**

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

Iowa Supreme Court, 1976.

California Supreme Court, 1977 (elected inactive status in 1986).

Distict of Columbia Court of Appeals, 1990.

United States Court of Military Appeals (now U.S. Court of Appeals for the Armed Forces), 1976.

United States Court of Appeals for the Ninth Circuit, 1988.

United States Court of Appeals for the Fourth Circuit, 1989.

United States Court of Appeals for the Tenth Circuit, 1990.

United States Court of Appeals for the District of Columbia Circuit, 1990.

United States Court of Appeals for the Federal Circuit, 1990.

United States Court of Veterans Appeals (now the U.S. Court of Appeals for Veterans Claims), 1990.

United States Supreme Court, 1991.

- There have been no lapses in membership for court admissions.

- I have not been admitted to practice before any administrative bodies that require special admission to practice.

3. **Judicial offices:**

State (chronologically) any judicial offices you have held and whether you were elected or appointed to them and provide a description of the jurisdiction of each such court.

None.

4. **Judicial opinions**

If you are or have been a judge, attach a statement providing (a) citations for the ten most significant opinions you have written, (b) a short summary of and citations for all appellate opinions either reversing your decision or confirming it with signifficant criticism of your substantive or procedural rulings, and (c) citations for significant procedural rulings, and (d) citations for significant opinions on federal or state constitutional issues, opinions on federal or state constitutional issues, together with citations for any appellate court rulings on your decision in those cases. (If any of the opinions listed were not officially reported, please provide copies of the opinions.)

N/A

5. **Speeches:**

Attach copies of all speeches you have given on issues involving constitutional law, legal policy, or matters relating to veterans' benefits. If there were press reports of any such speeches and they are readily available to you, please provide them.

While I have participated as a panel member and presenter in programs regarding the law of veterans benefits and the Americans with Disabilities Act for various professional organizations and for training programs sponsored by the Paralyzed Veterans of America, those presentations have been factual in nature. Outlines for some of those presentations are available.

The only press coverage of any of these presentations of which I am aware was by the *D.C. Lawyer*. That magazine wrote a short article on a panel discussion regarding accessibility of sports venues.

Other than the occasions listed above, however, I have given no speeches regarding constitutional law, legal policy or the policy of matters related to veterans benefits.

6. **Legal career:**

(a) Attach a chronological description of your law practice and experience after graduation from law school, including (1) whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk, (2) whether you practiced alone, and if so, the addresses and dates, and (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.

(1) I have never served as a clerk for a judge.
(2) I have never practiced law alone.
(3) 1976 - 1990, Judge Advocate, U.S. Marine Corps.
1990 - present, staff counsel, Paralyzed Veterans of America.

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

1973-1976: Law School, University of the Pacific, McGeorge School of Law, Sacramento, California. Juris Doctor Degree (1976).

1976-1979: Criminal Trial Attorney and Review Officer, Camp Pendleton, California. Represented criminal defendants (approximately one year) and the United States (approximately one year) in courts martial. Represented respondents and the Marine Corps in administrative discharge proceedings. As Chief Prosecutor supervised office of five prosecuting attorneys and the conduct of all criminal trials under jurisdiction of the commanding general. Appointed Special Assistant U.S. Attorney. As Review Officer reviewed all courts martial records for legal sufficiency of the proceedings (approximately one year). Graduated from course for military judges, U.S. Army Judge Advocate School, Charlottesville, Virginia.

1979-1982: Chief Prosecutor, U.S. Naval Base, Roosevelt Roads, Puerto Rico. Responsible for prosecution of all Navy and Marine Corps criminal cases and administrative discharge hearings in Caribbean Sea Frontier. Provided legal advice to investigating agencies. During period, detailed as Staff Judge Advocate and sole legal advisor to the Commander, Cuban-Haitian Task Force at Fort Allen, Puerto Rico, providing legal advice regarding the construction of refugee facilities and preparation to receive refugees. Responsible for coordination with federal and local law enforcement officials. Attended career prosecutor course, National College of District Attorneys, University of Houston, Texas.

1982-1983: The National Law Center, George Washington University. Master of Laws (Labor Law, with highest honors) (1983).

1983-1986: Deputy Director and Labor Relations Specialist, Labor Relations Branch, Headquarters, U.S. Marine Corps, Washington, D.C. Prepared management negotiating positions for and negotiated first master labor agreement covering Marine Corps' civilian employees worldwide. Developed and managed centralized defense of unfair labor practice allegations. Represented Marine Corps in labor arbitration and unfair labor practice hearings before labor arbitrators and Federal Labor Relations Authority. Provided advice and education to Marine commanders and supervisors of civilian employees regarding civilian employee labor and employment law issues.

1986-1987: Staff Judge Advocate, 9th Marine Amphibious Brigade, Okinawa, Japan. Senior legal advisor to Brigade Commanding General. Responsible for international law and treaty compliance, prisoner of war issues and international claims. Responsible for task organization and supervision of legal functions of brigade during operations in the Republics of Korea and the Philippines.

1987-1989: Deputy Director and Branch head, Civil Litigation Division, Office of the Judge Advocate General of the Navy. Represented the Navy and the Marine Corps in U.S. District and Appellate Courts throughout the United States on issues involving constitutional torts, Freedom of Information Act, and military personnel issues. Worked closely with the Department of Justice and Offices of U.S. Attorneys nationwide. As Deputy Director, supervised seven attorneys.

1990-1999: Deputy General Counsel, Paralyzed Veterans of America. Developed organization's capability to represent veterans before the newly created U.S. Court of Veterans Appeals including establishing the PVA Veterans Appeals Litigation Office and procedures for screening cases for representation. Represented veterans before the U.S. Court of Appeals for Veterans Claims, the U.S. Court of Appeals for the Federal Circuit, the VA administrative claims system and the Department of the Navy Physical Evaluation Board. Active in the Federal Bar Association's Veterans Law Section, founding its newsletter *Tommy* and serving in various leadership capacities including section chair for one year. Initiated PVA Professional Outreach Program, which funds the writing and publication of an annual review of the case law affecting veterans benefits and provided scholarships for law students who commit to certain pro bono work on behalf of veterans. Authored initial concept paper that formed the basis for the Veterans Consortium Pro Bono Program and served on the Program's Executive Board since its inception. Appointed as member to the Administrative Conference of the United States. Appointed member of the U.S. Court of Appeals for Veterans Claims Rules Advisory Committee.

1999-present: General Counsel, Paralyzed Veterans of America. Chief legal officer of a corporation with annual revenues in excess of 80 million dollars, 243 employees and over 55 offices. Responsible for all legal matters for the corporation and several subsidiary corporations. Responsible for supervising three offices with a total of seven attorneys and the work of retained counsel. Provides legal advice to the corporation's board of directors, officers and senior managers.

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

1976 - 1979

- While serving as a defense counsel, I represented Marines charged with various offenses under the Uniform Code of Military Justice. Some of those offenses were common law crimes and others were purely military offenses.

- While serving as prosecutor I represented the United States in the prosecution of Marines in the same matters described in the immediately preceding paragraph.

1979 - 1982

- Represented the United States in criminal prosecutions against Marines and Sailors for violations of the Uniform Code of Military Justice. Some of those offenses were common law crimes and others were purely military offenses. Provided advice to law enforcement agencies investigating these crimes.

1982 - 1983

- Attended graduate law school.

1983 - 1986

- Represented the Marine Corps in labor negotiations with union representing civilian employees. Represented the Marine Corps in unfair labor practice matters and labor arbitration.

1986 - 1987

- Provided legal advice to the Commanding General, 9th Marine Amphibious Brigade , on legal matters ranging from military justice to international treaty compliance, law of armed conflict and international claims.

1987 - 1989

- Represented the Department of the Navy in civil litigation matters in various courts of the United States. Representation ranged from liaison with local United States Attorneys and Department of Justice to drafting and arguing motions in federal court.

1990 - present

- Represented individual veterans and their survivors before the U.S. Court of Appeals for Veterans Claims, the Board of Veterans' Appeals and the Navy Physical Evaluation Board.

- Provided legal advice to the officers, directors and staff members of the Paralyzed Veterans of America.

- Personally or through retained counsel represented the Paralyzed Veterans of America in both state and Federal courts.

(d) State whether you have appeared in court frequently, occasionally, or not at all. If this frequency of your appearances in court has varied over time, describe each such variance, giving dates.

1976 - 1982

Appeared in court (special and general courts martial) frequently.

1983 - 1986

Appeared before Federal Labor Relations Authority on one occasion and labor arbitrators on two occasions.

1987 - 1989

Appeared in court (U.S. Court of Appeals) frequently by written motion (listed as "of counsel") through local U.S. Attorneys or Department of Justice lawyers and occasionally in person.

1990 - present

Appeared before the U.S. Court of Veterans Appeals frequently (1990 - 1993), mostly by written motion and brief and by oral argument when granted by the Court. Appeared occasionally before other courts (both state and federal) (1990 - present).

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

1976 - 1982

Was assigned as counsel in over 325 courts martial representing either the United States or criminal defendants. In virtually all of these cases I was the sole counsel. Approximately 50 of these cases were tried to verdict.

1983 - 1986

Appeared alone in one unfair labor practice case tried before National Labor Relations Authority to judgment. Appeared in two cases before labor arbitrators, one as a member of a team, the other alone. Both were "tried" to judgment.

1987 - 1989

Represented the Department of the Navy as litigation counsel in approximately 20 - 30 cases in U.S. district courts and courts of appeals associated with Assistant U.S. Attorneys or lawyers from the Department of Justice. Most were resolved by dispositive motion. One case was tried to judgment.

1990 - 1993

As Sole Counsel

- Represented veterans or survivors in 20 cases before the U.S. Court of Appeals for Veterans Claims.

- Represented the Paralyzed Veterans of America on veterans benefits matters through *amicus curiae* briefs in the Veterans Court and on one occasion before the U.S. Supreme Court.

- Represented the Paralyzed Veterans of America in one case before the U.S. Court of Appeals for the District of Columbia and the Tenth Circuit.

- Represented the Paralyzed Veterans of America in one case by filing *amicus curiae* brief before the Court of Appeals of the state of Michigan.

All cases went to judgment. However, due to the nature of the cases or the procedures involved, the cases were not tried, but resolved based on motion papers or briefs.

As Associate Counsel

- In five cases before the U.S. District Court, provided substantial assistance to retained trial counsel representing the Paralyzed Veterans of America.

7. **Litigation:**

Attach a statement describing the ten most significat litigated matters which you personally handled. Give the citations of cases that were reported and the docket numbers and dates of those that were not. 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 dates 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 names, addresses, and telephone numbers of the individuals who were co-counsel with you and principal counsel for each of the other parties.

This question requests a listing of the ten most significant litigated matters in which I was personally involved. I have listed those ten. Due to the age and nature of some of the litigation, all of the requested information is currently unavailable to me. To the extent I am able I have provided the requested information. The cases presented have been chosen to demonstrate significant cases litigated involving a range of legal subjects. I have, however, included additional cases where all of the required information is available, should the Committee prefer that treatment of the question.

(1) Case name: *Paralyzed Veterans of America v. D.C. Arena, LLP, et al.*

a. Citation, docket number of date: 117 F. 3d 579 (D.C. Cir.)(1997); 950 F. Supp. 393 (D.D.C.) (1996).
b. Summary: The Paralyzed Veterans of America sought to compel the owners, operators and lessees of the MCI Center arena in Washington, D.C. to construct the facility in accordance with the accessibility provisions of the Americans with Disabilities Act.
c. Party represented: Paralyzed Veterans of America.
d. Nature of my participation: Participated on brief and at trial as "of counsel". Reviewed and approved all pleadings. Supervised discovery. Attended virtually all depositions.
e. Final Disposition: The Paralyzed Veterans of America prevailed at the trial court, successfully defended the decision on appeal. The U.S. Supreme Court denied certiorari in the case.
f. Dates of representation: 1996 - 1997.
g. Court: U.S. District Court, District of the District of Columbia; U.S. Court of Appeals for the District of Columbia Circuit; U.S. Supreme Court.
h. Judge(s): Thomas Hogan (District Court); Judges Silberman, Henderson and, Tatel, (Court of Appeals).
i. Co-counsel (name, address, telephone): David S. Cohen et al. Current Address: Wilmer, Cutler & Pickering, 2445 M Street, N.W., Washington, DC 20037; (202) 663-6925.
j. Opposing counsel (name, address, telephone): Williams and Connolly LLP, 725 Twentieth Street, N.W., Washington, DC 20005; (202) 434-5000.

(2) Case name: *Gardner v. Derwinski; Brown v. Gardner*

a. Citation, docket number of date: 1 Vet. App. 584 (1991); 513 U.S. 115 (1994).
b. Summary: Challenge to a 70-year-old Department of Veterans Affairs regulation implementing 38 U.S.C. 1151, which grants service connection for additional disabilities incurred as a result of VA medical care.
c. Party represented: Paralyzed Veterans of America at the U.S. Court of Veterans Appeals (later renamed); At the U.S. Supreme Court, the Paralyzed Veterans of America, Veterans of Foreign Wars; American Veterans of World War II, Korea and Vietnam (AMVETS); Blinded Veterans Association; and Vietnam Veterans of America.
d. Nature of my participation: Represented the above-named parties as *amicus curiae.*
e. Final Disposition: The Supreme Court voided the challenged regulation.
f. Dates of representation: 1991 - 1994.
g. Court: U.S. Court of Veterans Appeals (later renamed); U.S. Supreme Court.
h. Judge(s): At the Veterans Court, Nebeker, Holdaway and Ivers.
i. Co-counsel (name, address, telephone): None (other parties filed *amicus briefs*).
j. Opposing counsel (name, address, telephone): Jacqueline E. Monroe, Office of the General Counsel, Department of Veterans Affairs, 625 Indiana Avenue N.W., Washington, DC 20004, (202) 639-4800 [(at the U.S. Court of Appeals (later renamed).
current address: Board of Veterans' Appeals, 811 Vermont Avenue, N.W., Washington, DC 20420, (202) 565-4275]; Edward C. Dumont, Wilmer, Cutler & Pickering, 2445 M Street, N.W.,Washington, DC 20037; (202) 663-6000 (at the U.S. Supreme Court).

(3) Case name: *Shopco v. Commanding General Marine Corps Base, Camp Lejeune, NC*

a. Citation, docket number of date: 88F.2d 167 (4th Cir. 1989); 696 F. Supp. 1063 (E.D.N.C.) (1988).
b. Summary: The publisher of a local advertising publication attempted to overturn the decision of the Commanding General of Marine Corps Base, Camp Lejeune to stop door-to-door distribution of the publication on that military base.
c. Party represented: Commanding General, Marine Corps Base, Camp Lejeune.
d. Nature of my participation: Drafted all papers and successfully argued summary judgment motions at the district court; drafted brief and argued case at the appellate court. Briefs were submitted to AUSA for review and approval prior to filing.
e. Final Disposition: Commanding General prevailed on summary judgment at the District Court and that decision was upheld at the Court of Appeals.
f. Dates of representation: 1988 - 1989.
g. Court: U.S. District Court (E.D, N.C.) and U.S. Court of Appeals for the 4th Circuit.
h. Judge(s): Howard (District Court); Hall, Haynsworth and Ellis (Court of Appeals)
i. Co-counsel (name, address, telephone): AUSA Paul Newby, last known address: P.O. Box 909, 636 Court Street, Office of the U.S. Attorney, Civil Section, P.O. Box 26897, Raleigh, NC 27611, (919) 856-4530.
j. Opposing counsel (name, address, telephone): Jeffrey S. Miller, last known address: P.O. Box 909, Jacksonville, NC 28541-0909.

(4) Case name: *Paralyzed Veterans of America, Zia Chapter v. Air Transport Association*

a. Citation, docket number of date: 90-1166 and 90-1167, (D.C. 1990) Docket No. 90-9519 (10th Circuit 1990).
b. Summary: The Air Transport Association filed an application for an emergency order that would restrain the Department of Transportation from publishing rules implementing the Air Carrier Access Act. PVA intervened in support of the publication of the rule and to seek transfer of the petition to a circuit deemed more favorable to the position of the organization.
c. Party represented: Zia Chapter, Paralyzed Veterans of America.
d. Nature of my participation: Drafted and filed all pleadings for the Zia Chapter Paralyzed Veterans of America.
e. Final Disposition: Matter transferred to the Tenth Circuit Court of Appeals.
f. Dates of representation: 1990.
g. Court: U.S. Court of Appeals for the District of Columbia Circuit and U.S. Court of Appeals for the Tenth Circuit.
h. Judge(s): Mikva, Buckley, Ginsburg (D.C. Circuit).
i. Co-counsel (name, address, telephone): None.
j. Opposing counsel (name, address, telephone): Michael S. Sundermeyer and Abner S. Green, Last known address: Williams and Connolly, 725 Twentieth Street, N.W., Washington, DC 20005, (202) 434-5000.

(5) Case name: *Fletcher v. Derwinski*

a. Citation, docket number of date: 1 Vet. App. 394 (1991).
b. Summary: Veteran Carl Fletcher challenged the application of new regulations rating the level of his disability.
c. Party represented: Carl Fletcher.
d. Nature of my participation: Drafted all documents and briefs.
e. Final Disposition: The Court remanded the case to the Board of Veterans'

Appeals instructing it to properly apply the regulation, to properly articulate its reasoning, and to issue a timely decision.

f. Dates of representation: 1990 - 1991.
g. Court: U.S. Court of Veterans Appeals (now U.S. Court of Appeals for Veterans Claims).
h. Judge(s): Nebeker, Mankin, Holdaway.
i. Co-counsel (name, address, telephone): None.
j. Opposing counsel (name, address, telephone): Carolyn F. Washington, Office of the General Counsel, Department of Veterans Affairs, 625 Indiana Avenue, N.W., Washington, DC 20004, (202) 639-4800.

(6) Case name: *Kinnaman v. Principi*

a. Citation, docket number of date: 4 Vet. App. 20 (1993).
b. Summary: Veteran Phillip Kinnaman sought service connection for a condition of the eye that substantially limited his sight. The VA denied service connection asserting the condition preexisted service.
c. Party represented: Phillip Kinnaman.
d. Nature of my participation: Drafted all court documents.
e. Final Disposition: The court ordered service connection, finding the agency failed to give proper deference to the finding of the service medical board and failed to rebut the presumption of sound condition prior to service.
f. Dates of representation: 1992 - 1993.
g. Court: U.S. Court of Veterans Appeals (now U.S. Court of Appeals for Veterans Claims).
h. Judge(s): Kramer, Farley, Ivers.
i. Co-counsel (name, address, telephone): None.
j. Opposing counsel (name, address, telephone): Deborah Singleton, Office of the General Counsel, Department of Veterans Affairs, 625 Indiana Avenue, N.W., Washington, DC 20004; (202) 639-4800; Current Address: Board of Veterans' Appeals, 811 Vermont Avenue, Washington, DC 20420, (202) 565-4275.

(7) Case name: *Paralyzed Veterans of America, et al. v. Togo D. West, Jr., Secretary Department of Veterans Affairs, et al.*

a. Citation, docket number of date: Civil Action: 98-02339 (HHK) (D.D.C., September 29, 1998).
b. Summary: Paralyzed Veterans of America sought an injunction seeking to prevent the reappointment of the incumbent Under Secretary for Health of the Department of Veterans Affairs on the grounds that the Secretary had failed to follow the required statutory procedure for the appointment.
c. Party represented: Paralyzed Veterans of America.
d. Nature of my participation: Developed the initial legal theory, participated with retained counsel by reviewing and approving complaint and motion for summary judgment and attending court hearings.
e. Final Disposition: The Secretary's motion for summary judgment was granted, an appeal was filed, but later dismissed as moot when the incumbent resigned.
f. Dates of representation: 1998 - 1999.
g. Court: U.S. District Court, District of the District of Columbia.
h. Judge(s): Henry H. Kennedy.
i. Co-counsel (name, address, telephone): Bernhard Wruble, 316 Westmont Street, West Hartford, CT 06117-2938, (860) 521-3543.
j. Opposing counsel (name, address, telephone): The Secretary was represented by the Department of Justice. Primary counsel were: Gale F. Levine and Allison C. Giles, Last known address: U.S. Department of Justice, Civil Division, 901 "E" Street, N.W., Washington, DC 20530; (202) 616-0608.

(8) Case name: *United States v. Spencer*

a. Citation, docket number of date: General Court Martial convened in 1976 by the Commanding General, First Force Service Support Group, Camp Pendleton, CA.
b. Summary: Marine Sergeant was one of 14 black Marines charged with various crimes in connection with a serious assault on a group of individuals thought to be members of the Ku Klux Klan. Sergeant Spencer was charged with the most serious crime, attempted murder.
c. Party represented: Sergeant William Spencer.
d. Nature of my participation: Detailed military defense counsel; prepared successful appeal to have individual military counsel assigned and then obtained experienced civilian criminal defense attorney pro bono. Participated in all facets of defense.
e. Final Disposition: Sergeant Spencer entered a negotiated plea of guilty to the charge of assault.
f. Dates of representation: 1976 - 1977.
g. Court: General Court Martial.
h. Judge(s): Colonel William Eleazer, USMC.
i. Co-counsel (name, address, telephone): Capt. William Bennett, USMC (address unknown); Alex Landon, 2442 4th Avenue, San Diego, CA; (619) 232-6022
j. Opposing counsel (name, address, telephone): Capt. Martin Binn, USMC (address unknown).

(9) Case name: *United States v. Chatman*

a. Citation, docket number of date: General Court Martial, convened at U.S. Naval Station Roosevelt Roads, Puerto Rico, approximately 1981.
b. Summary: Navy Petty Officer charged with the murder of his infant child.
c. Party represented: United States.
d. Nature of my participation: Prosecutor.
e. Final Disposition: Found guilty of murder.
f. Dates of representation: Approximately 1981.
g. Court: General Court martial held at U.S. Naval Station, Roosevelt Roads, Puerto Rico.
h. Judge(s): Commander Michael Labella, JAGC, USN (best recollection).
i. Co-counsel (name, address, telephone): None.
j. Opposing counsel (name, address, telephone): Lt. Thomas J. Connelly, JAGC, USN (best recollection) (location unknown).

(10) Case name: *Miller et al. v. City of Detroit*

a. Citation, docket number of date: 462 N.W. 2d 856; 483 N.W. 2d 23.
b. Summary: Class action by wheelchair users attempting to compel the city of Detroit to properly equip city-owned buses with wheelchair lifts and to properly maintain lifts purchased by the city.
c. Party represented: Paralyzed Veterans of America.
d. Nature of my participation: Drafted *amicus curiae* brief supporting a petition seeking leave to appeal to the Michigan Supreme Court.
e. Final Disposition: Petition was denied.
f. Dates of representation: 1990 - 1991.
g. Court: Court of Appeals of Michigan.
h. Judge(s): McDonald, MacKenzie, Weaver.
i. Co-counsel (name, address, telephone): None.
j. Opposing counsel (name, address, telephone): Cooper, Fink & Zausmer, PL (firm no longer exists).

(11) Case name: *Baughman v. Derwinski*

a. Citation, docket number of date: 1 Vet. App. 563 (1991).
b. Summary: Challenge to the severance of a finding of service connection for cardiovascular disease.
c. Party Represented: Thomas Baughman.
d. Nature of my participation: Drafted all court documents.
e. Final disposition: Court reversed and ordered reinstatement of service connection.
f. Dates of representation: 1990 – 1991.
g. Court: U.S. Court of Veterans Appeals (later renamed).
h. Judge(s): Nebeker, Farley, Ivers.
i. Co-counsel (name, address, telephone): None.
j. Opposing counsel (name, address, telephone): John Lindsay, Office of the General Counsel, Department of Veterans Affairs, 625 Indiana Avenue, N.W., Washington, DC 20004, (202) 639-4800. Current address: Department of Veterans Affairs (EEOC office), 1722 "I" Street, N.W., Washington, DC 20006, (202) 254-0149.

(12) Case name: *Jones et al v. Derwinski*

a. Citation, docket number of date: 2 Vet. App. 231 (1992).
b. Summary: First case considered by the Court of Veterans Appeals regarding the applicability of the Equal Access to Justice Act to cases before that court.
c. Party represented: Paralyzed Veterans of America and Disabled American Veterans.
d. Nature of my participation: Drafted *Amicus Curiae* brief.
e. Final disposition: Court ruled the act did not apply. Appeal filed. Appeal declared moot when Congress passed clarifying legislation.
f. Dates of representation: 1992.
g. Court: U.S. Court of Veterans Appeals (later renamed).
h. Judge(s): Nebeker, Kramer, Farley, Mankin, Holdaway, Ivers, and Steinberg.
i. Co-counsel (name, address, telephone): None.
j. Opposing counsel (name, address, telephone): David Engel, Office of General Counsel, Department of Veterans Affairs, 625 Indiana Avenue, N.W., Washington, DC 20004(current location unknown).

(13) Case name: *Thielman v. Derwinski*

a. Citation, docket number of date: 2 Vet. App. 340 (1992) and 2 Vet. App. 342 (1992).
b. Summary: Veteran sought service connection for multiple sclerosis. During reconsideration by the Board of Veterans' Appeals internal communications of board personnel surfaced, indicating at least the appearance that the reconsideration would not be impartially conducted. This prompted the filing of a motion for extraordinary relief with the Court requesting disqualification of certain board personnel and reports to the Court.
c. Party represented: Larry J. Thielman.
d. Nature of my participation: Drafted all court documents.
e. Final disposition: Secretary agreed to remand the case to the Board and to conduct expedited reconsideration under several conditions designed to guarantee impartiality.
f. Dates of representation: 1991 – 1992.
g. Court: U.S. Court of Veterans Appeals (later renamed).
h. Judge(s): Nebeker, Kramer, Holdaway.

i. Co-counsel (name, address, telephone): None.
j. Opposing counsel (name, address, telephone): Office of the General Counsel, R. Randall Campbell, 625 Indiana Avenue, N.W., Washington, DC, (202) 639-4800.

8. **Legal activities:**

Attach a statement describing the ten most significant legal activities you have pursued (other than the litigated matters referred to above). Describe the nature of your participation, but please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

(1) Matter: Counsel for Paralyzed Veterans of America.

Nature of Participation: Served in the capacity of either deputy general counsel or general counsel since 1990. Responsible for the legal affairs of the organization and its subsidiary corporations. Advised the board of directors, elected officials and senior staff on legal matters and organizational positions regarding various issues. Involved in various specific legal issues, some of which are noted below.

(2) Matter: Veterans Consortium Pro Bono Program

Nature of participation: Was author of original concept document that formed the organizational basis of the Consortium. Member of the Consortium's Executive Board since its inception in 1992.

(3) Matter: Accessibility of Places of Public Accommodation (Sports and Entertainment Facilities).

Nature of participation: Coordinated efforts by Paralyzed Veterans of America and two of its chapters in litigation to ensure newly constructed sports and entertainment facilities complied with the accessibility requirements of the Americans with Disabilities Act. Worked with other PVA attorneys to develop model ticketing plan for accessible seating that was adopted as the official position of the Paralyzed Veterans of America on that issue.

(4) Matter: Establishment of the Paralyzed Veterans of America's Veterans Appeals Litigation Office.

Nature of participation: Established for the Paralyzed Veterans of America the capability of representing appellants before the U.S. Court of Appeals for Veterans Claims. Drafted procedures and policies for review and acceptance of cases by the Paralyzed Veterans of America for representation at the U.S. Court of Appeals for Veterans Claims. Informed and educated staff members (legislative and veterans benefits) of important issues regarding the Court or its operation.

(5) Matter: PVA Professional Outreach Scholarship Program

Nature of participation: Developed concept of providing scholarships for students in their final year of academic study in certain professions that have a high impact on the membership of the Paralyzed Veterans of America (law, architecture, recreational therapy and journalism). The program had a minimal service requirement feature requiring recipients to provide a specified service to veterans. Program was adopted by the organization and expanded, eventually

awarding over 30 scholarships. The program is now suspended pending availability of funding.

(6) Matter: Publication of *The Law of Veterans Benefits: Judicial Interpretation* (formerly titled: *The United States Court of Appeals for Veterans Claims: An Analysis of the Jurisprudence, Organization, and Operation of the Newest Article One Court.*)

Nature of participation: Developed concept of an annual review of the case law of the U.S. Court of Appeals for Veterans Claims whose target audience would be lawyers having no prior knowledge of the law of veterans benefits. Arranged funding of publication by Paralyzed Veterans of America, oversaw solicitation for author, organized peer review of draft text. Since its first publication in 1994, over 10,000 copies of the original document or its succeeding editions have been distributed or sold to private practitioners, the U.S. Court of Appeals for Veterans Claims, the Department of Veterans Affairs, the Board of Veterans' Appeals, law school libraries, and veterans service organizations. As part of the contract with the Paralyzed Veterans of America the author is required, if asked, to lecture on this publication at the judicial conference of the U.S. Court of Appeals for Veterans Claims.

(7) Matter: Cuban-Haitian Task Force

Nature of participation: Assigned as the sole lawyer to advise the commander of a task force assembled on an emergency basis to construct and manage the housing in Puerto Rico of refugees from Cuba and Haiti. In this capacity was responsible for advising the task force commander on all legal issues and acting as liaison with law enforcement agencies such as the FBI, the Border Patrol, the Immigration and Naturalization Service and the Police of Puerto Rico.

(8) Matter: Representation of Peruvian Navy Captain

Nature of participation: Represented a Peruvian Navy Captain (resident of the United States and retired due to disability) who was paralyzed as a result of medical care administered by U.S. Navy medical personnel during a joint United States-Peru naval exercise. Initially obtained agreement from Department of the Navy to provide medical care at U.S. Navy facilities and later to establish a medical trust for care in civilian facilities.

(9) Matter: Greenpeace Interdiction of Navy Missile Tests

Nature of participation: Headed team that drafted documents for submission to the Department of Justice to obtain an emergency temporary restraining order in anticipation of Greenpeace organization's effort to halt U.S. Navy submarine force's operational tests of submarine-based ballistic missiles. Worked closely with Department of Justice attorneys.

(10) Matter: *Spragens v. Shalala*

Nature of participation: Assisted individual paralyzed and severely disabled with congenital spinal defect in challenging the validity of a statute and implementing regulations awarding a different level of Social Security disability benefits to persons who are blind than those with other disabilities. Assistance involved obtaining independent review of the case by outside counsel and financial assistance from the Paralysis Society of America.

(11) Matter: Represented widow in effort to reinstate her medical benefits under the CHAMPVA Program

Nature of participation: Gathered required documents, presented them to VA officials, conducted extensive follow up to ensure benefits awarded as provided by law.

9. Outside employment:

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

No.

10. Party affiliation

State (a) your current political party affiliation and the place and date it was established, and (b) if you have in the past registered as being with a different party (or as an independent if not now registered as an independent), the place and inclusive dates of such registration.

(a) I am not currently affiliated with any political party. I have maintained an independent status since leaving active duty military service and establishing residency in Virginia in 1990.

(b) Prior to that I voted by absentee in the state of Indiana (county of Vanderburgh) during my active military service. My inquiry revealed that the records of that jurisdiction from 1968-1991 indicate that I did not vote in the primary election of any political party during this period.

11. Memberships in certain organizations:

The American Bar Association's Commentary to Canon 2 of its code of Judicial Conduct states, "It is inaappropriate for a judge to hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, or national origin." Do you currently belong, or have you belonged, to any organization which discriminates in this manner -- through either formal membership requirements or the practical implementation of membership policies? If so (a) list all such organizations of which you are or were a member, (b) provide the dates of your memberships, and (c) describe in each case the efforts you made to try to change the organization's discriminatory policies or practices.

I belong to no such organizations. I belong to no such organizations. During the approximate period 1955-1960 I was a member of the Cub Scouts and Boy Scouts of America. During the approximate period 1987-1988 I was a cub scout leader.

12. Services for disadvantaged persons:

The American Bar Association in its comment to Rule 6.1 of its Model Rules of Professional Conduct calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Attach a statement describing what you have done to fulfill this responsibility, listing specific instances and the amount of time devoted to each.

For the period 1990 - present I have been a staff attorney for the Paralyzed Veterans of America. During this period, I have personally represented veterans or their survivors. In all cases these persons would not have been able to afford representation by counsel.

During the period 1992 - present, I have served as a member of the Executive Board of the Veterans Consortium Pro Bono Program. During that period the program has provided free attorney representation to approximately 2,000 veterans or survivors and has trained over 1,500 attorneys nationwide to represent veterans at no expense to the veteran.

13. Selection Process:

Has anyone involved in the process of selecting you as a nominee discussed with you any specific case, legal issue, or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such cases.

No.

AFFIDAVIT

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LAWRENCE B. HAGER, being duly sworn, hearby states that he/she has read and signed the foregoing answers to the Supplemental Questionnaire for Nominees to the United States Court of Veterans Appeals and that the information provided therein is, to the best of his/her knowledge and belief, current, accurate, and complete.

Signature of Nominee

Subscribed and sworn before me this 13 day of March, 20 2003

Notary Public

Dawn Loyd
Notary Public
My Commission Expires May 31, 2006

RESPONSE TO WRITTEN QUESTIONS SUBMITTED TO LAWRENCE B. HAGEL, NOMINEE TO BE JUDGE, U.S. COURT OF APPEALS FOR VETERANS CLAIMS

Question 1. The issue of statutory construction and the so-called "plain meaning" rule, has been pivotal in many critical cases before the U.S. Court of Appeals for Veterans Claims.

A. Would you hesitate to reverse or remand a decision by the Department of Veterans Affairs (VA) that is consistent with long-standing VA practice—but is contrary to your best reading of the express words of a statute?

Response. No. The age of a VA practice, or regulation for that matter, is not the test of its validity. This is especially true since the practices and regulations of VA until 1988 were not generally subject to judicial review. If, however, the language of the statute was unclear or subject to more than one reasonable interpretation, consideration of such matters as legislative history and consistent agency interpretation would be proper.

B. Would your judgment on such a question be influenced by your conception of the "common sense" of the VA's historical interpretation?

Response. If the VA interpretation conflicted with the plain language of the statute, its "common sense" would not be a basis for upholding the VA interpretation.

C. How about your sense of what is the preferable or most logical policy?

Response. No. In my view it is not the place of the Court to determine what is good policy. Establishment of policy is the responsibility of Congress and VA when VA is acting within the limits of its authority to implement laws passed by Congress.

D. Would the potential cost of overturning a historical—but, arguably, erroneous—statutory interpretation enter into your decisionmaking in such a case?

Response. The cost that VA may incur is not a proper element of making a decision regarding the validity of a particular policy or regulation.

Question 2. The Committee receives extensive mail expressing a common theme: justice delayed is justice denied, and it does a veteran limited practical good to prevail on a claim if it takes years of decisions, appeals, and remands to ultimately prevail.

A. Do you think it takes too long for a claim to work its way through the administrative and judicial review process?

Response. At least for certain cases, yes. I believe there is unanimity in both the veterans and VA communities on the response to this question. The Secretary has expressed his personal concern regarding this issue, and the Veterans Service Organizations have expressed this concern to Congress for some time. It is, however, important that the claim be adjudicated correctly. Consequently a focus on speeding up the adjudication process must not be achieved by unduly sacrificing the quality of the decision or important statutory rights of the claimant.

B. If so, do you have any proposed remedies the Committee might consider to speed up the process?

Response. Finding the appropriate balance between speed and quality is at best a difficult task. I do not believe there is any single solution to resolve this problem, which involves the quality of the initial agency decision, the handling of remanded decisions, and the structure and authority of the appellate agencies.

Several individuals and organizations (including VA), have offered remedies, some of which are highly controversial. Properly constructed and evaluated demonstration projects designed to test the effect that some of these suggestions have on the speed and accuracy of claims processing may provide sufficient empirical data upon which to base appropriate legislation or changes in practice and to convince these important critics of the value of change.

C. Do you know the extent of the authority of a judge in the U.S. Court of Appeals for Veterans Claims to, sua sponte, craft a remedy in a given case?

Response. The jurisdiction and scope of review of the Court are proscribed by the enabling legislation. For matters that the statute reserves to the Secretary, those cases must be remanded for the Secretary to exercise his judgment. Subject to the judicial policy against issuing advisory opinions, I do believe, however, it is helpful for the Court to answer completely where possible the legal questions presented to it.

D. In what sorts of cases, if any, can that Court directly award, e.g., compensation to veteran-claimants?

Response. There are very few cases where the Court can award benefits directly to the veteran. In order for the Court to do so the law would have to clearly dictate the right to a benefit and the evidence in the case would need to be fully developed.

There are some cases, however, where Court rulings guarantee that the veteran will ultimately receive some benefit. I can think of at least two possibilities. One is a direct finding that a particular disability is service connected. The second would be a situation where the denial of benefits turned solely on the application of a regulation that the Court found to be contrary to law, e.g., *Gardner* v. *Derwinski*. While these findings will ultimately result in benefits, the individual case would still have to be remanded to the VA to adjudicate the level of disability and the amount of retroactive benefits due.

E. Should the Court have that authority?

Response. In general, I do not believe that the Court is in the best position to determine the level of disability or to calculate the precise value of an award of a particular benefit to a veteran. Consequently, when entitlement has been established as discussed in the previous answer, the implementation of that decision in a particular case lies within the expertise of the Secretary, subject to the appellate process.

F. When must the Court remand a case and allow VA to craft the appropriate remedy?

Response. When proper adjudication of the case requires action committed by statute to the Secretary.

G. Do you agree with these rules?

Response. Yes, in general. But I do believe the Court should do what it can in its decisionmaking to reduce the possibility that the case will return to the BVA or the Court on a subsequent appeal.

H. What do you think the rules governing such matters should be?

Response. If the Court is truly to be viewed as an appellate court, I believe the rules as they exist are appropriate. If Congress wanted to expand the ability of the Court to make more decisions that would result in the direct award of benefits by the Court, it would need to change the standard of review to permit de novo review of factual matters. I do not particularly favor this.

Question 3. As the General Counsel of Paralyzed Veterans of America (PVA), you've served with and supervised other attorneys, some of whom will presumably appear before you if you are confirmed.

A. Do you think their clients might be perceived as having an unfair advantage?

Response. It is not possible for me to know the perceptions of others. If confirmed, it would be my responsibility to judge each case on its own merits applying the appropriate law to reach a decision. This is what I intend to do. In time, those interested will review the decisions of which I have been a part and hopefully judge that I have been true to this aspiration.

B. Would the fact that a PVA staff member is serving as counsel to a claimant be cause for recusal?

Response. No, that fact alone would not be sufficient cause for recusal.

Question 4. Since 1992, you have been a member of the Rules Advisory Committee of the Court of Appeals for Veterans Claims.

A. Please describe the work you've done on the Committee.

Response. My term with the Committee ended on June 30, 2003. Over the eleven years I served on the Committee, I offered suggestions regarding rule changes, considered and debated rule changes offered by others, performed research for consideration by the Committee members regarding proposed rule changes and drafted proposed final language of proposed rule changes adopted by the Committee.

B. Please describe changes in the Rules of Practice that have been made since you've been a member of the Committee.

Response. It is difficult to recall, in absolute detail, all of the rule changes that have taken place during my eleven years as a member of the Committee. However, some of those changes involved:

- Introduction of the concept of limited appearance to enable representatives to evaluate cases for representation.
- Permitting the filing of various papers by facsimile.
- Time limits for filing various papers with the Court.
- Changes to the form of papers and expansion of the minimum length of briefs to be filed with the Court.
- Standards for granting extensions of time to file required documents with the Court.
- Rules evidencing date of mailing of documents to the Court.
- Simplification of language to accommodate pro se appellants.
- Citation rules regarding single judge opinions and other nonprecedential authority.

• The design and requirements of various forms included in the appendix to the rules.

C. Has the Court been responsive to the recommendations of the Rules Advisory Committee?

Response. Rule changes suggested by the Committee are reviewed and discussed by the Board of Judges. While the Committee is not privy to those discussions, the Court has adopted a number of the changes recommended by the Committee. This causes me to believe that the Court gives serious consideration to Committee recommendations.

Question 5. In one of your responses to the Committee's Questionnaire for Presidential Nominees, you answered that you currently receive monthly disability compensation from VA for a service-connected disability, and that your mother receives Dependency and Indemnity Compensation from VA as a result of your father's death on active duty. I do not want to inquire into the personal details of either your claim or your mother's. But I am interested in learning whether you or your mother were forced to gain unwanted personal experience in the appellate mechanisms of the claims adjudication process.

A. Did you or your mother have to appeal a VA Regional Office denial of your claims?

Response. No.

B. How far up the appellate ladder did you or your mother have to go, if at all, before your claims were satisfactorily resolved?

Response. No appeal was filed in either case.

C. What lessons, if any, did you take from that experience to your work as a veterans' advocate?

Response. Both my mother and I were represented by non-lawyer service officers of Veterans Service Organizations. In addition, I represented my mother in one particular part of her claim. My experience in both situations has led me to believe that a veteran is best served to have some knowledgeable representative assist in the prosecution of the claim at the agency of original jurisdiction.

D. What lessons would you take to your work on the bench?

Response. Having experienced the claims process as a claimant and as a representative, if confirmed, I believe I would have an appreciation for obstacles facing claimants unfamiliar with VA as well as the complexities faced by VA adjudicators.

Question 6. In your article, "Five Years Under the Veterans' Judicial Review Act: The VA is Brought Kicking and Screaming Into the World of Meaningful Due Process," 46 Maine Law Review 43 (1994), you wrote there is a need for more trained advocates who were knowledgeable in the law of veterans' benefits.

A. Is a lack of properly trained advocates still a problem today? If so, how can it be addressed?

Response. This remark referred to the high pro se rate the Court was experiencing at the time the article was crafted and the limited availability of properly trained or resourced advocates to represent the interests of veterans before the Court. Since 1994, the Veterans Consortium Pro Bono Program and the National Organization of Veterans Advocates have made great strides in increasing the number of advocates qualified to represent veterans. The Veterans Consortium alone, with the strong support of four Veterans Service Organizations, has trained over 1,700 lawyers licensed in 49 states, the District of Columbia and the Commonwealth of Puerto Rico. While the initial pro se rate remains high, a much greater number of veterans whose cases merit it are now afforded representation than at the time of this article.

For the reasons described in the referenced article, adequate representation of veterans remains an important issue and warrants constant monitoring.

B. What is the Court's role in addressing that problem?

Response. By its active role in the creation of the Veterans Pro Bono Program and its strong continued support, the Court has taken steps to address this issue. The Court should continue to be sensitive to this issue and should be alert to ensure that significant precedential decisions are not issued without the benefit of full representation on both sides of the issue.

Chairman SPECTER. Thank you very much, Mr. Hagel. If you two gentlemen would stand for the administration of the oath.

[Witnesses sworn.]

Chairman SPECTER. You may be seated.

Mr. Lance, do you care to make an opening statement?

STATEMENT OF ALAN G. LANCE, SR., NOMINEE TO BE JUDGE, U.S. COURT OF APPEALS FOR VETERANS CLAIMS

Mr. LANCE. Mr. Chairman and Members of the Committee, let me thank you for having this hearing.

Let me extend my thanks as well to Mr. Tuerk and the staff members for their assistance during the last few weeks in getting prepared for this hearing today.

In addition, I would like to thank our Congressional delegation, Senator Craig, Senator Crapo, Mike Simpson, and Congressman Butch Otter, for their continuing support, along with our Governor Dirk Kempthorne, who is a former colleague of yours.

In addition, my thanks to Thorpe Orton and Janet Carter and Attorney General Lawrence Wasden of the Office of the Attorney General of the State of Idaho, for assisting me in locating certain documents and providing them to the Committee.

Let me also thank, Mr. Chairman, my former colleagues, the Attorneys General of the United States, all of whom have endorsed me for this position, with special thanks going to Attorney General Mike Fisher of Pennsylvania and former Attorney General Bob Butterworth of Florida for coauthoring the letter of endorsement and representation.

Mr. Chairman, my ambition and my livelihood for the last 30 years has been devoted to the law as a means of making a living. For the last quarter of a century my passion has been serving veterans and I would like to continue to do so.

Thank you.

[The prepared statement of Mr. Lance follows:]

PREPARED STATEMENT OF ALAN G. LANCE, SR., NOMINEE TO BE JUDGE, U.S. COURT OF APPEALS FOR VETERANS CLAIMS

I want to thank Chairman Specter, Senator Graham, and the Committee for holding this hearing today to consider my nomination to serve as a judge on the United States Court of Appeals for Veterans Claims. It is an honor to appear before you.

For more than 30 years, I have been dedicated to the Armed Forces of the United States and the brave men and women who served our country. During my career, I have been a soldier, an attorney, a veterans' advocate, and a political leader. I am committed to the issues that are important to our Nation's veterans. Promises were made to them in return for their service, and I have fought to make certain those promises are kept within the parameters of the law.

After graduating from South Dakota State University as an Army Scholarship recipient, Distinguished Military Student and Distinguished Military Graduate, I was commissioned in the Regular Army in June 1971. I attended the University of Toledo School of Law, where I was member of the Law Review. I graduated in December 1973 and was admitted to the Ohio Bar on April 27, 1974. I then matriculated from Judge Advocate General's School at the University of Virginia in 1974. My assignments included: Command Claims Officer, 1974–75; Defense Counsel, 172nd Infantry Brigade, Ft. Richardson, AK, 1974–77; Chief of Criminal Defense, 172nd Infantry Brigade, Ft. Richardson, AK, 1975–76; Military Magistrate, 172nd Infantry Brigade, Ft. Richardson, 1975–76; Prosecutor, Federal District Court of Alaska, Anchorage, AK, 1976–77; Command Judge Advocate, Corpus Christi Army Depot, Corpus Christi, TX 1977–78. Prior to my honorable discharge as a Captain in 1978, I was honored to receive a National Defense Service Ribbon and the Army Commendation Medal.

I became active and involved in veterans issues shortly after discharge. After moving my family to Meridian, Idaho in 1978, I joined American Legion Post 113, where I served as Post Commander on four separate occasions. My involvement with the American Legion included several positions at the local, state, and national levels, including: Department of Idaho State Judge Advocate, 1981–88; Department of Idaho State Commander, 1988–89; Ex-Officio member of the National POW/MIA Committee, 1996–1999; Alternate National Executive Committeeman, 1992–94; National Executive Committeeman, 1994–96; Chairman, National Foreign Relations Commission 1996–97; National Legislative Consultant, 1998–99; Chairman, National Advisory Committee, 2000.

My fellow American Legion members elected me to serve as the National Commander of the American Legion for 1999–2000. The American Legion provides representation to over one-fifth of the veterans who make claims for benefits with the Department of Veterans Affairs and Board of Veterans' Appeals. My long service in the American Legion has provided me with a detailed background and familiarity with the issues that are so important to our veterans, and that routinely are raised in cases before the United States Court of Appeals for Veterans Claims.

I have also enjoyed a long and varied career as a practicing attorney. I operated a private law firm in Meridian, Idaho from 1978–94. Meridian was a growing, but small, community during that time period, and my law practice encompassed a variety of areas. I also stayed active in community, serving as President of the Meridian Chamber of Commerce and forming a new Rotary Club chapter.

I also became active in state politics. In 1990, I was elected to serve as a member of the Idaho House of Representatives. After one term in the House, my colleagues elected me to serve as the House Majority Caucus Chairman. I served in the Idaho House of Representatives for two terms, from 1991–94, with assignments on the Committees on State Affairs, Judiciary, Rules and Administration, Transportation and Defense, and Ways and Means.

In 1994, I was elected to serve as Idaho's Attorney General. The Attorney General is a member of the executive branch and is the chief legal officer of the State. The Attorney General is also assigned the constitutional duty of managing the State's endowment lands as a member of the State Board of Land Commissioners. I was also active in the National Association of Attorneys General, serving on the Executive Committee, and I was also elected to serve as the Chairman of the Conference of Western Attorneys General from 1999–2000. I am honored to have received the recommendation of all of my fellow Attorneys General for this nomination. The people of Idaho reelected me to serve as their Attorney General in 1998, and earlier this year, I left office as the longest serving Attorney General in Idaho history.

One of my accomplishments as Attorney General involved resolution of a lawsuit that the State of Idaho filed against the United States Department of Veterans Affairs (VA). The lawsuit involved a proposed reduction of benefits to the residents of the State Veterans' Home in Lewiston, Idaho. The VA eventually recognized its error and the matter was resolved in favor of the State. This lawsuit benefited veterans and State Veterans' Homes across the country.

The reason I seek your confirmation of my nomination to serve as a judge on the United States Court of Appeals for Veterans Claims is because I am committed to serving those who served in our Armed Forces. This court was created in 1988 to deal with veterans' issues involving disability and survivor benefits, education benefits, life insurance, home loan foreclosures, and waivers of indebtedness. This Committee certainly knows how important these issues are to the men and women who served, and you are also, no doubt, aware that the caseload of this court has almost doubled over the last 10 years. It is vitally important that this court be fully staffed so that these issues are resolved in a timely and regular fashion. As an attorney committed to the rule of law and quite familiar with interpreting legislation and legislative intent, and as a long-time veterans advocate, I will be dedicated to the mission of this court so that claims are resolved in a legal, fair, and uniform manner.

I also recognize that a judge on this court must understand the relationship between the Secretary of Veterans Affairs, the Board of Veterans' Appeals, the Court of Appeals for Veterans Claims, the Court of Appeals for the Federal Circuit, and the Supreme Court of the United States. When cases are remanded, the directives must be followed. Each of these entities plays a vital role in the uniform body of veterans' benefits law, and all of them must work together in order to resolve cases in a timely and reliable manner.

In conclusion, I want to once again thank Chairman Specter, Senator Graham, and this Committee for holding this hearing. My service in the United States Army led me to become an active member of the American Legion for over 25 years. I believe my record of service and commitment to our veterans and the issues that are important to them will serve me well if I am confirmed to this court. More importantly, I believe my record will be a benefit to the constituents of this court and the entities that Congress has created and assigned duties to implement our veterans' benefits laws. I thank you and ask for your favorable consideration of my nomination to the United States Court of Appeals for Veterans Claims.

QUESTIONNAIRE FOR PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

1. Name: LANCE, SR. (LAST) ALAN (FIRST) GEORGE (OTHER)

2. Present address: 1370 EGGERS PLACE MERIDIAN (CITY) ID (STATE) 83642 (ZIP CODE)

3. Position to which nominated: JUDGE – United States Court of Appeals for Veterans Services

4. Date of nomination: September 24, 2002; January ___, 2003

5. Date of birth: 27th, April, 1949 (DAY) (MONTH) (YEAR)

6. Place of birth: McComb, OH

7. Marital status: Married

8. Full name of spouse: Sherry C. Holden Lance

9. Names and ages of children:

Lisa C. Lance	27
Alan G. Lance, Jr.	26
Luke S. Lance	19

10. Education:

Institution (City and State)	Dates attended	Degrees Received	Dates of degrees
University of Virginia Judge Advocate General's School	Charlottesville, VA 8/74 – 10/74	Certificate of Completion	10/74
University of Toledo School of Law	Toledo, OH 9/71 - 12/73	Juris Doctor	12/73
South Dakota State University	Brookings, SD 9/67 - 6/71	Bachelor of Arts	6/71
Bowling Green Senior High School	Bowling Green, OH 1966-1967 (Previously attended Westwood High School in Rudolph, OH 1963-66	High School Diploma	1967

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

Dollars for Scholars, Bowling Green, Ohio Community Scholarship 1967-1969; U.S. Army ROTC Scholarship, South Dakota State University, 1969-1971; American Legion 1969-1971; Schultz Werth Scholarship Writing Award, 1971; Phi Alpha Delta Scholarship Award, 1972; University of Toledo Law Review Case and Comment Editor, 1972-1973; Distinguished Military Student, South Dakota State University ROTC, 1969; Distinguished Military Graduate, South Dakota State University, 1971; Captain, Scabbard and Blade Honorary Military Fraternity, South Dakota State University, 1970-1971; National Defense Service Ribbon, 1974; Army Commendation Medal, 1977; Bowling Green High School Distinguished Alumnus Award, 2001; University of Toledo School of Law Distinguished Alumnus Chair & Award, 2002; Conference of Western Attorneys General, Chairman, 1999-2000; National Association of Attorneys General, Executive Committee, 1997-1998; Conference of Western Attorneys General Profile in Courage Award, 2002; National Commander of The American Legion, 1999-2000; National Association of State Veterans Homes Appreciation, 1998; Military Order of Purple Heart Citation,1998; The American Legion, Department of Idaho, Cal Niswander Award of Excellence, 1993; Victims Service Award of Public Policy Leadership from Idaho Counsel on Domestic Violence, 2002; Plaque of Appreciation from Victims, Families and Survivors of Oklahoma City Bombing, 1997; Idaho Air National Guard Plaque of Appreciation, 2002; The American Legion Auxiliary Humanitarian Award, 2000; Legion of Honor Bronze Medallion from the Chapel of The Four Chaplains for service to people regardless of race or faith, September 6, 2000.

12. Memberships: **List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable, and other organizations for the last 5 years and any other prior memberships or offices you consider relevant.**

Organization	Office held (if any)	Dates
Conference of Western Attorneys General	Chairman	1999-2000
National Association of Attorneys General	Executive Committee Member	1997-1998
Idaho Military Historical Society	Board Member	1994
The American Legion	National Commander	1999-2000
The American Legion	(National) Foreign Relations Chair	1997-1998
The American Legion, Dept of Idaho	National Executive Committeeman	1995-1996
The American Legion, Dept. of Idaho	State Commander	1988-1989
Meridian, Idaho Chamber of Commerce (charter member of Meridian Rotary Club International)	President	1983
Meridian Kiwanis Club	Member	
South Dakota State University	Brigade S-5 Public Relations Officer	1970-1971

13. Employment record: **List below all employment (except military service) since your twenty-first birthday, including the title or description of job, name of employer, location of work, and inclusive dates of employment.**

1969-1971 -- Sakota Hybrids, Brookings, South Dakota, Welder; 1971 -- Essex Wire Manufacturing, Wauseon, Ohio, Foreman; 1972-1974 -- McQuade Law Firm, Swanton, Ohio, Legal Research; 1972-1974 -- County of Fulton, Ohio, Prosecuting Attorney's Office, Wauseon, Ohio, Assistant Prosecuting Attorney; 1974-1978 -- U.S. Army, Judge Advocate General's Corps, Ft. Richardson, Alaska; 1977-1978 -- Command Judge Advocate, Corpus Christi, Texas; 1978-1990 – Foley & Lance, Chartered, Meridian, Idaho, Attorney/Partner; 1990-1994 – Alan G. Lance, Attorney at Law, Meridian, Idaho, Attorney/Sole Practitioner; 1990-1994 – State of Idaho, House of Representatives, Boise, Idaho, Legislator; 1995-2003 State of Idaho, Attorney General's Office, Boise, Idaho, Attorney General

14. Military service: **List below all military service (including reserve components and National Guard or Air National Guard), with inclusive dates of service, rank, permanent duty stations and units of assignment, titles, descriptions of assignments, and type of discharge.**

June 1971-July 1974 -- U.S. Army Inactive Reserve, Lieutenant; July 1974-December 1978 -- Judge Advocate General's Corps, Captain; October 1974-1977 – 172nd Infantry Brigade, Ft. Richardson, Alaska; October 1977-December 1978 – Corpus Christi Army Depot, Corpus Christi, Texas, Command Judge Advocate; 1967-1971 -- Army ROTC, South Dakota State University.

Description of assignments: Defense counsel, chief of defense (AK); claims officer, legal assistance officer, trial counsel and federal magistrate court civilian prosecution, administrative law officer, military magistrate (in absence of military judge), emergency deployment readiness officer (JAG).

Honorable Discharge in December, 1978

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

NONE

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

The Idaho Legion newspaper *"Commander's Column"* 1988-1989
The American Legion **Dispatch** (one per month minimum) 1999-2000
The American Legion Magazine 1999-2000
Idaho State Bar periodic publication **"The Advocate"** in capacity as Attorney General of Idaho 1995-2002
The Attorney General's Opinions and Annual Report 1995-2002

17. Political affiliations and activities:

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

Attorney General of Idaho – elected Republican
Committee to Elect Larry Craig – contributions
Committee to Elect Dirk Kempthorne – contribution
Committee to Elect Phil Batt – contribution
Committee to Elect Mike Crapo – contribution
Committee to Elect Mike Simpson – contribution
Committee to Elect Butch Otter – contribution
Committee to Elect Lawrence Wasden – contribution
Idaho Republican Party – contribution
Ada County Republican Party – contribution
Canyon County Republican Party – contribution

(b) List all elective public offices for which you have been a candidate and the month and year of each election involved.

May 1990 (Primary) November 1990 (General) -- Idaho House of Representatives – District 21
May 1992 (Primary) November 1992 (General) -- Idaho House of Representatives – District 14
December, 1993 – Majority Caucus Chairman – Idaho House of Representatives
May 1994 (Primary) November 1994 (General) -- Idaho Attorney General
May 1998 (Primary) November 1998 (General) -- Re-elected Idaho Attorney General

18. Future employment relationships:

(a) State whether you will sever all connections with your present employer, business firm, association, or organization if you are confirmed by the Senate.

YES

(b) State whether you have any plans after completing Government service to resume employment, affiliation, or practice with your previous employer, business firm, association, or organization.

NO

(c) What commitments, if any, have been made to you for employment after you leave Federal service?

NONE

(d) (If appointed for a term of specified duration) Do you intend to serve the full term for which you have been appointed?

YES

(e) (If appointed for an indefinite period) Do you intend to serve until the next Presidential election?

N/A

19. Potential conflicts of interest:

(a) Describe any financial arrangements, deferred compensation agreement, or other continuing financial, business, or professional dealings which you have with business associates, clients, or customers who will be affected by policies which you will influence in the position to which you have been nominated.

As a category VII veteran, I doubt seriously that any decision made would be in conflict with any entitlement I may have earned in service.

(b) List any investments, obligations, liabilities, or other financial relationships which constitute potential conflicts of interest with the position to which you have been nominated.

None

(c) Describe any business relationship, dealing, or financial transaction which you have had during the last 5 years, whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

None

(d) Describe any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any Federal legislation or for the purpose of affecting the administration and execution of Federal law or policy.

Several Congressional hearings on veterans' issues, budgets, defense spending, veterans' health care and issues of concern and interest to The American Legion.

Several Congressional hearings as Attorney General of Idaho on issues of interest and concern to Idaho's citizens and state government.

(e) Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements involved.)

I would not expect any such conflict; however, should a clear conflict or a flagrant appearance of impropriety arise, I would seek the counsel of the Chief Judge of the U.S. Court of Appeals for Veterans Claims and of staff.

20. Testifying before the Congress:

(a) Do you agree to appear and testify before any duly constituted committee of the Congress upon the request of such committee?

Yes

(b) Do you agree to provide such information as is requested by such a committee?

Yes

SUPPLEMENTAL QUESTIONNAIRE
FOR NOMINEES TO
THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS
(To Be Made Public)

1. **Bar associations:**
   List all bar associations and 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.

   Ohio Bar Association
   Idaho Bar Association
   National Association of Attorneys General (member, Executive Committee 1997-1998)
   Conference of Western Attorneys General (Chairman, 1999-2000)
   Former member Judge Advocates Association
   Former Member of American Bar Association
   Former Member of Idaho Trial Lawers Association

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

   Ohio Supreme Court and all lesser state courts and boards (April 27, 1974)
   Federal District Northern Ohio (June 7, 1974)
   United States Court of Military Appeals (now U.S. Court of Appeals for the Armed Forces – October 4, 1974)
   Idaho Supreme Court and all lesser state courts and boards (September 22, 1978)
   Federal District Court for the District of Idaho (September 22, 1978)
   Supreme Court of the United States (October 16, 1996)

3. **Judicial offices:**
   State (chronologically) any judicial offices you have held and whether you were elected or appointed to them and provide a description of the jurisdiction of each such court.

   Military Magistrate, 172nd Infantry Brigade, Fort Richardson, Alaska, 1975-76. Jurisdiction limited to consideration of the necessity of pre-trial confinement in absence of a military judge.

4. **Judicial opinions:**
   If you are or have been a judge, attach a statement providing (a) citations for the ten most significant opinions you have written, (b) a short summary of and citations for all appellate opinions either reversing your decision or confirming it with significant criticism of your substantive or procedural rulings, and (c) citations for significant opinions on federal or state constitutional issues, together with citations for any appellate court rulings on your decisions in

those cases. (If any of the opinions listed were not officially reported, please provide copies of the opinions.)

None. However, published are the Idaho Attorney General's Opinions and Annual Report, 1995-2002.

5. Speeches:
Attach copies of all speeches you have given on issues involving constitutional law, legal policy, or matters relating to veterans' benefits. If there were press reports of any such speeches and they were readily available to you, please provide them.

Please see American Legion magazine and periodic publications September 1999-September 2000, along with Congressional Record. Testimony of National Commander, September 1999, before Joint Senate and House Veterans Affairs Committee.

6. Legal career:
(a) Attach a chronological description of your law practice and experience after graduation from law school, including (1) whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk; (2) whether you practiced alone, and if so, the addresses and dates; and (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.

1972-1974 Fulton County Prosecuting Attorneys Office, Wauseon, Ohio -- Assistant Prosecuting Attorney
1972-1974 McQuade Law Firm, Swanton, Ohio – Associate
1974-1978 Judge Advocate General's Corp., U.S. Army
172nd Infantry Brigade, Ft. Richardson, AK
1977-1978 Command Judge Advocate, Corpus Christi Army Depot, Corpus Christi, TX
1978-1990 Foley and Lance Chartered, 77E Idaho Street, Meridian, ID – Partner
1990-1994 Alan G. Lance, Attorney, Sole Practitioner, Meridian, ID
1995-2003 Attorney General, State of Idaho

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

1972-1974 Misdemeanor Prosecution
1974-1976 Courts Martial Defense
1976-1978 Miscellaneous Military Law
1978-1990 General Practice of Law, primarily civil
1990-1994 Civil Practice of Law

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

No specialization, per se

(d) State whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court has varied over time, describe each such variance, giving dates.

1972-1976 Frequent court appearances, prosecution and defense
1976-1978 Infrequent court appearances
1978-1994 Periodic court room practice and trials
1994-2003 Infrequent

(e) 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, and identify the courts.

The number of courts martial cases, civil and criminal cases is impossible to estimate, but several hundred is probable.

7. Litigation:
Attach a statement describing the ten most significant litigated matters which you personally handled. Give the citations of cases that were reported and the docket numbers and dates of those that were not. 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 dates of representation;

1974 - 1978

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

172nd Infantry Brigade, Fort Richardson, AK – Judge Richard A. Mann, Judge Herb Green, Judge Anthony Bonfanti

(c) the names, addresses, and telephone numbers of the individuals who were co-counsel with you and principal counsel for each of the other parties.

David L. Hennessey, Co-Counsel (8527 44th Avenue N.W., Olympia, WA 98502 Phone: 360-866-4740)
Donn Wonnell, (2944 Crow's Nest Circle, Anchorage, AK 99515)
Phone: 907 349-7964
Michael Patterson,(20114 Eagle River Road, Eagle River, AK 99577)
Phone: 907-694-9634

The following two cases were litigated during my years in private practice:

W.L. Scott, Inc. v. Madras Aerotech, Inc., 103 Idaho 736, 653 P.2d 791 (1982)
Summary: This case involved a dispute between an equipment lessor and equipment lessee. I represented the lessee, Madras Aerotech, Inc. After default, the lessee attempted to sell the equipment, but the effort proved futile and was ultimately sold back to the original supplier for less than fair market value. The trial court ruled in favor of the lessor. On appeal, the Idaho Supreme Court reversed in part. The ruling dealt with the proper calculation of damages, including using fair market value to offset damages and reducing future rents to present value.
Date of Representation: 1982
Court: Idaho Supreme Court
Opposing Counsel: William J. Russell (deceased) of Elam, Burke, Jeppesen, Evans & Boyd; Boise, Idaho (the firm is now known as Elam & Burke, P.A., 702 West Idaho Street, 10th Floor, P.O. Box 1539, Boise, Idaho 83701-1539, 208-343-5454

First Security Bank v. Holsclaw, 4th Judicial District, State of Idaho
Summary: This case involved a failure to pay a debt relating to 25 horses. I represented First Security Bank. My client prevailed.
Dates of Representation: 1979-80
Court: 4th Judicial District Court for the State of Idaho (trial court); The Honorable W.E. Smith, Presiding Judge.
Opposing Counsel: James C. Herndon, currently a trial court judge in the Seventh Judicial District for the State of Idaho, 501 N. Maple, #310, Blackfoot, Idaho 83221-1700, 208-785-8040.

The following cases were litigated during my tenure as Idaho's Attorney General:

Kempthorne, et al. v. U.S. Forest Service, et al. No. CV-01-00011-EJL (D.C. Idaho)
Summary: This case was brought by the State of Idaho, challenging the "roadless rule" under the National Environmental Policy Act. I represented the plaintiff, Idaho State Board of Land Commissioners, of which I, as Attorney General, was both a member and legal counsel. The district court ruled that the State had shown a likelihood of success on the merits and entered a preliminary injunction barring implementation of the roadless rule. The case is currently pending on appeal in the Ninth Circuit Court of Appeals.
Dates of Representation: 1999-January 6, 2003
Court: United States District Court for the District of Idaho, the Honorable Edward J. Lodge; Ninth Circuit Court of Appeals, Circuit Judges Gould, Ferguson, and Kleinfeld
Co-Counsel: Matt McKeown, James D. Carlson, and Steven Strack, Deputy Attorneys General for the State of Idaho.
Opposing Counsel: John C. Cruden, Andrea Berlowe, and John W. Watts, U.S. Dep't of Justice, Environmental & Natural Resources Division, P.O. Box 663, Washington, D.C. 20044-0663; D. Marc Haws, U.S. Attorney's Office, Idaho; Douglas L. Honnold, Timothy J. Preso, Sanjay Narayan, Earthjustice Legal Defense Fund, 209 S. William Avenue, Bozeman, Montana 59715; Laird Lucas, P.O. Box 1342, Boise, Idaho 83701-1342; Patrick Parenteau, Vermont Law School, Chelsea Street, South Royalton, Vermont 05068.

State of Idaho v. Secretary of the U.S. Dep't of Veterans Affairs, No. 97-0306-S-MHW
Summary: This case involved a national policy instituted by the U.S. Dep't of Veterans Affairs (VA), whereby State Veterans Homes were denied certain payments relating to patient *per diems* and prescription drugs. I represented the State of Idaho, Department of Health and Welfare. The State of Idaho filed suit against the VA when the Lewiston, Idaho Veterans Home began to incur damages. The allegation was that the VA policy violated the black letter of federal law. Ultimately, the VA agreed to rescind its national policy and comply with federal law. The VA also reimbursed Idaho for losses incurred from the Lewiston Veterans Home.
Dates of Representation: 1997-98
Court: United States District Court for the District of Idaho, the Honorable Michael H. Williams.
Co-Counsel: W. Corey Cartwright, Deputy Attorney General for the State of Idaho.
Opposing Counsel: Carole Jeandheur, United States Department of Justice, Washington, D.C.

State of Idaho v. United States Forest Service, No. 97-0230-S-BLW (D. Idaho 1998)
Summary: This case involved the State of Idaho challenge against the Forest Service's policy of refusing to provide information concerning the identities of people leasing federally managed public lands. I represented the State of Idaho. The information was important for county assessors in terms of properly calculating local tax rates. The suit was brought under the Freedom of Information Act (FOIA). The court held the information was public information under FOIA, and it entered an order awarding attorney fees and costs.
Dates of Representation: 1997-98
Court: United States District Court for the District of Idaho, the Honorable B. Lynn Winmill.
Co-Counsel: James D. Carlson and Matt McKeown, Deputy Attorneys General for the State of Idaho.
Opposing Counsel: Betty Richardson, U.S. Attorney for Idaho, and Nicholas J. Woychick, Ass't U.S. Attorney for Idaho.

Gibbons, et al. v. Cenarrusa, 2002 Opinion No. 58 (Idaho Supreme Court, May 3, 2002)
Summary: This case was a challenge brought against the Idaho State Legislature's repeal of the law passed via initiative concerning term limits for state and local elected officials. I represented the respondent, Idaho Secretary of State Pete T. Cenarrusa. The Idaho Supreme Court ruled in favor of the respondent, holding that laws passed through the initiative process are on an equal footing with laws passed by the Legislature, and therefore can be repealed by the Legislature.
Date of Representation: 2002
Court: Idaho Supreme Court.
Co-Counsel: Michael Gilmore, Deputy Attorney General for the State of Idaho.
Opposing Counsel: Starr Kelso, Kelso Law Offices, P.O. Box 1312, Coeur d'Alene, Idaho 83816-1312, 208-765-3260

Public Serv. Co. of Colorado v. Kempthorne, No. 91-0035-EJL (D. Idaho)
Summary: This case dealt with the State of Idaho's efforts to force the federal government to remove certain nuclear waste. I represented the State of Idaho. Former Idaho Governor Phil Batt and I signed a settlement agreement, approved and enforceable by the court, establishing a schedule for removal of

waste, with penalties for failure to meet deadlines. This is a one-of-a-kind settlement that will not likely be duplicated by any other states.
Dates of Representation: 1995-January 6, 2003
Court: United States District Court for the District of Idaho, the Honorable Edward J. Lodge.
Opposing Counsel: Thomas L. Sansonetti and Barclay Samford, U.S. Dep't of Justice, Environmental and Natural Resources Division, P.O. Box 663, Washington, D.C. 20044-0663; Thomas E. Moss, U.S. Attorney for Idaho, and D. Marc Haws, Ass't U.S. Attorney for Idaho, 877 West Main Street, Ste. 201, P.O. Box 32, Boise, Idaho 83707.

Idaho v. Coeur d'Alene Tribe of Idaho, 521 U.S. 261, 117 S. Ct. 2028 (1997)
Summary: This case involved the Coeur d'Alene Tribe's claim to ownership of the bed and banks of Lake Coeur d'Alene. I represented the defendant State of Idaho. The United States Supreme Court held that the suit was the functional equivalent of a quiet title action, did not come within the doctrine of *Ex parte Young*, and was barred by the Eleventh Amendment.
Date of Representation: 1996-97
Court: United States Supreme Court
Co-Counsel: Clive Strong, Deputy Attorney General for the State of Idaho.
Opposing Counsel: Raymond C. Givens, Givens, Funk & Work, 424 Sherman Avenue, Ste. 308, Coeur d'Alene, Idaho 83816, 208-667-5486.

Rudeen v. Cenarrusa, 136 Idaho 560, 38 P.23d 598 (2001)
Summary: This case involved a constitutional challenge to the term limit initiative, which was passed by the people of the State of Idaho in 1994. I represented the defendant, Idaho Secretary of State, the Honorable Pete T. Cenarrusa. The Idaho Supreme Court upheld the constitutionality of the term limits law.
Date of Representation: 2001
Court: Idaho Supreme Court
Co-Counsel: James D. Carlson, Deputy Attorney General for the State of Idaho.
Opposing Counsel: Scott W. Reed, P.O. Box A, Couer d'Alene, Idaho 83816; Dennis C. Colson, Professor, University of Idaho College of Law.

Potlatch Corp. v. United States, 134 Idaho 916, 12 P.3d 1260 (2000)
Summary: This case involved the United States' claims for reserved water rights in three federally designated Wilderness Areas and the Hells Canyon National Recreation Area. I represented the appellant State of Idaho. After initially ruling in favor of the United States, the Idaho Supreme court agreed to rehear the case, ultimately changing its opinion and holding that the Wilderness Act does not create implied water rights and the express reservation of water in the Hells Canyon National Recreation Area applies only to the tributaries of the Snake River.
Date of Representation: 1996-2000
Court: Snake River Basin Adjudication District Court, the Honorable Daniel C. Hurlbutt; Idaho Supreme Court.
Co-Counsel: Clive Strong, Deputy Attorney General for the State of Idaho.
Opposing Counsel: Betty H. Richardson, U.S. Attorney for Idaho; Sean H. Donahue, U.S. Dep't of Justice, Washington, D.C.

8. **Legal activities:**
Attach a statement describing the ten most significant legal activities you have pursued (other than the litigated matters referred to above). Describe the nature of your participation, but please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

Real estate development of the Boise Towne Square Mall, Boise, Idaho and related parcels, representing Claremont Development Company, Bellevue, Washington and Price Development Corporation, Price, Utah.

The project consisted of options on two (2) potential sites for a regional shopping center requiring purchase options, easements, joint development agreements, approval of Ada County, Idaho, Meridian City and Boise City agencies, boards and commissions-- 1985-1987-- culminating in the building of the Boise Towne Square Mall, Boise, Idaho. Public hearings, private contracts, regional and site specific support.

Legislatively sponsored a variety of bills dealing with a host of subjects from corporate to criminal law to include the abolition of common law marriage in Idaho. 1990-1994.

As Attorney General of Idaho, consolidation of legal services of Idaho Attorney General's Office – 1995

Department of Energy and Department of the Navy Nuclear Agreement (INEEL) 1995

Revision of Idaho Code re Search and Seizure (2001)

Implementation of Idaho Constitution's Statutory framework for Victims' Rights (1995)

A variety of legislative initiatives concerning consumer protection, identity theft, privacy legislation (1995-2003).

9. **Outside employment:**
Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, please provide details.

Continued operation/ownership of Lance Land and Livestock, LTD, an Idaho corporation presently consisting of 50 acres in Canyon County, Idaho and related activities in agriculture.

10. **Party affiliation:**
State (a) your current political party affiliation and the place and date it was established, and (b) if you have in the past registered as being with a different party (or as an independent if not now registered as an independent), the place and inclusive dates of such registration.

(a) Republican – first registration in Fulton County, Ohio – 1972

(b) Idaho does not have registration requirements by party affiliation, however, I was elected in 1990 and 1992 as a republican Legislator and in, 1994 and 1998 as a republican Attorney General.

11. Memberships in certain organizations:

The Administrative Office of the United States Courts' Commentary to Canon 2C of the Code of Conduct for United States Judges states, "Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired." Do you currently belong, or have you ever belonged, to any organization which discriminates in this manner – through either formal membership requirements or the practical implementation of membership policies? If so (a) list all such organizations of which you are or were a member, (b) provide the dates of your memberships, and (c) describe in each case the efforts you made to try to change the organization's discriminatory policies or practices.

Member of Sons of the American Legion for male members of Sons and Grandsons of the American Legion or deceased Legion members – 1987 – present

La Societe Des Hommes et 8 Chevaux (Forty and Eight) member 1986-2001 – terminated membership in 2001)
Membership to invited veteran wartime male members of the American Legion who are in good standing. I sent a letter, in my capacity as National Commander of the American Legion dated April 11, 2000, to the Commander of the Forty and Eight, to change policy (the standing American Legion position reinforcement)

12. Services for disadvantaged persons:

The American Bar Association, in its Comment to Rule 6.1 of the Model Rules of Professional Conduct, states, "Every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer." Attach a statement describing what you have done to fulfill this responsibility, listing specific instances and the amount of time devoted to each.

While in private practice, I participated in a variety of Law Day activities with the Idaho Bar Association and participated periodically in the Pro Bono program, primarily domestic relations counseling for income disadvantaged or indigent persons. While members of the American Legion are not disadvantaged per se, many members require Pro Bono assistance on a variety of issues.

I served as the State Judge Advocate of the American Legion from 1982 through 1988 (Idaho) pro bono and State Judge Advocate 1990-1994. In addition, while in private practice, I participated in periodic pro bono counseling for the indigent or income disadvantaged.

13. Selection process:

Has anyone involved in the process of selecting you as a nominee discussed with you any specific case, legal issue, or question in a manner that could reasonably be interpreted as seeking any

express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

No.

AFFIDAVIT

County of Ada
State of Idaho) ss

Alan G. Lance, being duly sworn, hereby states that he has read and signed the foregoing answers to the Supplemental Questionnaire for Nominees to the United States Court of Appeals for Veterans Claims and that the information provided therein is, to the best of his/her knowledge and belief, current, accurate, and complete.

Alan G. Lance, Sr.
Signature of Nominee

Subscribed and sworn before me this 4 day of February, 2002

Reid W. Olsen
Notary Public

REID W. OLSEN
NOTARY
PUBLIC
STATE OF IDAHO

Chairman SPECTER. Thank you very much, Mr. Lance.

In your resume there is a notation of your service as National Commander of the American Legion which is a very important position. In that role, you obviously have had the obligation as an advocate for veterans interests. When you serve in a judicial capacity you are the arbiter, the umpire.

Would you comment on your approach to that role and the difference which you see with the assurances that you can provide to this Committee that you will be able to shed your role, so to speak, of advocate to be an impartial arbiter?

Mr. LANCE. Thank you, Mr. Chairman, I will.

Mr. Chairman, I think that those who represent the American Legion who are here today can vouch for the fact that I will be fair and impartial. The obligation of a judge of this court is to the Congress of the United States, as well as to the taxpayer, as well as to the executive branch and the Secretary. I would intend to fulfill that obligation in trying to service veterans and to provide them justice in their claims.

If anything, Mr. Chairman, I might hold the American Legion advocates, who account for about 21 percent of the cases before the Board of Veterans' Appeals, to a higher standard than the other colleagues.

I would assure you, Mr. Chairman, and others, that I would fulfill my oath in office to be fair and impartial irrespective of whether or not the veteran were represented by private council or one of the VSOs.

Chairman SPECTER. Mr. Hagel, I think it most expeditious, since there are overlapping questions, to deal with the nominations jointly.

And you, like Mr. Lance, have had an advocacy role as General Counsel for the Paralyzed Veterans of America. What assurances can you provide that in your new judicial role you will be able to exercise the imperatives of the different perspective?

Mr. HAGEL. Thank you, Senator. In addition to the almost 14 years that I served in the General Counsel's Office, both as Deputy General Counsel and General Counsel of the Paralyzed Veterans of America, I have indeed represented veterans and their interests and I am proud of that.

But almost for an equal amount of time, as the information I submitted to the Committee notes, I have represented the interest of the Government in various capacities. I understand the issues on both sides of the fence, if you would.

The responsibility of a judge is to know the law, to read the law, to apply the law to the facts of the particular case. That is what I would intend to do if I were confirmed by the Senate.

Chairman SPECTER. Mr. Hagel, let me begin with you on the next general question, and that is with respect to the deference, if any, that an appellant tribunal should give to an executive branch agency's findings of fact in deciding claims for benefits from that agency. Is there any difference in deference which you would give to an Article 1 court, contrasted with the deference to an Article 3 court?

Mr. HAGEL. No, Senator, I don't think there would be any appreciable difference in fact-finding. I think the statute is clear that the

court must review findings of fact made by, in this case, the Board of Veterans' Appeals, under a clearly erroneous standard and that is what I would apply.

Chairman SPECTER. Mr. Lance, with all of your extensive experience, do you place any credence in the complaint that is heard from time to time about Article 1 courts serving a little too closely to the branch that they are a court of, contrasted with the life tenure which is accorded to Article 3 judges? Is there anything to it that there is a little partiality, a little administrative control sometimes that creeps into the Article 1 courts?

Mr. LANCE. Mr. Chairman, thank you.

No, not in my opinion. The criticism is made, the Chairman is correct, you hear that criticism periodically. But in reviewing the cases that at least I have reviewed of the U.S. Court of Appeals for Veterans Claims, it is clear to me that they do their level best to apply the law, are not as closely affiliated to the VA or the BVA, as some would suggest that they are, in terms of applying the law fairly and uniformly and executing and exercising those mandates as provided by Congress.

So in response, Mr. Chairman, no, I do not give any credence to that complaint.

Chairman SPECTER. There are many more questions which I have, but I have taken some time, now let me yield to my distinguished colleague, Senator Campbell.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO

Senator CAMPBELL. Thank you, Mr. Chairman.

First, let me say that I have read the backgrounds on both our nominees. They are very highly respected, well qualified, fine families and they have done a great job in the jobs they have already finished before they came here.

And I would think that because of that strong support and no real vocal opposition that they would not have any problem at all getting through the process. I am sorry to say, however, we have seen other nominees, at least one, to the same court being held up, as you know, Mr. Chairman. I am sorry that it has become sort of a partisan issue, a lot of our nominees that are being held up, as you probably know.

I just would hope you do not get discouraged. This is not an easy process. And when you have 100 senators, about a third of whom are running for president themselves, and all of the rest of them are a bunch of flaming eagles, too, it is very difficult to get anything through.

I just would hope that you are in it for the long run and you do not get discouraged and go home. And I hope your families will stick it out with you, too.

Thank you, Mr. Chairman. I have no questions.

Chairman SPECTER. Thank you very much, Senator Campbell.

The Court of Veterans Appeals allows non-statutory practitioners to appear and argue cases for claimants. When I first joined the Judiciary Committee, Senator Strom Thurmond was the Chairman. And at one of the first hearings, he asked two nominees from Penn-

sylvania if they promised to be courteous. And that is translated into do you promise to be courteous.

And I thought to myself that really was not a very erudite or piercing question because what could the nominee do but say yes. The nominees, Judge Caldwell and Judge Mannesmann, appeared that day, this was 1982.

And then Senator Thurmond said, "The more power a person has the more courteous a person should be." Translated the more power a person has, the more courteous the person should be.

And having practiced law for some time, I have noted the tremendous authority of the black robe. Having learned a good deal from Senator Thurmond, that being one of the items, whenever I am at a confirmation hearing I ask the question. But I think that is something which I will not ask you if you promise to be courteous because I know the answer.

I think that is something which ought to be in your mind at all times. It is very, very easy to be out of sorts and the power is just overwhelming. People like Senator Campbell and Senator Craig and Senator Crapo and I have to, at least sometimes, be deferential to voters. But judges who have either fixed terms, 15 years or life, have great temptation to be a little less than courteous.

And many, many people who have been confirmed years after the fact have said, "I remember when you mentioned to be courteous and I just want you to know I have been courteous." I consider no attribute of a judge more important than being courteous.

And you might be tested when you have some of these non-attorney practitioners appear before you or people who appear pro se before you, that is representing themselves. And you also might be tempted when some lawyers appear before you, because there have been known occurrences where lawyers are not too relevant or responsive or professional in their approach.

So I would ask you to make a comment about what special consideration you would give to the non-attorney practitioners or the pro se litigants who appear before you.

Mr. Lance?

Mr. LANCE. Thank you, Mr. Chairman.

I think it is correctly pointed by the Chairman that this court, given the number of pro se litigants, I believe 52 percent of all cases before the court start out pro se and that number dwindles back down to 35 percent.

But it is very difficult, as the Chairman is aware, to deal with advocates who are advocating their own case and to have to tell them in a polite, courteous, and professional manner that, in fact, maybe their cause of action is not as strong as they perceive it to be.

I believe that I can do that, Mr. Chairman. In my capacity as National Commander, of course, I came under the same types of conditions and circumstances as the Chairman has described. I will promise you, Mr. Chairman, and all the veterans in this room and the veterans throughout the United States that I will be courteous.

Chairman SPECTER. Are you going to give a similar answer, Mr. Hagel?

Mr. HAGEL. Yes, Senator.

Chairman SPECTER. OK, gentlemen.

Senator CAMPBELL. There is a moral in that story, Mr. Chairman.

Chairman SPECTER. Bear it in mind.

Mr. Lance, in response to the Committee's supplemental questionnaire, you identified two organizations that you had been a member of, the Sons of the American Legion and the Forty & Eight Society. Are these organizations open only to men?

Mr. LANCE. Mr. Chairman, the Sons of the American Legion, I think the name speaks for itself. Yes, sir, that is a male organization. Where a person has had a father or a grandfather who is a member of the American Legion.

The Forty & Eight, unfortunately, is indeed, as we speak, Mr. Chairman, still restricted to males. The American Legion has been attempting to convince the Forty & Eight over the last several years that that policy is no longer applicable in today's society.

As National Commander of the American Legion, I wrote them a letter and suggested that they needed to come in conformance with the 21st century. Unfortunately, to date, that has not happened and I am no longer a member of that organization.

Chairman SPECTER. Did you terminate your membership because of the practice that you concluded was discriminatory?

Mr. LANCE. That was one of the reasons, yes, sir.

Chairman SPECTER. Were there other reasons?

Mr. LANCE. Their inability to address the problem in a businesslike and professional manner.

Chairman SPECTER. But that turned on the discrimination issue as well?

Mr. LANCE. Yes, sir.

Chairman SPECTER. How do you distinguish your reaction there from your reaction to the Sons of the American Legion which, as you accurately stated, speaks for itself, covering only men.

Mr. LANCE. There, sir, the Sons of the American Legion has been organized. We have a very vibrant American Legion Auxiliary consisting of 2 million members and we have the Juniors Auxiliary, that is for the females, the counterpart or the distaff, if you will, for those interested in Legion activities and Legion work.

Chairman SPECTER. Mr. Hagel, in response to one of the questions, you stated that you represented a claimant in a case captioned *Thielman* vs. *Derwinski*, and during the consideration of that case by the Board of Veterans' Appeals you filed a motion with a request that certain members be disqualified after information surfaced which suggested that, on reconsideration, those members might not be impartial.

Are any of the individuals you sought to have disqualified still members of the BVA?

Mr. HAGEL. I do not know the answer—I know that at least one of the individuals is not, Senator. I do not know, I would like to go back to look at the files of the case and the roster of the BVA to determine that.

Chairman SPECTER. If there are members still sitting from the BVA, would that influence you in any way on matters which come before you in a confirmed capacity?

Mr. HAGEL. I would only say that I would look at each case as it came before me and judge it based upon the facts that were be-

fore me. I would not allow facts that I knew from other cases to influence my decision in a particular case.

Chairman SPECTER. Mr. Lance, in your response to the Committee questionnaire, you listed as one of your significant legal activities is your involvement in the revision of the search and seizure provisions of the Idaho code. What revisions were incorporated on that activity of yours?

Mr. LANCE. Mr. Chairman, I believe it was last legislative session or two legislative sessions ago, working with our legislature, we brought the search and seizure provisions of the Idaho law up to the Federal standards.

Chairman SPECTER. Did you have to do that? You were bound by them anyway.

Mr. LANCE. In Federal District Court, yes, sir. But in State Court, we had an old code that went back to the 1970s.

Chairman SPECTER. 1970s?

Mr. LANCE. Yes, sir.

Chairman SPECTER. Was that an ancient time?

Mr. LANCE. Sir, it was before cell phones. Our law, strictly construed, would indicate that a district judge in the State of Idaho, who wished to issue a phone tap order had to issue it for that telephone sitting on that desk and not the roving situs cell phone. So we brought it up into the 21st century. It complies, to a great extent, to the Federal law that does exist.

Chairman SPECTER. Were there Federal Court judicial decisions dealing with cell phones prior to that revision?

Mr. LANCE. In the Federal system, sir, yes. The State judges, however, were somewhat impaired as a result of our reading of Idaho law.

Chairman SPECTER. So, it existed for the Federal system but not for the State system and the point of the revision in the code was to give guidance to the State Court judges which would be applicable without going through the interpretation process?

Mr. LANCE. That is correct sir, in State Court.

Chairman SPECTER. That is a long and complicated history. For so many years States were not bound by search and seizure rules. And they came into the 19th century in *Mapp* vs. *Ohio* in 1961. I was an Assistant DA at the time. And one of the first cases that came into the criminal court, one of the elderly judges listened to the motion to suppress and said, "Motion denied, this is not Ohio."

I argued a case as an Assistant DA, a case called *Commonwealth* vs. *Richardson.* The defendant's lawyer was making the point that the search and seizure was unreasonable and the president, Judge Chester Rhodes of the Superior Court, kept saying but they found the glass from the jewelry store in his cuff links. And the lawyer tried to make the point that it had to be tested by probable cause in advance of the search and it was totally incomprehensible to the judge.

But a lot has happened since that time and I commend you for your work on the code. That is, I think I commend you for your work on the code. I have not read it.

Mr. LANCE. It is a good piece of work, sir.

Chairman SPECTER. Mr. Hagel, in your article Five Years Under the Veterans Judicial Review Act, the VA is brought kicking and

screaming into the world of meaningful due process. You stated the value of the Court of Appeals for Veterans Claims would depend on the court's ability to maintain its independence. Did you have some reason to believe that prior to the wisdom in that Law Review article, the court had not established its independence?

Mr. HAGEL. Senator, I think that at the time that article was written, I believe, on approximately the fifth year anniversary of the court. And at that time, my coauthor and myself believed that it was important to remind those readers that it was a danger that any Article 1 court should always guard against.

Chairman SPECTER. A little too much influence from the agency that it sat in judgment on?

Mr. HAGEL. That is correct.

Chairman SPECTER. That is the question I asked Mr. Lance earlier. He said it was all copacetic. Some disagreement with your soon-to-be colleague on the court, if confirmed?

Mr. HAGEL. I do not have any disagreement. I think in answering your question what I was trying to say is that, it is extremely important that being an Article 1 court and constantly dealing with the same agency, constantly having the same litigants before the court, it is important that it ensures that it maintains its independence because the criticism can easily be made that it is not independent. And it is something that the court should always guard against.

Chairman SPECTER. That certainly is a critical factor. That is the overreach, and the great beauty of the American judicial system is the independence. Some think that the Congress is unduly influenced by being reelected and that the executive branch is unduly influenced by being reelected. But there is a quality of independence that the judicial branch has which is superb.

The Constitution does not establish the courts as supreme, but the courts took care of that earlier in *Marbury* vs. *Madison* in 1803. And now major issues of national and international importance are decided by one judge on five to four decisions. So the independence is really very, very important.

However, there are pitfalls in writing Law Review articles. We had a confirmation hearing—one where more war story, a short one.

We had a confirmation hearing on Chief Justice Rehnquist. He was asked a lot of questions about court stripping. Does the Congress have the authority to take away the jurisdiction of the court on First Amendment issues? And he would not answer the question.

Overnight one of the staffs found an article which William H. Rehnquist had written in the Harvard Law Record back in about 1960 or 1958. In that article he criticized the Judiciary Committee for asking softball questions to Justice Whittaker, whose main achievement was that he represented two States, he lived in Kansas and practiced law in the Missouri or vice versa.

The author, William H. Rehnquist, suggested that there ought to have been some more directed questions.

So being armed with that article, I went back to the question the next day, does the Congress have the authority to take away the jurisdiction of the Federal courts on First Amendment issues? He

still hesitated, and I produced the article and said there was a William H. Rehnquist who wrote this article. He answered a question with a question and said, "Did I say that?"

And I said, "I do not know whether you said it or not, but that is what the book says you said." And he said , "Well, if I did, I was wrong." And then he answered the question. He said that Congress did not have the authority to strip the Federal courts of jurisdiction on First Amendment questions.

So then, as you might suspect, I asked him does the Congress have the authority to strip the court of Fourth Amendment issues? And he refused to answer that, as he did the Fifth Amendment, Sixth, Seventh and Eighth.

I said why answer as to the First and not as to the Fourth, Fifth, Sixth, Seventh, and Eighth. He would not answer that question either.

He was confirmed 65 to 33, and it was touch and go, leading to what many of us concluded was that nominees answer just as many questions as they think they have to be confirmed.

But I think, you gentlemen, have answered more questions than you have to to be confirmed. The principal purpose, or a principal purpose of these hearings is to get an idea as to how you will respond, your demeanor, how you handle questions, how you reason. There are a number of other questions which we are going ask you for the record which will be propounded, which we would like you to return in writing.

We would like to take much more time, but we have taken a fair amount of time in today's hearing. We have the Medicare Reform bill on the floor and it is a very, very busy calendar. We are taking up the issue of asbestos reform the day after tomorrow and there is a tremendous amount of preparation necessary.

So we are going to conclude the hearing at this point. We thank you for coming in. I do not like to make firm predictions, but I think your nominations are very sound and highly likely to be confirmed.

I made that prediction for a Court of Appeals nominee 2 years ago and I was wrong. The nominee had superb qualifications, but there is a little difference of opinion depending on politics in the Senate these days.

But I do not think that is going to impede you in any way.

Senator Campbell, would you care to add anything?

Senator CAMPBELL. No, Mr. Chairman. Well, maybe a comment or two.

I was interested in your story about Justice Rehnquist. I think he is a fine jurist, but if he had to go through the confirmation hearing now, as opposed to say even 6 or 7 or 8 years ago, I think he would find it tougher, unfortunately. Because now not having an answer does not seem to be sufficient for some of our colleagues. They want you to have an answer, and it better be the right one. And it is almost a litmus test answer unfortunately, as you know.

I did want to ask one question of Mr. Lance. You mentioned that you belong to the Sons of the American Legion and another group. You said the Forty & Eight, or something? Is that what it is called, Forty & Eight?

Mr. LANCE. Yes, sir.

Senator CAMPBELL. What is that? I am sorry, I have never heard of that group.

Mr. LANCE. It was an offshoot of the American Legion that was begun after World War I.

Senator CAMPBELL. Where did the name Forty & Eight come from, a battle or something?

Mr. LANCE. No, sir, it came from the box cars that they used in France in World War I that had the notation on the side of 40 men or 8 horses. And that is where they took their name from.

In fairness to them, their traditions and their rituals and so forth are the result of basically the draft during World War I and so forth and so on. And of course, in World War I women were not drafted.

However, we are now in the 21st century and it is the American Legion's opinion that possibly they should change their bylaws and Constitution to include female members of the Armed Forces honorable discharged.

Senator CAMPBELL. Since you told a couple of war stories, I think I better fess up and tell you, Mr. Chairman. I belong to an all man's club. We cannot get any women to join the club.

It is true. It is based in Los Angeles and they do an awful lot of charity work. They have a number of very high profile people, some in the movie industry and so on that belong to it. It is called the Ugly Motorcycle Club.

Funny name but in their bylaws they say anybody is welcome to belong to it but they have got to subscribe to the bylaws, which means you have got to be ugly. And we have not found any women who would admit it, yet.

So far, it is an all male club, but we are still trying.

Thank you, Mr. Chairman. I think that is enough for today.

Chairman SPECTER. Thank you very much, Senator Campbell.

There will be some more questions submitted for the record.

Thank you both very much.

The Committee is now adjourned.

[Whereupon, at 3:14 p.m., the Committee was adjourned.]

NOMINATIONS INCLUDING ROBERT N. DAVIS TO BE JUDGE, U.S. COURT OF APPEALS FOR VETERANS CLAIMS

THURSDAY, APRIL 1, 2004

U.S. SENATE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:35 p.m., in room 418, Russell Senate Office Building, Hon. Arlen Specter, Chairman of the Committee, presiding.

Present: Senators Specter, Cochran, Lott and Congressman Murphy.

OPENING STATEMENT OF HON. ARLEN SPECTER, CHAIRMAN, U.S. SENATOR FROM PENNSYLVANIA

Chairman SPECTER. Good afternoon, ladies and gentlemen. The hearing of the Veterans' Affairs Committee will now proceed.

We are joined by high-level dignitaries today, Members of the Congress of the United States, two United States Senators, and without further ado, I turn to the senior Senator from Mississippi, Senator Thad Cochran.

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

Senator COCHRAN. Thank you, Mr. Chairman. It's a pleasure and an honor for me to be here with Robert Davis, who taught at the University of Mississippi School of Law for 13 years. He is now on the faculty at Stetson University College of Law in Florida.

He has been a friend of mine because I was on the campus from time to time for events at the law school. I came to know him really as the founder of the Journal of National Security Law. He is a scholar. He has written numerous articles, not only for that publication but on a variety of subjects in many other law journals around the country. But he was well respected at the university and well liked by the students.

He had also taught, before he came to Ole Miss, at Georgetown University and at Washington Lee University, among other colleges and universities around the country. He is a graduate from Georgetown University Law Center here in Washington. He is a naval officer, a Reservist, who was activated after September 11, 2001. He is a fine naval officer and law professor, and I am confident that he will serve with distinction on the Veterans Court of Appeals.

It is a pleasure to recommend him to you and to introduce him, Mr. Chairman.

Chairman SPECTER. Thank you very much, Senator Cochran. Your recommendation is very weighty with this Committee and with the U.S. Senate.

I will now turn to Senator Trent Lott.

STATEMENT OF HON. TRENT LOTT,
U.S. SENATOR FROM MISSISSIPPI

Senator LOTT. Thank you, Mr. Chairman. It's a pleasure to be before you, as Chairman of this very important Committee. It is a great honor to be here to endorse this nominee, Robert Davis, for this important judicial position.

As is usual, when you follow your senior colleague, you just say "me, too." I know that Senator Cochran has pointed out some very important things about this distinguished nominee. I, too, knew him when he was at Ole Miss, my alma mater. He has an outstanding record and a diversity of backgrounds at a lot of different schools.

As has been pointed out, he not only worked in national security law, but also in administrative law, alternative dispute resolution, and sports law. He has quite a diversified background of education and teaching. He also worked as a government attorney with the Commodity Futures Trading Commission and the Department of Education.

I think that combination of education, experience, teaching and in the military, serving now as a Commander in the Navy, the Reserves, makes him uniquely qualified to take this position with the U.S. Court of Appeals for Veterans' Claims.

He is an outstanding individual, one that we're very proud of, that we had a significant portion of his life in Mississippi. It is a great honor for me to be here and to endorse his nomination for this important position.

Chairman SPECTER. Thank you very much, Senator Lott. You have great references, Professor Davis, to have two distinguished lawyers, two distinguished Senators, men I have known for a very, very long time. I have high regard for their opinions. So thank you very much, Senator Cochran, Senator Lott.

I know you have many obligations this afternoon, so if you wish to take leave at this time, thank you.

Chairman SPECTER. Professor Davis, tell us a little bit about your own background, where you went to school, what your professional career has entailed.

Mr. DAVIS. Thank you, Chairman Specter, for the opportunity.

I spent most of my youth in Davenport, IA. I went to college in Connecticut, at the University of Hartford, and law school at Georgetown here. Upon graduation——

Chairman SPECTER. What year at Georgetown, the graduation?

Mr. DAVIS. 1978, sir.

Chairman SPECTER. And since then?

Mr. DAVIS. Since then, I practiced in Washington for 10 years in a variety of government positions, as a government attorney. I taught part time at——

Chairman SPECTER. With what departments were you associated?

Mr. DAVIS. With the Commodity Futures Trading Commission initially, and then the Department of Education. After that, shortly with the United States Attorneys Office for the District of Columbia.

I began teaching in 1988. At the same time, I joined the military for the first time as a Reserve Officer. I moved to Oxford, MS. I stayed there for about 16 years, I guess, teaching and—actually, 13 years there, and then 3 years in Florida at Stetson University College of Law.

Chairman SPECTER. You reviewed a book authored by Professor Christopher Edley, agreeing with his idea that there should be judicial deference to agency decisions.

Mr. DAVIS. I vaguely remember the book review, Senator.

Chairman SPECTER. I hadn't come to a question yet.

[Laughter.]

Chairman SPECTER. Why do you think there should be deference to agency decisions?

Mr. DAVIS. Senator, the short answer is the agencies are the experts, and certainly in terms of fact finding in the areas within which the Congress has provided legislation for those agencies to operate, the authorization. It seems to me that they are the best first place to interpret the law since they deal with it on a daily basis.

Chairman SPECTER. Do you think that sometimes agencies take advocacy positions, like to uphold the government's view, just as a matter of predisposition after hearing so many matters and tending to side with the government?

Mr. DAVIS. Senator, I think that is a danger. I think it probably happens from time to time. But in my experience, agency counsel has been very interested in objective and fair decisionmaking.

Chairman SPECTER. Senator Thurmond was Chairman of the Judiciary Committee, and in an earlier hearing that I attended in 1982 with two Pennsylvania nominees, Senator Thurmond asked the nominees, "If you're confirmed, do you promise to be courteous?" Translated into English, that is "If you're confirmed, do you promise to be courteous." I thought it was a rather nonrevealing question. What could they say, but, Yes. Both nominees said yes, and Senator Thurmond said, "The more power a person has, the more courteous the person should be." Translated into English, "The more power a person has, the more courteous the person should be." I have since come to regard that as a very profound question and a very profound observation. If you are confirmed, do you promise to be courteous?

Mr. DAVIS. Absolutely, Senator. Absolutely.

Chairman SPECTER. Sometimes when you don those black robes and you have either life tenure or tenure for 15 years, judges tend to become impatient.

You taught constitutional law. What would you think of a constitutional amendment that subjected Federal judges to election every 6 years, and Senators to serve for life?

[Laughter.]

Chairman SPECTER. Be careful now. Be careful in your answer.

Mr. DAVIS. Do you want——

Chairman SPECTER. I withdraw the question, Professor Davis.

Professor Davis, we have a long list of questions for you to respond to here. I am hopeful we can get you confirmed.

[The prepared statement of Mr. Davis follows:]

PREPARED STATEMENT ROBERT N. DAVIS, NOMINEE TO BE JUDGE, U.S. COURT OF APPEALS FOR VETERANS CLAIMS

Chairman Specter, Senator Graham and the distinguished Members of this Committee. I appreciate the opportunity to appear before you today as you consider my nomination to serve as a judge on the United States Court of Appeals for Veterans' Claims. I would also like to thank the distinguished Senators from Mississippi, Senator Thad Cochran and Senator Trent Lott, for their joint appearance here today and that very kind introduction.

My remarks will be brief. If confirmed, I will dedicate my efforts to assisting my fellow judges to efficiently and fairly adjudicate cases and decrease the backlog of matters pending before the Court consistent with the rule of law. If confirmed, a priority mission will also be to ensure that those veterans who have business before the United States Court of Appeals for Veterans' Claims receive thorough, expeditious, and objective decisions. My diverse background and twenty-six years of experience as a lawyer will allow me to bring a fresh perspective to the Court, if confirmed. This experience includes thirteen years as a law professor, and an equal amount of time as a government attorney trying both criminal and civil cases, a Commissioner to the National Commission on Uniform State Laws, an Arbitrator and Mediator with the American Arbitration Association and the United States Postal Service, a Hearing Officer for the SFOR Claims Tribunal in the Republic of Serbia, Sarajevo, Bosnia, and a member of the United States Navy Reserves. This diverse background and experience will assist me, if confirmed, in adjudicating the variety of veteran's benefIt claims that fall within the jurisdiction of the Article I United States Court of Appeals for Veterans' Claims.

As a young boy growing up in Davenport, Iowa, I dreamed of becoming a lawyer someday. That dream became a reality when I graduated from law school. It was made possible because of the support I received from my parents and family members, teachers at all grade levels, and friends. It was also made possible because of the freedoms we enjoy as Americans. However, I did not dream that someday I would be teaching law at the University of Mississippi School of Law or at my present station, Stetson University College of Law in Gulfport, Florida, the home state of my father who is now deceased, and my grandparents with whom I would frequently visit in Fort Pierce as a child. And I most certainly did not dream that someday I would be nominated by the President of the United States of America to become a Federal judge. However, this great Nation of ours with all of its quirks and imperfections has a way of making dreams become reality. Even things that I may not have dreamt, may happen to anyone of us if given the opportunity to achieve in a free nation.

In conclusion, I would like to thank the Committee for the opportunity to appear before you today and present this statement. I would be happy to answer any questions that you may have.

QUESTIONNAIRE FOR PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

1. Name: DAVIS (LAST) ROBERT (FIRST) N. (OTHER)

2. Present address: 6617 Gulfport Blvd South, Gulfport, Florida 33707 (CITY) (STATE) (ZIP CODE)

3. Position to which nominated: JUDGE, United States Court OF Appeals for Veterans Claims

4. Date of nomination: March 26, 2003

5. Date of birth: 20/ 09/ 1953 (DAY) (MONTH) (YEAR)

6. Place of birth: Kewanee, Illinois

7. Marital status: Married

8. Full name of spouse: Linda Margarette Williams

9. Names and ages of children: Robert L. Davis (11)

10. Education:

Institution (including city and State)	Dates attended	Degrees received	Dates of degrees
Georgetown Univ. Law Center Washington, D.C.	8/75-6/78	Juris Doctor	6/78
University of Hartford West Hartford, Connecticut	8/71-6/75	B.A. (Pol. Sci)	6/75
Davenport Central High School Davenport, Iowa	8/68-6/71	Diploma	6/71

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

Joint Service Achievement Medal, Joint Service Commendation Medal, Navy Achievement Medal, NATO Medal, Armed Forces Expeditionary Medal, Armed Forces Reserve Medal with "M" Device, Overseas Service Ribbon, National Defense Ribbon, Joint Meritorious Unit Award, Military Outstanding Volunteer Service Medal.

Defense Institute for International Legal Studies (Papua New Guinea July 2000)
DOD Reserve Officers Foreign Exchange Program (Germany, Sept. 1996)
Salvatori Fellowship, The Heritage Foundation (Summer 1996)
Teacher of the Year Award (1990), Washington and Lee University Law School

12. Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable, and other organizations for the last 5 years and any other prior memberships or offices you consider relevant.

Organization	Office held (if any)	Dates
National Security Law (ABA)	Advisory Committee Member	6/96 to present
St. Petersburg Tennis Center	Board of Directors	8/2001 to present
Intl Assoc. of Sports Law	Board of Directors	12/96 to present
Uniform Law Commission	Commissioner	7/94 to 7/2000

13. Employment record: List below all employment (except military service) since your twenty-first birthday, including the title or description of job, name of employer, location of work, and inclusive dates of employment.

Stetson University College of Law, Professor of Law 8/2001 to present
Gulfport, Florida
University of Mississippi School of Law, Professor 1/88 to 8/2001
Oxford, Mississippi
United States Dept. of Education, General Attorney 7/83 to 12/87
Washington, D.C.
Commodity Futures Trading Comm. Attorney 12/78 to 6/83
Washington, D.C.
United States Senate, Staff of Senator John C. Culver(IOWA) 1/76 to 2/78

14. Military service: List below all military service (including reserve components and National Guard or Air National Guard), with inclusive dates of service, rank, permanent duty stations and units of assignment, titles, descriptions of assignments, and type of discharge.

Please See Attached (Military Resume p.2) Attachment #1

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

Mississippi Business Law Committee, Administrative Procedure Act ~~(Advisory position to the Secretary of State's office)~~

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

Please See Attached #2

17. Political affiliations and activities: (a) List all memberships and offices held in and financial contributions and services rendered to any political party or election committee during the last 10 years.

Mississippi Republican Party, Executive Committee (1990- 2000)

Pinellas County Republican Party, Executive Committee (2001 to present)

(b) List all elective public offices for which you have been a candidate and the month and year of each election involved.

None

18. Future employment relationships:

(a) State whether you will sever all connections with your present employer, business firm, association, or organization if you are confirmed by the Senate.

If confirmed I intend to resign my full time teaching position

(b) State whether you have any plans after completing Government service to resume employment, affiliation, or practice with your previous employer, business firm, association, or organization.

I would like to resume my academic position at Stetson after completing government service.

(c) What commitments, if any, have been made to you for employment after you leave Federal service?

None at this time

(d) (If appointed for a term of specified duration) Do you intend to serve the full term for which you have been appointed?

Yes

(e) (If appointed for an indefinite period) Do you intend to serve until the next Presidential election?

N/A

19. Potential conflicts of interest:

(a) Describe any financial arrangements, deferred compensation agreements, or other continuing financial, business, or professional dealings which you have with business associates, clients, or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None

(b) List any investments, obligations, liabilities, or other financial relationships which constitute potential conflicts of interest with the position to which you have been nominated.

None

(c) Describe any business relationship, dealing, or financial transaction which you have had during the last 5 years, whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

None

(d) Describe any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any Federal legislation or for the purpose of affecting the administration and execution of Federal law or policy.

None

(e) Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements involved.)

I have no potential conflict of interest. However should any ever arise, I would immediately resolve even the appearance of a potential conflict.

20. Testifying before the Congress:

(a) Do you agree to appear and testify before any duly constituted committee of the Congress upon the request of such committee?

Yes

(b) Do you agree to provide such information as is requested by such a committee?

Yes

SUPPLEMENTAL QUESTIONNAIRE
FOR NOMINEES TO
THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS
(To Be Made Public)

1. Bar associations: List all bar associations and 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.

Iowa State Bar (1980 to present)

Virginia State Bar (1994 to present)

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

Supreme Court of Iowa (1980)

Supreme Court of Virginia (1994)

3. Judicial offices: State (chronologically) any judicial offices you have held and whether you were elected or appointed to them and provide a description of the jurisdiction of each such court.

None

4. Judicial opinions: If you are or have been a judge, attach a statement providing (a) citations for the ten most significant opinions you have written, (b) a short summary of and citations for all appellate opinions either reversing your decision or confirming it with significant criticism of your substantive or procedural rulings, and (c) citations for significant opinions on federal or state constitutional issues, together with citations for any appellate court rulings on your decisions in those cases. (If any of the opinions listed were not officially reported, please provide copies of the opinions.) None

5. Speeches: Attach copies of all speeches you have given on issues involving constitutional law, legal policy, or matters relating to veterans' benefits. If there were press reports of any such speeches and they were readily available to you, please provide them. See Attachment #3

6. Legal career: (a) Attach a chronological description of your law practice and experience after graduation from law school, including (1) whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk; (2) whether you practiced alone, and if so, the addresses and dates; and (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. See Attachment #4

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

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

(d) State whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court has varied over time, describe each such variance, giving dates.

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

7. Litigation: Attach a statement describing the ten most significant litigated matters which you personally handled. Give the citations of cases that were reported and the docket numbers and dates of those that were not. 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 dates 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 names, addresses, and telephone numbers of the individuals who were co-counsel with you and principal counsel for each of the other parties.

See Attachment#5

8. Legal activities: Attach a statement describing the ten most significant legal activities you have pursued (other than the litigated matters referred to above). Describe the nature of your participation, but please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

See Attachment #6

9. Outside employment: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, please provide details.

No

10. Party affiliation: State (a) your current political party affiliation and the place and date it was established, and (b) if you have in the past registered as being with a different party (or as an independent if not now registered as an independent), the place and inclusive dates of such registration.

Pinellas County Republican Party 10/2/01 (Florida)
Mississippi Republican Party (Approx 1990 in Lafayette County, MS)

11. Memberships in certain organizations: The Administrative Office of the United States Courts' Commentary to Canon 2C of the Code of Conduct for United States Judges states, "Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired." Do you currently belong, or have you ever belonged, to any organization which discriminates in this manner – through either formal membership requirements or the practical implementation of membership policies? If so (a) list all such organizations of which you are or were a member, (b) provide the dates of your memberships, and (c) describe in each case the efforts you made to try to change the organization's discriminatory policies or practices.

No

12. Services for disadvantaged persons:

The American Bar Association, in its Comment to Rule 6.1 of the Model Rules of Professional Conduct, states, "Every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer." Attach a statement describing what you have done to fulfill this responsibility, listing specific instances and the amount of time devoted to each. N/A However, I participated in the Peoples Law School Program at Stetson in June 2002. This program is open to the community free of charge. Topic: Airport Security after 9/11

13. Selection process:

Has anyone involved in the process of selecting you as a nominee discussed with you any specific case, legal issue, or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

No

AFFIDAVIT

State of Florida)ss
County of Pinellas

Robert N. Davis, being duly sworn, hereby states that he/she has read and signed the foregoing answers to the Supplemental Questionnaire for Nominees to the United States Court of Appeals for Veterans Claims and that the information provided therein is, to the best of his/her knowledge and belief, current, accurate, and complete.

Robert N. Davis
Signature of Nominee

Subscribed and sworn before me this 17 day of April, 2003

Sharon Gisclair
Notary Public

Sharon M. Gisclair
Commission # DD098325
Expires March 7, 2006
Bonded Thru
Atlantic Bonding Co., Inc.

ATTACHMENT #1
Reference Question #14
Military Service

14. Military Service:

Commissioned as an Ensign, September 1987 in the United States Navy Reserve Intelligence Program. January 1988 to October 2002. Originally assigned to Atlantic Intelligence Command Naval Reserve Unit 1379 NAS, Memphis, Millington, TN. Intelligence analyst: Geo-Political, Military, Target and Beach analysis. Served as ASSISTANT ADMINISTRATION OFFICER for NR LANTJIC 0186, Norfolk, Virginia during assignment to that unit in 1989.

The Atlantic Intelligence Command unit expanded and a second unit was developed in 1999, NR JICCENT 0382 (Joint Intelligence Center Central Command). The gaining command for this reserve unit is U.S. Central Command, MacDill, AFB, Tampa, Florida.

October 2002 to present. Commander, USNR, currently assigned to United States Special Operations Command, MacDill, AFB, Tampa, Florida. Intelligence Action Officer, Naval Reserve CINCSOINT 0108. The mission of USCINCSOC is the commander of a unified combatant command and exercises command authority, direction and control of assigned special operations forces. The mission of NR CINCSOINT 0108 is to support the U.S. Special Operations Command while maintaining a high state of readiness and to augment the gaining command, or other elements, in the event of war, or other contingencies, as provided by law.

TRAINING OFFICER, Joint Intelligence Center Central Command (JICCENT 0382, Memphis, TN) (October 2000 to present). As training officer for this new unit, I have the responsibility for coordinating all unit member general military, required schools and rate training requirements. As a new unit with the United States Central Command, MacDill AFB, I have the responsibility to ensure that all members are mobilization qualified and our unit is mobilization ready. Currently we have approximately 30 members with a target of 80 total unit members.

DIRECTOR, Awards and Recognition Program for Reserve Intelligence Area Three (December 1997 to present). This is a RIAC Staff assignment and requires coordinating the awards program for all five units in the region. I travel with the commanding officer and chief of staff to perform quality improvement visits (inspections) througout the region.

DIRECTOR, Basic Reserve Intelligence Training Program. As BRIT Director I had the responsibility for planning, implementation and instruction of all personnel entering the intelligence Field assigned to Reserve Intelligence Program Area Eight (Memphis).(October 1993 thru April 1996). Selected for membership on the National BRIT Charter Committee. The Committee's task was to review the BRIT program at the National level for improvement.

ACTIVE DUTY ASSIGNMENTS:

October 23, 2001, USCENTCOM J2 Intelligence Operations Division. Lieutenant Commander (LCDR USNR), Assigned to Long Range Planning Element (LRPE). Officer in Charge of All Source Intelligence Analysis for LRPE. Planning in support of OEF and ONE. Report through chain of command to J2 BG Kimmons and Gen Tommy Franks, CINC.

May 29-June 16, 2001, USS CORONADO deployed off the coast of San Diego. Participated in Joint Task Force Exercise 01-02. Operational control and training of Pacific Fleet forces. Served as Request for Information (RFI) manager for one week then spent remainder of tour as Collections Manager.

July 6-22, 2000, Defense Institute for International Legal Studies, Team member for Papua New Guinea. Conducted two-week trial advocacy and operational law course with lawyers, judges, and operational commanders from Papua New Guinea (PNG) Defense Force and Australian military lawyers. Also arranged to make a presentation at the University of Papua New Guinea on constitutional and international law.

May 27-July 25, 2000, National Security Agency, Fort Meade, Maryland. Assigned to the Office of General Counsel, Information Security Division. Wrote a report on NSA compliance with Directive 5530 regarding the processing of international agreements.

May 15-27, 2000, Office of Naval Intelligence (ONI), Provided country study research and developed reports for intelligence support to Information Operations Division, Computer Network Operations team. Wrote a Maritime Intelligence Report which provided information on a computer hacker group targeting Department of the Navy and Department of Defense military web sites.

January-October 1999, Presidential Selective Recall to Active Duty, Bosnia. Operation Joint Forge. SFOR/NATO Implementation of Dayton Peace Accords. Assigned as Compliance Assessment Team Chief (CAT), United States National Intelligence Cell (USNIC), Sarajevo, Bosnia. As CAT Chief, I investigated criminal linkages between the military, government and organized crime in Bosnia. After one month with the USNIC, I assumed command of the document exploitation mission at Task Force Eagle Tuzla, Bosnia. Task Force Eagle is the base camp for the United States run Multinational Division North (MND(N)) sector of Bosnia. As Officer in Charge of the SFOR/NATO Document Exploitation Section of the Combined Joint Intelligence Directorate, I established the theater document exploitation section at Headquarters, Stabilization Force, Sarajevo, Bosnia after first establishing the MND (N) document exploitation facility from ground zero. During peak work load, I managed 25 people in three sections and established "Go Teams" to help acquire material. I led several missions into hostile territory. The work force included contractors, NATO representatives, all branches of the United States Military and required coordination with the National Intelligence Support Team. During this tour I also served as a Hearing Officer for the SFOR Republic of Serbia Claims Tribunal. Served as one of five judges and heard personal injury and

property cases. Received, Armed Forces Expeditionary Medal, NATO Medal, and Joint Service Commendation Medal.

May-July 1998, National Security Agency, Fort Meade, Maryland. Assigned as intelligence support to the Office of General Counsel, Information Security Division. Detailed to the Joint Communications Monitoring Activity (JCMA) to work communication monitoring issues. Also handled international agreement issues.

August 1997, Office of Naval Intelligence, Suitland, Maryland. Assigned to ONI's Special Operations/Special Warfare Division.

June-July 1997, National Security Agency, Fort Meade, Maryland. Assigned to the Office of the General Counsel, Information Security Division. Conducted a study and developed a report on satellite communications and negotiating host nation agreements.

May 1997, Office of the Secretary of Defense, Pentagon. Assigned to the Assistant Secretary of Defense for Command, Control, Communications and Intelligence. Developed Instructions and Directives to implement policy guidance on total force concept for reserves and active duty components.

December 1996 - Performed two drill periods with the Department of Defense International Affairs and Intelligence Division of The Office of the General Counsel, Pentagon. Work included providing legal advice on NATO rules of engagement and war powers resolution issues.

October 1996 - Office of the Secretary of Defense, Pentagon. Assigned to the Reserve Intelligence Oversight Office. Developed Instructions and Directives to Implement Policy Guidance on total force concept for reserves and active duty components.

September 1996 - Department of Defense Foreign Exchange Officer. One of six officers selected on a flag chaired selection board from a nationwide field to participate in the Reserve Officers Foreign Exchange Program sponsored by the Assistant Secretary of Defense for Reserve Affairs. Assigned to the Federal Republic of Germany's Naval Intelligence Community to exchange concepts and ideas on intelligence related programs.

August 1996 - Atlantic Intelligence Command, Norfolk Virginia. During this tour, assigned to the International Studies Program Office and developed a Memorandum of Understanding (MOU) between USACOM/AIC and Supreme Allied Commander, Atlantic (SACLANT). This assignment required that I maintain close liaison with U.S. and NATO staffs.

May 1995 - Student, Basic Naval Operational Intelligence Course, TC, Dam Neck, Virginia. This course is designed to provide officer reserve students with realistic scenarios of fleet operations and to train them in the fundamentals of the Ocean Surveillance Information System.

June 1994 - NAVAL ANALYST, HQ USEUCOM, Joint Analysis Center, RAF Molesworth, United Kingdom. JAC Molesworth is the European Theater's multiservice, JCS sponsored all source intelligence production facility. It provides intelligence support for contingency operations, special exercises, and ongoing combined Joint Task Force missions for USCINCEUR, NATO, United Nations and other allied countries, component and major commands, and special operations forces. During this AT, I managed the naval watch desk for the Balkan Intelligence Support Element which included the preparation of the nightly Balkan Intelligence summary.

August 1993 - SUPPLOT WATCH OFFICER, USS AMERICA CV 66 deployed. Assisted in planning contingency strike operations for Mediterranean theater of operations. Provided intelligence support to Airwing Commander and nine tactical aviation squadrons. Assisted the N2 in daily supplot briefings by preparing Mediterranean naval and air order of battle, as well as assessment on current ASW/ASUW threats. Developed brief on Adriatic Rules of Engagement which included United Nations Directives, Operational Plans, and Rules of Engagement messages.

August 1992 - STUDENT, Fleet Intelligence Training Center Pacific, San Diego, California. Imagery Interpretation Course. This course provided instruction in the basics of imagery intelligence, reconnaissance systems, planning of reconnaissance missions and interpretation of the resulting imagery.

July 1992 - TARGET INTELLIGENCE ANALYST, Atlantic Intelligence Command, Norfolk, Virginia (Gaining Command). Provided intelligence material production in support of Lantcom forces, Eucom and Southcom naval forces.

February 1991 - SYSTEMS ANALYST, US CINCEUR, Vaihingen, Germany. Unified Command Headquarters Responsible for providing the U.S. contribution to Allied Command Europe and conducting U.S. national responsibilities and unilateral activities in Europe, Africa, and the Middle East in accordance with Unified Command Plan assigned responsibilities. During this period I was assigned to the European Intelligence Support System Program Management Office, a multi-million dollar computer development project to establish the computer facility at JAC Molesworth. Additionally, I volunteered to work additional hours with the Joint Intelligence Center Watch supporting Desert Storm activities.

April 1990 - WATCH OFFICER, US CINCLANT, Norfolk, Virginia. Participated in Exercise Ocean Venture 1990. As a military analyst during the Joint Exercise I provided intelligence information to subordinates in support of planned operations. During this time I was also tasked to monitor real world developments in Liberia.

June 1989 - INSTRUCTOR, Schools Command, NAVAVSCHOLSCOM, Pensacola, Florida. The Academic Department develops, operates, and administers academic instruction programs that support all approved curricula at Naval Aviation Schools Command. Program emphasis is directed toward providing a foundation for further

training, education, and personal growth of aviation students and designated categories of newly commissioned officers. During this assignment, I taught military law to aviation officer candidates. At that time, I was the only ensign to qualify as a classroom instructor.

July 1988- STUDENT, NAVAVSCHOLSCOM, Pensacola, Florida. Direct Commission Officer Course, Officer indoctrination. This course consisted of 80 hours of instruction in Military Law, United States Sea Power, Division Officer responsibilities, Military Orientation, Naval Administration, Naval Correspondence, Damage Control, Naval Leadership, and Military Organization.

RECENT DEVELOPMENTS:

July 2000, Defense Institute for International Legal Studies, Team Member for Papua New Guinea.

September 1999, Hearing Officer, SFOR Republic of Serbia Claims Tribunal, Sarajevo, Bosnia.

January 1995, Founder, Journal of National Security Law.

ATTACHMENT #2
Reference Question #16
Published Writings

16. Published Writings:

The National Security Agency and the Wall of Silence: Striking the Balance between Individual Privacy and National Security. Brooklyn Journal of International Law (forthcoming fall 2003)

Exploring the Contours of Agent Regulation: The Uniform Athlete Agents Act, Villanova Sports & Entertainment Law Journal (Vol. VIII, No. 1 2001)

Bosnia briefing to the ABA Standing Committee on Law and National Security: A Report on Document Exploitation in Bosnia. Standing Committee Newsletter (November 1999).

Document Exploitation: An Underutilized Intelligence Collection Asset, Vol. 3, Journal of National Security Law, December 1999.

Faculty Editor, The Journal of National Security Law, Volume 3, (December 1999)

Olympic Competition: An Opportunity to Participate or a Privilege with Obligations, Sports & European Community Law 154, (1998).

Inaugural Issue of The Journal of National Security Law, 1 JNSL 1, (December 1997). Founder and Faculty Editor-in-Chief.

Calming the Waters: Initiatives for Asia Pacific Maritime Cooperation, Book Review (Spring 1997) published by Ocean Development and International Law Journal.

Legal Issues and the Olympic Games, Vol. 3 Villanova Sports & Entertainment Law Journal 391 (1996).

Ambushing the Olympics, Vol. 3 Villanova Sports & Entertainment Law Journal 423 (1996).

The Lawyer as a Peacemaker, Published by the Mississippi Trial Lawyers Association Fall 1995 Mediation and Arbitration Seminar (September 1995).

Diversity: The Emerging Modern Separate But Equal Doctrine, William and Mary Law School Journal of Women and the Law, Vol. 1 p. 11 (Fall 1994).

The Quest for Equal Education in Mississippi: The Implications of United States v. Fordice, Vol. 62 Mississippi Law Journal, (Spring 1993).

New Directions in Administrative Law, Vol. 43 Administrative Law Review 819, (1991).

Athletic Reform: Missing the Bases in University Athletics, Vol. 43 Capital University Law Review 597 (1991).

Academics and Athletics on a Collision Course, Vol. 66 North Dakota Law Review 239
(1990).

The Court and Athletic Scholarships, Vol. 67 North Dakota Law Review 163 (1991).

Legislative needs Assessment Concerning Blind and Vision Impaired, University of Mississippi 1989.

Franchise Relocations, Entertainment and Sports Lawyer, 1986.

Choosing a Futures Broker, Center for Futures Education Cedar Falls, Iowa Copyright 1983.

Legislative History of the Commodity Exchange Act, CFTC Library, 1980.

ATTACHMENT #3

Reference Question #5
Supplemental Questionnaire
Speeches

5. Speeches:

Most of the speeches I have given have not been published. Some have been based on published articles involving the same topic. I use talking points for most of my presentations. Many of the speeches I have given on the USA Patriot Act are based on an article that will be published by the Brooklyn University Law School's Journal of International Law in the fall of 2003.

The Florida Library Association, The USA Patriot Act and Libraries, April 23, 2003, Hyatt Regency, Orlando, Florida.

Barney Masterson Inn of Court, Pupilage Group#6, Terrorism on Trial, March 27, 2003, Stetson University College of Law.

Ferguson White Inn of Court, Pupilage Group#1, Civil Liberties in a Time of National Crisis, University Club of Tampa, September 12, 2002.

University of South Florida, War on Iraq: Wisdom or Folly? A panel discussion, Thursday, October 31, 2002.

Stetson University College of Law, The USA Patriot Act and Libraries, Wednesday, October 2, 2002.

Stetson University College of Law, One Year Later: How our Laws and Civil Liberties have been affected, September 11, 2002.

University of Tampa, Remembering, Reflecting, Responding, September 11, 2002.

St. Petersburg College, USA Patriot Act, Libraries, National Security and Privacy, August 2, 2002, St. Petersburg, Florida.

University of South Florida, USA Patriot Act Debate, against the Florida State President of the ACLU (Howard Simon), April 25, 2002, St. Petersburg, Florida.

University of Papua New Guinea, Constitutional and International Law classes, July 20, 2000, Port Moresby, Papua New Guinea. "Comparative Systems in Partnership."

Sports Lawyers Association, Twenty Sixth Annual Conference, May 18-20, 2000, San Francisco, CA., "Report on the Uniform Athlete Agents Act."

American Bar Association, Standing Committee on Law and National Security, October 30, 1999, Washington, D.C., "Bosnia and Foreign Policy."

International Association of Sports Law, July 9-13, 1997, Naufplio, Greece, "Olympic Competition: An Opportunity to Participate or a Privilege with Obligations."

United States Commission on Civil Rights, March 6, 1997, Greenville, Mississippi, "Is Mississippi on the Right Path to Providing Equality of Opportunity at its Colleges and Universities?"

United States Naval Academy, John M. Olin Lecture Series, October 21, 1996, "International Security Law: A Post Cold War Perspective."

International Association of Sports Law, IASL Congress November 10-11, 1995, Barcelona, Spain "Ambushing the Olympic Games in 1996."

Makerere University School of Law, January 1996, Uganda, Africa, "Uganda's new Constitution and Human Rights; Resolving disputes through Arbitration and Mediation."

Mississippi Trial Lawyers Association, Mediation and Arbitration Seminar (September 1995).

Sidney Redmond Lecture Series, Jackson State University, April 28, 1995, "Courts, Higher Education and Opportunities for Citizenship."

Testified before the House Judiciary Committee on Legislation sponsored by The National Conference of Commissioners on Uniform State Laws. Mississippi Legislature (January, 1994)

Speaker, Mississippi Association of Supervisors, 1993 Midwinter Conference, Jackson, MS (January, 1993). Current Issues Update, The Ayers litigation.

Speaker, Capital University Law School Symposium, The Reform of Big Time Intercollegiate Athletics, April 10, 1991, Columbus, Ohio.

Speaker, Association of American Law Schools, Annual Conference Entertainment and Sports Law Forum on Athletic Reform, January 5, 1991, Washington DC.

Speaker, American Enterprise Institute, Procurement Oversight Conference, Washington, DC (July 23, 1990). Topic: Pros and Cons of the Procurement Process.

Speaker, Washington University School of Law, St. Louis, Missouri, Sports Law Symposium (Oct. 16, 1989).

Testified before the Special Judiciary Subcommittee of the Mississippi State Senate on Senate Bill Number 2067: An Act to Provide For Regulation of Athlete Agents in the State of Mississippi, (Feb. 16, 1988).

Presentation before the University of Mississippi Varsity Football Team on Sports Agents, March 21, 1988.

Presentation for the Tenth Annual School Law Institute University of Mississippi Law Center, June 6-10, 1988. Topic: Legal and Supreme Court Update, June 10, 1988.

Panelist, Congressional Black Caucus, Washington, DC Blacks and the Business of Sports (1987).

ATTACHMENT #4

Reference Question #6
Supplemental Questionnaire
Chronological description of law practice and experience after graduation from law school

Question#6(a),(b),(c)(d)(e):

1. **(December 1978-July 1983), Attorney, Office of the General Counsel, United States Commodity Futures Trading Commission**, 2033 K Street NW, Washington, DC.

   (a). This was my first legal position after law school (GS-11/12/13). As an attorney with the appellate section of the general counsel's office my responsibilities included representing the United States in administrative hearings and federal courts.

   (b). My practice focused primarily on research, motions practice and opinion writing. The appellate section of the general counsel's office employed approximately six lawyers and was charged with reviewing administrative law judge opinions, testing them for legal sufficiency and writing opinions on behalf of the commissioner's, the final administrative appellate body of the agency.

   (c). The CFTC is an independent regulatory agency and has independent litigation authority (independent of the Department of Justice). The agency was charged with policing the commodities industry and prosecuted cases involving commodities fraud and corrupt financial practices. My immediate clients were the commissioners of the agency.

   (d). From 1978 until 1980 I did not appear in court much at all. My practice was heavily research and writing. From 1980 until 1983 when I began working for the Division of Enforcement, I began to handle more administrative and court litigation. My clients typically were members of the public who had lost revenue because of illegal financial practices on the part of commodities brokers.

   (e). I did not try cases to verdict during these beginning years of my legal experience. I was involved in taking depositions, interrogatories, motions practice, and settlement discussions in various stages of the administrative enforcement process from 1980 through 1983.

2. **(July 1983 to November 1987), Attorney, United States Department of Education**, 400 Maryland Ave. SW, Washington, D.C.

   (a). This position offered me a promotion to GS-14 and significantly more responsibility in handling administrative and court cases.

(b). As a general attorney in the division of business and administrative law, I had responsibility for a wide variety of cases including government contract litigation, grant administration, labor relations, property disposition and tort claims. Approximately ten lawyers worked in this division.

(c). My clients typically included contracting officers, administrators and management level employees of the Department of Education.

(d). Most of my litigation experience at the Department of Education involved administrative hearings before the board of contract appeals or hearings related to personnel matters. I appeared in administrative hearings frequently. In 1984 I joined the District of Columbia Fee Arbitration Board as an Arbitrator. I subsequently became a panel member for the American Arbitration Association. In 1986, I began teaching part time at American University. I taught two courses, civil judicial administration and criminal judicial administration.

(e). During my employment at the Department of Education, I was selected to participate in an agency exchange program with the Office of the United States Attorney for the District of Columbia. The purpose of the program was to provide attorneys at the Department of Education, criminal trial experience. During this period, I worked as a Special Assistant United States Attorney and prosecuted cases on behalf of the United States in the District of Columbia Superior Court. The cases I prosecuted ran the gamut from assault to drugs and weapons offenses. I tried approximately twenty plus cases including jury and bench trials. This was my last position before I started teaching full time.

3. **(December 1987 to August 2001), Professor of Law, The University of Mississippi School of Law**, Grove Loop, University, Mississippi.

(a). This was my first full time law school teaching position.

(b). My teaching responsibility included constitutional law, administrative law, public sector labor relations and sports law.

(c). I began to teach and write in the areas of constitutional law, administrative law, and sports law. I also became very involved in arbitration and mediation through the American Arbitration Association.

(d). I have not appeared in court since 1987 with the exception of providing assistance to family and friends.

4. **(August 2001 to present), Professor of Law, Stetson University College of Law**, 1401 61st Street South, Gulfport, Florida.

(a). I accepted a full time tenured position at Stetson University College of Law in August 2001 after spending the 2000 academic year as a visitor at Stetson on leave from the University of Mississippi School of Law.

(b). I teach constitutional, national security, administrative and sports law. I have continued to remain involved in the mediation and arbitration process of the American Arbitration Association.

(c). My clients now and for the past 15 years are my students. I have concentrated on constitutional and national security law.

(d). I have not appeared in court since 1987.

(e). Not applicable to this position.

ATTACHMENT #5

Reference Question #7
Supplemental Questionnaire
Litigation

7. Litigation:

1(a). The last case I litigated for the government was in 1987. During the past 15 years as a law professor I have taught classes, served as a National Commissioner for Mississippi, mediated and arbitrated cases, published law review articles, founded the Journal of National Security Law, and given presentations on a variety of subjects. Please see my publication and presentations lists attached. However two cases immediately come to mind. One case I worked on at the Commodity Futures Trading Commission captioned: John J. Damiani v. Futures Investment Company, Inc., CFTC Docket No. R 77-15, CCH 21097 1980.
(b). This was a final decision from the commission after an appeal from an administrative law judge decision. The case established that officers and other employees or agents of corporate commodity trading advisors are liable under Section 14 of the Commodity Exchange Act, just as surely as their firm, for any commodity trading advice they give to the public for compensation or profit which operates as a fraud upon that public.
(c). My supervisor was Richard A. Graham, 3500 Raymond St., Chevy Chase, MD 20815-3228. Tel: (301)656-7953.

2(a). The second case, was one in which I was involved at the Department of Education.
(b). We filed a motion for summary judgment at the Board of Contract Appeals, lost the summary judgment motion then settled the case. To the best of my recollection the case was captioned EDS v. U.S. Department of Education. I do not have a docket number. The case was significant to me because I remember counsel for EDS being particularly aggressive.
(c). Senior counsel on this case was Richard S. Werksman, 10607 Kennelworth Ave. Apt. #103, Bethesda, Maryland 20814. Tel:(301) 530-7967

While at the Department of Education as an attorney in the division of business and administrative law, I tried or resolved many administrative matters. As a Special Assistant United States Attorney, I tried at least twenty criminal cases before a judge or jury. However, the two cases discussed above stand out in my litigation experience.

ATTACHMENT #6

Reference Question #8
Supplemental Questionnaire
Legal Activities

8. Legal activities:

While this question appears to be intended for practicing lawyers, I have provided below a description of several significant activities that I have been involved in during my academic career.

1. Arbitrator for the District of Columbia Fee Arbitration Board (1982-1987). As a panel member on this board, I heard and resolved cases regarding fee disputes between District of Columbia attorneys and their clients.

2. Commercial Arbitrator and Mediator for the American Arbitration Association (1985 to present). As a neutral panel member for the AAA, I arbitrated and mediated a variety of commercial cases including property, personal injury, contract disputes and sports issues. The AAA cases are as follows:

   69-134-106-9
   69-160-45-0
   57-129-389-0
   57-129-419-0
   57-129-474-0
   12-114-55-0
   12-114-306-0
   12-114-324-0
   30-190-730-0

   Additionally, while in Mississippi, I was asked to mediate approximately fifteen cases independent of the AAA.

3. Labor Mediator (EEO) for the United States Postal Service, (1998 to present). As a member of the United States Postal Service's panel of mediators, I mediated approximately five cases in Mississippi.

4. Arbitration Panel, United States Olympic Committee, (1996). As a panel member, I was asked to be on call for the USOC during the 1996 Olympic Games.

5. Mississippi Commissioner, National Conference of Commissioners on Uniform State Laws. Appointed by the Governor, (February 1993-July 2000). As one of four Mississippi commissioners, I worked with the national conference in passing uniform legislation including such uniform laws as the uniform commercial code, uniform child custody act, and the uniform probate code among many others. I

served as the national reporter for the development of the uniform athlete agents act.

6. Chairman 1996, American Association of Law Schools, Sports Law Section. Editor, law and sports section newsletter (1994 to 1999).

7. Vice Chairman, Programs, International & National Security Law, The Federalist Society (1997-1999). Coordinated a panel discussion on the international criminal court for the national meeting.

8. Vice Chairman, Publications, International & National Security Law, The Federalist Society. Editor of the section newsletter (1999).

9. Founder and Editor-in-Chief, Journal of National Security Law (1995 to present). Wrote and edited articles and coordinated all phases of journal publication.

10. Hearing Officer, SFOR Claims Tribunal Republic of Serbia, Sarajevo, Bosnia (September 1999). In this capacity, I served as one of five judges (1 German, 2 Serbian and 2 American) to hear and decide claims filed by Serbian citizens against SFOR for damage resulting from alleged SFOR activities.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED TO ROBERT N. DAVIS, NOMINEE TO BE JUDGE, U.S. COURT OF APPEALS FOR VETERANS CLAIMS

Question 1. In 1991, you reviewed a book authored by Professor Christopher Edley, Jr. titled, Administrative Law: Rethinking Judicial Control of Bureaucracy. *See* 43 Admin. L. Rev. 819 (1991). Professor Edley advanced some rather novel ideas on the issue of judicial deference to agency decisionmaking, and your commentary seemed to agree with them. You said, for example, that "I agree totally with [Professor] Edley's proposition that our traditional approach [to administrative law] does not provide adequate guidance on when [judicial] deference [to administrative agencies] is appropriate." Do you believe that "guidance" on the issue of deference owed by the courts to administrative agencies has been clarified since you wrote that statement? If you are confirmed, what principles would guide you in determining the appropriate degree of deference owed by the U.S. Court of Appeals for Veterans Claims ("the Court") to decisions of the Department of Veterans Affairs ("VA")?

Response. A. Yes, I believe that "guidance" on the issue of deference has been clarified and reinforced since I wrote the above statement. When the book review was written in 1991, my major point of agreement with Professor Edley was with his thesis that often, administrative agency action is not always so easily divided into the law, fact or policymaking categories. Because agency action may frequently involve a mix or blend of these categories, it may not always be easy to apply conventional judicial review approaches to mixed agency action. However, since writing the book review, I have not found a better approach than the traditional one based on the separation of powers model. The issue of deference owed by courts to administrative agencies is a consistent theme in administrative law. The debate regarding scope of review and judicial deference will probably continue to occupy jurists, administrative law scholars and practitioners for some time to come. However, I believe, as do several administrative law scholars, that the United States Supreme Court has consistently sent strong signals to the lower Federal courts, to leave agency determinations alone unless the agency has abused its discretion or acted inconsistent with its statutory authority. Recent administrative law cases indicate that the early messages of cases like *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council* 467 U.S. 837 (1984) and *Vermont Yankee Nuclear Power Corp.* v. *Natural Resources Defense Council, Inc.* 435 U.S. 519 (1978) has been received and followed. See, for example, *Household Credit Inc.,* v. *Pfenning*, 2004 WL 840101, April 21, 2004, holding that the Federal Reserve Board's promulgation of Regulation Z interpreting the "finance charge" definition to exclude over-limit charges under the Truth in Lending Act, was not unreasonable and therefore entitled to judicial deference.

B. If I am confirmed, I would be guided by the following principles in determining the appropriate degree of deference owed by the United States Court of Appeals for Veterans Claims (CAVC) to decisions of the Department of Veterans Affairs. First, I would be informed by the express provisions of the relevant statute(s) providing judicial review authority. Second, I would follow precedent to the extent that it is consistent with statutory authority. Third, I would recognize that the agency is usually in the best position to determine facts and defer to such factfinding determinations by the Board of Veterans Appeals (BVA) unless they are "clearly erroneous." Fourth, with respect to issues of law, I would review Board determinations "de novo" to ensure a consistent rule of law development. Additionally, constitutional principles of fundamental fairness and procedural regularity would also inform my decisions on the bench.

Question 2. Further with respect to Professor Edley's article, you state that he advances the notion that courts and agencies should "form a partnership in which the courts make decisions based on how effectively and efficiently the agency is responding to the needs of society." Do you believe that courts should take into account how well an agency is responding to the needs of society when it reviews agency actions? How can it do that? Do you think judges have particular expertise in making such judgments?

Response. A. While I do not believe it is the role of the courts to take into account how well an agency is responding to the general needs of society when it reviews agency actions, it seems to me that part of what the court must do when it reviews agency actions is to answer several fundamental questions in the case. What is the problem? What is the remedy? Is there a way to fix the cause in order to avoid similar problems in the future? I do not believe the agency focus should be on the "needs of society" generally; however, I do believe that the reviewing court should certainly consider in the context of each case presented whether or not the agency is fulfilling its specific statutory mandate efficiently. Thus, questions regarding whether the Board of Veterans Appeals or the CAVC case processing procedures ensures timely

decisions for claimants go directly to the issue of whether the agency is responding to the needs of its constituents.

B. I believe the ability of courts to address the question of whether the agency is responding to the needs of its particular constituents is limited to the context of the specific case when it reviews agency actions. However, the end of year reports of the CAVC, for example, should certainly be scrutinized by the judges, from a big picture perspective, in an effort to detect patterns, trends, gaps, highs and lows or particular areas of case processing that need attention or are problematic at the agency level.

C. While I do not believe that judges have a particular expertise in making determinations about the agency response to the needs of society generally, I do believe judges are in a good position to determine whether agencies are efficiently fulfilling their statutory mandates based on an assessment of the kinds of cases brought before the court, or the frequency of the type of case or the problems that certain agency rules generate for claimants. However, the question of whether or not agencies are ultimately fulfilling their statutory role by meeting the needs of their constituents seems to me to be a job better left to the Congress.

Question 3. You are a Professor of Law at Stetson University College of Law, and you have taught administrative law there and at the University of Mississippi. Which two or three administrative law cases would you cite as being the most significant on the topic of judicial review of an agency's actions? Why these cases?

Response. A. In my view, the two most significant cases on the topic of judicial review are *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council*, 467 U.S. 837 (1984) and *Vermont Yankee Nuclear Power Corp.* v. *Natural Resources Defense Council, Inc.*, 435 U.S. 519 (1978). Both cases are law defining moments in administrative law because they directly address the role of the courts in reviewing administrative action. *Chevron* addresses judicial review for issues of law and *Vermont Yankee* addresses judicial review in the context of administrative rulemaking.

B. In *Chevron*, the United States Supreme Court developed a two-step approach for the courts to follow when addressing scope of review issues of legal interpretation. There, the Court said, if the intent of Congress is clear and it has spoken directly to the precise question at issue then follow that intent. However, if the court determines that Congress has not directly addressed the issue, the court's role is not to simply impose its own construction on the statute but rather to determine whether the agency's interpretation is based on a permissible construction of the statute. The Court has long recognized that considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer.

In *Vermont Yankee*, the Court held that §553 of the Administrative Procedure Act established the maximum procedural requirements which Congress was willing to have the courts impose on agencies conducting rulemaking procedures. Agencies are free to grant additional procedural rights in the exercise of their discretion, but reviewing courts are generally not free to impose them if the agencies have not chosen to grant them.

Thus, both cases stand for the general proposition that because agencies are charged with the day to day administration of the organic statute, agencies are entitled to a good degree of deference and discretion regarding the best methods to pursue the discharge of their statutory duties.

Question 4. The issue of statutory construction, and the so-called "plain meaning" rule, has, on occasion, been pivotal in veterans' litigation. Would you hesitate to reverse or remand a decision by the VA that is consistent with long-standing VA practice, but is contrary to your own best reading of the express words of a statute? Would your judgment on such a question be influenced by your conception of the "common sense" of VA's historical interpretation or by your sense of what is the preferable or most logical policy? Would the potential cost of overturning a historical—but, arguably, erroneous—statutory interpretation enter into your decisionmaking in such a case?

Response. A. I would hesitate to reverse or remand a decision by the VA that is consistent with long-standing VA practice, but is contrary to my own best reading of the express words of a statute. I would hesitate to substitute my judgment for that of the agency charged with implementing the statute as long as the agency construction is a reasonably permissible one. This approach is consistent with administrative law precedent.

B. My judgment on such a question would be influenced by my concept of the "common sense" of the VA's historical interpretation and its logic as applied.

C. A cost-benefits analysis would certainly enter into my decisionmaking regarding whether or not it is appropriate to overturn a historical, but arguably erroneous,

statutory interpretation. However, if the interpretation is clearly contrary to the statutory scheme I would be more inclined to overrule the agency despite the cost. If, on the other hand, the agency interpretation is a close call (as to whether it is erroneous) and the potential cost of overturning the interpretation is excessive, I would be less inclined to overrule the agency.

Question 5. The Committee receives extensive mail that expresses a common theme: that justice delayed is justice denied, and that it does a veteran limited practical good to prevail on a claim if it takes years of decisions, appeals, and remands to ultimately prevail. From what you have been able to learn about the adjudication of veterans' benefits since your nomination, do you think it takes too long for a claim to work its way through the current administrative and judicial review process? If so, do you have any proposed remedies the Committee might consider to speed up the process?

Response. A. I strongly believe that one of the major weaknesses of the VA processing system is precisely that it takes too long for a claim to work its way through the current administrative and judicial review process. On average, it takes the regional offices 184.2 days to render a decision on an initial claim and an average of 672 days to process a remand from the CAVC or the BVA. (June 3, 2002, Draft Report of ABA Section of Administrative Law and Regulatory Practice.) The time frame for CAVC decisionmaking, from filing to disposition has averaged around 1 year for the last 7 years. (Report to the Social Security Advisory Board by Paul Verkuil and Jeffrey Lubbers, March 1, 2002.) For veterans who may have limited resources at their disposal, justice delayed is justice denied.

B. The proposed remedies that I would give serious consideration to include many of the recommendations contained in the October 2001, VA Claims Processing Task Force Report to the Secretary of Veterans Affairs. The Task Force identified flaws to exist in accountability, communications, and change management. The Task Force recommended actions to improve the appeal resolution time of veterans' claims at the Board of Veterans' Appeals and actions to improve the timeliness and quality of compensation and pension medical examinations conducted by the Veterans Health Administration. Among the suggested recommendations include the creation of Teams from experienced staff in order to expedite resolution of Compensation and Pension claims cases over 1-year old; Revision of the operating procedures in VBA manual (M21-1) involving the time for submitting evidence by a claimant, physician or hospital; Require that BVA process the current workload of appeals rather than issuing remands; Establish specialized claims processing teams within defined claims processing functions; Designate specialized Regional Offices to work specific tasks in order to increase efficiency; Decrease the time delay necessary to place incoming claims under control; Improve record recovery from record center; Authorize VBA Regional Offices to hire administrative staff and contract for administrative services to support claims processing; Better utilize Veterans Service Organizations; and Consolidate the function of income matching.

Additionally, according to a March 2002 Report to the Social Security Advisory Board by Paul Verkuil and Jeffrey Lubbers, the main criticisms of the VA appeals process concerns the slowness of the administrative process and the penchant of both the BVA and the CAVC to remand cases back to the rating boards. Recommendations in this report similarly include taking remand authority away from the BVA or elimination of the reconsideration option before a hearing officer at the VBA and go directly to the BVA.

Similarly, the administrative law and regulatory practice section of the American Bar Association in its July 2002 Report on Recommendations for Improvements in Veterans' Judicial Review, recommends that the CAVC should hear all questions of law presented to it rather than refusing to resolve a legal claim not expressly argued before the BVA; and exercise its statutory authority to expedite VA decisions when it remands a case for further administrative proceedings by ordering VA to readjudicate the case by the date ordered by the court.

In my view, these recommendations are certainly starting points for a major system overhaul with a focus on providing timely, fair, and expeditious resolution of VA claims. If confirmed, I would dedicate my energy to ensuring that claims processing systems at all levels work efficiently so that veterans will recognize that there has been a major improvement in the amount of time it takes for a claim to reach finality. Moreover, none of the reform recommendations that I have read seem to include an alternative dispute resolution process. I would recommend, to the extent possible, that it would be worthwhile to investigate whether there may be a role for mediation or arbitration in the VA claims process and/or some expanded use of the CAVC's case settlement process.

Question 6. It has been posited that the U.S. Court of Appeals for Veterans Claims should have broader discretion to craft remedies sua sponte when it finds errors in VA decisionmaking. Do you have any views on this subject?

Response. I believe giving the CAVC broader discretion to craft remedies sua sponte could significantly aid the Court in addressing backlogs and ultimately assist in providing a better and more efficient appeals system by resolving issues itself rather than remanding issues to the BVA. The administrative law and regulatory practice section of the ABA stated in its July 2002 Report that "When the CAVC remands a case, it contributes to delay by refusing to resolve issues presented to it other than the ground relied upon for remand." The ABA Report concluded that the impact of the CAVC remand practice is significant because it has remanded nearly 70 percent of the cases it has heard over the last 7 years. In my view, this remand percentage is too large. One of the ABA recommendations to Congress was that it enact legislation to require the CAVC, when it remands a claim for further administrative proceedings, to resolve all allegations of error presented by and briefed by the appellant that, if left unresolved, could be the subject of a subsequent dispute before the VA. Additionally, the ABA has recommended that the CAVC as a matter of general practice should hear all questions of law presented to it rather than refuse to resolve a legal claim not expressly argued before the BVA.

Question 7. The U.S. Court of Appeals for Veterans Claims allows non-attorney practitioners to appear and to argue cases for claimants. Further, the Court hears many appeals—more than most courts, I think—where a non-attorney claimant appears pro se. How would the participation of a non-attorney advocate in a case before you affect your approach to hearing—and deciding—a case? Do you think judges should make special accommodations for non-attorney practitioners? For pro se litigants?

Response. A. I understand that dealing with pro se cases is one of the Court's biggest problems. The participation of a non-attorney advocate or a pro se litigant can be even more demanding of judicial resources because of the necessity to ensure that the claimant is adequately and fairly represented. The participation of a non-attorney advocate in a case before me would affect my approach to hearing and deciding a case only to the extent that I would take particular care to make sure that the litigant received fair representation. The public list program and the National Organization of Veterans Advocates have helped to provide a baseline standard of non-attorney representation, but the quality of advocates is not always consistent.

B. While I do not believe special accommodations for non-attorney practitioners or pro se litigants should be made in the general conduct of a hearing or in the way a judge should decide a case, I do think the judicially responsible approach should be to take all steps to ensure that the litigant gets a fair hearing and decision. This is no more or less than any other litigant is entitled to but ensuring a fair process may take more time when the litigant is a non-attorney or pro se.

Question 8. The Committee's staff—and the White House Counsel's Office and the Department of Justice—are currently researching a legal question that has arisen as we consider your nomination. The question is, generally, whether Reserve Officers have to—or ought to—resign their commissions if they serve on the bench. Have you considered this question? In your White House vetting process, did anyone there raise the issue? Do you intend to remain a Reserve Naval Officer if you are confirmed by the Senate?

Response. A. I remember raising the question when I was initially interviewed by the White House regarding my status in the Naval Reserves but no one had an answer. While I am not aware of any express prohibition of a judge serving in the military Reserves, to the extent that it would become difficult or impossible for the Reserve Officer to meet his or her obligations on the bench I think it would be appropriate and prudent to resign the commission. The potential difficulty would arise if the officer were activated or recalled to active duty based on a national emergency like 9/11.

B. I have considered the question and am aware of several judges who have also been Naval Reserve Officers. The judges that I know are state court judges in Florida.

I am not aware of any law prohibiting a Federal judge from serving in the Naval Reserves. I know the Soldiers and Sailors Relief Act requires employers both public and private to maintain the servicemembers' job.

C. In my own experience, I have attempted to balance my professional career with my responsibilities as a Naval Reserve Officer. It has not been easy but my employers have been supportive of my service to my country. I recognize that it may be much easier to take a leave of absence from an academic institution than from a private or public employer or from the bench. If I am confirmed by the Senate, my

intention is to maintain my Reserve commission unless it clearly interferes with my responsibilities on the bench. If the Reserve commission interferes with my judicial duties then I would resign my commission.

Question 9. Committee staff has been informally advised by the Department of Justice that it sees no per se proscription against retention of a commission in the Armed Forces and service on the bench—at least so long as a Judge's service in the military is not of a legal nature. One might wonder, however, whether the time-demands of the military might prevent a Judge from executing his or her judicial responsibilities. Do you forsee any problems of this nature? What will you do if you are activated again? Would you be forced to resign from the bench? Would you be forced to—and would you be allowed to—resign your commission?

Response. A. The normal time demands of the military would not prevent a judge from executing his or her judicial responsibilities. The requirements are to perform military drills with a unit 1 weekend a month and a minimum of 2 weeks active duty per year. In. my military career, I have usually performed much more service on an annual basis than the required minimum.

B. The situation is complicated when a national exigency requires activation of the Reserve forces. In the past, I have volunteered for active duty service in exigent circumstances or when I thought I could contribute to a mission. However, I understand that there are categories of Reserve military service that may not require activation. I would have to look into this. If I am on the bench and activated, I don't believe I would have the option of resigning my commission until after the period of activation has ended.

C. Activation with the military would not force me to resign from the bench but it would temporarily delay my ability to continue the day to day work of the court.

Usually, involuntary recalls are no longer than 2 years. The longest period of time for which I have been activated has been 2 years and even then I, along with many servicemembers, was allowed to return to my civilian career after 1 year.

Question 10. During your time as a Law Professor at the University of Mississippi, you spent a considerable period of time away from the law school to serve in the Navy.

This Committee oversees the administration of two statutes by the Department of Labor that protect servicemembers and their families in such situations. First, the "Uniformed Services employment and Reemployment Rights Act," 38 U.S.C. §4301 et seq., assures that employers will not penalize employees for serving in the Reserves. Second, the recently recodified "Servicemembers Civil Relief Act," Public Law 108–189, December 19, 2003, protects servicemembers and their families from lawsuits, evictions, and default judgments during periods when they are away from home on active duty service. Has your experience with your employers provided you with any insight on the efficacy of these statutes in protecting the rights of servicemembers? Do you feel like your career at Mississippi suffered because of absences from campus for active duty service?

Response. A. My experience with my employers both at the University of Mississippi and at Stetson University has always been extremely positive regarding my military service. Both institutions have been exceptionally supportive and have accommodated my service commitment without question. Both institutions were cognizant of their legal responsibilities under the Servicemembers Civil Relief Act and the Uniformed Services Employment and Reemployment Rights Act. In my experience, most employers of my brothers and sisters at arms have been supportive generally. However, I am aware of situations where the servicemember's military commitment has caused problems at his or her place of employment. In my judgment, these statutes are critically important to attracting and keeping good people in the military Reserves. Without employment security, I believe it would be more difficult to maintain the high quality of the current volunteer Reserve service.

B. Yes, I believe my career did suffer because of absences from campus for active duty service in two basic ways. First, because of my unavailability during the summer months (my choice) and the potential to recall for active duty, I believe administrators may have been reluctant to seek me out for academic administrative positions. While, I have never applied for such a position, other colleagues who did not have the military commitment that I did, were considered and received administrative positions. Second, the time that I spent away from home on active duty delayed some of my writing projects. Though I always exceeded my publication requirements for regular promotion and tenure, I was not always able to complete other projects within the timeframe that I anticipated because of military service interruptions. Again, these decisions to serve were my decisions and I realized the impact they could have on my civilian career at the time. However, ultimately, I believe my mili-

tary career enhanced my legal career by providing me opportunities in the national security law field that I would not have had otherwise.

Question 11. You recently wrote an article titled "Striking the Balance: National Security vs. Civil Liberties," in the *Brooklyn Journal of International Law*. In the article, you concluded that in enacting the USA Patriot Act, Congress struck an appropriate balance between national security and Fourth Amendment privacy concerns. But you also noted at the outset of the article that "the USA Patriot Act is not perfect; no piece of legislation is," What defects—or "imperfections"—have you identified in the USA Patriot Act? Do you have suggestions for changes that Congress should consider as it considers reauthorization of this legislation?

Response. A. One of the major criticisms of the USA Patriot Act is that it was passed in haste without appropriate Congressional deliberation and thus, contains provisions that undermine individual freedoms. A number of highly controversial USA Patriot Act provisions have been identified by several organizations (Center for Democracy & Technology and the American Civil Liberties Union) for Congressional review as USA Patriot Act II is considered. These provisions include, Sec. 203(a) sharing grand jury information; Sec. 213 sneak and peek searches; Sec. 215 records searches; Sec. 216 pen registers for the Internet; Sec. 358 exceptions to financial privacy laws; Sec. 505 National Security Letter exceptions to privacy laws; and Sec. 802 definition of domestic terrorism.

B. The recommendations I included in the law review article were to:

1. Ensure that the next version of the USA Patriot Act II, goes through the full legislative process including full committee hearings and debate.

2. Integrate the findings of the DOJ Report on the implementation of the USA Patriot Act on the proposed new USA Patriot Act II.

3. Study the DOJ report and make any abuses identified by it the focal point for amendments, revisions and new legislation.

Question 12. During your employment with the Department of Education you participated in an agency exchange program that allowed you to be assigned to the office of the U.S. Attorney for the District of Columbia. There, you tried a variety of criminal cases. How long were you so assigned to the U.S. Attorney's office? During your time with the exchange program, did you "first chair" these prosecutions? Was your time as a prosecutor valuable to you? Did it teach you anything about good—or bad—judicial temperament?

Response. A. My position as Special Assistant United States Attorney for the District of Columbia was part of an agency exchange program with the Department of Education. The goal was to give lawyers at the Department of Education an opportunity to get a good amount of trial experience working with the United States Attorney's office. The program was approximately 4 months and during that period, most of the attorneys had both bench and jury trials.

B. During that 4-month assignment, I first Chaired at least twenty cases about ten jury trials and ten bench trials. After the first trial as second Chair, we usually were given our own caseload to work and take to trial.

C. My time as a prosecutor was probably one of the most rewarding experiences of my legal career. I learned so much about trying cases and the judicial process. After that experience, I had a new confidence in my abilities as a lawyer.

D. Fortunately, the experience was instructive on many levels. I learned that the quality of the District of Columbia bar and bench was very high. Most of the judges on the District of Columbia Superior Court while polite, were no nonsense in their approach to handling cases on their docket. I saw colleagues get upbraided by judges and on at least one occasion I remember during an initial appearance, one of the judges asking me in an exasperated tone, why I did not make the observation earlier that the defendant appeared to be intoxicated. During that experience, I learned that judges are people too with different personalities. I saw a consistent thread however, on the bench, most of the judges exercised very calm and careful control over their courtroom. They all took great care to make sure that the defendant received a fair trial and they were not hesitant to put the prosecutors to the test regarding the strength of their cases against the defendants.

Question 13. I note in your nomination materials that you served as a Hearing Officer on a Claims Tribunal in Serbia in 1999. Please elaborate for the Committee the nature of that service. Was this quasi-judicial service of any assistance to you as you prepare to ascend the bench?

Response. A. My experience as a Hearing Officer for the SFOR Republic of Serbia Claims Tribunal was the result of being in the right place at the right time. My assignment in Sarajevo was as an intelligence officer, but several people were also aware that I was a lawyer. As a result of my legal background, I was asked to fill a position as an American hearing officer on the SFOR Claims Tribunal for a day.

This claims tribunal was gearing up to hear a number of cases in Bosnia. I sat as one of five judges and heard personal injury and property cases. These cases included alleged property damage from NATO ordnance explosions and automobile accidents on the narrow, poorly maintained, and dangerous Bosnian roads. Accidents with SFOR vehicles occurred frequently and were often fatal for both the military personnel and local residents. My job as a hearing officer was to vote on whether under the circumstances of the case we would recommend and authorize payments of claims filed.

B. This unusual quasi-judicial international experience was very helpful as I prepare to ascend the bench if confirmed. Not only did my years as a mediator and arbitrator aid in this function, but hearing cases involving local residents claims against coalition military forces reinforced to me the importance of having a judicial system that is fair. Even in the context of a combat environment, the SFOR coalition partners were attempting to expose the Bosnians, Serbians, and Croatians to a fair legal system and judicial process that worked without corruption. As I prepared for hearings that day, I was told that one of our goals was to help demonstrate to the local people that judicial systems can work even at a rudimentary level. In some ways, the experience with SFOR makes me even more committed to ensuring that the veterans who file claims with the VA get expeditious and fair resolution. The SFOR tribunal did not have the resources of a large executive department at its disposal but we were committed to quickly and fairly resolving claims.

Chairman SPECTER. We have a real snarl today in the Senate about confirmation of judges. We're having a hard time getting judges confirmed for the U.S. Court of Appeals for Veterans Claims. It's all tangled up in a lot of lines.

The Administration will not allow Senators to look at the confidential investigative files, and in the Judiciary Committee, Members can see the files. We should be able to see them. I have taken it up with White House counsel, Alberto Gonzales. But right now we have a judge being tied up on that point, isn't that right, Mr. Tuerk?

Mr. TUERK. That's correct.

Chairman SPECTER. Then on the broader issue, we have an escalation of controversy where when we had the President of one party and the Senate controlled by the other, a stalemate. And now that we have both the White House and the Senate controlled by the same party, we come to the filibuster. The President has exercised his constitutional prerogatives for interim appointments, and now the Senate is exercising its asserted power for filibuster. So I do not know where the nomination is going to go.

You are obviously very well qualified. There are quite a number of questions I would like you to respond to for the record. But unlike Ms. Iovino, where I think confirmation will occur in due course—unless the stalemate proliferates to all nominees, which is a possibility—but I think at this time it's unlikely. I just wanted to make you aware of that. I was on the floor within the hour trying to find a judicial protocol to solve the problem.

Mr. DAVIS. I appreciate that, Mr. Chairman.

Chairman SPECTER. Professor Davis, I will do my best to move for your confirmation. You have a very distinguished record and I think the court is lucky to have a man of your background and qualifications.

Mr. DAVIS. Thank you, Mr. Chairman.

Chairman SPECTER. That concludes the hearing.

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

NOMINATIONS INCLUDING MARY J. SCHOELEN AND WILLIAM A. MOORMAN TO BE JUDGES, U.S. COURT OF APPEALS FOR VETERANS CLAIMS

THURSDAY, SEPTEMBER 30, 2004

U.S. SENATE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:04 p.m., in room SR–418, Russell Senate Office Building, Hon. Arlen Specter, Chairman of the Committee, presiding.

Present: Senators Specter, Craig, Graham, and Rockefeller.

OPENING STATEMENT OF HON. ARLEN SPECTER, CHAIRMAN, SENATOR FROM PENNSYLVANIA

Chairman SPECTER. Good afternoon, ladies and gentlemen. We will now proceed with the hearing for three nominees who are before the Committee.

If you will all stand and take the oath.

Do you all solemnly swear that the testimony you will give before the Committee will be the truth, the whole truth and nothing but the truth, so help you God?

Ms. SCHOELEN. I do.

Gen. MOORMAN. I do.

Chairman SPECTER. The nominees before us today are Mary J. Schoelen, and Major General William A. Moorman, United States Air Force (Retired), to be Judges of the United States Court of Appeals for Veterans Claims.

Ms. Schoelen is no stranger to this Committee, having served on the staff here for many years, and we will turn to her first.

Ms. Schoelen, do you have an opening statement?

STATEMENT OF MARY J. SCHOELEN, NOMINEE TO BE JUDGE, U.S. COURT OF APPEALS FOR VETERANS CLAIMS

Ms. SCHOELEN. Yes. Thank you, Mr. Chairman.

I am honored to have been nominated by the President an associate judge on the United States Court of Veterans Claims. I would like to thank Senator Rockefeller for his unwavering support, not just for my nomination, but for my work on the Committee. It was a true privilege to work for someone who cares so passionately for the American people and who has devoted himself to improving the quality of their lives.

I have had the tremendous fortune to work for not one, but two great Senators. I can express nothing but admiration for Senator Bob Graham's integrity and intellect. Their efforts are great examples of what can be accomplished through a lifetime's commitment to public service.

From the time that I first set my sights on law school, I was also determined to pursue a life in public service. My father, Commander Lawrence Schoelen, did have such a life, serving more than 27 years in the United States Navy. Through him, I learned firsthand of the sacrifices that servicemembers and their families are asked to make.

My abiding respect for those who have answered the call to service has grown into a career spent working on veterans issues. While still a law student, I joined the National Veterans Legal Services Program and represented veterans who were appealing VA decisions on their benefits claims. I found this work immensely rewarding.

After graduating law school, I came to work for this Committee as an intern and developed a great appreciation for the ability of the legislative process to touch millions of lives. From there, I returned to representing veterans in their appeals, as well as training and supervising other veterans' advocates, at the Vietnam Veterans of America.

I returned to the staff of the Senate Committee on Veterans' Affairs in 1997, where I have worked on a wide range of veterans-related issues. During this time, I have been privileged to work closely with the Veterans Service Organizations, VA, the Department of Labor and my colleagues on the House VA Committee staff.

Through these experiences, I have become very familiar with the complexities of the VA benefits delivery system and its controlling statutes. I believe that the insights and skills I have gained representing disabled veterans before VA and working on veterans legislation here in the Senate have prepared me for the challenges that judges on this court face.

Throughout my career, I have labored to achieve a balance that ensures veterans receive the benefits they earned through their service, while striving to develop sound policy that guarantees the long-term integrity of the system. If confirmed, I will continue to seek this balance on the court. I will review the facts and the applicable laws of each case and dedicate myself to rendering fair and timely decisions.

Mr. Chairman, thank you for the opportunity to appear here today. It is a true honor to be considered for this position. I would like to thank your Committee staff for their assistance during the nomination process, as well as their professionalism and collegiality over the many years that we have worked together. Finally, I would like to thank my family, Brad Smith, colleagues and friends who have gathered here today to show their support.

Thank you, Mr. Chairman.

[The prepared statement of Ms. Schoelen follows:]

PREPARED STATEMENT OF MARY J. SCHOELEN, NOMINEE TO BE JUDGE, U.S. COURT OF APPEALS FOR VETERANS CLAIMS

Thank you, Mr. Chairman and Members of the Committee.

I am honored to have been nominated by the President to serve as an associate judge on the United States Court of Appeals for Veterans Claims.

I would like to thank Senator Rockefeller for his kind introduction and his unwavering support—not just for my nomination, but for my work on the Committee. It was a true privilege to work for someone who cares so passionately for the American people and who has devoted himself to improving the quality of their lives.

I have had the tremendous fortune to work for not one, but two great Senators. I can express nothing but admiration for Senator Bob Graham's integrity and intellect.

Their efforts are great examples of what can be accomplished through a lifetime's commitment to public service. From the time that I first set sights on law school, I was also determined to pursue a life in public service. My father, Commander Lawrence Schoelen, did have such a life, serving more than 27 years in the United States Navy. Through him, I learned firsthand of the sacrifices that servicemembers and their families are asked to make.

My abiding respect for those who have answered the call to service has grown into a career spent working on veterans issues. While still a law student, I joined the National Veterans Legal Services Program and represented veterans who were appealing VA decisions on their benefits claims. I found this work immensely rewarding. After graduating law school, I came to work for this Committee as an intern, and developed a great appreciation for the ability of the legislative process to touch millions of lives. From there, I returned to representing veterans in their appeals, as well as training and supervising other veterans' advocates, at the Vietnam Veterans of America. I returned to the staff of the Senate Committee on Veterans' Affairs in 1997, where I have worked on a wide range of veterans-related issues. During this time, I have been privileged to work closely with the Veterans Service Organizations, VA, the Department of Labor, and my colleagues on the House VA Committee staff.

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Mr. Chairman, thank you for the opportunity to appear here today. It is a true honor to be considered for this position. I would like to thank your Committee staff for their assistance during the nomination process, as well as their professionalism and collegiality over the many years that we have worked together. Finally, I would like to thank my family, Brad Smith, colleagues and friends who have gathered here today to show their support. I would especially like to thank Jim Gottlieb, Bill Brew, Ellen Doneski, Bryant Hall, and Buddy Menn. Without them, this would not have been possible.

I am prepared to answer any questions that Members of the Committee may have.

QUESTIONNAIRE FOR PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

1. Name: Schoelen (Last) Mary (First) Jeannette (Middle)

2. Address: 658 E Street, N.E. (Street Address) (Apartment/Unite #)

Washington (City) D.C. (State) 20002 (Zip)

3. Position to which nominated: Associate Judge, U.S. Court of Appeals for Veterans Claims

4. Date of nomination: 3/12/04 (mm/dd/yyyy) **5.** Date of birth: 05/08/68 (mm/dd/yyyy) **6.** Place of birth: Rota, Spain (CITY,STATE)

7. Marital status: Single **8.** Full name of spouse: N/A

9. Names and ages of children:
Not Applicable

10. Education: Institution *(including city and state)*	Degrees received	Dates attended *(mm/yyyy)*	Dates of degree *(yyyy)*
The George Washington University Law School, Washington, D.C	Juris Doctor	8/90-5/93	5/93
The University of California, Irvine, Irvine, CA	B.A. Political Science	9/86-6/90	6/90
Sonora High School, La Habra, CA	High School Diploma	9/82-6/86	6/86

11. Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognition for outstanding service or achievement. *(Attach additional page if more space is needed)*

George Washington University Law School

- Moot Board Member (selected through competition) and Vice President, Interscholastic Affairs
- Trial Advocacy, High Pass

University of California, Irvine Dean's List

12. Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable, and other organizations for the last 5 years and any other prior memberships or offices you consider relevant. *(Attach additional page if more space is needed)*

Organization	Office held *(if any)*	Dates *(mm/yyyy) - (mm/yyyy)*
State Bar of California		11/94 - present

National Organization of Veterans Advocates		1995 - 1997
American Bar Association		1995 - 1998
Vietnam Veterans of America Accredited Service Officer	1992-1993 and	1994-1997
Vietnam Veterans of America Associate Member		1994 - 1997
		-
		-
		-
		-
		-

13. Employment record: List below all employment *(except military service)* since your twenty-first birthday, including the title or description of job, name of employer, location of work, and inclusive dates of employment. *(Attach additional page if more space is needed)*

The United States Senate Committee on Veterans' Affairs

- Minority Deputy Staff Director, Benefits Programs/General Counsel - January 2002-present
- Majority Deputy Staff Director, Benefits Programs/General Counsel - June 2001-January 2002
- Minority General Counsel, March 2001-June 2001
- Minority Counsel, March 1997-March 2001

Vietnam Veterans of America (VVA)
8605 Cameron Street, Suite 400, Silver Spring, MD 20910
Attorney, Veterans Benefits Program, November 1994-February 1997

The United States Senate Committee on Veterans' Affairs
Legislative/Legal Intern, April 1994 - November 1994

The National Veterans Legal Services Project
2001 S Street, N.W., Suite 610 Washington, D.C. 20009
Legal Intern, June 1992 - April 1993

Continued on separate page

14. Military service: List below all military service (including reserve components and National Guard or Air National Guard), with inclusive dates of service, rank, permanent duty stations and units of assignment, titles, descriptions of assignments, and type of discharge. *(Attach additional page if more space is needed)*

Not Applicable.

15. Government experience: List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments other than those listed above. *(Attach additional page if more space is needed)*

Not Applicable.

16. Published writings: List the titles, publishers, and dates of books, articles, reports, or other published materials you have written. *(Attach additional page if more space is needed)*

Not Applicable.

17. Political affiliations and activities: (a) List all memberships and offices held in and financial contributions and services rendered to any political party or election committee during the last 10 years. *(Attach additional page if more space is needed)*

2000 - $50 Democratic National Party

(b) List all elective public offices for which you have been a candidate and the month and year of each election involved. *(Attach additional page if more space is needed)*

Not Applicable.

18. Future employment relationships: *(Attach additional page if more space is needed)*

(a) State whether you will sever all connections with your present employer, business firm, association, or organization if the Senate confirms you.

Yes.

(b) State whether you have any plans after completing Government service to resume employment, affiliation, or practice with your previous employer, business firm, association, or organization.

No.

(c) What commitments, if any, have been made to you for employment after you leave Federal service?

None.

(d) (If appointed for a term of specified duration) Do you intend to serve the full term for which you have been appointed?

Yes.

(e) (If appointed for an indefinite period) Do you intend to serve until the next Presidential election?

Not Applicable.

19. Potential conflicts of interest: (Attach additional page if more space is needed)

(a) Describe any financial arrangements, deferred compensation agreements, or other continuing financial, business, or professional dealings which you have with business associates, clients, or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None.

(b) List any investments, obligations, liabilities, or other financial relationships which constitute potential conflicts of interest with the position to which you have been nominated.

None.

(c) Describe any business relationship, dealing, or financial transaction which you have had during the last 5 years, whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

None.

(d) Describe any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any Federal legislation or for the purpose of affecting the administration and execution of Federal law or policy.

While a staff attorney for Vietnam Veterans of America, my job responsibilities included drafting comments to Federal Regulations, testifying before the House of Representatives Committee on Veterans' Affairs, and meeting with VA staff to discuss potential changes to veterans-related issues. My position on the Committee requires me to attempt to influence passage, defeat, and modification of Federal legislation.

(e) Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements involved.)

Not Applicable.

20. Testifying before the Congress: *(Attach additional page if more space is needed)*

(a) Do you agree to appear and testify before any duly constituted committee of the Congress upon the request of such committee?

Yes, to the extent that it does require discussion of matters pending before the court.

(b) Do you agree to provide such information as is requested by such a committee?

Yes, to the extent it does not breach confidentiality of court matters.

Question 13

4/94-12/94 – Sales associates
Woodward & Lothrop
Bethesda, Maryland

1/92- 5/92 – Legal intern
The Honorable Nan R. Shuker
District of Columbia Superior Court

6/91- 8/91 – Legal intern
The Nature Conservancy
Arlington, Virginia

Various periods between 1990 and 1993 – Temporary clerical services
Interim Systems Corporation – San Diego California
Advantage LLP – Washington, D.C.
Trak Temps Inc. – Washington, D.C.

7/89 – 4/90 – Receptionist and Assistant
ToppMed, Inc.
Irvine, California

9/88 – 7/89 – Cashier
University Bookstore, University of California, Irvine
Irvine, California

SUPPLEMENTAL QUESTIONNAIRE
FOR MARY J. SCHOELEN, NOMINEE TO
THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS
(To Be Made Public)

1. **Bar associations:** **List all bar associations and 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.**

The State Bar of California
National Organization of Veterans Advocates
American Bar Association

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

California Supreme Court - November 1994- present
U.S. Court of Appeals for Veterans Claims – April 1995- present
U.S. Court of Appeals for the Federal Circuit – June 1995-present
Accredited representative before the Department of Veterans Affairs for Vietnam Veterans of America - 1992-1993; 1994-1997 (lapse due to different employment in 1993/1994)

3. **Judicial offices:** **State (chronologically) any judicial offices you have held and whether you were elected or appointed to them and provide a description of the jurisdiction of each such court.**

Not Applicable.

4. **Judicial opinions:** **If you are or have been a judge, attach a statement providing (a) citations for the ten most significant opinions you have written, (b) a short summary of and citations for all appellate opinions either reversing your decision or confirming it with significant criticism of your substantive or procedural rulings, and (c) citations for significant opinions on federal or state constitutional issues, together with citations for any appellate court rulings on your decisions in those cases. (If any of the opinions listed were not officially reported, please provide copies of the opinions.)**

Not Applicable.

5. Speeches: **Attach copies of all speeches you have given on issues involving constitutional law, legal policy, or matters relating to veterans' benefits. If there were press reports of any such speeches and they were readily available to you, please provide them.**

Most of my public speaking on veterans benefits has been extemporaneous.

6. Legal career: **(a) Attach a chronological description of your law practice and experience after graduation from law school, including (1) whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk; (2) whether you practiced alone, and if so, the addresses and dates; and (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.**

The United States Senate Committee on Veterans' Affairs

- Minority Deputy Staff Director, Benefits Programs/General Counsel - January 2002-present
- Majority Deputy Staff Director, Benefits Programs/General Counsel - June 2001-January 2002
- Minority General Counsel, March 2001-June 2001
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The National Veterans Legal Services Project,
2001 S Street, N.W., Suite 610 Washington, D.C. 20009
Legal Intern, June 1992 - April 1993

Continued on separate page

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

My legal career has focused exclusively on veterans law. My work has ranged from representing individual veterans in their appeals for benefits from the Department of Veterans Affairs to working on legislation and oversight to assist veterans or improve the administration of veterans services from the Department of Veterans Affairs, Department of Labor, Small Business Administration and other related agencies.

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

My clients were veterans or their surviving family members. Many of my clients were Vietnam or Vietnam-era veterans or survivors of veterans who served during the Vietnam War. Often, my clients had very little income.

(d) State whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court has varied over time, describe each such variance, giving dates.

I have not appeared in court or represented veterans since returning to the U.S. Senate Committee on Veterans' Affairs in March 1997. Prior to that, I primarily supervised attorneys, paralegals, law clerks (contract and in-house) and accredited service representatives in representation at Department of Veterans Affairs' regional offices and in appeals before the Board of Veterans' Appeals, the U.S. Court of Appeals for Veterans Claims, and in one instance, the U.S. Court of Appeals for the Federal Circuit. Between 1992 to 1993 and 1994 to 1997, I frequently represented veterans before the Department of Veterans Affairs' Board of Veterans' Appeals.

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

I was not representing veterans in a traditional trial court, but in the context of the veterans' adjudication system, many of the matters I handled were resolved in a manner favorable to the claimant.

7. Litigation: **Attach a statement describing the ten most significant litigated matters which you personally handled. Give the citations of cases that were reported and the docket numbers and dates of those that were not. 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 dates 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 names, addresses, and telephone numbers of the individuals who were co-counsel with you and principal counsel for each of the other parties.

I personally represented veterans and their survivors at the Department of Veterans Affairs' Board of Veterans' Appeals. However Board of Veterans' Appeals' cases are not reported and I do not recall the docket numbers of cases that I handled. The work that I personally handled at the U.S. Court of Appeals for Veterans Claims was settled by joint motion for remand.

My legal practice has not been traditional, but I believe that I made significant contributions to individual veterans' lives. In addition, my work on legislation has attempted to improve the compensation, education, pension, housing, vocational rehabilitation, insurance, employment and burial benefits that veterans receive. My oversight efforts have sought to ensure that veterans and their families receive the benefits they have earned through their service and sacrifice.

8. Legal activities: Attach a statement describing the ten most significant legal activities you have pursued (other than the litigated matters referred to above). Describe the nature of your participation, but please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

I consider all the work I have performed as an attorney with the Committee on Veterans' Affairs to be significant legal activity. In that capacity, I have participated in the drafting of: legislation, committee reports, amendments for consideration in Committee action, amendments for consideration during Senate debate, floor statements, and joint explanatory statements that describe agreements on legislation for final Congressional action on a broad array of veterans benefits legislation and administrative matters. I have assisted in carrying out oversight activities over the Department of Veterans Affairs, Department of Labor, and other relevant entities, by facilitating in the organization of hearings, drafting official correspondence, interfacing with the Government Accountability Office, coordinating and participating in site visits and meeting with agency officials.

9. Outside employment: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, please provide details.

No.

10. Party affiliation: State (a) your current political party affiliation and the place and date it was established, and (b) if you have in the past registered as being with a different party (or as an independent if not now registered as an independent), the place and inclusive dates of such registration.

District of Columbia, Democrat, August 2003; Virginia - no registered affiliation 1994-2003; California, Republican, May 1986 to May 1993.

11. Memberships in certain organizations:
The Administrative Office of the United States Courts' Commentary to Canon 2C of the Code of Conduct for United States Judges states, "Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired." Do you currently belong, or have you ever belonged, to any organization which discriminates in this manner – through either formal membership requirements or the practical implementation of membership policies? If so (a) list all such organizations of which you are or were a member, (b) provide the dates of your memberships, and (c) describe in each case the efforts you made to try to change the organization's discriminatory policies or practices.

I do not currently belong to any organization that discriminates in this manner. In high school, I was the Tennis representative to the Sonora High School Girls' Athletic Association, which was limited to female athletes.

12. Services for disadvantaged persons:
The American Bar Association, in its Comment to Rule 6.1 of the Model Rules of Professional Conduct, states, "Every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer." Attach a statement describing what you have done to fulfill this responsibility, listing specific instances and the amount of time devoted to each.

I have spent my legal career representing or advocating on behalf of veterans and their dependents. Participating in public service has been a priority to me throughout my career. Many of my clients were of low income and disabled. While serving on the staff of the U.S. Senate Committee on Veterans' Affairs, I have worked to improve the education and employment opportunities for veterans, particularly disabled and disadvantaged veterans and their families. I have also participated in efforts to ensure that housing – traditional, adaptive and transitional – is available to all veterans including service-disabled and homeless veterans.

13. Selection process: **Has anyone involved in the process of selecting you as a nominee discussed with you any specific case, legal issue, or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.**

No.

AFFIDAVIT

District of Columbia)ss

Mary J. Schoelen, being duly sworn, hereby states that he/she has read and signed the foregoing answers to the Supplemental Questionnaire for Nominees to the United States Court of Appeals for Veterans Claims and that the information provided therein is, to the best of his/her knowledge and belief, current, accurate, and complete.

Signature of Nominee

Subscribed and sworn before me this 27th day of August, 2004

Notary Public

NOTARY PUBLIC
DISTRICT OF COLUMBIA

MY COMMISSION EXPIRES JANUARY 31, 2009

Chairman SPECTER. Senator Graham has entered the room, and it is our custom that when a Senator arrives, we recognize them immediately.

So, Senator Graham, we will hear from you now.

STATEMENT HON. LINDSEY O. GRAHAM, SENATOR FROM SOUTH CAROLINA

Senator GRAHAM. Mr. Chairman, that is a great custom.

It is with great pleasure that I appear before our Committee. I have enjoyed serving on the Committee under your chairmanship, and today is one of the fun things a Senator gets to do and introduce to his colleagues a very fine gentleman for a very important position.

General Moorman—in our relationship, I always waited on him because he was a two-star general and I was a lieutenant colonel. But, Mr. Chairman, I could not more highly recommend a person to this Committee than General Moorman. He is the most recent Judge Advocate General of the Air Force. He is now retired. He has had about every job an Air Force lawyer could have. He led the Department extremely well as the Judge Advocate General for the Air Force, a man of the highest integrity.

He was in the Pentagon on September 11, 2001, and took a leadership role of evacuating the building, caring for those who were hurt, then went with the air staff to plan a counter-response.

Since his retirement, General Moorman has served in the Department of Veterans Affairs as a counselor to the general counsel and as Assistant to the Secretary for Regulation Policy. In this role, Mr. Chairman, he was responsible for a comprehensive review of all VA regulations to ensure clarity, consistency, user-friendliness and compliance with the law. In other words, he tried to take the regulatory scheme of the VA and put it in understandable English.

He has been there for his country in a variety of roles. He has served the Veterans Department well. He has served his Nation well in uniform, and I think he would be a great addition to the Court of Appeals for Veterans Claims. He will make it more efficient. He is an eminently fair man, and it is with great pleasure that I recommend his appointment to the Committee.

General, I am very proud of you.

Chairman SPECTER. Thank you very much, Senator Graham.

Senator Rockefeller.

STATEMENT OF HON. JOHN D. ROCKEFELLER IV, SENATOR FROM WEST VIRGINIA

Senator ROCKEFELLER. Thank you, Mr. Chairman. I am unaccustomed to sitting here. This is a first. I am grateful to you for holding this, welcoming our nominees, Robert Allen Pittman and Mary Schoelen. They are very qualified, and I wish to say a word about Mary.

I am particularly happy that Mary is having her hearing today. She is no stranger to us. Indeed, the Chairman and I put Mary's nomination forward in June of 2002. So it is a long time in the works, but I am very glad that this hearing has been scheduled and I appreciate it.

Mary first came to this Committee in 1994 as an intern, working for free—that impresses me—and eager to gain more experience in an area where she has always been interested and passionate, and that is called veterans, individually and collectively.

I have always been most impressed with Mary's compassion for veterans that we serve and her commitment to work on matters and people in whom she believes so strongly.

She never loses sight of serving the individual veteran. One example of that is, I specifically recall one young West Virginia veteran who was losing his fight with Lou Gehrig's disease. His family felt that the law VA was applying to the adaptive housing grant for his home was unjust. She listened, she researched, and then she set about to successfully fix what was wrong and make it right.

She took the plight of one individual veteran and worked to change the entire law so that thousands of veterans could benefit. That is just one small example of the many successful pieces of legislation that Mary has championed and helped usher through this process in this Committee and in this Congress to a positive solution.

Mary has a huge range of experience, part of which I had to cut out because it was so extensive so I wouldn't go on too long. All of this experience will serve her well on the court.

When Mary finished her internship with this Committee, she joined the staff of Vietnam Veterans of America. She represented veterans before the VA and trained other advocates for veterans. In 1997, I was very fortunate to convince Mary to return to what at that point was my Committee staff it is nice to say, where she later became the Committee's General Counsel and Deputy Staff Director for Benefit Programs. She understands veterans' matters from all angles.

Mary's unique perspective and knowledge gained while advocating for veterans before the VA and here in Congress make her particularly well-suited to be a judge on this court. This Committee and the full Senate should be enormously proud that one of our own is again willing to continue to serve veterans in a very direct way.

Mr. Chairman, I feel very strongly about Mary professionally and personally. I think she is a superb person, an exceptionally wonderful person. I want very much to thank you, Mr. Chairman, for moving these nominations expeditiously to make this all happen. It is critical that these nominees for this important and special court are approved. Your efforts to achieve this should be properly recognized. I also want to acknowledge your Chief Counsel, Bill Tuerk, for his fine work during this process.

I thank you for your attention and recommend highly Mary Schoelen to the position for which she has been nominated.

Chairman SPECTER. Thank you, Senator Rockefeller.

Ms. Schoelen, is there anyone in the hearing room you would like to introduce?

Ms. SCHOELEN. Yes. Thank you, Mr. Chairman. With me today I have my brother, Larry Schoelen, and my boyfriend, Brad Smith.

Chairman SPECTER. General Moorman, is there anyone in the hearing room you would like to introduce?

General MOORMAN. Yes, Mr. Chairman. I have with me my wife, Bobbie.

Chairman SPECTER. Since both Ms. Schoelen and General Moorman are up for the same position, I will ask the questions and ask each of you to respond.

As a generalization, Ms. Schoelen, what are your views as to the role of a judge with respect to interpreting or making law?

Ms. SCHOELEN. Well, a judge has the role to interpret law. It is not their role to make law. The jurisdiction of the court and the areas in which it is supposed to interpret statutes and regulations have been clearly laid out, and that was what I would endeavor to follow if I were to be confirmed.

Chairman SPECTER. What is your thought on that subject, General Moorman?

General MOORMAN. Senator, I would agree with what Mary has just said. I think that the role of a judge is to apply the law to the facts that come before him, in accordance with the statutes that govern the court.

Chairman SPECTER. What is your view of the unique procedure in this court, where there are advocates for claimants who are not members of the bar? Does that give you any pause, General Moorman?

General MOORMAN. No, Senator, it doesn't. In this particular case, I think in keeping with the general construct of the court to handle veterans' claims, it is important that veterans have the opportunity to come before the court and to present their own cases, if they see that as in their interests, and not feel as though they have to hire an attorney to get a fair and just hearing of their claims.

Chairman SPECTER. Well, the issue of hiring an attorney may not influence the court in terms of making a fair adjudication, but how about the quality of presentation? Would you encourage pro se litigants, people who are representing themselves, to try to get professional assistance, a member of the bar?

General MOORMAN. I think that the rules of the court, Senator, actually, if there is going to be a panel decision, do encourage claimants who are appearing pro se to consider representation. But in terms of what a judge should bring to a particular case, I would hope that in my considerations it would not matter whether the litigant came before me representing himself or herself, or was represented by counsel, because the duty of the judge is to decide the case fairly based on the facts and the law.

Chairman SPECTER. Ms. Schoelen, do you think that there is any significant advantage for a claimant to have a member of the bar represent him as opposed to representing himself or herself pro se, or having a non-lawyer advocate?

Ms. SCHOELEN. I don't believe that there is necessarily an advantage between a member of the bar and a non-attorney practitioner. There are many skilled non-attorney practitioners who have practiced for years as veterans' advocates through the service organizations that practice before the court.

I do think that the system of laws and regulations is complex, and a pro se litigant would probably be greatly aided by the help of an attorney or a non-attorney practitioner. But I echo General

Moorman's sense that it is their right, and if that is what they wish to do, the court should certainly allow for pro se litigants and review the evidence and the facts in whatever manner they are presented.

Chairman SPECTER. Well, at one of the first hearings after being elected to the Senate on the Judiciary Committee, Senator Strom Thurmond was the Chairman and one of the questions which he addressed to the nominees was, in his inimitable accent, "If you are confirmed, do you promise to be courteous?" Translated into English that is, if you are confirmed, do you promise to be courteous? And the thought that went through my mind was what a meaningless question. What is a nominee going to say.

Both of the nominees responded in the affirmative, and then Senator Thurmond said, "The more power a person has, the more courteous the person should be." Translated again, the more power a person has, the more courteous a person should be. Over the years, I have come to regard that as a very profound statement, and when I have presided on hearings in the Judiciary Committee or on this Committee, I have always asked that question.

Ms. Schoelen, do you promise to be courteous?

Ms. SCHOELEN. Yes, Mr. Chairman.

Chairman SPECTER. General Moorman?

General MOORMAN. Absolutely, Mr. Chairman.

Chairman SPECTER. Well, remember that, because there are nominees who have told me years later, more than decades later that was a very important comment which was made because there tends to be an attitude, once you have that black robe on, of sort of omnipotence, and especially in a context where you are going to have people who are pro se or who are not trained in the law. It is true that some of the non-attorney advocates are very well-versed and very, very experienced, and may have superior skills than some beginning lawyers would who appear before the court. But bear that in mind.

Ms. Schoelen, do you anticipate having any extra expertise on being a judge of this court, if confirmed, as a result of your work for the Committee? Do you think you will know a little more about legislative intent, or have a little different insight than, say, General Moorman will?

Ms. SCHOELEN. Well, I don't believe that any one staffer can really try and nail down what congressional intent is, since it is an understanding of the entire body and of both chambers. And I don't really think that it would affect my judgment in a particular case. I would look at the facts and applicable law and, if necessary, then move on to the publicly available legislative history.

Chairman SPECTER. Well, wouldn't congressional intent be a relevant factor on interpretation of a statute which is not plain on its face?

Ms. SCHOELEN. Yes, Mr. Chairman, and to that avenue I would look to the publicly available documents that all judges would have available to them.

Chairman SPECTER. And suppose you had some special expertise. How could you close your mind to that?

Ms. SCHOELEN. Well, a judge's role is to be fair and impartial, and I think that carries into that area of you have to look at the

facts that are before you and the law that is before you and the available evidence that would clarify that material.

Chairman SPECTER. General Moorman, do you think there is any such thing as congressional intent, or do you think that Justice Scalia is pretty much right when he says it is an irrelevancy; that you only have to look at the face of the statute?

General MOORMAN. Senator, I think that in the cases where the statute is clear on its face, obviously there is no need to look for legislative intent. But I would hope that in cases where the statute is not clear on its face that I could look to the record to define, if necessary, what the legislative intent was and help inform my decision.

Chairman SPECTER. How would you seek to determine that legislative intent, Ms. Schoelen?

Ms. SCHOELEN. I would look at Committee reports, joint explanatory statements, floor statements that may have been published in the Congressional Record.

Chairman SPECTER. Would you look at Committee reports?

Ms. SCHOELEN. Yes, sir.

Chairman SPECTER. Haven't you seen Committee reports always prepared by staff? Would you say that staff intent is relevant?

Ms. SCHOELEN. Staff intent is illustrated through their Members' direction and intent.

Chairman SPECTER. If it is ratified?

MS. SCHOELEN. I'm sorry, sir?

Chairman SPECTER. Ratified?

Ms. SCHOELEN. Does the staff ratify what the Members say?

Chairman SPECTER. No. Does the Member ratify the staff? I hadn't heard it in the reverse.

Ms. SCHOELEN. I would say it would perhaps depend on the committee, sir.

Chairman SPECTER. I am sorry that Colonel Graham is gone. How does a Senator's rating compare to a general's rating, General Moorman, contrasted with a lieutenant colonel's rating to a major general? And this is specifically with Senator Graham, not any other Senator.

General MOORMAN. Well, I will be deeply indebted to Senator Graham for the fine words that he spoke today, regardless of how you would sort out the relative merits or whether or not we are in uniform. And it is unlikely that I will be in uniform again, so there would always be deference to Senator Graham.

Chairman SPECTER. Hypothetically, Ms. Schoelen, if you found a longstanding precedent from the court which you thought was erroneous under the plain meaning of the statutory construction as you read it, how would you balance your own view of a clear-cut statutory construction as opposed to a longstanding practice of the court which you thought was wrong?

Ms. SCHOELEN. Mr. Chairman, if the interpretation of the statute was clear on its face to be incorrect, it would be the court's role to overturn that interpretation, despite longstanding precedent.

Chairman SPECTER. What is your sense on that, General Moorman?

General MOORMAN. I would agree completely, Senator. A judge must rule on those legal issues as he sees the law——

Chairman SPECTER. Or she.

General MOORMAN.—or she sees the law.

Chairman SPECTER. Would the potential cost of overturning a historically established rule enter into your decision on how to adjudicate a case?

General MOORMAN. Senator, it wouldn't enter into my decision if we were talking about a statute that was clear on its face. However, if it was a statute that was not clear on its face and I felt as though we were operating in an area where, because there was latitude left in the statute, the agency appropriately acted, then the agency's analysis, including cost, would become an important factor in determining whether or not they had taken an appropriate course in regulating within the law.

Chairman SPECTER. To what extent do you think it's appropriate for the agency to consider cost in its decisionmaking process?

General MOORMAN. I think that, from time to time, it has to be an important factor. I would think that it ought to weigh less heavily where it is clear that the intent of Congress is to deliver benefits, compensation and pension, to veterans. And the overriding principles that underlie veterans' compensation and pension programs are the delivery of those benefits.

Chairman SPECTER. Well, should it weigh at all under those circumstances? Should cost weigh at all under the circumstances you have just described?

General MOORMAN. With regard to particular benefits, I would say not. With regard to defining the right policy decisions within the law with regard to what conditions might have to be met in order to qualify for benefits, I would say it might be a consideration. I would not give it great weight.

Chairman SPECTER. Well, what kind of policy matters are you thinking about where cost would be a factor?

General MOORMAN. I think the one situation that would come to mind for me, Senator, would be not in the benefits area, but more in the medical care delivery area, where the Secretary made the decision, I think, reluctantly to stop enrollment of Category 8 veterans because the net result of continuing to enroll those veterans for care was that it put them behind the queue of veterans who had been injured in service. Those kinds of decisions.

Chairman SPECTER. Ms. Schoelen, how about the cost factor as a consideration in your judgments, if confirmed?

Ms. SCHOELEN. I would again agree with General Moorman's analysis that if an interpretation of the agency was wrong, clearly wrong on its face, that cost should not play a factor. But the court is not intended to overturn regulations or rules that are not arbitrary and capricious. So, if there was not a clear finding that the agency was acting in error, then it would not come into play.

Chairman SPECTER. So you agree with what he said just like he, a few moments ago, agreed with what you said?

Ms. SCHOELEN. Yes, sir.

Chairman SPECTER. Have you conspired in advance?

Ms. SCHOELEN. No, sir.

General MOORMAN. No, sir, we have not.

Chairman SPECTER. Senator Craig.

Senator CRAIG. Mr. Chairman, I am not going to try to follow that line of questioning, but let me say thank you for convening this hearing and having these folks before us. We have a critical need in this particular area. The U.S. Court of Appeals for Veterans Claims has a mounting caseload of substantial proportion. In 2003, new case filings reached an all-time high of 2,532. That is more than 200 case filings per month. We have a nine-member court and four vacancies. They are not at full speed and full muscle, and it is important that they be for the sake of our veterans.

So, I do appreciate this hearing and I do appreciate qualified people coming before us, and I think that is what we have in both of these folks today. I look forward to moving them forward, giving them the attention they need, and those who have languished seeking the attention of the full Senate. I hope that we can, at least, fill three of those four vacancies.

Thank you very much.

Chairman SPECTER. Thank you, Senator Craig. The Committee has been very, I think fairly stated, diligent in proceeding.

Senator CRAIG. I appreciate that.

Chairman SPECTER. We have had some delays which are regrettable, but none that has been attributable to the excellent management of Bill Tuerk, the Staff Director, who handles me like a mannequin.

Senator CRAIG. And then there is another factor here, too. One more hearing during this session of Congress would give you that opportunity to preside and this might well be your last opportunity before this Committee.

Chairman SPECTER. Well, I consider it a high calling and if I am not here, there will be someone excellent in the wings, like Senator Craig. But we have tried to push this along very, very expeditiously.

Senator CRAIG. And it is appreciated. Thank you.

Chairman SPECTER. The staff work here has been really excellent. And "mannequin" might be the wrong word. It might be more like Edgar Bergen and Charlie McCarthy. The only thing I do not read are his questions. I use my own.

General Moorman, I didn't give you a chance to make an opening statement. Would you like to make a concluding statement?

General MOORMAN. Senator, I would like to make a brief statement, if I may.

STATEMENT OF MAJOR GENERAL WILLIAM A. MOORMAN (RET.), NOMINEE TO BE JUDGE, U.S. COURT OF APPEALS FOR VETERANS CLAIMS

Mr. Chairman, Members of the Committee, I am honored to have been nominated by the President for a position on the Court of Appeals for Veterans Claims. I want to thank you for the opportunity to appear here today. I also want to thank Senator Graham for his gracious introduction, and most of all my wife, Bobbie, who is here today and has always supported me.

Thirty-three years ago this month, I entered active duty in the Air Force with the expectation that I would complete my 4 years of obligated service and return to practice law in my hometown of

Chicago. More than 30 years later, I retired from the Air Force in the spring of 2002

During that 30-plus years, I learned firsthand about the extraordinary men and women who serve our country in uniform. Shortly after my retirement, I was offered a position at the Department of Veterans Affairs. And in the last two years, I have learned more about the lasting sacrifices that our veterans have made for our country. If confirmed, I pledge to the Committee and to the Senate that I will bring all that I have learned to my new position, where I might assure that every veteran and every veteran's family member who comes before the court gets the full and fair hearing to which they are entitled.

Thank you, Mr. Chairman.

[Prepared statement of General Moorman follows:]

PREPARED STATEMENT OF MAJOR GENERAL WILLIAM A. MOORMAN (RET.), NOMINEE TO BE JUDGE, U.S. COURT OF APPEALS FOR VETERANS CLAIMS

Mr. Chairman, Members of the Committee, I am honored to have been nominated for a seat on the Court of Appeals for Veterans Claims. Thank you for the opportunity to appear here today.

My thanks also go to my mother and father, Mary and Jim Moorman, who taught me to treat others as I wanted to be treated, to always act with integrity, and to believe that hard work is always worth the effort. I thank my mother-in-law, Junice Zook, for her always positive outlook, no matter how dire the situation and my late father-in-law, Roy Zook, for his service in World War II and his loving example of a life well-led. I thank our daughter, Kelly, just for being the terrific person she is, for marrying a great guy, and raising two marvelous grandchildren who are a constant source of joy in our lives. Finally, I want to thank my wife, Bobbie, who is here today, for her constant, loving support. Without her by my side, I could not continue in public service.

Thirty-three years ago this month, I entered active duty in the Air Force with the expectation that I would complete my 4-year tour of duty and return home to Chicago to practice law. More than thirty years later, I retired from the Air Force in the spring of 2002. During that thirty plus years, I learned firsthand about the extraordinary men and women who serve our Country. I saw the endless demands they faced. I saw them put duty above all else. And, I saw their families willingly shoulder the burden of service as well.

Shortly after my retirement, I was offered a position at the Department of Veterans Affairs. In the last 2 years, I have learned still more about the lasting sacrifices of those who have served our Country. I have visited with wounded soldiers at Walter Reed and I have met veterans from every conflict since World War II. I have heard their stories of service, and I have seen the toll their service has taken on their health.

If confirmed, I pledge that I will bring all that I have learned over these last thirty-three years to my new position where I might assure that every veteran and every veteran's family member gets the full and fair hearing concerning their claims that our Nation has promised to each.

Thank you Mr. Chairman. I'll be happy to respond to any questions you and the Committee may have for me.

QUESTIONAIRE FOR PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

1. Name: MOORMAN (LAST) WILLIAM (FIRST) ALBERT (OTHER)

2. Present Address: 5009 N. 25TH ROAD ARLINGTON (CITY) VA (STATE) 22207 (ZIP CODE)

3. Position to which nominated: Judge, Court of Appeals for Veterans Claims

4. Date of nomination: Sept 21, 2004

5. Date of birth: 23 (DAY) Jan (MONTH) 1945 (YEAR)

6. Place of birth: Chicago, Illinois

7. Marital Status: Married

8. Full name of spouse: Barbara Joan Moorman

9. Names and ages of children

Daughter, Kelly, age 42

10: Education:

Institution (including city and State)	Dates attended	Degrees received	Dates of degrees
University of Illinois Champaign, Illinois	1963-1970	BA, JD	1967, 1970

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

Edmund J. James Scholar in Liberal Arts (1963);
Outstanding Young Judge Advocate of the Air Force (Kuhfeld Award 1979);
Distinguished Graduate Air Command and Staff College (1980);
Outstanding Senior Attorney of the Air Force (Reichart 1991);
AF Meritorious Service Medal with four oak leaf clusters;
Joint Meritorious Service Medal;
Legion of Merit with one oak leaf cluster;
Distinguished Service Medal with one oak leaf cluster;
Distinguished Alumnus Award, University of Illinois College of Law (2000)

12. Memberships List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable, and other organizations for the last 5 years and any other prior memberships or offices you consider relevant

Organization	Office held (if any)	Dates
Air Force Aid Society	Member Board of Trustees and Chairman, Audit Cmte	1999-Present
Air Force Judge Advocate General School Foundation	Vice President	2003-Present
Judge Advocates Assoc.		1975-Present
Federal Bar Assoc.		1999-2002
US Soldiers and Airmens Home	Board of Directors	1999-2002
CAVC Bar Assoc.		2002-Present
Illinois Bar Association		1970-Present

13. Employment record: List below all employment (except military service) since your twenty-first birthday, including the title or description of job, name of employer, location of work, and inclusive dates of employment.

V.B. Lindsey Construction (summer work) (1966-1970) laborer, Champaign, Illinois

John J. Kennelly and Assoc., Associate (1970-1971) Chicago, Illinois

Department of Veterans Affairs, Counselor to the General Counsel and Assistant to the Secretary for Regulation Policy (2002-2004) Washington, DC

Department of Veterans Affairs, Acting Assistant Secretary for Management (Aug 2004-Present)

14. Military service: List below all military service (including reserve components and National Guard or Air National Guard), with inclusive dates of service, rank, permanent duty stations and units of assignment, titles, descriptions of assignments, and type of discharge.

Sep 1971, 2Lt, Personnel Officer, Richards-Gebaur AFB, Kansas City, MO

Aug 1972, Capt, Judge Advocate, Richards-Gebaur AFB, Kansas City, MO

Jul 1974, Capt, Judge Advocate, Yokota AB, Japan

Jul 1977, Capt, Judge Advocate, Homestead AFB, FL

Jul 1979, Capt, Student, Air Command and Staff College, Maxwell AFB, AL

Jul 1980, Major, Staff Judge Advocate, Luke AFB, AZ

Aug 1983, Lt Colonel, Chief: Legal Aid Group; Manpower; Career Development, Air Staff, Pentagon, Washington, DC

Aug 1988, Colonel, Student, National War College, Ft. McNair, Washington, D.C.

Jul 1989, Colonel, Staff Judge Advocate, 12th Air Force, Bergstrom AFB, TX

Jul 1991, Colonel, Deputy Staff Judge Advocate, Strategic Air Command, Offutt AFB, NE

Jul 1992, Colonel, Staff Judge Advocate, U.S. Strategic Command, Offutt AFB, NE

Jul 1993, Colonel, Staff Judge Advocate, US Air Forces Europe, Ramstein AB, Germany

Jul 1995, Colonel, Commander, Air Force Legal Services Agency, Bolling AFB, D.C.

Mar 1996, Brigadier General, Staff Judge Advocate, Air Combat Command, Langley AFB, VA

Jan 1999 – Apr 2002, Major General, The Judge Advocate General, US Air Force, Pentagon, Washington, D.C.

15. Government record: List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments other than those listed above.

None

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

Article: Executive Privilege: Sufficient Protection for Accident Reports?, Air Force Law Review(1980)

Article: Cross-Examination Techniques (co-author), Air Force Law Review (1986)

Article: Fifty Years of Military Justice: Does the UCMJ Need to be Changed?, Air Force Law Review, 2000

Article: Humanitarian Intervention and International Law in the Case of Kosovo, New England Law Review (2002)

Article: Serving our Veterans Through Clearer Regulations (co-author), Administrative Law Review (2004)

17. Political affiliations and activities: (a) List all memberships and offices held in and financial contributions and services rendered to any political party or election committee during the last 10 years.

None

(b) List all elective public offices for which you have been a candidate and the month and year of each election involved.

None

18. Future employment relationships:

(a) State whether you will sever all connections with your present employer, business firm, association, or organization if you are confirmed by the Senate.

Yes

(b) State whether you have any plans after completing Government service to resume employment, affiliation, or practice with your previous employer, business firm, association, or organization.

No

(c) What commitments, if any, have been made to you for employment after you leave Federal service?

None

(d) (If appointed for a term of specified duration) Do you intend to serve the full term for which you have been appointed?

Yes

(e) (If appointed for an indefinite period) Do you intend to serve until the next Presidential election?

19. Potential conflicts of interest:

(a) Describe any financial arrangements, deferred compensation agreements, or other continuing financial, business, or professional dealings which you have with business associates, clients, or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None

(b) List any investments, obligations, liabilities, or other financial relationships which constitute potential conflicts of interest with the position to which you have been nominated.

None

(c) Describe any business relationship, dealing, or financial transaction which you have had during the last 5 years, whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

None

(d) Describe any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any Federal legislation or for the purpose of affecting the administration and execution of Federal law or policy.

None

(e) Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements involved.)

Not Applicable

20. Testifying before the Congress:

(a) Do you agree to appear and testify before any duly constituted committee of the Congress upon the request of such committee?

Yes

(b) Do you agree to provide such information as is requested by such a committee?

Yes

SUPPLEMENTAL QUESTIONNAIRE
FOR NOMINEES TO
THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS
(To Be Made Public)

1. Bar associations: List all bar associations and 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.

Illinois Bar Association
American Bar Association
Federal Bar Association
American Trial Lawyers Association
Court of Appeals for Veterans Claims Bar Association
Judge Advocates Association – Board member

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

Supreme Court of Illinois 1970
US District Court for the Northern District of Illinois 1970
Court of Military Appeals 1972

3. Judicial offices: State (chronologically) any judicial offices you have held and whether you were elected or appointed to them and provide a description of the jurisdiction of each such court.

None

4. Judicial opinions: If you are or have been a judge, attach a statement providing (a) citations for the ten most significant opinions you have written, (b) a short summary of and citations for all appellate opinions either reversing your decision or confirming it with significant criticism of your substantive or procedural rulings, and (c) citations for significant opinions on federal or state constitutional issues, together with citations for any appellate court rulings on your decisions in those cases. (If any of the opinions listed were not officially reported, please provide copies of the opinions.)

No such opinions.

5. Speeches: Attach copies of all speeches you have given on issues involving constitutional law, legal policy, or matters relating to veterans' benefits. If there were press reports of any such speeches and they were readily available to you, please provide them.

6. Legal career: (a) Attach a chronological description of your law practice and experience after graduation from law school, including (1) whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk; (2) whether you practiced alone, and if so, the addresses and dates; and (3) the dates, names, and addresses of law firms or offices, companies, or governmental agencies with which you have been connected, and the nature of your connection with each.

I spent my first year after law school with the firm of John J. Kennelly and Associates, as a junior associate while I was awaiting call up on my Air Force active duty commitment. From the time that I entered active duty in 1971 until my retirement from the Air Force in 2002, my legal practice was all on behalf of the United States Air Force. Since July, 2002 I have been employed by the Department of Veterans Affairs.

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

In my first year of practice, I was affiliated with a firm that specialized in personal injury and wrongful death, primarily resulting from air crashes. I was co-counsel on one major case during that time. My practice was otherwise limited to brief writing and motion practice.

The first 10 years of my career in the Air Force included an emphasis on criminal litigation, but also included international law and federal claims practice. Thereafter, my practice was heavily weighted in favor of international law, appellate review, administrative law, and operations law.

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

During my first year of practice I was a junior associate in a firm that specialized in plaintiff's aircrash accident law.

In the Air Force, with the exception of those times when I practiced on behalf of individual criminal defendants and on behalf of individual airmen with personal legal problems, my practice was governmental legal practice.

(d) State whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court has varied over time, describe each such variance, giving dates.

During the first 10 years of my Air Force career, I appeared in court frequently. I appeared as prosecutor or defense counsel, but more often as the presiding official in administrative hearings. That period was from 1972 until 1983. Thereafter, I rarely appeared in court.

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

I either prosecuted or defended to verdict about 40 courts-martial. A significant majority of these were as chief counsel. I also appeared as counsel in a greater number of administrative hearings for and against individual airmen. I also acted as hearing officer/legal advisor on 50 or more such cases. In all cases, these occurred in military proceedings between 1972 and 1983. The vast majority of the cases fell between 1974 and 1977 when I was stationed in Japan.

7. Litigation: Attach a statement describing the ten most significant litigated matters which you personally handled. Give the citations of cases that were reported and the docket numbers and dates of those that were not. 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 dates 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 names, addresses, and telephone numbers of the individuals who were co-counsel with you and principal counsel for each of the other parties.

8. Legal activities: Attach a statement describing the ten most significant legal activities you have pursued (other than the litigated matters referred to above). Describe the nature of your participation, but please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

9. Outside employment: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the

court? If so, please provide details.

I have no such plans.

10. Party affiliation: State (a) your current political party affiliation and the place and date it was established, and (b) if you have in the past registered as being with a different party (or as an independent if not now registered as an independent), the place and inclusive dates of such registration.

I have not declared a political party affiliation.

11. Memberships in certain organizations: The Administrative Office of the United States Courts' Commentary to Canon 2C of the Code of Conduct for United States Judges states, "Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired." Do you currently belong, or have you ever belonged, to any organization which discriminates in this manner – through either formal membership requirements or the practical implementation of membership policies? If so (a) list all such organizations of which you are or were a member, (b) provide the dates of your memberships, and (c) describe in each case the efforts you made to try to change the organization's discriminatory policies or practices.

I have never belonged to such an organization.

12. Services for disadvantaged persons: The American Bar Association, in its Comment to Rule 6.1 of the Model Rules of Professional Conduct, states, "Every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer." Attach a statement describing what you have done to fulfill this responsibility, listing specific instances and the amount of time devoted to each.

13. Selection process: Has anyone involved in the process of selecting you as a nominee discussed with you any specific case, legal issue, or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

No.

AFFIDAVIT

William A. Moorman , being duly sworn, hereby states that he/she has read and signed the foregoing answers to the Supplemental Questionnaire for Nominees to the United States Court of Appeals for Veterans Claims and that the information provided therein is, to the best of his/her knowledge and belief, current, accurate, and complete.

Signature of Nominee

Subscribed and sworn before me this 27th day of September, 2004

Notary Public

District of Columbia : SS
Subscribed and Sworn to before me
this 27th day of September, 2004
Notary Public, D.C.
My commission expires 7-14-2008

Kathleen A. Achille
Notary Public, District of Columbia
My Commission Expires 07-14-2008

Statement Concerning Question 6 – Legal Career:

(a) 1. John J. Kennelly and Associates, 111 W. Washington, Chicago, Illinois (1970--1971), associate.

2. United States Air Force (September 1971 -- April 2002), judge advocate.

3. U.S. Department of Veterans Affairs (July 2002 -- Present), counselor to the General Counsel, then Assistant to the Secretary for Regulation Policy, then Acting Assistant Secretary for Management.

(b) With the exception of my first year following law school, my practice has all been government legal practice. Thirty years of that practice was with the United States Air Force. The first 10 years of practice involved considerable litigation as prosecutor, defense counsel, or presiding official in criminal and administrative proceedings. During that time, I also handled international claims matters, general base level legal practice, and legal assistance on behalf of airmen and their families. During the remaining 20 years of my Air Force practice, I was serving at higher levels of command. My practice during those years was the provision and supervision of legal support on issues of international law, operations law, administrative law, and military justice. Since joining the Department of Veterans Affairs, my focus has been on administrative law concerning the regulations that govern VA benefits.

(c) My typical former clients were military officers in command. From time to time, I also represented individual military members.

(d) I appeared in court occasionally during my first ten years of military service. Since that time, I have not appeared in court at all. I have frequently supervised those who appeared in court during the last 20 years.

(e) I believe that I participated in between 20 and 30 cases during my first ten years of military service. All of the proceedings were either courts-martial or administrative separation boards. In most, I was either the sole or the lead counsel. All of these courts-martial occurred during my assignments to Richards-Gebaur Air Force Base, Yokota Air Base, or Homestead Air Force Base.

Statement Concerning Question 7 – Litigation:

1. U.S. v. Master Sergeant Meadows, court-martial at Yokota AB, Japan, 1975. I was the requested defense counsel for MSgt Meadows in a case involving multiple charges of sexual contact with minor females. MSgt Meadows was the base swim team coach during his off-duty hours. Three teenaged females alleged that he had inappropriately touched them during his coaching activities. I was lead defense counsel in his court-martial. MSgt Meadows was acquitted by a military judge of all charges and specifications. My co-counsel were Harold Oppenheim and Capt Robert E. Reed. Mr. Oppenheim died in the 1970s. Colonel Reed (retired) is now a civilian attorney in the office of the DoD General Counsel. The military judge was Major Howard P. Sweeney. Colonel Sweeney (retired) is now living somewhere in California. The prosecutor was Captain Scott Spitzer. He separated from service in the 1970s, and I no longer know where he resides.

2. U.S. v. Sgt Morales, administrative discharge proceeding at Yokota AB, Japan, 1974. I was the sole government representative in this proceeding which involved charges of possession and use of LSD. Sgt Morales had failed drug rehabilitation and was being administratively separated from the USAF. The discharge board found that he should be separated with a discharge Under Other than Honorable Conditions. I no longer recall the names of either the defense counsel or the presiding legal advisor.

3. U.S. v. SSgt Aken, court-martial at Yokota AB, Japan, 1976. I was the co-counsel for the Government in this prosecution of an assault with intent to inflict grievous bodily harm. The defendant was accused of stabbing a drunken teenager on the front steps of his home in the Japanese community near the base. The defendant was acquitted of this charge. My co-counsel was Captain John Southard. The military judge was Lieutenant Colonel William Arrowood. The defense counsel was Captain William Whitehurst. Captain Southard is now a Colonel in the USAF Reserve and practices in Kentucky. I do not know the current whereabouts of either Lt Col Arrowood or Captain Whitehurst.

4. U.S. v. Airman First Class Bethard, court-martial at Yokota AB, Japan, 1975. I was requested defense counsel. A1C Bethard was accused of stealing stereo equipment from the Base Exchange where he was an employee during his off-duty hours. On duty, he was an Air Force fireman. He was convicted following his guilty plea to reduced charges. He was sentenced to 45 days confinement and no discharge. I do not remember the name of the prosecutor on this case. The judge was Major Howard P. Sweeney. Colonel Sweeney (retired) now resides in California.

5. U.S. v. Colonel Williams, administrative separation action at Wright-Patterson AFB, Ohio, 1972. I was the sole Government representative (prosecutor) in this matter. Colonel Williams was accused of defrauding a Spanish woman of more

than $15,000 during a time when he was stationed in Spain. The criminal statute of limitations had run on this case. The board of General Officers who sat as jurors discharged Colonel Williams Under Other than Honorable Conditions. I do not remember the name of the defense counsel on this case. The judge was then Colonel Ed McHugh. Colonel McHugh retired in the 1970s. I do not know where he now resides.

I prosecuted a number of other courts-martial during this period from 1972-1978. Many of these were guilty plea cases involving either Absences without Leave (AWOL), desertion, or drug possession. I no longer recall the names of the defendants in these cases nor the names of the counsel who appeared against me.

Statement Concerning Question 8 – Legal Activities:

1. As Judge Advocate General of the Air Force, I was responsible for coordinating the Air Force legal support for activities immediately following the terrorist attacks of September 11, 2001. On duty at the Pentagon that day, I led evacuation of my offices, cared for the wounded, and then moved with the Air Staff to a separate location to resume operations. In the days and months that followed, I exercised supervision over the legal support for the Crisis Action Team in the Pentagon, conducted frequent coordination with senior judge advocates at NORAD, and at various overseas and stateside commands. The legal work involved analysis of the legal issues involved in possible rules of engagement for operations against terrorists at home and abroad.

2. I was the legal advisor to the Air Force commander for all aircraft involved in Operation Just Cause in Panama in 1989. I supervised the legal review and personally reviewed the rules of engagement, the international law issues likely to arise, the rules for treatment of detainees, and the use of US Air Force installations in Panama before and after the conflict.

3. I was the senior Air Force legal officer in Europe in 1993-1995. During that period, we negotiated a number of agreements that resulted in the return of US Air Force installations in Europe to the host nations. The end of the Cold War and subsequent troop reductions in Europe made these reversions possible. In exchange for these returns, we negotiated construction of replacement facilities at the remaining US bases at no cost to the US.

4. During my assignment in Europe, we were also engaged in operations in Bosnia, Rwanda, and northern Iraq. I was the senior Air Force legal advisor concerning these operations. In northern Iraq, two Air Force F-15s erroneously shot down two Blackhawk helicopters. As legal advisor the commander of US Air Forces in Europe, I coordinated the investigation and review of this incident.

5. While at Air Combat Command from 1996 to 1999, I negotiated the settlement of a longstanding dispute with a major construction contractor that had built faulty housing at Ellsworth AFB, SD. The resulting settlement required the contractor to repair and refurbish the substandard housing at no cost to the Government.

6. In 1992, I became the first Staff Judge Advocate for the newly formed U.S. Strategic Command at Offutt AFB, NE. During that time, we established new legal procedures to guide this joint command. Many of these new procedures involved issues concerning use of the Nation's nuclear deterrent.

7. As Judge Advocate General from 1999 to 2002, I led the effort to produce a first-ever Handbook of Air Force Operations and the Law. For the first time, this handbook brought together all of the intersections of the law and operations in

one volume that could be used by commanders and their judge advocates alike. It has become the single most used reference by deploying judge advocates.

8. In 1983, I appeared before the Maricopa County Zoning Commission to advocate the use of zoning patterns that would protect the future of Luke Air Force Base, Phoenix, AZ, from encroachment by development in the west valley of Phoenix. The commission adopted zoning that has successfully protected Luke Air Force Base since that date.

9. In 1982, I was the legal advisor on the Accident Investigation Board that investigated the simultaneous crash of four F-16 Thunderbird aircraft during a training flight near Las Vegas, NV. This accident drew national attention and the Accident Investigation Report release was widely covered in the media.

10. In 2000, I initiated a program of field training for judge advocates and paralegals called JAG FLAG. This exercise has since become the premier operational training exercise for the provision of legal support to deployed forces. For the first time, it prepared judge advocates and paralegals for both the practical and the legal aspects of deployed operations in an organized way.

Statement Concerning Question 12 – Services for Disadvantaged Persons

Throughout my military career, my focus in this regard was on the provision of legal services to airmen and their families. Many of these services were performed during off-duty time. From 1972 to 1974, I was a participant in the Expanded Legal Assistance Program that allowed military attorneys to appear on behalf of low income military families in local courts in Missouri.

More recently, I have sat on the Board of Trustees of the US Soldiers and Airmans Home in Washington, D.C. and on the Board of the Air Force Aid Society. Both of these organizations help those active duty and retired service members and their families who are most needy. Services performed on behalf of these boards comprises about 50 hours per year.

Chairman SPECTER. Thank you General Moorman, and thank you, Ms. Schoelen. We will try to act expeditiously on your nominations. We know the need for speed so that the court will be able to discharge its duties.

That conludes our hearing.

[Whereupon, at 2:43 p.m., the Committee adjourned.]

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