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S. HRG. 109–397, PT. 2

CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

NOVEMBER 1 AND NOVEMBER 15, 2005

PART 2

Serial No. J–109–4

Printed for the use of the Committee on the Judiciary

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NOMINATION OF ERIC NICHOLAS VITALIANO, OF NEW YORK, TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK; GREGORY F. VAN TATENHOVE, OF KENTUCKY, TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF KENTUCKY; JOSEPH FRANK BIANCO, OF NEW YORK, TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK; AND TIMOTHY MARK BURGESS, OF ALASKA, TO BE DISTRICT JUDGE FOR THE DISTRICT OF ALASKA

TUESDAY, NOVEMBER 1, 2005

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

The Committee met, pursuant to notice, at 1:35 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Charles Schumer, presiding.

Present: Senator Schumer.

Senator SCHUMER. We are going to call the hearing to order. We are under unusual circumstances. So our candidates, their friends and family, and all others understand, we have called a special session, which is a closed session, to discuss intelligence matters on the floor of the Senate. It was unexpected. I am going to have to be on the floor very quickly, so I may have to suspend the hearing until we can get someone—Senator Kyl was supposed to be here, but he had to stay there, and Senator Specter, in an act of bipartisanship, asked me to be here or asked me to chair it since I was here because of our two New York judges.

I will save my opening statement for a minute because I know that Senator Stevens has a statement and has another Committee hearing. So I will recognize Senator Stevens first for his statement.

PRESENTATION OF TIMOTHY MARK BURGESS, OF ALASKA, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF ALASKA, BY HON. TED STEVENS, A U.S. SENATOR FROM THE STATE OF ALASKA

Senator STEVENS. Well, thank you very much, Mr. Chairman, and it is an honor to be here today and an honor to present to the

Committee Tim Burgess, who is the nominee to be district judge in Alaska.

Tim came to our State 30 years ago to play basketball at the University of Alaska-Fairbanks, and he never left Alaska. He now lives in Anchorage with his wife, Joanne Grace, and four children, one of whom is with him here today.

I first met Tim in 1982 when he served as legislative assistant to then-Senator Frank Murkowski. In 1989, he joined the U.S. Attorney's Office for the District of Alaska as Assistant U.S. Attorney working on criminal prosecution and civil litigation. In 2001, President Bush nominated Tim to be the U.S. Attorney for the District of Alaska, and he has served as our State's chief Federal law enforcement officer with great distinction. As a former U.S. Attorney, I do appreciate his service there.

As a U.S. Attorney, Tim also serves as a co-Chair of Alaska's Rural Justice and Law Enforcement Commission, which the Congress created at my request in 2004 to improve the quality of justice in rural Alaska. Tim has demonstrated exceptional leadership on rural justice issues. He has been instrumental in organizing the process and moving it forward. The commission recently produced a draft report of suggestions, which has been distributed for comment across our State. This milestone is in part a reflection of Tim's ability to serve as a unifying force among many differing points of view. Tim is a devoted public servant and a talented legal mind. His commitment to the rule of law led President Bush to nominate him to the position of U.S. District Court Judge for Alaska.

I am confident Tim will approach this new position with the same dedication which he has fulfilled his other assignments, and I urge this Committee to act quickly on this nomination. And I thank you for the courtesy of taking the Chair.

Senator SCHUMER. Senator, you have always extended courtesy to me and the people of New York, so it is a pleasure to reciprocate in a small way.

OK. Now I will read my opening statement on behalf of two New Yorkers.

PRESENTATION OF ERIC NICHOLAS VITALIANO AND JOSEPH FRANK BIANCO, OF NEW YORK, NOMINEES TO BE DISTRICT JUDGES FOR THE EASTERN DISTRICT OF NEW YORK, BY HON. CHARLES E. SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator SCHUMER. It is great to have two New Yorkers nominated for positions both on the Eastern District, which covers my home borough of Brooklyn and Queens, Nassau County, Suffolk County, a very large judicial district. I think it may be the largest. It has 7 million people in one judicial district. And so I want to thank the Chairman for scheduling this hearing and for considering the nomination of both Eric Vitaliano and Joseph Bianco to the Federal Court for the Eastern District of New York.

I would say that this comes at an opportune time. It is a singular week for Italian-Americans in the judiciary, and overlooked in all the attention to Judge Samuel Alito's nomination to the Supreme Court—which I will have more to say about in a different forum,

not today—we are considering the nomination of two outstanding Italian-Americans nominated to the Federal District Court in the Eastern District.

Now, one of the things that is hard to believe, but there are no Italian-Americans sitting in the Eastern District, despite a large Italian-American population. And I have to be honest, the Columbian Society and other Italian-American organizations came to me, pointed that out, and I agreed with them. And we have had in the past, but because of retirements we do not right now.

And so I have been committed to correcting it, and if all goes well here—and we expect that it will—we will be increasing the ranks of Italian-Americans in the Eastern District of New York by infinity. And for the young children here, the Vitaliano children, the Bianco children, that is because anything from zero to something, it goes up by infinity. I think.

[Laughter.]

Senator SCHUMER. In any case, first I want to introduce to my colleagues and to the entire U.S. Senate Eric Vitaliano. I have known Eric Vitaliano for close to two decades, and he is just a class act. And everything he has done, he has been a class act. He has had an impressive career in the legal profession. He is a true lifelong New Yorker. And, frankly, another thing to his benefit, he is from Staten Island. And I always want to see Staten Island recognized—it is also part of the Eastern District—on the bench and everywhere else. I have worked hard.

First, let me say in New York we have worked out a wonderful system for nominating judges to the district court and the circuit courts. With all the back-and-forth on judges at the national level and in other districts, we have worked it out. The President, Governor Pataki, and I worked together to name highly qualified consensus candidates to the Federal bench. There is often rancor when it comes to judges from other parts of the country, but none when it comes to New York. And that is because in New York the candidates we select are mainstream, consensus candidates. Some may be a little more conservative. Some may be a little more liberal. But they are all within the broad mainstream that defines America.

Now, I am especially proud to introduce Judge Vitaliano, because he was my recommendation for a seat on the Eastern District. The administration agreed with my assessment of his integrity, credentials, and excellence, and formally nominated him a few weeks ago. And so I am heartened by the strong bipartisan support that you have received, Eric. Eric's nomination is the product of a real consultation process and a strong commitment to choosing moderate, diverse, and well-qualified judges in New York.

Judge Vitaliano is joined today by many members of his family, and I know they are all proud. I am not going to introduce his brother who moved to New Jersey, but a few of the others I will, just his immediate family. Helen is here, who has been by Eric's side for so long and has played such a great role in the success that the Vitaliano family has had, and the four children: Michael, who is 15; Emma, who is 12; Abigail, who is 9; and Halle, who is 6. And I have known them since they have been very, very little. One of my great—I really say this. My greatest regret in life, which shows

you God has been good to me, is that Iris and I did not have more children. We have two beautiful girls. I wanted four. She wanted two. Guess what?

[Laughter.]

Senator SCHUMER. We have two.

Also with Judge Vitaliano, aside from his wayward brother, are his sister-in-law, Dorothy Hurley; her husband, John; nephew, Terence; and, finally, I want to make mention of somebody who is a close friend of mine who was always whispering in my ear, Eric, "Eric Vitaliano, Eric Vitaliano. Come on, Chuck, Eric would be a great judge." And that is someone who worked for me for many years and now has gone on to much greater things: Michael Cusick. Mike is the Assemblyman from one of the four districts on Staten Island, and just a wonderful person, and I am sure he is as proud as the Vitaliano family as he sits here today, particularly knowing that there have been so many judges, including his later father, in the Cusick family.

Let me just give a brief biography. Judge Vitaliano grew up on Staten Island, attended Fordham University in the Bronx, NYU Law School in Manhattan. He clerked for Judge Costantino, one of the Italian-Americans on the Eastern District, who, of course, is no longer there. And that is the court he has been nominated to.

Apart from a brief stint in Washington, he spent his entire life in New York. He graduated cum laude from NYU, spent several years with one of the most prestigious law firms in New York—Simpson, Thacher & Bartlett—and then was chief of staff to Congressman John Murphy before beginning his own law practice.

After that, he spent two decades as a distinguished member of the New York State Assembly, representing first the 59th and then the 60th Assembly Districts. Redistricting changed the numbers—same place. And he has more recently been a civil court judge and, since 2004, an acting Supreme Court judge in the State of New York.

Here is what the well-read local newspaper and well-respected local newspaper, the Staten Island Advance—for those of you not from Staten Island, it is not the "Ad-VANCE"; it is the "AD-vance"—has said about Eric Vitaliano: "Eric Vitaliano is the epitome of the most often misused description of proper judicial temperament."

This is continuing the quote, but that is a quote in a quote. "'He is one of the most intelligent and analytical public officials we have ever had the pleasure to meet. He is fair and reasonable almost to a fault.'"

I have known Eric—as I said, he is a class act. He is smart. He has integrity. He is decent. He is honorable. He will just be a great judge. And he is achieving something that he has dreamed about for a long time. I am very pleased that the President acted on my suggestion in nominating Judge Vitaliano, and I hope the Senate will move expeditiously to confirm him.

Now, second, I would like to introduce to the Committee Joseph Bianco. He was nominated by the President as well, another great, great guy from New York, and he is joined today by his wife, Melissa, who I saw outside with their little one. I guess she is still outside. Nicholas was his name, but he didn't give me a high five.

But his other children are here, another family of four children, making me even more envious. There is Joey, who is 11; Davey, who is 8; Stephanie, who is 6; in addition to Nicholas; and a full complement of law clerks.

Joe Bianco was born in Flushing, but we will forgive him for this fact because he saw the error of his ways and moved to Brooklyn, and he has lived there since he has been 11. I am a Brooklynite, first Senator from Brooklyn in 140 years. He graduated as a member of Phi Beta Kappa from Georgetown University here in Washington, went on to earn his degree from Columbia Law School, and then clerked for another very fine judge, Justice Leisure of the Southern District in New York.

After a brief stint in private practice, Mary Jo White hired him to be an Assistant U.S. Attorney in the Southern District of New York, one of the strongest and toughest districts—when you work there, you learn everything—from 1994 to 2003. And while at the U.S. Attorney's Office, Mr. Bianco prosecuted mobsters, terrorists, violent gang members, and other criminals.

After a short time, his supervisors, who included David Kelly, until very recently the acting U.S. Attorney, and a name that has been in the news lately, Patrick Fitzgerald, promoted him to the position of Deputy Chief of the unit responsible for investigating and prosecuting organized crime and terrorism. And, in fact, Mr. Bianco replaced Patrick Fitzgerald as the chief of the Organized Crime and Terrorism Unit, I guess when Patrick Fitzgerald went over to Chicago to the U.S. Attorney's Office in Illinois.

In the U.S. Attorney's Office, he supervised, among other people, my chief counsel, Preet Bharara—it is one happy family here in New York—who tells me that Mr. Bianco was among the most beloved and respected prosecutors in that office. And since Preet no longer works for Joe Bianco, you can be sure he means those words, and Preet's recommendation is second to none as far as I am concerned.

He has since gone on to be Deputy Assistant Attorney General in the Criminal Division of the Justice Department where he now serves. I am proud—I did not nominate him originally, but I am proud to support someone as outstandingly qualified and well respected as Mr. Bianco.

We have two great nominees from New York, high quality, and I am proud to be here.

With that, I see that my colleague Senator Bunning—we are sort of going on the fly here because of the closed session. So instead of—we will break out of the regular order, ask Senator Bunning to come forward so he can give his statement on behalf of Greg Van Tatenhove. Senator Bunning?

PRESENTATION OF GREGORY F. VAN TATENHOVE, OF KENTUCKY, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF KENTUCKY, BY HON. JIM BUNNING, A U.S. SENATOR FROM THE STATE OF KENTUCKY

Senator BUNNING. Thank you, Senator Schumer. It is a privilege to help introduce Greg Van Tatenhove to this Committee. By sending his nomination to the Senate, the President is presenting a top-

notch candidate for the Federal bench in the Eastern District of Kentucky.

A quick look at Greg's resume shows me his strong qualifications. Although Greg is not originally from Kentucky—and that is a rare bird that gets nominated to the judiciary if they were not born there—he made a very smart decision by making a permanent move to our Commonwealth.

Greg is a graduate of Kentucky's Asbury College and the University of Kentucky College of Law. He has worked two stints for members of Kentucky's Federal Congressional delegation: Senator Mitch McConnell and Representative Ron Lewis.

Greg has served as a judicial law clerk in the U.S. district court, and he served in the U.S. Department of Justice's Civil Division as a trial attorney.

Finally, over the last 4 years, Greg has served admirably as the U.S. Attorney for the Eastern District of Kentucky. Clearly, Greg possesses the wisdom and character to sit on the Federal bench.

His time on Capitol Hill, in the Department of Justice, and within our judicial system gives Greg a wealth of knowledge and experience which can only make him a better judge. I hope swift progress can be made toward his confirmation, and I appreciate the Chairman's scheduling this hearing.

I want to thank you, Senator Schumer, for filling in and doing such an admirable job, and I am very happy, along with my colleague Senator McConnell, who is obviously stuck on the floor of the U.S. Senate right now, to support the nomination of Greg Van Tatenhove for U.S. District Judge for the Eastern District of Kentucky.

Senator SCHUMER. Thank you, Senator Bunning, and we appreciate your being here, and obviously your recommendation means a great deal to the Committee.

OK. We are now going to call our four nominees: Eric Nicholas Vitaliano, to be U.S. District Judge for the Eastern District; Gregory F. Van Tatenhove, to be U.S. District Judge for the Eastern District of Kentucky—Vitaliano, of course, is for New York—Joseph Frank Bianco, to be U.S. District Court Judge for the Eastern District of New York; and Timothy Mark Burgess, to be U.S. District Judge for the District of Alaska.

Well, we are going to have to improvise since they do not have the sheet here. Please raise your right hands, gentlemen. Do you solemnly swear to tell the whole truth and nothing but the truth, so help you God?

Judge VITALIANO. I do.

Mr. VAN TATENHOVE. I do.

Mr. BIANCO. I do.

Mr. BURGESS. I do.

Senator SCHUMER. Please be seated. They said I did it all right.

OK. Now, we do not have many members here, and all of you have not raised many questions of this Committee. So I don't think we are going to do too many questions since there is the closed session. I will ask all of you—let's see here. I am going to ask you, tell us—I will ask you each—because you have each had different experiences. Tell us what are the reasons that you seek to become

a Federal judge. We will start with Mr. Vitaliano and work our way over.

STATEMENT OF ERIC NICHOLAS VITALIANO, OF NEW YORK, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK

Judge VITALIANO. Thank you, Mr. Chairman. It's certainly an honor and a privilege to be here, to be before you and the members of this Committee. As you so eloquently put in your remarks on my behalf at the beginning of the hearing, I have dedicated most of my adult life to public service. I was privileged to begin my public service in the Eastern District of New York, first as a Temporary Deputy United States Marshal, and then later as a law clerk to Staten Island's first Federal judge, Mark Costantino. My public service continued as a member of the New York State Assembly, and now as a trial judge in the New York State court system. It has allowed me to develop a very broad, deep, rich experience, diverse experience in the law, to hone the skills that are necessary to be a trial judge in the United States district court.

By being a judge for now 4 years, I have been able to understand in a very palpable way the awesome power of the judiciary, to understand the importance of continuing public service in a way that benefits real people with real controversies, to have the temperament to administer justice not only fairly in fact but fairly in appearance. Those are the skills that I have developed over these years, and I look forward to being granted the opportunity and the privilege to continue that kind of service as a United States District Judge in the Eastern District of New York.

[The biographical information of Judge Vitaliano follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

RESPONSE: Eric Nicholas Vitaliano

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

RESPONSE:

Residence: Staten Island, New York 10304.

Office: New York State Supreme Court
Courthouse
355 Front Street
Staten Island, New York 10304

3. Date and place of birth.

RESPONSE: February 27, 1948

Staten Island, New York

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

RESPONSE: I am married. My wife's name is Helen M. Vitaliano. Her maiden name was Helen M. Fleming. My wife is employed as a real property asset manager for Rivercrest Realty Associates, 500 Seaview Avenue, Staten Island, New York 10305.

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

RESPONSE:

UNDERGRADUATE: Beginning September 1964 and ending with my graduation in June 1968, I attended Fordham College, the undergraduate liberal arts college of Fordham University, which is located at the Rose Hill Campus, Bronx, New York 10458. I was awarded a Bachelor of Arts degree in history. While I have no information regarding my class standing, I was a Dean's List student and received First Honors in my junior and senior years. I was also awarded a Mayor's Scholarship

based on my academic performance.

LAW SCHOOL: Beginning September 1968 and ending with my graduation in June 1971, I attended New York University School of Law, 40 Washington Square South, New York, New York. Class standing information is unavailable. I was, however, awarded my Juris Doctor degree *cum laude*. I was also named to the National Legal Honor Society (Order of the Coif). I was a Dean's List student and was named a John Norton Pomeroy Scholar and a Founder's Day Scholar. I received the American Jurisprudence Prize for Scholastic Excellence. I served on the executive board of the New York University Law Review as its Research Editor.

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

RESPONSE:

SALARIED POSITIONS:

EMPLOYER	POSITION	YEARS OF SERVICE
The New York Times Company 229 W. 43rd Street, NY, NY 10036	Charge Department Clerk	Est. 9/65 - 6/71
United States Marshal - Eastern District 225 Cadman Plaza East, Brooklyn NY 11201	Temporary Deputy	7/68 - 8/68
Kelley Drye & Warren 101 Park Avenue, NY, NY 10178	Summer Associate	7/70 - 9/70
Hon. Mark A. Costantino United States District Court - Eastern District of New York US Courthouse, 225 Cadman Plaza East, Brooklyn, New York 11201	Law Clerk	9/71 - 9/72
Simpson Thacher & Bartlett 425 Lexington Ave., NY, NY 10017	Associate	9/72 - 10/79

Congressman John M. Murphy U.S. House of Representatives Washington, D.C.	Chief of Staff	10/79 - 1/81
Office of Eric N. Vitaliano, Esq. 289 Taylor Street Staten Island, New York 10310	Sole practitioner	1/81-7/82
Russo, Silverman & Vitaliano 140 Cedar Street, NY, NY 10006	Partner	7/82 - 12/85
New York State Assembly State Capitol, Albany, NY 12248	Member of Assembly	1/83 - 1/02
Behrins & Behrins, P.C. One Edgewater Plaza (700), SINY 10305	Counsel	7/99 - 12/01
New York State Unified Court System 355 Front Street, SINY 10304	Acting Justice of the Supreme Court and Judge of New York City Civil Court	1/02 - Present

NON-SALARIED POSITIONS:

ORGANIZATION	POSITION	YEARS OF SERVICE
St. Ann Roman Catholic Church	Finance Committee Member	2005 - current
Seaview Historic Foundation, Inc.	Member, Board of Directors	2002- current
New York State Conference of Italian-American Legislators	President, Vice President, Secretary	1983 - 2001
Assumption Council, Knights of Columbus	Advocate (Est. 1975 - 86)	Est. 1973 - current
Miss Staten Island Pageant	Treasurer & General Counsel	Est. 1979-81
New York State Young Democrats	Treasurer	1975-76
Young Democrats of Richmond County	President, Vice President, Secretary	Est. 1970-71, 1972-76

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

RESPONSE:

I have not performed any military service.

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

RESPONSE:

Other than the honors and scholarships indicated in my response to Question 5 above, I was named an "Outstanding Young Man of America" in 1977 by the United States Junior Chamber of Commerce.

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

RESPONSE:

Beginning around 1973 and continuing until the mid-1980's, I was a member of the American Bar Association and the Richmond County Bar Association. My memberships in those organizations lapsed during a period of time in which I performed no legal services outside of my duties as a member of the New York state legislature. In the same time period I belonged to a fraternal legal organization, the Columbian Lawyers Association of Brooklyn. Though there was a period of lapse in that membership as well, I am currently a member in good standing. I was also a member of record of the New York State Bar Association in the period 1982-2002 and served, in 2001, on the Committee on Legislative Law and Lobbying. Additionally, I am a member of the Legislative Committee of the New York State Unified Court System. In that capacity, I am an inter-branch representative of the judiciary to our partners in government, the New York State Executive and Legislature. The role of the Legislative Committee is to help advance the legislative agenda set by our state's Judicial Conference.

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

RESPONSE:

Organizations to which I currently belong are:

American Legion Citizen Flag Alliance Advisory Committee

Iron Hills Civic Association

Indian Club of Staten Island

Knights of Columbus, Assumption Council

St. Ann's Church Finance Committee and Parish Council

St. Ann's Fathers Club

Seaview Historic Foundation, Inc.

Staten Island Softball Oldtimers

Staten Island Lodge, Fraternal Order of Police

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

RESPONSE:

Court of Admission	Date of Admission
Appellate Division for the Second Department New York State Supreme Court	1972
United States District Court Eastern District of New York	1972
United States District Court Southern District of New York	1972
United States Court of Appeals Second Circuit	1973

United States District Court Northern District of Iowa	1977
United States District Court District of Connecticut	1978
United States Court of Appeals Fifth Circuit	1979
United States Court of Appeals Eighth Circuit	1979

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

RESPONSE: With a career in public service spanning over 20 years, I have spoken publicly on innumerable occasions, certainly over a thousand, and have written reports and op-ed articles among other public material. Aside from those written materials which relate to my former institutional responsibilities as an elected Member of the New York State Assembly, e.g. annual committee reports, all of the speeches, floor debates, television and radio appearances, correspondence, op-ed pieces were authored either exclusively by me or under my direct control and supervision. The institutional reports were edited by me but created by the central staff members assigned to assist me. Many of my speeches and a good portion of my significant written statements generated newspaper comment at least on Staten Island and in some cases nationally and internationally, e.g. my 11 hour debate as the chief Assembly sponsor of legislation which reinstated the death penalty in NewYork in 1995. I have not kept records of either the oral or written communications, which, in any event, would be simply impossible to review for purposes of responding fully to this inquiry. All of my public papers, correspondence and files, however, have been donated to the archives at the College of Staten Island. They occupy yards of shelf space and are in the process of being categorized by the archivist. Some of the materials have been put up online and a substantial index of the collection is now available online through the College of Staten Island website, www.library.csi.cuny.edu/archives.

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

RESPONSE: The present state of my health is good. The date of my last physical examination was June 23, 2005.

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

RESPONSE:

Judicial Office	Years of Service	Selection	Jurisdiction
Acting Justice of the Supreme Court	1/04 - current	Appointed by Hon. Jonathan Lippman, Chief Administrative Judge of New York State	The Supreme Court is New York's court of general jurisdiction. It entertains actions and proceedings for all civil claims, both contract and tort. It has jurisdiction over matrimonials as well as criminal prosecutions.
Judge of the New York City Civil Court	1/02 - 1/04	Elected	The Civil Court is a court of limited civil jurisdiction regarding contract and tort actions under $25,000.00. It also has jurisdiction over landlord/tenant matters, small claims and designated administrative agency appeals.

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

RESPONSE: (1) The ten most significant opinions I have written are listed below chronologically:

Case Name	Index Number
Bush v. Protravel International, Inc.	192 Misc. 2d 743, 746 N.Y.S.2d 790 (2002)

Sweeney v. UAL Corp.	9/27/2002 NYLJ 22, (Col. 3)
Citibank N.A. v. McGrory	196 Misc. 2d 292, 765 N.Y.S.2d 163 (2003)
Lamanna v. Carrigan	196 Misc. 2d 98, 762 N.Y.S.2d 233(2003)
Colacino v. Chavis	2 Misc. 3d 506, 769 N.Y.S. 2d 706 (2003)
Park Radiology P.C. v. Allstate Insurance Company	2 Misc. 3d 621, 769 N.Y.S.2d 870 (2003)
Bridgeview Garden Apartments, LLC v. New York State Division of Housing & Community Renewal	4 Misc. 3d 1023 (A), 2004 WL 2059552
Culotta v. The City of New York	5 Misc. 3d 583, 785 N.Y.S. 2d 655(2004)
Best v. MetLife Auto and Home Insurance Co.	7 Misc. 3d 242, 793 N.Y.S.2d 682(2004)
Hartford Insurance Co. v. Lubrano	6 Misc. 3d 1038(A), 2005 WL636697

(2) In the last year and a half alone, I have presided over 35 jury trials. Throughout my judicial career, I have presided over many more jury and non-jury trials and hearings and have decided hundreds of appealable motions. We are aware of only 15 decided appeals. The following two resulted in reversals:

CASE	APPELLATE CITE	SUMMARY
McAllister v. Stanislaus	1 Misc.3d 129(A), 781 N.Y.S.2d 625	Reversed grant of summary judgment finding triable fact issue as to whether plaintiff suffered a "serious" injury in a motor vehicle accident.
Etter v. Bloomingdale Village Corp.	6 Misc.3d 135(A), 2005 WL4332207	Finding of liability sustained, but new trial ordered for lack of sufficient proof of damages.

Judgments were modified in two other matters:

CASE	APPELLATE CITE	SUMMARY
Ross v. Szoke	196 Misc.2d 588, 763 N.Y.S.2d 389	Summary judgment sustained as to one defendant in a motor vehicle accident but reversed as to another holding that triable facts existed.
Escobar v. St. Vincent's	2 Misc.3d 126(A), 784 N.Y.S.2d	Denial of dismissal order should have

Medical Center	920	been conditioned on plaintiff's attorney paying additional costs.

(3) I have not issued an opinion dealing with federal or state constitutional issues.

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

RESPONSE:

The following table sets forth information regarding my pursuit of or the holding of public office:

Public Office	Term	Appointment/Election
Deputy United States Marshal Eastern District of New York	Summer 1968	Appointment
Law Clerk Hon. Mark A. Costantino United States District Judge Eastern District of New York	September 1971 - August 1972	Appointment
Chief of Staff Congressman John M. Murphy	October 1979 - January 1981	Appointment
Candidate for New York City Council Member-at-Large	1981	Election cancelled and office abolished
Member of Assembly New York State	January 1983 - January 2002	Elected at the general election of 1982 and re-elected to nine additional terms.
Candidate for the United States House of Representatives	Special Election 1997	Unsuccessful candidate.

17. Legal Career:

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

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

RESPONSE: Yes, I clerked for the Hon. Mark A. Costantino, a United States District Judge, assigned to the Eastern District of New York. I served as clerk from September 1971 through September 1972.

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

RESPONSE: I did briefly practice alone from my then home address, 289 Taylor Street, Staten Island, New York 10310 during the period January 1981 through July 1982.

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

RESPONSE:

Simpson Thacher & Bartlett 425 Lexington Ave., NY, NY 10017	Associate	9/72 - 10/79
Congressman John M. Murphy U.S. House of Representatives Washington, D.C.	Chief of Staff	10/79 - 1/81
Office of Eric N. Vitaliano, Esq. 289 Taylor Street Staten Island, New York 10310	Sole practitioner	1/81-7/82
Russo, Silverman & Vitaliano 140 Cedar Street, NY, NY 10006	Partner	7/82 - 12/85
New York State Assembly State Capitol, Albany, NY 12248	Member of Assembly	1/83 - 1/02
Behrins & Behrins, P.C. One Edgewater Plaza (700), SINY 10305	Counsel	7/99 - 12/01

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

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

RESPONSE: I have concentrated in the area of civil litigation and have had a broad experience in diverse areas from tort and products liability to commercial law, antitrust and bankruptcy. Following graduation from law school, I took a leave of absence from Simpson Thacher & Bartlett to accept an appointment as law clerk to the late Judge Mark A. Costantino, who had been recently appointed to the Eastern District. Given wide latitude by Judge Costantino, my clerkship was challenging and fulfilling. I helped Judge Costantino set up his new office, assisted at trials and had a principal role in the motion practice of the court. I drafted major opinions for his review and signature. As to be expected, Judge Costantino handled a full case load of civil and criminal matters.

At Simpson Thacher and Bartlett, I progressed from year to year as associates ordinarily did in firms of that stature. That is, my responsibilities and experience increased with my development as an attorney. Most of my litigation experience came at the pretrial stage, including documentary discovery and participation in extensive deposition taking or defending. At that time, the firm handled litigation for a major bank and auto maker. As a result, even junior associates had the opportunity to make pretrial appearances in state courts to handle calendar calls and motion practice. I participated at more senior levels in a major antitrust case, a uranium supply litigation and a hostile tender offer. Aside from the odd criminal matter, the vast majority of my assignments were on the civil side.

My service in the New York State Assembly, obviously, offered me an expansive experience in the substantive law of New York, with a special concentration on pension law, court operations, public authority structure and corporate law. The outside counsel work I performed during my service in the Assembly focused primarily on appellate assignments. It included, however, participation in pretrial discovery and trial preparation.

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

RESPONSE: Prior to taking the bench, most of my litigation experience was outside the courtroom. As for actual court experiences, most came during the periods when I was not in public service.

2. What percentage of these appearances was in:
(a) federal courts;
RESPONSE: 10%

(b) state courts of record;
RESPONSE: 90%

(c) other courts.
RESPONSE: None

3. What percentage of your litigation was:
(a) civil;
RESPONSE: 95%

(b) criminal.
RESPONSE: 5%

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

RESPONSE: I participated as chief associate counsel in two trials that went to verdict.

5. What percentage of these trials was:
(a) jury; RESPONSE: 50%
(b) non-jury. RESPONSE: 50%

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

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

RESPONSE: The 10 most significant litigated matters which I personally handled were matters I presided over as trial judge. They are set forth below chronologically:

Case Name	Index Number	Description	Plaintiff's Attorney	Defendant's Attorney
Bush v. Protravel International, Inc.	192 Misc. 2d 743, 746 N.Y.S.2d 790 (2002)	Held that the law of impossibility could excuse the untimely cancellation of a foreign travel contract in the aftermath of the September 11, 2001 terrorist attacks.	Marvin Ben-Aron, Esq. Chelli & Bush 149 New Dorp Lane Staten Island, NY 10306 (718) 987-8444	Craig S. Brown, Esq. 1 Battery Park Plaza New York, NY 10004 (212) 804-4260
Sweeney v. UAL Corp.	9/27/2002 NYLJ 22, (Col. 3)	A Small Claims proceeding which yielded an early determination of the intent and reach of federal law created to respond to claims of damage arising out of the September 11th terrorist attacks.	Joseph C. Sweeney, *pro se*	Incomplete information as to the attorney representing United Airlines. Her last name was Dunn.
Citibank N.A. v. McGarvey	196 Misc. 2d 292, 765 N.Y.S.2d 163 (2003)	Requirements for a default judgment valid under the Soldiers' and Sailors' Civil Relief Act.	Francis E. Mullen, Esq. Mullen & Innarone, P.C. Smithtown, NY	Stafford Liss, Esq. 6124 18th Avenue Brooklyn, NY 11204 (718) 837-4000
Lamanna v. Carrigan	196 Misc. 2d 98, 762 N.Y.S.2d 233(2003)	Determined that plaintiff had capacity to bring an action not scheduled in a prior bankruptcy proceeding, limiting prior case law.	Raymond J. Pezzoli, Esq. 698 Forest Avenue Staten Island, NY 10310 (718) 720-2200	Loris Zeppieri, Esq. 330 Old Country Road Mineola, NY 11501 (516) 739-0400
Colacino v. Chavis	2 Misc. 3d 506, 769 N.Y.S. 2d 706 (2003)	Held that a tenant terminated from the Section 8 rent abatement program for noncompliance was responsible for the full market rent.	Kenneth Colacino, *pro se*	Natalie Chavis, *pro se*

Park Radiology P.C. v. Allstate Insurance Company	2 Misc. 3d 621, 769 N.Y.S.2d 870 (2003)	Vacated arbitration award denying no-fault benefits and held that advisory opinion of the insurance superintendent was not binding. This was an early decision in a burgeoning area of litigation which has followed.	Joseph Sparacio, Esq. 2555 Richmond Avenue Staten Island, NY 10314 (718) 966-0055	Robert A. Stern, Esq. 295 Madison Avenue New York, NY 10017 (212) 592-8100
Culotta v. the City of New York	5 Misc.3d 583, 785 N.Y.S.2d 655 (2004)	An Article 78 Proceeding that struck down a portion of the zoning ordinance controlling development of Staten Island's South Richmond District.	Mattthew W. Woitkowski, Esq. 1562 Richmond Road Staten Island, NY 10304 (718) 667-1421	Ave Maria Brennan, Esq. Asst. N.Y.C. Corporation Counsel 100 Church Street (Room 5174) New York, NY 10007 (212) 788-0782
Best v. MetLife Auto and Home Insurance Company	2004 WL 2954915 (2004)	Resolved and open question of New York Law as to whether a debtor maintains legal capacity to sue on a cause of action not scheduled in bankruptcy where his bankruptcy proceeding is terminated summarily.	Peter M. McCabe, Esq. 61 Broadway (Suite 2320) New York, NY 10006 (212) 509-4212	Gallagher Walker & Bianco 98 Willis Avenue Mineola, NY 11501 (516) 248-2002
Sederer v. Ikker	3014/04	Jury appeal of a Kendra's Law order providing for involuntary assisted outpatient mental health treatment.	David Baltch, Esq. 232 Thompson Avenue Oceanside, NY 11572 (516) 594-3471	Jacqueline Civitano, Esq. Mental Health Legal Services Creedmoor Psychiatric Center 80-45 Winchester Blvd. Queens Village, NY 11427 (718) 264-3340

Paniagua v. Paniagua	13976/01	Motor vehicle accident with seatbelt defense tried to jury verdict in excess of $2 million.	Marvin Salenger, Esq. Joseph Bavaro, Esq. 233 Broadway (Suite 950) New York, NY 10279 (212) 261-1950	James N. Cameron, Esq. 74 Lincoln Avenue Staten Island, NY 10306 (718) 667-0897 Judith Formica, Esq. 1200 South Avenue (Suite 303) Staten Island, NY 10314 (718) 494-1200 Harold Schwab, Esq. Philip Abate, Esq. 120 Broadway New York, NY 10271 (212) 341-4234

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

RESPONSE: Most of my legal career has been spent in public service, with more than a majority of that as an elected member of the New York State Assembly. My service in the Assembly significantly tapped my legal knowledge, skills and experience. I was intimately involved in the crafting of legislation or defending as chief floor debater major legislative initiatives, including the reinstatement of capital punishment, modernization of court operations, development of ethics laws for public officials, business reorganization and pension improvements. I presided over many committee meetings and over meetings of the full Assembly. I served as an informal parliamentarian of Assembly whose advice on the rules of house procedure was highly regarded by members on both sides of the aisle. I authored 300 chapters of New York Law. All of these activities were accomplished with interaction among the other Members of the Assembly as well as the professional staff of the legislature and attorneys representing regulated interests affected by proposed legislation.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

RESPONSE: There are none, other than entitlement to New York State public employee pension benefits upon my retirement from state service. The formula is fixed by statute and the benefit will be computed as a percentage of my final average salary based on my length of service.

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

RESPONSE: There are no categories of litigation or financial arrangements that are likely to present potential conflicts of interest during my initial service as a district judge. Any potential conflict of interest which might arise will be resolved in the same way I have resolved potential conflicts of interest as a state court judge, that is, in accord with the applicable canons of judicial ethics and conflict of interest statutes and guidelines.

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

RESPONSE: No.

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

RESPONSE: See attached copy of my financial disclosure report.

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

RESPONSE: Attached.

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

RESPONSE: Prior to my election to the NY City Civil Court in 2001, I had over 30 years of political involvement. I ran as a candidate in 12 general election campaigns. I have been involved in a host of campaigns during that period. I was involved in various capacities in literally every Democratic campaign on Staten Island in those 30 years, from President of the United States to the most local public office. I could not hope to collect information regarding my political activities in that period. Suffice it to say, if a Democratic candidate was running for office on Staten Island, I had a role. Obviously, as a sitting judge since January 2002, I have not been involved in any such activities over the last three and one half years.

AO-10
Rev. 1/2004

FINANCIAL DISCLOSURE REPORT

Calendar Year 2004

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (Last name, First name, Middle initial) Vitaliano, Eric N	2. Court or Organization Eastern District of New York	3. Date of Report 10/11/2005
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge - nominee	5. ReportType (check appropriate type) (•) Nomination, Date 10/6/2005 ( ) Initial ( ) Annual ( ) Final	6. Reporting Period 1/1/2004 to 9/30/2005
7. Chambers or Office Address New York Supreme Court Homeport - 355 Front Street Staten Island, New York 10304	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer_____ Date_____	

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

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions)

☐ NONE - (No reportable positions.)

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Director	Seaview Historic Foundation, Inc.

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions)

☐ NONE - (No reportable agreements.)

	DATE	PARTIES AND TERMS
1.	1983	New York State Employees Retirement System; pension upon retirement.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Italiano, Eric N	10/11/2005

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1.	2003	New York State Unified Court System - Salary	123,132
2.	2004	New York State Unified Court System - Salary	135,060
3.	2005	New York Staten Unified Court System - Salary	105,000
4.	2003	Public Administrator, New York County - guardian ad litem fee	10,800
5.	2004	Public Administrator, New York County - guardian ad litem fee	5,750

B. Spouse's Non-Investment Income (If you were married during any portion of the reporting year, please complete this section. (dollar amount not required except for honoraria)

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

	DATE	SOURCE AND TYPE
1.	2004	Rivercrest Realty Associates - Salary
2.	2005	Rivercrest Realty Associates - Salary
3.		

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

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

☐ **NONE** - (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1.		Exempt

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Vitaliano, Eric N	Date of Report 10/11/2005

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

☐ NONE - (No such reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1.		Exempt	

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)

☑ NONE - (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE
1.			

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Name of Person Reporting	Date of Report
Vitaliano, Eric N	10/11/2005

VII. INVESTMENTS and TRUSTS

-- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
] NONE (No reportable income, assets, or transactions)									
. New York Community Bank Accounts	A	Interest	J	T					
:. Citibank N.A. Accounts	A	Interest	J	T					
;. American Amcap Fund	A	Dividend	K	T					
;. Lord Abbet Secs. Trust	A	Dividend	J	T					
5. Merrill Lynch Global Allocation C		None	J	T					
6. Prudential Financial common stock	A	Dividend	J	T					
7. Merrill Lynch Cash Management Account - NY Municipal Money	A	Interest	J	T					
8. U.S. Savings Bonds	B	Interest	J	T					
9. NYS Thruway Authority Bonds	A	Interest							
10. Honeywell International common stock	A	Dividend							
11. Johnson & Johnson common stock	A	Dividend							
12. Merrill Lynch common stock	A	Dividend							
13. Del Monte Foods common Stock		None							
14. Penn Mutual Life Insurance	B	Interest	J	T					
15. Sun Life Insurance Annuity	A	Interest	J	T					
16. New York State Empolyees Retirement System account	C	Interest	L	T					
17. Fidelity Investments IRA	A	Dividend	K	T					
18. -Spartan US EQ Index									

1. Income/Gain Codes: (See Columns B1 and D4)	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000
	F = $50,001-$100,000	G = $100,001-$1,000,000	H1 = $1,000,001-$5,000,000	H2 = More than $5,000,000	
2. Value Codes: (See Columns C1 and D3)	J = $15,000 or less	K = $15,001-$50,000	L = $50,001-$100,000	M = $100,001-$250,000	
	N = $250,000-$500,000	O = $500,001-$1,000,000	P1 = $1,000,001-$5,000,000	P2 = $5,000,001-$25,000,000	
	P3 = $25,000,001-$50,000,000		P4 = More than $50,000,000		
3. Value Method Codes (See Column C2)	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market	
	U = Book Value	V = Other	W = Estimated		

INANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Visiliano, Eric N	10/11/2005

II. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	(2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
). Prudential Financial Life Insurance	A	Dividend	J	T					
). Rivercrest Realty Associates Profit Sharing Plan	D	Interest	K	T					

1. Income/Gain Codes:	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000
(See Columns B1 and D4)	F = $50,001-$100,000	G = $100,001-$1,000,000	H1 = $1,000,001-$5,000,000	H2 = More than $5,000,000	
2. Value Codes	J = $15,000 or less	K = $15,001-$50,000	L = $50,001-$100,000	M = $100,001-$250,000	
(See Columns C1 and D3)	N = $250,000-$500,000	O = $500,001-$1,000,000	P1 = $1,000,001-$5,000,000	P2 = $5,000,001-$25,000,000	
	P3 = $25,000,001-$50,000,000		P4 = $More than $50,000,000		
3. Value Method Codes	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market	
(See Column C2)	U = Book Value	V = Other	W = Estimated		

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Vitaliano, Eric N	Date of Report 10/11/2005

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

10/24/05 MON 16:31 FAX

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Vitaliano, Eric N	Date of Report 10/11/2005

X. CERTIFICATION.

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

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

Signature _____ Date October 11, 2005

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS		LIABILITIES	
Cash on hand and in banks	$19,200.00	Notes payable to banks-secured	NONE
U.S. Government securities-add schedule	$10,000.00	Notes payable to banks-unsecured	NONE
Listed securities-add schedule	$42,675.00	Notes payable to relatives	NONE
Unlisted securities--add schedule	NONE	Notes payable to others	NONE
Accounts and notes receivable:	NONE	Accounts and bills due	$28,500.00
Due from relatives and friends		Unpaid income tax	NONE
Due from others		Other unpaid income and interest	NONE
Doubtful		Real estate mortgages payable-add schedule	$238,000.00
Real estate owned-add schedule	$900,000.00	Chattel mortgages and other liens payable	NONE
Real estate mortgages receivable	NONE	Other debts-itemize:	
Autos and other personal property	$35,000.00	Auto loans and leases	
Cash value-life insurance	$15,000.00	Revolving credit debt	
Other assets itemize.			
Vested retirement funds	$135,000.00		
		Total liabilities	$266,500.00
		Net Worth	$890,175.00
Total Assets	$1,156,675.00	Total liabilities and net worth	$1,156,675.00
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	NONE	Are any assets pledged? (Add schedule)	NONE
On leases or contracts	NONE	Are you defendant in any suits or legal actions?	NONE
Legal Claims	NONE	Have you ever taken bankruptcy?	NO
Provision for Federal Income Tax	NONE		
Other special debt	NONE		

SCHEDULE OF U.S. GOVERNMENT SECURITIES

U.S. Savings Bonds	$10,000.00

SCHEDULE OF LISTED SECURITIES

American Amcap Fund	$15,250.00
Lord Abbett Secs. Trust	$12,870.00
Merrill Lynch Global Allocation C	$12,045.00
Prudential Financial - common stock	$ 2,310.00

SCHEDULE OF REAL ESTATE OWNED

Residence	Staten Island, New York	$900,000.00

SCHEDULE OF REAL ESTATE MORTGAGE PAYABLE

Staten Island Residence	$238,000.00

III. GENERAL (PUBLIC)

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

RESPONSE: For more than 20 years of my professional career, I have worked, essentially, full-time as a lawyer in public service. As a Member of the New York State Assembly, I was involved in a very broad cross-section of public interests and activities in my home community and throughout New York State. I am particularly proud of my service to working families and the disadvantaged. Among the awards and recognition which have brought me the highest personal satisfaction are the declaration by a committee of the American Federation of State, County and Municipal Employees naming me "Champion of Worker Rights" and receipt of the New York State Catholic Conference Public Policy Award "for courageous public service in pursuit of the common good". I consider my public service to be in the highest traditions of our profession.

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

RESPONSE: I do not belong to any organization that practices invidious discrimination. I do belong, however, to the Knights of Columbus, a fraternal organization with membership limited to Roman Catholics. Women members meet separately in an auxiliary. The Columbian Lawyers, of which I am also a member, limits membership to active and retired attorneys who claim Italian ancestry. The activities of both organizations are essentially open to all on an equal basis, except for actual membership meetings.

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

to your nomination and interviews in which you participated).

RESPONSE: When a vacancy was created in the district court for Eastern District of New York, friends suggested that I make an application to New York's Senior United States Senator, Charles E. Schumer. My name was forwarded by his staff to the Senator's judicial screening panel, chaired by Mark H. O'Donoghue, Esq. of the firm of Curtis, Mallet-Prevost, Colt & Mosle, LLP. I then completed a confidential questionnaire sent to me by Mr. O'Donoghue. The screening panel approved my application and forwarded my name to Senator Schumer. (I presume other names were forwarded as well.) Senator Schumer requested that I schedule a personal interview with him, which I did. Following that interview, I presume Senator Schumer made further inquiry about me. Within a few weeks, I received a call from the Senator's office indicating that the Senator was satisfied with my qualifications and prepared to recommend my nomination to the White House. After Senator Schumer made his recommendation to the President, I received a call from the Office of White House Counsel to arrange for a personal interview. I traveled to the White House to meet with a team of attorneys who reviewed my qualifications. I was given a packet of forms and questionnaires which I completed. Following that, a background investigation was conducted by the FBI. I was then advised by the Office of White House Counsel that the President had formally transmitted my nomination to the Senate on October 6, 2005.

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

RESPONSE: No.

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

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped-many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

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

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the

imposition of far-reaching orders extending to broad classes of individuals;

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

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

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

RESPONSE: Criticism of judges and their decisions is often colored by the critic's view of a particular judicial result. Criticism can come swiftly and furiously. A losing party might more easily find fault in the judge's "judging" than conclude the facts and the law were against his position. But, that being recognized, addressing the "tendencies" described as "characteristics of judicial activism", whether or not they are "characteristics of judicial activism", they are tendencies which, in my view, are to be avoided. In my three and one half years on the state court bench, I have made perfectly plain that I am no longer the politician, I am no longer the lawmaker, I am no longer the advocate and I no longer have a political or litigation agenda. My role as a judge is to know and understand what is required by the Constitution and the laws and to see that the individual cases and controversies brought before me are resolved in accordance with the Constitution and the laws, with fairness, justice, and even-handedness. I strive to do so every day on the state bench with wisdom and energy. That will be my working principal on the federal bench as well. To the extent that some might believe there is a role for judges beyond that, it is a belief that I do not share.

10/24/05 MON 16:34 FAX

AFFIDAVIT

I, **ERIC N. VITALIANO**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

10/24/05
(DATE)

ERIC N. VITALIANO

(NOTARY)

JULIA A. RICE
NOTARY PUBLIC, STATE OF NEW YORK
ID No. 01RI6107626
QUALIFIED IN RICHMOND COUNTY
MY COMMISSION EXPIRES APRIL 12, 2008

Senator SCHUMER. Thank you, Judge Vitaliano. They are now calling me over there, so I am going to ask each of our prospective nominees to be quick. But I see that Senator Murkowski is here on behalf of Mr. Burgess. Senator Stevens was here already. We are under real time constraints, but I want to recognize Senator Murkowski to say a few words on behalf of Mr. Burgess. And your entire statement will be read into the record.

PRESENTATION OF TIMOTHY MARK BURGESS, OF ALASKA, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF ALASKA, BY HON. LISA MURKOWSKI, A U.S. SENATOR FROM THE STATE OF ALASKA

Senator MURKOWSKI. Thank you. I so appreciate that.

I want to welcome a colleague of mine. In fact, Mr. Burgess and I were actually sworn in to the Alaska Bar together, so we have not only a longstanding professional relationship, but I think it is fair to say a longstanding personal relationship. Our kids are participants in YMCA basketball, and Tim is a coach there. I see him out on the soccer field. I see him in the real world, being a dad, being a community leader, being a participant.

I want to commend Tim for the acts that he has done as our U.S. Attorney General working on drug education initiatives like Red Ribbon, something that I am very involved in, in our State; working on programs like Weed and Seed; and more recently the Interagency Terrorist Threat Task Force that we have seen some incredible successes, working with the Federal, the State, the local to really bring together those that are involved to make a difference in our State. Tim is a leader at the community level, at the State level, and I am delighted to stand with him and recommending him for this judgeship.

I appreciate the opportunity to speak here today and to endorse him. Thank you.

Senator SCHUMER. Thank you, Senator Murkowski, and I appreciate your being here.

I ask unanimous consent—which I guess if I say it is OK, it will be.

[Laughter.]

Senator SCHUMER [continuing]. For Senator Leahy's and Senator McConnell's statements to be entered into the record.

Now I do have to go to this session, so what we are going to do—and this is no—in fact, the fewer questions you are asked, the better, gentlemen. We are going to leave the record open for 1 week for any Senator to submit written questions, which you will be required to answer.

With that, do any of you want to say anything in particular? Do you, Mr. Van Tatenhove and Mr. Burgess, want to introduce your families briefly? I introduced Mr. Bianco's already.

STATEMENT OF GREGORY F. VAN TATENHOVE, OF KENTUCKY, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF KENTUCKY

Mr. VAN TATENHOVE. Mr. Chairman, I appreciate the opportunity to do that, and I appreciate the courtesy of the hearing. We

certainly understand the unusual circumstances that we are under today.

You asked about my qualifications. The one that I am proudest of is that as a husband and father, so I will quickly introduce my family that is here today.

First of all, my daughter, Catherine, who is a first grader at the Lexington School in Lexington, Kentucky; my son, Cooper, who is fifth grader at the Lexington School. I am pleased also to have my wife of over 21 years, Jane, who is with me here today; and I am particularly pleased to have my sister, who I describe as the smartest lawyer in my family, Jana, who is here with her husband, Rick. I am also pleased to have my brother-in-law, David Cooper, who is here with his friend, Chris Koosher. And I have a number of other friends here. It is a privilege to have them here.

Thank you, Mr. Chairman.

[The biographical information of Mr. Van Tatenhove follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Gregory Frederick Van Tatenhove

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

RESIDENCE: Lexington, Kentucky

OFFICE: 110 West Vine Street
Suite 400
Lexington, Kentucky 40507-1671

3. Date and place of birth

April 2, 1960; Los Angeles County, California

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

B. Jane Cooper Van Tatenhove

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

University of Kentucky College of Law
1986 - 1989
J.D. 1989

Asbury College
1978 - 1982
B.A. 1982

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

2001-Present
U.S. Department of Justice; U.S. Attorneys
Lexington, Kentucky

1994-2001:
U.S. Representative Ron Lewis; Chief of Staff and Legal Counsel;
Washington, D.C.

2000-Present:
Asbury College Board of Trustees; Member;
Wilmore, Kentucky

1997-2001:
Asbury College Alumni Association; Officer;
Wilmore, Kentucky

1993-95:
Burgess Square Homeowners Association; President;
Alexandria, Virginia

1990-94:
U.S. Department of Justice; Trial Attorney;
Washington, D.C.

1990:
McConnell for Senate Committee; Reseach & Writing;
Louisville, Kentucky

1989-90:
U.S. District Judge Eugene E. Siler, Jr.; Law Clerk;
London, Kentucky

1988:
Pepper, Hamilton, LLP; Summer Associate;
Philadelphia, Pennsylvania

1988:
Stoll, Kennon & Park; Summer Associate;
Lexington, Kentucky

1987:
Stites and Harbison; Summer Associate;
Lexington, Kentucky

1985-86:
U.S. Senator Mitch McConnell; Legislative Assistant;
Washington, D.C.

1984:
U.S. Representative Dan Lungren; Press Secretary;
Washington, D.C.

1983-84:
U.S. Representative Dan Lungren; Research Assistant;
Washington, D.C.

1982-83:
Talcott, McCabe & Associates; Intern;
Washington, D.C.

1982:
Tim Martin for Congress; Issues Coordinator;
Elyria, Ohio

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

No

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

Selected, Kentucky Law Journal -- First Year Academic Selection

Awarded, Excellence in Oral Advocacy -- First Year Moot Court Program

Finalist, University of Kentucky National Moot Court Team Competition

Selected, Kentucky Law Journal Articles Editor

Awarded, U.S. Department of Justice Special Achievement Award

Awarded, Transportation Security Administration, 2004 Local Partnership Award

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

Bar of the District of Columbia Court of Appeals
January 8, 1992
Active

Kentucky Bar Association
May 1, 1990
Active

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

I do not believe that any of the organizations to which I belong are active in lobbying before public bodies. My memberships are as follows:

Appalachian High Intensity Drug Trafficking Area Board
Operation UNITE Advisory Board
Attorney General's Advisory Committee (AGAC)/Office Management and Budget
Attorney General's Advisory Committee (AGAC)
AGAC Office of Management and Budget Subcommittee (Chair)
AGAC Narcotics Subcommittee
AGAC White Collar Subcommittee
Federalist Society
Asbury College Alumni Association
University of Kentucky Alumni Association
Centenary United Methodist Church
Homeowners Association

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

Bar of the District of Columbia Court of Appeals
January 8, 1992
Active

Bar of the Commonwealth of Pennsylvania
January 17, 1990
Active January 17, 1990 - July 1, 1990
Voluntarily Inactive July 1, 1990 - Present

Bar of the Commonwealth of Kentucky
May 1, 1990
Active
(Non-practice exemption for CLE since October 1996)

United States District Court for the Eastern District of Kentucky
September 17, 1990

United States Court of Appeals for the Sixth Circuit
August 16, 1990

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

"Recent Developments Under the Federal Sentencing Guidelines," Volume 68 Number 1, KBA Bench and Bar (January 2004)

"A Matter of Power: Judicial Review of Congressional Rules of Procedure," 76 KY.L.J. 597 (Winter 1988)(reprinted 134 Cong. Rec. S12045 (daily ed. September 8, 1988)

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

My last physical examination was conducted in July 2005. I am generally in excellent health.

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

None

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

Not Applicable.

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

Not Applicable.

17. Legal Career:

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

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

August 1989- August 1990:
Chief U.S. District Judge Eugene E. Siler, Jr.;
London, Kentucky

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

I have not practiced as a sole practitioner.

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

September 2001-Present:
United States Attorney
Eastern District of Kentucky
110 West Vine Street
Suite 400
Lexington, Kentucky 40507-1671

July 1994-September 2001:
Chief of Staff and Legal Counsel
U.S. Representative Ron Lewis
2418 Rayburn House Office Building
Washington, D.C. 20515

November 1990-July 1994:
Trial Attorney
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

August 1989-August 1990:
Law Clerk
The Honorable Eugene E. Siler, Jr.
United States Courthouse
Room 333
310 South Main Street
London, Kentucky 40741

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

As United States Attorney, I serve as the chief federal law enforcement officer in the Eastern District of Kentucky. In addition to my administrative duties, I review and approve virtually every indictment or information (in the case of a plea) presented to a grand jury. With regard to civil matters, my review and approval is required for major enforcement actions. Similarly, substantial offers of settlement cannot be presented without my signature. I am directly involved with the substantive litigation decisions made in major cases arising from both the civil and criminal divisions.

Few experiences were better preparation for my current leadership position, than my work as a Department of Justice Trial Attorney. In 1990, I was one of eleven hired nationally as part of the Attorney General's Honors Program. I served in the Federal Programs Branch of the Civil Division until July of 1994.

The Federal Programs Branch litigates on behalf of approximately 100 federal agencies, the President and Cabinet officers, and other government officials. The activities of the branch include defending against constitutional challenges to federal statutes, suits to overturn government policies and programs, and attacks on the legality of government decisions. My case load included matters on behalf of the Departments of State, Health and Human Services, and Justice.

Finally, as Chief of Staff and Legal Counsel for Congressman Ron Lewis (KY-2), I had occasion to handle a number of legal matters. Although not practicing in a formal sense, as the only attorney on staff I reviewed all matters pertaining to constitutional questions, legislative drafting, public policy issues pertaining to the Constitution or judicial system, and constitutional related legal matters. I also served as the top ethics officers for the office.

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

As noted, while practicing as a trial attorney my federal clients included the Department of State, Health and Human Services and Justice. I handled a wide variety of cases within the general jurisdiction of the federal programs branch.

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

As United States Attorney, my appearances in court and before the grand jury have been primarily limited to ministerial functions. On selected occasions, however, I

have appeared in court because of the significance of the case.

While at the Department of Justice as a Trial Attorney, I appeared on behalf of the United States in federal courts throughout the nation including those located in the Northern and Southern Districts of California, the Northern District of Texas, the Southern District of Ohio, the Eastern District of Pennsylvania, the District of Colorado, the District of Arizona and the District of Columbia. During my tenure as a Trial Attorney I appeared in court three or four times per year.

2. What percentage of these appearances was in:
   (a) federal courts;
   100%
   (b) state courts of record;
   0%
   (c) other courts.
   0%

3. What percentage of your litigation was:
   (a) civil;
   60%
   (b) criminal.
   40%

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

Although my experience as lead counsel is largely based on a civil motion practice, in August of 1993 I successfully tried, as sole counsel, a Title VII case involving allegations of age and sex discrimination at the Army and Air Force Exchange Service, Batt v. Kahla, (N.D. Texas).

5. What percentage of these trials was:
   (a) jury;
   0%
   (b) non-jury.
   100%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date

if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

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

1. Batt v. Kahla, (N.D. Texas)(1992-94). Title VII Case involving age and sex discrimination in which I represented the Army and Air Force Exchange Service. After extensive settlement negotiations, and in the face of the Court's refusal to rule on the government's summary judgment motion, a two day evidentiary hearing on the merits of the case was conducted. I handled all aspects of the trial. Pretrial work included drafting findings of fact and conclusions of law, exhibit lists and conducting witness preparation. On November 17, 1993, Magistrate Judge Tolle filed a Special Master's Report recommending that judgment be entered in favor of the government. This report was adopted by Judge Fish on November 30, 1993.

Opposing Counsel: Joann Peters; 501 Elm Place; Suite 400; Dallas, Texas 75202

Judge: Hon. A. Joe Fish

2. Rosenfeld v. DOJ, (N.D. Ca.)(1991-94)(Civil Docket #: 85-CV-2247). At the time this was one of the largest and most complicated FOIA cases being handled by the Federal Programs Branch. A reporter seeking information about FBI surveillance in and around Berkeley, California in the 1960s and 1970s brought the consolidated cases against my client the FBI. At the time of my departure from the branch, the FBI had processed over a quarter of a million pages in response to the plaintiff's requests. In 1993, I successfully defeated plaintiff's Motion For Contempt And Second Motion To Compel Release Of Non-Exempt Records, gaining a favorable ruling from Judge Marilyn Hall Patel on the FBI's Motion to Stay Proceedings.

Opposing Counsel: Thomas Steel; Steel Clarence & Buckley; 301 Pennsylvania Ave.; San Francisco, CA 94107 (415-920-7100)

Judge: Hon. Marilyn Hall Patel

3. In Sheridan-Kalorama Historical Association, et al. V. Baker, et al. And National Trust for Historic Preservation v. Department of State, (D. D.C.)(1991-94)(Civil Docket #: 91-CV-564), plaintiffs raised a number of claims concerning the Republic of Turkey's plan to demolish its chancery. On April 14, 1993, Judge Greene sustained in part and denied in part the government's motion to dismiss and ordered additional briefing. At this juncture, after serving as co-counsel, I took over as sole counsel on the case filing four substantive briefs of the Department of State: 1) a reply to plaintiff's supplemental briefing on the D.C. Circuit's decision in McMillan Park Comm. V. National Capital Planning Comm'n, 968 F. 2d 1283 (D.C. Cir. 1992); 2) a supplemental brief requested by the Court on the impact of the National Historic Preservation Act Amendments of 1992 on this case; 3) a response to the Republic of Turkey's motion for reconsideration; and 4) a supplemental brief on the requirements of the Foreign Missions Act regarding "substantial compliance" with D.C. historic preservation regulations. This final brief required the reconstruction and organization of an administrative record comprised of over 1,500 pages. Ultimately, the Court ruled in the government's favor after my departure from the Branch.

Opposing Counsel: Richard Bart Hettler; Robins, Kaplan, Miller & Ciresi; 1801 K Street, NW; Washington, D.C. 20006 (202-775-0725)

Judge: Hon. Harold H. Greene

4. In Uithoven v. Thuss, (D. D.C)(D.C. Cir.) and (N.D. Miss.)(1992-94)(Civil Docket #: 93-CV-106), I successfully obtained dismissal of the D.C. District Court action, a mandamus suit alleging that my client, the Corp of Engineers, violated certain statutory and constitutional provisions in refusing to resell to the plaintiff property condemned for recreational use as part of the Tennessee-

Tombigbee Waterway Project. I also successfully handled the appeal in this case. After the plaintiff filed an identical suit in the Northern District of Mississippi, I filed a Motion to Dismiss or, In the Alternative, For Summary Judgment. The Court ruled in the government's favor after my departure from the branch.

Opposing Counsel: Jim D. Waide, III; Waide Law Office; P.O. Box 1357; Tupelo, MS 38802

Judge: Hon. L.T. Senter, Jr.

5. Brown v. Higgins, (S.D. Oh.)(Civil Docket #: 89-CV-446) was an action challenging, on fourth amendment grounds, the Bureau of Alcohol, Tobacco and Firearms' "forward trace" of selected guns and certain purchasers as part of the ATF's annual compliance inspection of licensees. After propounding interrogatories and taking the named plaintiff's deposition I filed, on behalf of ATF, a supplemental memorandum in support of the government's motion to dismiss the case as moot. In ruling on the government's motion, the Court recognized that the case was moot as to the original plaintiffs but allowed the substitution of a new plaintiff by way of an amended complaint and ordered that the substantive issues in the case be completely rebriefed. In March of 1993, I filed a new dispositive motion. Among other things, the papers supporting this motion addressed the impact of the Supreme Court's decision in U.S. v. Thompson/Center Arms Co., 112 S. Ct. 2102, 2110-11 (1992)(holding that ambiguous statutes that have "criminal applications that carry no additional requirement of willfulness" be resolved in favor of the defendant according to the rule of lenity), an issue of first impression in this context.

Opposing Counsel: Dan Lee Ferguson; 5509 Howe Road; Trenton, OH 45067 (513-988-9314)

Judge: Hon. Walter Herbert Rice

6. A third party action against my client, HUD, seeking indemnification and declaratory relief, Planned Parenthood of Santa Barbara v. City of Santa Maria, (C.D. Ca.)(Civil Docket #: 90-CV-5995), was a suit in which the plaintiff

challenged a no abortion restriction put on Community Development Block Grant funds. After removing to federal court, the government's Motion to Dismiss was granted at oral argument.

Opposing Counsel: Richard R. Terzian; Adams, Duque & Hazeltine; 777 S. Figueroa Street; 10th Floor; Los Angeles, CA

Judge: Hon. Irving Hill

7. In Peoples Bank of Sandy Hook v. The Comptroller of the Currency, (E.D. Ky.)(1993-94)(Civil Docket #: 93-CV-91), I defended the government's policies pertaining to requests by a national bank to relocate its main office from one county to another, while maintaining a branch office in the county in which the bank's main office was originally located. I filed a dispositive motion in the case, which was decided in favor of the government after my departure from the branch.

Opposing Counsel: M. Thurman Senn; Morgan & Pottinger; 600 W. Washington Street; Louisville, KY 40202 (502-582-2453)

8. At the time I left the Federal Programs Branch in 1994, I was defending against seven subpoenas issued to the intelligence community in Paul v. Avril, (S.D. Florida)(1994)(Civil Docket #: 91-CV-399). My clients included the NSA, CIA and the Department of State. The plaintiffs in this suit brought a civil action seeking damages against Lt. Col. Prosper Avril, who for a time was a military ruler in Haiti, and was accused of torturing the plaintiffs. The subpoenas in question sought a variety of documents that dealt with, among other things, the structure of the Haitian military and/or police and that mentioned certain prominent Haitians by name, including Col. Avril. Also the plaintiffs sought all records created by the U.S. Army Military attaches stationed in Haiti from January 1, 1987 to January 1, 1991. I am not aware of the disposition of this matter.

Opposing Counsel: Ira Jay Kurzban; Kurzban Kurzban Weinger & Tetzeli; 2650 Southwest 27th Avenue; Second Floor; Miami, FL 33133 (305-444-0060)

Judge: Hon. Wilkie D. Ferguson, Jr.

9. From 1992 to 1994 I co-chaired a Title VII and Equal Pay Act suit brought by an Assistant United States Attorney in Denver, Colorado, Ray v. Barr, (D. Co.)(1992-94)(Civil Docket #: 91-CV-2069). After conducting numerous witness interviews and preparing supplemental discovery responses, I participated in successfully settling this case on behalf of the Department of Justice.

Co-Counsel: Jennifer R. Rivera; U.S. Department of Justice; Civil Division; 901 E Street, NW; Washington, D.C. 20004 (202-514-3671)

Opposing Counsel: Kathleen Mullen; 733 East 8th Avenue; Denver, CO 80203 (303-894-0995)

Judge: Hon. Daniel B. Sparr

10. During my tenure at the Department of Justice, I served on the litigation team for Kendrick v. Sullivan, (D. D.C.)(1992-94)(Civil Docket #: 83-CV-3175). In defense of this first amendment challenge to the administration of the Adolescent Family Life Act, I conducted research on a motion in limine, prepared exhibit lists, conducted a video tape deposition, and authored video tape designations as well as conclusions of law. This matter was subsequently settled.

Lead Co-Counsel: Thomas W. Millet; U.S. Department of Justice; Civil Division; 901 E Street, NW; Washington, D.C. 20004 (202-514-3313)

Opposing Counsel: Janet Benshoof; American Civil Liberties Union Foundation; 132 West 43rd Street; New York, New York 10036 (212-944-9800)

Judge: Hon. John Sirica

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

One of the most rewarding parts of my tenure as United States Attorney has been the opportunity to serve on the Attorney General's Advisory Committee (AGAC). This group of fifteen to twenty U.S. Attorneys serves as one of the major policy review and formulation organizations at the Department of Justice. It has been my privilege to have been selected to serve on the AGAC by both Attorney General Ashcroft and Gonzales.

During the last several years, the AGAC has reviewed and considered a number of matters pertaining to the administration of justice in the federal courts. For example, recent Supreme Court decisions have substantially changed the way the Federal Sentencing Guidelines are applied. The AGAC has been at the forefront in drafting the Department of Justice's response to the Court's action.

The greatest crime problem facing the Eastern District continues to be our struggle with the illegal use of narcotics. Consequently, I have sought to use my role as United States Attorney as a catalyst for the creation of a comprehensive drug control strategy for the District. In support of this goal, I have served several terms on the Executive Board of the Appalachian High Intensity Drug Trafficking Area (AHIDTA), just completing a term as chair. The AHIDTA is part of a network of similar organizations around the country focused on investigation, prosecution and education.

To address the growing problem of gun crime, I established a Project Safe Neighborhoods program in the Eastern District. This program vigorously enforces existing gun laws while increasing public awareness of the consequences of gun crime.

I also serve as the chair of an Anti-Terrorism Advisory Council (ATAC). This group of state, local and federal law enforcement officials meets regularly to coordinate efforts to combat terrorism in the Eastern District of Kentucky.

In sum, my legal activities in recent years have focused on the effective invocation of federal criminal law in support of the priorities of the Office of U.S. Attorney. This provides a unique and complex understanding of federal practice.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

a. U.S. Government Thrift Savings Plan

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

Conflict-of-interest issues during my initial service should be confined solely to my tenure as United States Attorney. I anticipate being recused from all matters pending in the office of United States Attorney at the time of my confirmation. Generally, I will seek counsel before participating in any matter in which an impartiality could be questioned. I will carefully adhere to the Code of Conduct for United States Judges and applicable statutes.

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

No

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

See attached Public Financial Disclosure Report

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

See attached Net Worth Statement

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

Fall 1990:
McConnell for Senate Committee (KY); Special Projects; Louisville, Kentucky

Fall 1982:
Tim Martin for Congress (OH - 13); Issues Coordinator; Elyria, Ohio

In addition, I have occasionally been identified in a public way with other candidates because of my service to Members of Congress. For example, Congressman Lewis served as a co-chair of President Bush's campaign effort in Kentucky. Part of my personal time was devoted to this effort.

AO-10
Rev. 1/2004

FINANCIAL DISCLOSURE REPORT

Calendar Year 2004

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (Last name, First name, Middle initial) Van Tatenhove, Gregory F	2. Court or Organization U. S. District Court (ED-KY)	3. Date of Report 9/16/2005
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) U. S. District Judge-Nominee	5. ReportType (check appropriate type) (●) Nomination, Date 9/13/2005 ( ) Initial ( ) Annual ( ) Final	6. Reporting Period 1/1/2004 to 8/16/2005
7. Chambers or Office Address 110 West Vine Street Suite 400 Lexington, KY 40507-1671	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer_____ Date_____	

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

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions)

☐ NONE - (No reportable positions.)

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Vice-Chairman	Appalachian High Intensity Drug Trafficking Area
2.	Chairman	Appalachian High Intensity Drug Trafficking Area
3.	Steering Committee Member	Operation UNITE (DOJ Funded Drug Initiative)

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions)

☑ NONE - (No reportable agreements.)

	DATE	PARTIES AND TERMS
1.		

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FINANCIAL DISCLOSURE OFFICE

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Van Tatenhove, Gregory F	9/16/2005

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

A. Filer's Non-Investment Income

☑ NONE - (No reportable non-investment income.)

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1.			

B. Spouse's Non-Investment Income - (If you were married during any portion of the reporting year, please complete this section. (dollar amount not required except for honoraria)

☑ NONE - (No reportable non-investment income.)

	DATE	SOURCE AND TYPE
1.		

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

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

☐ NONE - (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1.		EXEMPT

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Van Tatenhove, Gregory F	9/16/2005

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

☐ NONE - (No such reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1.		EXEMPT	

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)

☑ NONE - (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE
1.			

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Van Tatenhove, Gregory F	9/16/2005

VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	(2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)									
1. Wright Patman Congressional Federal Credit Union Accounts	A	Interest	J	T	EXEMPT				
2. The Janus Fund	A	Dividend							
3. The Vanguard 500 Fund	B	Dividend	K	T					
4. Wash. Hosp. Center Sec. 401(a) Cash Balance Ret. Plan	C	Interest	L	T					
5. New York Whole Life Insurance Policy	B	Dividend	K	T					

1. Income/Gain Codes: (See Columns B1 and D4)
A = $1,000 or less
B = $1,001-$2,500
C = $2,501-$5,000
D = $5,001-$15,000
E = $15,001-$50,000
F = $50,001-$100,000
G = $100,001-$1,000,000
H1 = $1,000,000-$5,000,000
H2 = More than $5,000,000

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

3. Value Method Codes (See Column C2)
Q = Appraisal
R = Cost (Real Estate Only)
S = Assessment
T = Cash/Market
U = Book Value
V = Other
W = Estimated

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Van Tatenhove, Gregory F	9/16/2005

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

IIIA: Non-investment income from 2003-2005 is from current employment by the United States.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Van Tatenhove, Gregory F	9/16/2005

IX. CERTIFICATION.

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

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

Signature _____ Date 9-16-05

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS		LIABILITIES	
Cash on hand and in banks	6,119.00	Notes payable to banks-secured	0.00
U.S. Government securities-add schedule	0.00	Notes payable to banks-unsecured	14,680.00
Listed securities-add schedule	25,298.00	Notes payable to relatives	61,000.00
Unlisted securities--add schedule	0.00	Notes payable to others	0.00
Accounts and notes receivable:	0.00	Accounts and bills due	0.00
Due from relatives & friends	0.00	Unpaid income tax	0.00
Due from others	0.00	Other unpaid income and interest	0.00
Doubtful	10,000.00	Real estate mortgages payable-add schedule	383,115.00
Real estate owned-add schedule	700,000.00	Chattel mortgages and other liens payable	2,920.00
Real estate mortgages receivable	0.00	Other debts-itemize:	0.00
Autos and other personal property	95,000.00	Consumer Credit	16,219.00
Cash value-life insurance	17,765.00		
Other assets itemize:	0.00	Total Liabilities	477,934.00
U.S. Government Thrift Savings	316,302.00	Net Worth	751,884.00
Cash Balance Retirement	59,334.00	Total liabilities and net worth	1,229,818.00
Total Assets	1,229,818.00		
CONTINGENT LIABILITIES		**GENERAL INFORMATION**	
As endorser, comaker or guarantor	0.00	Are any assets pledged? (Add schedule)	No
On leases or contracts	0.00	Are you defendant in any suits or legal actions?	No
Legal Claims	0.00	Have you ever taken bankruptcy?	No
Provision for Federal Income Tax	0.00		
Other special debt	0.00		

Financial Statement
Net Worth
September 2005
Gregory F. Van Tatenhove

Listed Securities Schedule

Vanguard 500 Mutual Fund	$ 25,298.00
TOTAL	$ 25,298.00

Real Estate Owned Schedule

Real Estate; Personal Residence; Lexington, Kentucky	$ 700,000.00
TOTAL	$ 700,000.00

Real Estate Mortgages Payable Schedule

First Mortgage on Personal Residence; Lexington, Kentucky	$ 208,961.00
Second Mortgage on Personal Residence; Lexington, Kentucky	$ 174,154.00
TOTAL	$ 383,115.00

III. GENERAL (PUBLIC)

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

While in the Federal Programs Branch at the Department of Justice, I was pleased to be part of an effort by several attorneys to organize Branch participation with D.C. Cares. This service based organization targets lawyers in the D.C. area, encouraging them to become active in local service projects. My participation included serving breakfast on a regular basis at a homeless shelter and assisting with maintenance projects on behalf of a low-income homeowner.

Since that time I have supported financially the ministry and charitable works of my parish in Alexandria, Virginia, the Washington Street United Methodist Church and also in Lexington, Kentucky, Centenary United Methodist Church. At Centenary, I am pleased to serve as the Chair of the Staff-Parish Relations Committee and member of the Church Council.

Further, as a volunteer Trustee and Alumni Board Member of my alma mater, Asbury College, I donated both financial resources and time to an institution with a long history of supporting and encouraging students, both formally and informally, to be active in service to their community.

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

No.

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

There is no selection commission

By letters dated January 10, 2005, I forwarded to U.S. Senators Mitch McConnell and Jim Bunning a formal request to be considered for recommendation to the President for appointment to the federal bench. This was followed some weeks later by an interview in Kentucky with the Chief of Staffs for each senator. Prior to that interview, I responded in writing to a list of questions drawn from this questionnaire. On April 14, 2005 I interviewed in Washington with Senators McConnell and Bunning. I interviewed with the Office of White House Counsel on May 20, 2005.

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

No.

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

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

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

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

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

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

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

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

These examples of the exercise of judicial authority illustrate the significance of a civic framework premised on separate or divided powers. In a representative democracy, comprised of separate legislative, executive, and judicial departments, the judicial power is restricted.

When a court strikes down or expands the action of one of the political branches it is acting in a countermajoritarian way. Consequently, it should do so in only the most limited of circumstances less the judiciary gradually circumscribe the majority's right to govern. And in so acting, a court must always rest its' holding on a neutral principle as opposed to the subjective judgment of the judge.

Ultimately, our representative democracy relies heavily on the corrective force of the political process. The duty of a federal judge is simply to interpret and apply the law. Congress and the Executive branch are charged with enacting it. Hence, the doctrines of judicial restraint, stare decises, the "presumption of constitutionality", and "rule of law", all are designed to prevent judges wandering into matters of public policy wisely entrusted by the Constitution to those accountable to the electorate.

AFFIDAVIT

I, Gregory F. Van Tatenhove, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

9-29-05
(DATE)

GREGORY F. VAN TATENHOVE

Peggy L. Rose
(NOTARY)

Commission Expires: 01-29-06

Senator SCHUMER. And how about you, Mr. Burgess? Would you do us the honor of introducing your family?

STATEMENT OF TIMOTHY MARK BURGESS, OF ALASKA, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF ALASKA

Mr. BURGESS. Thank you, Senator. My son, Foster Burgess, is right over here. He was the only one able to make the long trip with me for this.

Senator SCHUMER. We understand. There is no shuttle every half-hour, as I understand it, the way there is to New York.

[Laughter.]

Mr. BURGESS. No, there is not. But I also have four children, and I also have with me three of my Washington family from my many years of working here when I was much younger: Mary Maguire, Donna Murray, and John Devore.

[The biographical information of Mr. Burgess follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

   Timothy Mark Burgess

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

   Residence: Anchorage, Alaska

   Office: United States Attorney's Office
   Federal Building & U.S. Courthouse
   222 West 7th Avenue, #9, Room 253
   Anchorage, Alaska 99513-7567

3. Date and place of birth:

   August 11, 1956
   San Francisco, CA

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

   Spouse's name: Joanne Margaret Grace
   Spouse's occupation: Senior Assistant Attorney General
   Spouse's employer: Alaska Department of Law
   Opinions, Appeals and Ethics Section
   State of Alaska
   1031 West 4th Avenue, Suite 200
   Anchorage, Alaska 99501

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

College/Law School	Dates of Attendance	Degree Received Date Granted
Georgetown University Law School	09/86 - 05/87	(None, visiting student)
Northeastern University Law School	09/83 - 05/87	J.D. (1987)

University of Alaska, Fairbanks	09/79 - 05/82	M.B.A. (1982)
University of Alaska, Fairbanks	09/76 - 12/78	B.A. (1978)
Cañada College Redwood City, CA	09/74 - 05/76	A.A. (1976)

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

03/2001 - Present	U.S. Attorney District of Alaska
09/1999 - 08/2001	Habitat for Humanity - Anchorage Board of Directors (Volunteer Position)
02/1989 - 03/2001	Office of the U.S. Attorney District of Alaska (Assistant U.S. Attorney)
11/1987 - 01/1989	Gilmore & Feldman Law Firm (Associate Attorney)
11/1987 - 01/1989	Alpine Alternatives, Inc. Board of Directors (Volunteer Position)
04/1988 - 01/1989	University of Alaska, Fairbanks Alumni Association Board of Directors (Volunteer Position)
09/1986 - 05/1987	Birch, Horton, Bittner Law Firm (Law Clerk)
11/1985 - 08/1986	Law Offices of Charles E. Cole (Law Clerk)

08/1985 - 11/1985	Office of General Counsel University of Alaska (Law Clerk)
03/1985 - 08/1985	Alaska Supreme Court Justice Edmund W. Burke (Legal Intern)
06/1984 - 08/1984	Hartig Rhodes Law Firm (Legal Intern)
06/1983 - 08/1983	Self-employed
08/1982 - 06/1983	Office of U.S. Senator Frank Murkowski (Special Assistant)
05/1982 - 08/1982	University of Alaska, Fairbanks
02/1980 - 02/1982	University of Alaska Board of Regents
06/1981 - 08/1981	Self-employed
06/1980 - 08/1980	University of Alaska, Fairbanks
09/1979 - 05/1980	University of Alaska, Fairbanks
06/1979 - 08/1979	Cost Less Maintenance
01/1979 - 06/1979	Sailmaker Restaurant

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

   No.

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

   2002 - NALS Foundation *Scales of Justice Award*

   2000 - EPA Silver Medal for Superior Service

2000 - Four Outstanding Performance Commendations from the Environment and Natural Resources Division of the United States Department of Justice for work on separate environmental cases between 1995 and 2000, all awarded in 2000.

1999 - Director's Award, U.S. Department of Justice

1998 - Anchorage, Alaska YMCA, Outstanding Basketball Coach of the Year

1994 - Certificate of Recognition (For Exceptional Performance and Significant Contributions to Joint DOJ/USCG/NOAA Fisheries Prosecutions in Alaska) NOAA, U.S. Department of Commerce

1992 - Special Achievement Award, U.S. Department of Justice

1986 - Alaska Bar Association Scholarship

1982 - Mable Crawford Scholarship

1976 - Athletic Scholarship, University of Alaska, Fairbanks, Alaska

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

Anchorage Bar Association

Alaska Bar Association

American Bar Association

2004 - Present Co-chair, Alaska Rural Justice and Law Enforcement Commission

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

Alaska Peace Officer's Association

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

1987 United States District Court, District of Alaska, November 24, 1987.

1990 United States Court of Appeals for the Ninth Circuit, January 10, 1990.

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

I have given a number of speeches and talks to civic groups, associations, and public schools in my capacity as U.S. Attorney. The subject matter of these presentations is the role and work of the United States Attorney's Office. I do not give presentations from prepared texts. I have no publications.

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

Excellent. May 6, 2005.

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

None.

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

Not applicable.

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

1980 - 1982 Member, University of Alaska Board of Regents. Appointed

1989 - 2001 Assistant United States Attorney, District of Alaska. Appointed

2001 - Present	United States Attorney, District of Alaska. Appointed
2004 - Present	Co-chair, Alaska Rural Justice and Law Enforcement Commission. Appointed

17. Legal Career:

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

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

No.

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

I never practiced law alone.

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

11/1987 - 01/1989
Gilmore & Feldman Law Firm
(Now Feldman & Orlansky)
500 L Street, Suite 400
Anchorage, Alaska 99501
(Associate Attorney)

02/1989 - 03/2001
Office of the United States Attorney
Federal Building & U.S. Courthouse
222 W. 7th Avenue, Room 253
Anchorage, Alaska 99513
(Assistant U.S. Attorney)

03/2001 - Present
Office of the United States Attorney
Federal Building & U.S. Courthouse
222 W. 7th Avenue, Room 253
Anchorage, Alaska 99513
(U.S. Attorney)

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

While in private practice my work involved both civil cases, such as insurance defense, as well as criminal defense.

As an Assistant U.S. Attorney, I represented the United States in both civil and criminal litigation. My work has included the prosecution of drug cases, violent crime cases, firearm cases, criminal wildlife enforcement cases and white collar fraud cases. A substantial amount of my work involved fisheries enforcement, as well as the prosecution of federal environmental crimes.

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

While in private practice my civil clients were typically insurance companies and physicians and my criminal clients were individuals.

As an Assistant U.S. Attorney and as U.S. Attorney, I have represented the United States and have worked with a variety of federal agencies as well as federal, state and local law enforcement officials.

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

While in private practice I appeared in court occasionally. As an Assistant U.S. Attorney, I appeared in court frequently.

2. What percentage of these appearances was in:

   (a) federal courts: 95%

   (b) state courts of record; 5%

   (c) other courts.

3. What percentage of your litigation was:

   (a) civil; 35%

   (b) criminal. 65%

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

   I have tried four cases as sole counsel, five as associate counsel and three as lead counsel.

5. What percentage of these trials was:

   (a) jury; 100%

   (b) non-jury.

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

    I represented the United States in all of the following:

    1. United States of America v. BP Exploration (Alaska), Inc.; No. A99-0141 CR (JKS)

       (a) the date of representation;

       Investigation began in 1996
       Case filed September 27, 1999
       Guilty plea February 1, 2000

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

U.S. District Court
District of Alaska
Anchorage, Alaska
Judge James K. Singleton

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

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2. United States of America v. Doyon Drilling, Inc.
No. A98-082 CR (JKS)

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3. United States of America v. Benjamin Shafsky
No. A98-082 CR (JKS)

(Principal counsel for defendant Shafsky)
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4. United States of America v. Michael Krupa
No. A98-082 CR (JKS)

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5. United States of America v. Alan Sinclair
No. A98-082 CR (JKS)

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The above five cases all derive from the same investigation. Therefore, I am providing a comprehensive overview of the investigation followed by the result for each case.

SUMMARY:

The case involved an investigation of illegal waste handling practices relating to the oil-producing wells of Endicott Island in the Beaufort Sea, off the North Slope of Alaska. Endicott Island is a 45 acre man-made gravel island constructed solely for the purpose of extracting and processing oil. An investigation began in 1996 into allegations concerning the illegal disposal of hazardous wastes down wells on Endicott Island. The island is owned by a consortium of oil companies and managed by British Petroleum Exploration Alaska (BPXA). BPXA contracted with Doyon Drilling, Inc. to drill all of the wells on Endicott. The case was jointly investigated by the United States Attorney's Office for the District of Alaska and the Environmental Crimes Section of the Department of Justice. The investigation was conducted in several stages and culminated in the criminal conviction of BPXA, Doyon Drilling, and three Doyon Drilling, executives.

NATURE OF PARTICIPATION:

The case was investigated by attorneys from my office in conjunction with attorneys from the Environmental Crimes Section of the Department of Justice and one EPA attorney. I was co-lead counsel with the Deputy Chief of the Environmental Crimes Section. The investigation was conducted in several stages over a four year period. It was an extensive and complex investigation that included taking interviews and testimony of more than 100 witnesses and organizing and reviewing millions of documents.

The first phase of the investigation culminated in the guilty plea of Doyon Drilling in April, 1998, to numerous counts of negligently discharging harmful quantities of oil and hazardous substances in violation of the Clean Water Act.

In the second phase of the investigation, three Doyon Drilling managers pled guilty to criminal charges related to the company's illegal conduct. All three managers knew that hazardous waste was being illegally dumped but failed to stop the activity.

The final phase of the investigation was concluded in September, 1999, when BPXA pled guilty to failing to report the illegal discharges at its facility after it had been put on notice of the illegal activity.

DISPOSITIONS:

a. United States of America v. British Petroleum Exploration (Alaska):

BPXA pled guilty to a felony in violation of CERCLA. The company was fined $500,000 and placed on five years probation. As a condition of probation, BPXA agreed to spend up to $15 million establishing a comprehensive national environmental management system at its facilities in the United States and the Gulf of Mexico. Because of the benefits of the compliance plan, BPXA ultimately spent more than $30 million nation-wide improving environmental compliance. This was the first such national environmental compliance plan of its kind in the oil industry implemented as part of a federal criminal prosecution.

b. United States of America v. Doyon Drilling, Inc.:

In addition to pleading guilty to violations of the Oil Pollution Act, Doyon Drilling was fined $3 million. A large portion of that fine was used to pay for implementation of a comprehensive environmental management plan during its five year term of probation. Doyon Drilling also implemented a comprehensive environmental training program for its employees which became a model for other contractors doing business on Alaska's North Slope.

c. United States of America v. Benjamin Shafsky:

Shafsky pled guilty to a felony violation of concealing Doyon Drilling's environmental crimes and failing to notify authorities. Shafsky was sentenced to five years probation. As part of his plea agreement, he was required to make a number of public speeches to oil industry groups on the importance of knowing and following environmental laws. Shafsky was also fined $25,000 and agreed to cooperate with the government's continuing investigation.

d. United States of America v. Alan Sinclair:

Sinclair was also convicted of a felony violation of concealing Doyon Drilling's environmental crimes and failing to notify authorities. He was sentenced to four months of home confinement and placed on five years of probation. Sinclair was fined $25,000 and agreed to cooperate with the government's continuing investigation.

e. United States of America v. Michael Krupa:

Krupa was convicted of two misdemeanor violations of negligently discharging oil and hazardous substances. At the time of the illegal discharges, Krupa was Doyon Drilling's Health, Safety and Environment Manager. He was sentenced to serve one year in prison and fined $25,000.

6. United States of America v. RCCL;
No. A99-0089 CR (JWS)

(a) the date of representation;

1997 - 1999

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

U.S. District Court
District of Alaska
Anchorage, Alaska
Judge John W. Sedwick

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

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SUMMARY:

This was a joint investigation and prosecution by six United States Attorneys' Offices around the country and the Environmental Crimes Section of the Department of Justice of a major foreign vessel cruise line. The company, Royal Caribbean Cruise Lines, Ltd. (RCCL) was ultimately convicted of illegally discharging oil and toxic chemicals from its passenger cruise vessels in U.S. waters.

NATURE OF PARTICIPATION:

I represented the District of Alaska and worked in conjunction with Assistant U.S. Attorneys in Florida, New York, California, the Virgin Islands and Puerto Rico, as well as with attorneys from the Environmental Crimes Section of the Department of Justice in the investigation and prosecution of RCCL. A Liberian company, RCCL was owned by three families, two Norwegian and one American. At the time, it was the second largest cruise ship line in the world. The violations in Alaska occurred between 1994 and 1995. The case was initially investigated by the Federal Bureau of Investigation (FBI), the United States Coast Guard (USCG), the Department of Transportation (DOT) and the Environmental Protection Agency (EPA). The crux of the investigation concerned a company-wide practice of falsifying oil discharge record books aboard its vessels; the destruction of evidence and RCCL's refusal to turn over documents as required by law. Ultimately, RCCL pled guilty in all six federal districts. As one of the Assistant U.S. Attorneys assigned to investigate and prosecute this matter, I examined witnesses before the grand jury, reviewed documents and helped negotiate the nation-wide plea agreement.

DISPOSITION:

RCCL was fined a total of $18 million. Of that amount, $6.5 million was allocated for the violations committed in Alaska. RCCL was convicted of multiple violations of the Clean Water Act and of making false statements. The company was placed on five years probation, during which time it agreed to implement a comprehensive environmental management system to ensure no similar violations in the future.

7. United States of America v. Hal Beheer, BV., et al.
No. A98-108 CR (HRH)

(a) the date of representation;

1995 - 1998

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

U.S. District Court
District of Alaska
Anchorage, Alaska
Judge H. Russel Holland

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

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8. United States of America v. Nanne Hogendoorn
No. A99-180 CR (JKS)

(a) the date of representation;

1995 - 1999

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

U.S. District Court
District of Alaska
Anchorage, Alaska
Judge James K. Singleton

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

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9. United States of America v. Hantje deJong.;
No. A99-180 CR (JKS)

(a) the date of representation;

1995 - 1999

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

U.S. District Court
District of Alaska
Anchorage, Alaska
Judge James K. Singleton

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

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10. United States of America v. Dirk Smeenk
No. A99-180 CR (JKS)

(a) the date of representation;

1995 - 1999

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

U.S. District Court
District of Alaska
Anchorage, Alaska
Judge James K. Singleton

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The above four cases all derive from the same investigation. Therefore, I am providing a comprehensive overview of the investigation, as well as the result for each case.

SUMMARY:

The case involved an investigation of illegal discharges of oily water from a Holland America Line cruise vessel, the *ss Rotterdam*, within Alaska's Inside Passage, the causes of the discharge and the identity of the individuals responsible for the discharges. The corporation and three company officials responsible for the discharges were convicted of criminal offenses.

NATURE OF PARTICIPATION:

I was the lead attorney in a joint prosecution of Holland America with the Environmental Crimes Section of the Department of Justice. The first stage of the case involved the investigation of the company which owned and operated the *ss Rotterdam*. The investigation involved substantial grand jury work, gathering and reviewing hundreds of thousands of documents, interviewing scores of witnesses and taking the testimony of those witnesses. The first phase of investigation culminated in June of 1998 when the company entered into a plea agreement with the United States. Pursuant to that agreement, Holland America pled guilty to two felony counts of violating the Act To Prevent Pollution from Ships, paid $2 million in fines and restitution and was placed on five years probation. As a condition of probation, Holland America was required to install adequate pollution-reduction equipment on all the vessels in its fleet and conduct a fleet-wide audit of all vessel bilge waste systems.

The second phase of the investigation involved the prosecution of the three individuals directly responsible with the illegal discharges from the *ss Rotterdam*. Nanne Hogendorn, a corporate official for Holland America, was responsible for maintenance work done on company vessels, including the *ss Rotterdam*. The investigation revealed that it was the failure to perform necessary maintenance and properly install required pollution-reducing equipment that led to the oily water discharges. These failures were the result of cost reduction efforts. Hantje deJong and Dirk Smeenk were both Second Engineers aboard the *ss Rotterdam*. As ship's officers, they ordered subordinates to illegally discharge oily water overboard.

All three individuals were convicted of violating the Clean Water Act, placed on probation for two years and fined $10,000. The conviction of Hogendorn was the first conviction of a land based cruise line corporate official for illegal discharges at sea.

11. United States of America v. Ketchikan Pulp Company;
No. A95-025 CR (JKS)

(a) the date of representation;

1993 - 1995

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

U.S. District Court
District of Alaska
Anchorage, Alaska
Judge James K. Singleton

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

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SUMMARY:

This case involved the investigation and prosecution of a company for the illegal discharges of harmful sludge and wastewater from a pulp mill over a three year period, including one intentional discharge of illegal waste that lasted for five days.

NATURE OF PARTICIPATION AND DISPOSITION:

I prosecuted this case with two attorneys from the Environmental Crimes Section. The case involved an investigation of the Ketchikan Pulp Company (KPC) for illegal discharges of harmful sludge and wastewater from its facility in Ketchikan, Alaska. The investigation included the execution of search warrants at company facilities. It required reviewing hundreds of thousands of documents, interviewing scores of witnesses and taking the testimony of many of those witnesses regarding illegal discharges into Ward Cove in Ketchikan, Alaska. The Environmental Protection Agency (EPA) had declared the waters of Ward Cove "impaired" due to the cumulative effect from KPC's waste discharges, including solids, toxic chemicals, alkaline substances and oxygen-depleting materials that deprived the Cove of its potential as a marine habitat. The vicinity of Ward Cove is populated by numerous species of wildlife, including killer whales, salmon, halibut, sea otters and various birds.

In addition to helping guide the investigation of the case, I also negotiated the plea agreement with KPC. Under that agreement, KPC was fined $3 million and established an environmental compliance program during its five year term of probation.

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

The majority of my most significant legal work has focused on four principal areas: wildlife investigations; fisheries enforcement investigations; environmental investigations and drug prosecutions.

WILDLIFE PROSECUTIONS:

I have been involved as trial counsel in several significant wildlife cases involving enforcement of statutes and regulations intended to protect marine mammals. One case is *United States v. Richard L. Clark*, 912 F.2d 1087 (9th Cir. 1990). It involved the challenge to a regulation issued under the Marine Mammal Protection Act. The Act establishes a moratorium on the taking or importation of marine mammals and marine mammal products. See, 16 U.S.C. § 1371. The Act exempts from its general prohibition the taking of any marine mammal by Alaskan Natives for "subsistence hunting and use of marine mammal parts for a limited cash economy, so long as neither use is wasteful." *United States v. Clark*, 912 F.2d 1087, 1089 (9th Cir. 1990; 16 U.S.C. § 1371(b). It permits Alaskan Natives to take walrus so long as a "substantial portion" of the animal is used. It is not permissible under the Act or the exemption to the Act to take walrus simply to collect the ivory tusks. I prosecuted the *Clark* case in federal district court in Alaska. Clark appealed his conviction to the Ninth Circuit of Appeals challenging the regulation promulgated under the Act which defined "substantial portion." The Ninth Circuit found that the regulation was not void for vagueness and affirmed Mr. Clark's conviction. This was a case of first impression under the Act in regard to the exemption under the Act.

Several years later I prosecuted *United States v. Glen Iyahuk, et. al*, a case in which five defendants were charged with violations of the Marine Mammal Protection Act. The defendants in *Iyahuk* were charged with hunting and killing scores of walrus without making any attempt to recover the walrus meat. Instead, only the walrus heads with ivory tusks were recovered and a very small portion of walrus meat. Following a two week jury trial, the defendants were convicted. Their convictions were upheld on appeal.

Finally, I have also prosecuted a number of cases in which wildlife parts have been traded for illegal drugs in rural Alaskan communities.

FISHERIES CASES:

Between 1989 and 1995, I led the United States' fisheries enforcement litigation efforts in Alaska. This work involved enforcement of the Magnuson-Stevens Fisheries Conservation Management Act, as well as other fisheries laws and resulted in the collection of more than $10 million in fines from violators. These cases involved coordinating the enforcement efforts of the United States Coast Guard (USCG), the National Marine Fisheries Service (NMFS), the National Oceanic and Atmospheric Administration's Office of General Counsel (NOAAGC), and the Department of Justice. In those instances in which foreign vessels were involved, the State Department, as well as agency components in Washington, D.C., were also included in the case decision-making process. Over the six years that I was responsible for this work, our office developed a model program for investigating and prosecuting these cases. The program was successful to the extent that other federal prosecutors from around the country often asked for assistance in developing procedures to prosecute similar cases. As a result, in 1986 our office helped plan and host a national fisheries enforcement training conference.

OTHER ENVIRONMENTAL PROSECUTIONS:

In addition to the environmental prosecutions mentioned in response to question 16 above, I have also been involved in leading the prosecution in a number of other environmental cases. I have conducted several investigations of the illegal removal of asbestos by companies in Alaska. These were cases in which the defendants knowingly exposed others, usually subordinates, to extremely high concentrations of airborne asbestos fibers with inadequate, or in some cases, no protection. Both the companies and responsible corporate officers were convicted. In one recent case, a company owner directly exposed many of his workers to extremely high levels of asbestos, washed asbestos and other hazardous substances out into the ocean, and threatened a witness to prevent her from talking to authorities. Because of the seriousness of his misconduct, the court sentenced him to five years imprisonment following a jury trial.

I have also prosecuted a variety of other environmental crimes, including the discharge of oil from a pipeline in Southeast Alaska. In that case, the companies who owned the pipeline pled guilty to criminal misconduct and paid a substantial fine. One of the officers involved in the events that led to that oil discharge was also prosecuted and convicted for his criminal misconduct. His conviction was upheld on appeal.

DRUG CASES:

Finally, I have prosecuted a number of illegal drug cases. One case involved the prosecution of a cocaine organization that was responsible for the importation of more than 300 kilograms of cocaine into the United States. In another case, I was the co-counsel in the prosecution of a drug-related homicide. Following his conviction after a jury trial, the defendant was sentenced to serve 45 years imprisonment. That prosecution was particularly important because the State of Alaska was unable to prosecute the defendant for murder.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

   I am invested in the federal Thrift Savings Plan through the Department of Justice. My wife has a 401(a) account with her employer, the State of Alaska.

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

   I do not anticipate any categories of litigation likely to present potential conflicts during my initial service, except for any litigation involving the United States Attorney's Office for the District of Alaska, during my tenure as United States Attorney. If there appears to be a potential conflict, I will consult with judicial ethics officials and follow the Code of Conduct for United States Judges and appropriate statutes, including 28 U.S.C. § 455.

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

   No.

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

   The Financial Disclosure Report is attached.

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

   See Net Worth Statement.

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

Sometime in 1986, I made a short appearance in a re-election television commercial for then United States Senator Frank Murkowski, my former employer. I believe the commercial was only aired locally in Fairbanks, Alaska. However, it may have also aired in other parts of Alaska.

AO-10
Rev. 1/2004

FINANCIAL DISCLOSURE REPORT
NOMINEE REPORT

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (Last name, First name, Middle initial) BURGESS, TIMOTHY M	2. Court or Organization U.S. District Court, Alaska	3. Date of Report 8/1/2005
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Court Judge –nominee	5. ReportType (check appropriate type) (●) Nomination, Date 7/28/2005 ( ) Initial ( ) Annual ( ) Final	6. Reporting Period 1/1/2004 to 6/30/2005
7. Chambers or Office Address United States Attorney's Offic 222 West 7th Ave., Rm. 253 Anchorage, AK 99513-7567	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer_____ Date_____	

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

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions)

☑ NONE - (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1.	
2.	

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions)

☑ NONE - (No reportable agreements.)

DATE	PARTIES AND TERMS
1.	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	BURGESS, TIMOTHY M	8/1/2005

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1.	10/2004	Alaska Permanent Fund Dividend (Paid to all qualifying residents)	$920.00
2.	10/2003	Alaska Permanent Fund Dividend (Paid to all qualifying residents)	$1108.00
3.			

B. Spouse's Non-Investment Income - (If you were married during any portion of the reporting year, please complete this section. (dollar amount not required except for honoraria)

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

	DATE	SOURCE AND TYPE
1.	2004	State of Alaska, Salary
2.	10/2004	Alaska Permanent Fund Dividend (Paid to all qualifying residents)

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

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

☐ NONE - (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1.		Exempt

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	BURGESS, TIMOTHY M	8/1/2005

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

☐ NONE - (No such reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1.		Exempt	

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)

☐ NONE - (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE
1.	Credit Union One	Credit Card	J

FINANCIAL DISCLOSURE REPORT
Page 1 of 1

Name of Person Reporting	Date of Report
BURGESS, TIMOTHY M	8/1/2005

VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A -H)	(2) Type (e.g. div. rent. or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	(2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)									
1. T.Rowe Price 529 Plan C; T.Rowe Price College Savings Plan		None	L	T	Exempt				
2. T. Rowe Price 529 Plan (B)' T. Rowe Price College Savings		None	K	T					
3. T. Rowe Price 529 Plan (B); T. Rowe Price College Savings		None	J	T					
4. T. Rowe Price 529 Plan (B); T. Rowe Price College Savings		None	J	T					
5. Alaska Public Employees Retirement System 401 (K)		None	M	T					

1. Income/Gain Codes:	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000
(See Columns B1 and D4)	F = $50,001-$100,000	G = $100,001-$1,000,000	H1 = $1,000,001-$5,000,000	H2 = More than $5,000,000	
2. Value Codes:	J = $15,000 or less	K = $15,001-$50,000	L = $50,001-$100,000	M = $100,001-$250,000	
(See Columns C1 and D3)	N = $250,000-$500,000	O = $500,001-$1,000,000	P1 = $1,000,001-$5,000,000	P2 = $5,000,001-$25,000,000	
	P3 = $25,000,001-$50,000,000		P4 = $More than $50,000,000		
3. Value Method Codes	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market	
(See Column C2)	U = Book Value	V = Other	W = Estimated		

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	BURGESS, TIMOTHY M	8/1/2005

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

III. A. Continuation of information: Non-Investment Income:

As a current federal employee, I received non-investment fund income in the form of a salary.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	BURGESS, TIMOTHY M	8/1/2005

IX. CERTIFICATION.

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

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

Signature Tim Burgess Date August 1, 2005

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		15	000	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule				Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		14	000
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		159	000
Real estate owned-add schedule		342	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		25	000	Sallie Mae (student loan)		3	900
Cash value-life insurance							
Other assets itemize:							
Thrift Savings		293	000				
State of AK 401 (C)		188	000				
College Savings Plan Account		101	000	Total liabilities		176	900
				Net Worth		787	100
Total Assets		964	000	Total liabilities and net worth		964	000
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

REAL ESTATE SCHEDULE

PERSONAL RESIDENCE $342,000.00 MORTGAGE $159,000.00

III. GENERAL (PUBLIC)

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

   a. Between 1987 through 1989, I was a member of the Board of Directors of Alpine Alternatives, an organization that provided outdoor sport opportunities for disabled children. One of Alpine's special emphasis was helping disabled children learn to downhill ski. As a Board member, I helped Alpine Alternatives raise money to fund these activities and also helped supervise skiing lessons for children.

      Time devoted: Approximately 10-20 hours per month.

   b. I have been actively involved with coaching youth sports since 1985. I have coached primarily soccer and basketball through the YMCA and the Boys and Girls Club in Anchorage, Alaska. Both organizations provide opportunities for disadvantaged children to participate in sports.

      Time devoted: Approximately 20-25 hours per month.

   c. In 1995 I began working with Habitat for Humanity - Alaska. My involvement consisted of working on the construction of some of Habitat's first homes in Anchorage. In 1996, I was asked to be the project chair for the construction of the first Habitat for Humanity house built by the United Methodist Churches of Alaska. Construction of that house was completed in 1997.

      Time devoted: Approximately 10-25 hours per month, depending on the time of year.

   d. In March and April of 1999, I participated in a Habitat for Humanity International building project in the Philippines. The trip lasted two weeks. The participants were required to pay their way over and pay their expenses while in the Philippines. During that period of time, Habitat for Humanity International built approximately 300 houses for low income families in the Philippines. My group of volunteers built 25 houses in a small village for low income families who could not otherwise afford a home.

      Time devoted: Two weeks.

e. In September of 1999, I joined the Board of Directors for Habitat for Humanity - Anchorage. I resigned that position in August 2001.

Time devoted: Approximately 15-25 hours per month, depending on the time of year.

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

No.

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

There is no selection commission in my jurisdiction. Rather, the Alaska Congressional delegation solicited candidates through the Alaska Bar Association. Individuals interested in appointment submitted their names to the Bar Association, which conducted a membership poll regarding the qualifications of the candidates. The results of that poll were then sent to the Alaska Congressional delegation which ultimately recommended several names for nomination. My only interview during this process was with officials of the White House Counsel's Office and the Department of Justice.

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

No.

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

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

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

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

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

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

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

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

Federal courts play a critical role in the government's system of checks and balances. As the only unelected branch of government, federal courts should focus on making narrow legal decisions rather than policy.

The role of federal courts is to interpret and clarify the law. As courts of limited jurisdiction, they may hear only the types of cases authorized by the Constitution or Congress. The Constitution further limits federal court jurisdiction to actual cases and controversies. It is important for courts to interpret Article III standing and ripeness requirements precisely, because loosening the standards increases the authority of courts and thereby shifts power to the judiciary. For example, if a federal court issues an advisory decision on the facial validity of a statute or regulation in a challenge brought by a plaintiff not directly and immediately affected by the law, then the judiciary trumps the authority of the executive branch or state or local governments to interpret and implement the law in a legitimate, constitutional manner. In addition, when a court considers an issue without the benefit of a plaintiff with a direct, concrete interest, it cannot limit its decision to a narrow dispute, but necessarily broadens the impact, possibly with unforeseen results.

Federal courts also should avoid infringing on the power of Congress, the executive, and states by carefully applying canons of construction that respect their authority. When

courts rely primarily on the plain language of statutes, for example, they are less likely to second-guess Congress' intent and less able to fill gaps with "judicial legislation." Similarly, by deferring to the discretion and expertise of administrative agencies, federal courts permit an executive administration to implement its policies, within the scope of the law, regardless of whether a judge personally agrees with those policies. By using constraint, the judiciary can maintain its proper role as a check on the other branches without assuming their authority. And by applying a presumption against Congressional intent to usurp traditional state authority and declining to infer such an intent without clear statutory language, federal courts help maintain the local sovereignty of state governments as contemplated by the constitutional framers.

Federal courts should maintain a narrow focus for another reason as well; when courts decline to engage in creative interpretations and expansive policy making, they limit the demand for federal court litigation. If courts predictably keep their review narrow, litigants will be less interested in bringing broad challenges to executive and legislative action. To this end, it is important that federal courts carefully follow the holdings of higher courts and respect the principle of *stare decisis*. This promotes consistency, predictability, and certainty in the law, and provides lawyers, litigants, and society in general, with rules as a framework to guide their decisions and behavior.

AFFIDAVIT

I, TIMOTHY MARK BURGESS, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

August 5, 2005
(DATE)

(NAME)

SUBSCRIBED AND SWORN to before me this 5th date of August, 2005, at Anchorage, Alaska.

(NOTARY)
State of Alaska
My commission expires: 5/4/07

[The biographical information of Mr. Bianco follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Joseph Frank Bianco

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

Residence: **Port Washington, New York**

Local Address: **Potomac, Maryland**
(Temporary Residence)

Work Address: **Department of Justice**
950 Pennsylvania Ave., NW
Washington, DC 20530

3. Date and place of birth.

9/11/66
Flushing, New York

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

Dawn Melissa Bianco
Maiden Name: Card

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

Georgetown University (Aug. 1984 - May 1988), B.A. May 1988
Columbia University School of Law (Sept. 1988 - May 1991), J.D. May 1991

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

U.S. Department of Navy (Summer 1988)

Fried Frank Harris Shriver & Jacobson (Summer 1989)
Simpson Thacher & Bartlett (Summer 1990; 1991-92; 1993-94)
Honorable Peter K. Leisure, U.S.D.J., S.D.N.Y. (1992-93)
U.S. Department of Justice (1994-2003; 2004-present)
Debevoise & Plimpton LLP (2003-2004)
Fordham University Law School (2002-present)

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

No.

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

Phi Beta Kappa.

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

Federalist Society

New York Inn of Court (Note -- I indicated my intention to join in 2004, but then never formally became a dues-paying member because of change of employment to D.C. area.)

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

I belong to no organizations that are active in lobbying.

I am a member of the Knights of Columbus.

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

Admitted, N.Y. State, 2d Dept., June 1992

Admitted, U.S. District Court, S.D.N.Y., May 31, 1994
Admitted, U.S. Court of Appeals for the Second Circuit, January 26, 1998

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

    I wrote an article at Georgetown University in February 1987 in a student newspaper, The Hoya (attached). I also wrote a couple of sports/entertainment articles for the student newspapers.

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

    I am in excellent health. My last physical exam was in July 2005.

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

    None.

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

    Not applicable.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the

terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Assistant United States Attorney, 1994-2003, appointed.
Senior Counsel to the Assistant Attorney General Criminal Division, 2004, appointed.
Deputy Assistant Attorney General, 2004-present, appointed.

17. Legal Career:

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

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

Yes, I clerked for the Honorable Peter K. Leisure in the U.S. District Court for the Southern District of New York from 1992-1993.

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

No.

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

Simpson Thacher & Bartlett
425 Lexington Avenue
New York, NY 10017
Associate in Litigation Department
(1991-92; 1993-94)

U.S. Attorney's Office, S.D.N.Y.
One St. Andrew's Plaza
New York, NY 10007
Assistant U.S. Attorney
(1994-2003)

Debevoise & Plimpton LLP
919 Third Avenue
New York, NY 10022
Counsel in Litigation Department
(2003-2004)

Fordham University Law School
140 West 62nd Street
New York, NY 10023
Adjunct Professor
(2002 - present)

U.S. Department of Justice
950 Pennsylvania Ave.
Washington, D.C. 20530
Senior Counsel to the Assistant Attorney General (2004)
Deputy Assistant Attorney General (2004-present)

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

(1) Simpson Thacher & Bartlett (September 1991 - September 1992) (October 1993 - June 1994) (Litigation Associate): Upon graduating from Columbia University Law School, I worked as an associate in the Litigation Department of Simpson Thacher and Bartlett. In that capacity, I was involved in all types of general litigation matters in various areas of law, including securities, insurance, and contracts. I also returned to the firm in October 1993 (after my clerkship) and continued with that same type of litigation work until I became a federal prosecutor.

(2) U.S. Attorney's Office, Southern District of New York (June 1994 - January 2003) (Assistant United States Attorney): As an Assistant United States Attorney in the Criminal Division, I participated in the prosecution of criminal matters from inception to completion, including grand jury presentations, pre-trial hearings, trials, and briefs and oral arguments in the United States Court of Appeals for the Second Circuit. The

subject matters of the prosecutions included, among other things, white collar fraud, narcotics, organized crime, and terrorism.

I also served as the Deputy Chief (2000-2002) and then Chief (2002-2003) of the Organized Crime and Terrorism Unit. In that capacity, I participated in, and supervised attorneys responsible for, the investigation and prosecution of complex organized crime and terrorism cases, including the investigations and/or prosecutions relating to the 9/11 terrorist attacks, the anthrax attacks, the Lynne Stewart case, the Millennium bombing plot, and the activities of various members and associates of the al Qaeda terrorist network.

I also served as the Deputy Chief of the General Crimes Section in 1999. In that position, I supervised new prosecutors on all types of criminal investigations and prosecutions.

(3) Debevoise and Plimpton LLP (February 2003 - September 2004) (Counsel, Litigation Department): At Debevoise, I participated in internal investigations on behalf of corporations regarding allegations of, among other things, various fraudulent or improper accounting practices. I also participated in the representation of large corporations and individual corporate executives in connection with both civil and criminal investigations by various entities, including the U.S. Department of Justice, the Securities and Exchange Commission, and the New York State Attorney General's Office. I was also involved in representing companies on complex civil litigation matters, including securities-related claims and breach of contract claims. Finally, I assisted a partner (who was assigned to the Criminal Justice Act Panel) in representing indigent defendants in several federal criminal cases in the Southern District of New York.

(4) United States Department of Justice, Criminal Division (Senior Counsel, September 2004 - December 2004) (Deputy Assistant Attorney General, December 2004 - Present): As a Deputy Assistant Attorney General in the Criminal Division, I supervise and manage the following Criminal Division components under the direction of the Assistant Attorney General: (1) Counterterroism Section (investigates and prosecutes international and domestic terrorism matters); (2) Fraud Section (litigates major fraud matters, including corporate fraud, securities fraud, and health

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

   100 percent in federal courts (with the exception of one state court matter referenced above)

3. What percentage of your litigation was:

   (a) civil;
   (b) criminal.

   Civil - 25 percent
   Criminal - 75 percent

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

   I have tried nine cases to verdict or judgment. I was sole counsel on two cases, was lead counsel on four cases, and associate counsel on three cases.

5. What percentage of these trials was:

   (a) jury;
   (b) non-jury.

   Jury trials - 100 percent

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

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

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

(1) U.S. v. Mokhtar Haouari, 00 Cr. 15 (2001) (S.D.N.Y.) (Keenan, J.): I was one of two prosecutors who participated in the trial of Mokhtar Haouari in connection with, among other things, Haouari's participation in a conspiracy to provide material support to Ahmed Ressam in a failed plot to bomb LAX airport around the time of the Millennium. Haouari was convicted at trial of the material support conspiracy and various fraud charges, and sentenced to 24 years' imprisonment.

Defense Counsel: Daniel Ollen
(212) 619-1245

Other AUSA Team Member: Robin Baker
(212) 637-2308

(2) U.S. v. Ahmed Sattar, 02 Cr. 395 (2002-2003) (S.D.N.Y.) (Koeltl, J.): Prior to leaving the U.S. Attorney's Office in 2003, I was the lead prosecutor in the case involving defendant Ahmed Sattar and two co-defendants (including Lynne Stewart), charging them with providing material support to the the terrorist organization called the Islamic Group by, among other things, passing messages from the imprisoned spiritual leader to the terrorist group. Sattar and his two co-defendants were convicted at trial in February 2005 and are awaiting sentencing.

Defense Counsel: Kenneth Paul (for Sattar)
(212) 587-8000
Barry Fallick (for Sattar)
(212) 697-4090

Other AUSA Team Members: Chris Morvillo
(212) 637-2410
Robin Baker
(212) 637-2308

(3) U.S. v. Kent Adam James, 97 Cr. 185 (1998) (S.D.N.Y.) (Sotomayor, J.): I was co-counsel for the Government in the trial of Kent Adam James for, among other things, his

illegal possession and manufacture of explosives, including hand grenades and pipe bombs, and firearms. James was convicted at trial and sentenced to approximately 30 years' imprisonment.

Defense Counsel: Howard Leader (212) 717-2243

Other AUSA Team Member: Eric Seidel (212) 335-8904

(4) U.S. v. William Bokun, Docket 95-2037 (S.D.N.Y.) (1995): I represented the Government in an appeal before the U.S. Court of Appeals for the Second Circuit and successfully argued that the District Court's reduction of sentence in a habeas petition was without legal authority. Bokun was charged and convicted along with nine co-defendants in connection with their membership in the "Westies," a violent organized crime group that operated primarily in the Hell's Kitchen neighborhood on the West Side of Manhattan.

Defense Counsel: Austin Campriello (212) 541-2065

(5) U.S. v. Vasily Ermichine, 99 Cr. 419 (2000) (S.D.N.Y.) (McKenna, J.): I was the lead prosecutor in the trial of Vasily Ermichine and a co-defendant who were charged with participating in a conspiracy to rob a jewelry store in New Jersey. Both defendants were convicted at trial.

Defense Counsel: Valerie Amsterdam (212) 481-5252

Other AUSA Team Member: Michael McGovern (212) 637-2198

(6) U.S. v. Joseph DeFede, 98 Cr. 373 (1998) (S.D.N.Y.) (Kaplan, J.): I represented the Government in the prosecution of the Acting Boss of the Luchese Organized Crime Family (as well as numerous co-defendants) in connection with racketeering activity related to the extortion of businesses in New York City's Garment Center. Defede pleaded guilty and subsequently became an important cooperating witness for the Government.

Defense Counsel: Stanley Teitler
(Telephone Number Unavailable)
Charles Lavine
(718) 520-8722

(7) U.S. v. Anthony Tortorello, 97 Cr. 56 (1997) (S.D.N.Y.) (Griesa, J.): I represented the Government in the prosecution of Luchese Family captain Anthony Tortorello, along with numerous co-defendants, for his participation in a robbery crew from 1995 through 1997 that was involved in a series of armed robberies in the New York City area. Tortorello pleaded guilty and was sentenced to approximately 10 years' imprisonment.

Defense Counsel: Matthew Mari
(Telephone Number Unavailable)

(8) U.S. v. Amir Solomon, 95 Cr. 154 (1996) (S.D.N.Y.) (Preska, J.): I was co-counsel for the Government in the prosecution of Amir Solomon and his wife in connection with a massive marriage fraud ring designed to evade immigration laws. Both defendants were convicted after trial.

Defense Counsel: Paul Madden (for Amir Solomon)
(718)624-0964
Anthony Ricco (for Amir Solomon)
(212)791-3919

Other AUSA Team Member: Thomas Rubin
(425) 882-8080

(9) U.S. v. Hang Sen Chen, 97 Cr. 190 (1997) (Sprizzo, J.): I represented the Government in the prosecution of Hang Sen Chen in connection with an indictment charging him with participating in the gang murder of an individual at a supermarket in the Chinatown section of Manhattan. The defendant pleaded guilty to his participation in the murder.

Defense Counsel: Martin Stolar
(212) 941-0980

(10) U.S. v. Zheng Wei Sheng, 97 Cr. 100 (1997) (S.D.N.Y.) (Wood, J.): I represented the Government in the prosecution

of Zheng Wei Sheng and his co-defendants who were charged in connection with the kidnapping of an 11-year old boy from his home in Meriden, Connecticut. Zheng Wei Sheng (and his co-defendants) pleaded guilty.

Defense Counsel: Lawrence Gerzog
(212) 486-3003

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

Some of my most significant legal activities are described above. In addition, I have been involved in numerous other significant investigations and/or prosecutions in connection with terrorist activities, including the investigations arising from the September 11th attacks. In addition, I have personally participated in, and supervised, numerous investigations and prosecutions into various organized crime groups in the New York City area, including Asian gangs, Russian organized crime, and La Cosa Nostra. I also prosecuted numerous narcotics cases while in the U.S. Attorney's Office in Manhattan.

I also have participated in significant civil litigation, including S.E.C. investigations and complex litigation between private litigants relating to a variety of areas of the law, including securities law, contract law, and insurance law.

With respect to non-litigation matters, I have taught a Terrorism and the Law course at Fordham University Law School.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

   I participate in and will receive benefits from the Federal Employees Retirement System (FERS).

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

   I recognize that potential conflicts of interest may arise. Litigation involving matters that I worked on or supervised at the Department of Justice, as well as matters that I or my colleagues at Debevoise & Plimpton LLP or Simpson Thacher & Bartlett worked on during my previous employment at those firms, would present a conflict-of-interest. I will establish a screening procedure to determine whether cases present a potential conflict of interest. I will follow the Code of Conduct for United States Judges and relevant statutes, including 28 USC 455, in resolving any such conflicts.

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

   I am currently an adjunct professor at Fordham University Law School (although I have not taught since Spring 2004). I have an interest in teaching, but have no commitments or agreements to do so. I would only do so after consulting with the Chief Judge and in accordance with the Code of Conduct, applicable statutes, and Judicial Conference

regulations.

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

   See attached Financial Disclosure Report.

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

   See attached Financial Net Worth Statement.

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

   Student Intern, Jack Kemp for President (1988).

AO-10 (WP)
Rev. 1/2004

FINANCIAL DISCLOSURE REPORT

~~FOR CALENDAR YEAR 2003~~ Nominee Report

Report Required by the Ethics in Government Act of 1978, (5 U.S.C. App. §§101-111)

1. Person Reporting *(Last name, first, middle initial)*	2. Court or Organization	3. Date of Report
Bianco, Joseph F.	Eastern District of New York	7/29/05

4. Title *(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)*	5. Report Type (check appropriate type)	6. Reporting Period
District Judge – Nominee	X Nomination, Date 7/28/05 __ Initial __ Annual __ Final	1/1/04 to 7/15/05

7. Chambers or Office Address	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.
U.S. Department of Justice 950 Pennsylvania Ave., NW – Rm. 2212 Washington, D.C. 20530	Reviewing Officer ___ Date ___

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

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

	POSITION	NAME OF ORGANIZATION/ENTITY
☐	**NONE** (No reportable positions.)	
1	Counsel	Debevoise and Plimpton LLP
2	Adjunct Professor	Fordham University Law School
3		

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

	DATE	PARTIES AND TERMS
☒	**NONE** (No reportable agreements.)	
1		
2		

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

A. Filer's Non-Investment Income

	DATE	SOURCE AND TYPE	GROSS INCOME
☐	**NONE** (No reportable non-investment income.)		
1	2004	Debevoise and Plimpton LLP	$ 296,878
2	2004	Fordham University Law School	$ 2,000
3	2003	Debevoise and Plimpton LLP	$ 210,919

B. Spouse's Non-Investment Income - If you were married during any portion of the reporting year, please complete this section. (dollar amount not required except for honoraria)

☒	**NONE** (No reportable non-investment income.)		
1			
2			

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Joseph F. Bianco	July 29, 2005

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.
(Includes those to spouse and dependent children. See pp. 25-27 of Instructions.)

	SOURCE	DESCRIPTION
☐	**NONE** (No such reportable reimbursements.)	
1		EXEMPT
2		
3		
4		
5		
6		
7		

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

	SOURCE	DESCRIPTION	VALUE
☐	**NONE** (No such reportable gifts.)		
1		EXEMPT	$
2			$
3			$
4			$

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

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

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

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Joseph F. Bianco	July 29, 2005

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

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure.	Amt. Code1 (A-H)	Type (e.g., div., rent or int.)	Value Code2 (J-P)	Value Method Code3 (Q-W)	Type (e.g., buy, sell, merger, redemption)	(2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ **NONE** (No reportable income,									
1 Citibank accounts	A	Interest	J	T	EXEMPT				
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									

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

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Joseph F. Bianco	July 29, 2005

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

Part III – Non-Investment Income for 2005 is U.S. Government salary.

IX. CERTIFICATION.

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

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

Signature _____ Date 7/29/05

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. App., § 104.)

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS (estimate)				LIABILITIES (estimate)			
Cash on hand and in banks	2	000		Notes payable to banks-secured	9	286	
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		445		Notes payable to relatives	25	000	
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due	23	000	
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule	539	929	
Real estate owned-add schedule	811	200		Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property	103	800		E-Trade Account Maintenance Fee		285	
Cash value-life insurance							
Other assets itemize:							
FERS	8	305		Total liabilities	597	500	
				Net Worth	328	250	
Total Assets	925	750		Total liabilities and net worth	925	750	
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

Listed Securities - Schedule

Stock	Shares	Price Per Share	Value
AT&T Corp.	5	$19.04	$95.20
Comcast Corp.	8	$30.70	$245.60
Milestone Scientific	40	$2.61	$104.40
PSINet Inc.	0	$0.00	$0.00

Real Estate Owned - Schedule

Personal Residence

Appraised Value: $811,200

Real Estate Mortgages - Payable

Mortgages for Personal Residence:

CitiMortgage: $479,912

Citibank (Home Equity): $60,017

III. GENERAL(PUBLIC)

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

   I have been involved in various pro bono activities during my employment at law firms, including the following examples: (1) at Fried Frank Harris Shriver & Jacobson, I was involved in the representation of an indigent defendant in a death penalty case in Florida; (2) at Simpson Thacher & Bartlett, I participated in a student mentor law program at Sheepshead Bay High School in Brooklyn, New York and taught a number of class sessions on legal advocacy; (3) at Debevoise & Plimpton, I assisted a partner (who was assigned to the Criminal Justice Act Panel) in representing indigent defendants in several federal criminal cases in the Southern District of New York. I estimate that, over the course of my legal career, I have spent several hundred hours performing pro bono work, including litigation and educational activities.

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

   I am a member of the Knights of Columbus, which is a Catholic men's fraternal organization involved in educational, religious, charitable and social welfare works. I joined the organization in or about the late 1980s, but I have not been an active member.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process,

from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

I expressed my interest in the position by speaking with a White House Counsel staff member. I was interviewed by the White House Counsel's Office and Governor George Pataki's Federal Judicial Screening Committee. I was also interviewed by the Federal Bureau of Investigation in connection with a background check. I filled out separate written applications/forms from all three of these entities. Upon completion of this process, I was notified by the White House Counsel's Office that the President would formally nominate me, which he did on July 28, 2005.

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

No.

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

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

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

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

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

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

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and a tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The separation of powers among the three branches of the United States Government is set forth in our Constitution and the federal courts must function within that constitutional framework. Courts need to respect the separation of powers between the branches of government and exercise judicial restraint. The role of the court is to interpret laws, rather than to legislate or to implement those laws. In each case, the court must address any jurisdictional requirements and, assuming jurisdiction exists, then decide the case in a fair and impartial manner in accordance with the Constitution, as well as applicable statutes, rules, and legal precedent. Judges must be committed to the rule of law regardless of their personal views.

AFFIDAVIT

I, Joseph Frank Bianco, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

8/5/05
(DATE)

Joseph Frank Bianco
(NAME)

Subscribed before me on this 5th day of August, 2005 in the District of Columbia. My Commission expires on February 29, 2009.

Valerie J. Jackson
NOTARY)
Valerie J. Jackson

Senator SCHUMER. Thank you.

With that, I want to thank all of you gentlemen for the great service that you have done, both in public and private careers, and we will see if there are any written questions, and the Committee is going to do everything to move, to expedite the process so that you can assume a position on the bench, which I am confident each of you will receive from the Senate.

Thank you, and with that, the hearing is adjourned.

[Whereupon, at 2:20 p.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Responses of Joseph Bianco to Questions from Senator Schumer

1. **Please identify two judges or Justices whom you admire and explain the reason for your selection.**

Response:

I had the honor and privilege of serving as a law clerk for the Honorable Peter K. Leisure in the United States District Court for the Southern District of New York from 1992-1993. Based on that wonderful clerkship experience and having continued to follow his distinguished career as a judge since that time, I have the highest admiration and respect for Judge Leisure both personally and professionally. For over two decades, Judge Leisure has been an exceptional judge who decides cases in a fair and impartial manner in accordance with the rule of law. He applies the Supreme Court and Second Circuit precedents to the factual record before him without regard to his personal views and issues well-reasoned opinions based on the law. Judge Leisure decides the issues before him in a thorough and timely fashion. He also treats all those in the courtroom – including litigants, jurors, and court staff -- with courtesy, respect, and professionalism. Over the years, lawyers who have appeared before him have commented to me that Judge Leisure presides over cases in a manner that leaves both sides with the opinion, regardless of the ultimate outcome, that they were treated fairly and professionally.

I also have great admiration for the Honorable Loretta A. Preska, who is a United States District Judge in the Southern District of New York. As an Assistant United States Attorney in the Southern District of New York, I appeared before Judge Preska on several cases and was extremely impressed by her legal skill, judicial temperament, and integrity. In my experience, Judge Preska has always been well-prepared and thorough in deciding the legal issues before the court in a fair and impartial manner based on the applicable precedent. In addition, like Judge Leisure, Judge Preska has an excellent judicial temperament and requires litigants to conduct themselves in the courtroom with the same civility, professionalism, and respect that she displays every day as a judge.

I have admired these qualities in both Judge Leisure and Judge Preska and, if confirmed, hope to achieve the same reputation that they have earned in the legal community as distinguished jurists.

2. **You have spent the bulk of your legal career as a federal prosecutor. By all accounts, you have been both fair and tough. But you have spent little or no time representing the other side in the criminal justice system.**

   - **What can you tell the Committee to assure us that, if confirmed, you will be able to fairly consider the claims and rights of criminal defendants who come into your courtroom?**

Response:

Although I have spent the bulk of my career as a prosecutor, I also have spent several years in private practice and have been involved in representing defendants or potential

defendants in the criminal justice system. For example, as a counsel in the litigation department at Debevoise & Plimpton, I was involved in the representation of corporate employees in connection with Department of Justice investigations and also assisted a partner (who was assigned to the Criminal Justice Act Panel) in representing indigent defendants in federal criminal cases in the Southern District of New York.

Moreover, in my role as a prosecutor for the Department of Justice, I believe I have handled criminal cases in a manner that demonstrates a commitment to fairness. As a prosecutor, I have listened to the positions of defense counsel with an open mind and made decisions in criminal cases, including charging decisions, that I believe were in the interests of justice and were consistent with principles of fairness. I have always demonstrated respect for the rights of criminal defendants as a prosecutor and have been committed to performing my job with the highest standard of ethics and professionalism.

I can assure the Committee that, if confirmed as a judge, I would consider the claims and rights of criminal defendants, as with all litigants, in a fair and impartial manner.

3. **In particular, as a federal prosecutor and Department of Justice official, you have had extensive experience in both conducting and supervising investigations and prosecutions involving terrorism.**

- **What, in your view, is the proper role of the courts in balancing the rights of individuals against the needs of domestic security?**

Response:

The proper role of the district court in cases involving national security cases is the same as with all cases – that is, to interpret and apply the law in accordance with the applicable legal standards articulated by the Supreme Court and the relevant circuit court. Some of those legal standards, such as with the Classified Information Procedures Act, may require the district court to balance national security concerns with the defendant's rights. In those cases where the relevant precedent or statute requires the court to perform such a balancing, the district court should perform that balancing in a fair and impartial manner that ensures that the defendant's rights under the Constitution are being protected.

In addition, Congress may balance the needs of domestic security and the rights of individuals in enacting legislation and the Executive Branch may engage in a similar balancing in performing its executive functions. To the extent that there are constitutional or other legal challenges to such Congressional or Executive actions, the role of the district court is to rule on such challenges in accordance with the Constitution, as well as applicable statutes, rules, and legal precedent. If the court determines there is no legal basis to challenge the action, it is not the role of the court to question the wisdom of those policy decisions by Congress or the Executive or to otherwise seek to infringe upon that decision-making process by engaging in some type of re-balancing of the various interests on its own. The separation of powers among the three branches of the United States government is set forth in our Constitution and the federal courts must function within that constitutional framework.

Responses of Timothy M. Burgess to Questions from Senator Schumer

1. **Please identify two judges or Justices whom you admire and explain the reason for your selection.**

Response:

I have practiced before United States District Court Senior Judge James M. Fitzgerald for many years and have come to admire him as a person and judge. He is committed to justice and the rule of law. Whether poor or powerful, Judge Fitzgerald always treats everyone with dignity and respect. The parties to any action before him always leave the courtroom feeling that they have been treated fairly. Judge Fitzgerald is always well prepared and ready to make decisions needed to keep cases moving quickly toward resolution. Judge Fitzgerald always understands the facts of his cases and the law that govern the issues he must decide. His decisions are thoughtful, well reasoned and respect the principle of *stare decisis*.

Very early in my legal career I worked for Alaska Supreme Court Justice Edmond Burke. Justice Burke gave me an appreciation for the court's role in interpreting and clarifying the law. I especially admired Justice Burke's determination to explain complex legal issues in clear, understandable terms. He emphasized focusing on the key legal issues and the importance of clear and concise legal reasoning. Justice Burke was always patient and respectful of those appearing before him; however, he always thoroughly tested the legal arguments of litigants during oral arguments.

2. **You have spent the bulk of your legal career as a federal prosecutor. But you have spent little or no time representing the other side in the criminal justice system.**

   - **What can you tell the Committee to assure us that, if confirmed, you will be able to fairly consider the claims and rights of criminal defendants who come into your courtroom?**

Response:

Before coming to the Department of Justice I worked for a private law firm and represented criminal defendants. That experience gave me an appreciation for the impact criminal charges have upon defendants and their families. I also learned the importance of vigorously defending the rights of individuals.

During my career at the Department of Justice, I have always appreciated the government's heavy burden in criminal matters: that it must prove its case beyond a reasonable doubt. I have always been aware of the great power the government exercises when it brings

criminal charges and have always tried to use that authority carefully and thoughtfully. I have never believed that a prosecutor's job is simply to win cases; rather, it is to seek justice. When I became the United States Attorney, one of the first changes I made in the practice of the office was to require that cases be screened by a committee of experienced prosecutors before indictments were filed. The purpose of the policy was to thoroughly test the legal and factual sufficiency of cases prior to charging.

Finally, I have always had a very good relationship with the Federal Defenders and the defense bar. Should I be confirmed, I can assure the Committee that I will be committed to the rule of law and the protection of individual rights. I will treat all litigants, attorneys, court staff, and others with whom I may associate in the Court, with respect and dignity.

Responses of Gregory F. Van Tatenhove to Questions from Senator Schumer

1. **Please identify two judges or Justices whom you admire and explain the reason for your selection.**

Response:

One judge I admire is the Honorable Eugene E. Siler, Jr., Senior Judge, United States Court of Appeals for the Sixth Circuit, for whom I clerked. The year I spent in Judge Siler's chambers as a law clerk taught me three things. First, human dignity is a fundamental respect afforded to all. Second, good decisions begin with listening. Finally, authority is not the product of an order or decree but of preparation and intellect.

Another judge or Justice I admire is the Chief Justice John Marshall, who served as Chief Justice of the United States. Through force of intellect and vision, Chief Justice Marshall established a role for the judiciary that survives over two hundred years later. No jurist has had a greater influence on the administration of justice.

2. **You have a portion of your legal career as the top federal prosecutor in your District. But you have spent little or no time representing the other side in the criminal justice system.**

- **What can you tell the Committee to assure us that, if confirmed, you will be able to fairly consider the claims and rights of criminal defendants who come into your courtroom?**

Response:

Hanging in my office is the much quoted statement of Justice Sutherland observing that "[t]he United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done." *Berger* v. *United States*, 295 U.S. 88 (1935). I have sought to fulfill my duties as United States Attorney with that aspiration in mind – a commitment and value that I would continue to embrace, if confirmed, as a federal judge.

Responses of Eric Vitaliano to Questions from Senator Schumer

1. **Please identify two judges or Justices whom you admire and explain the reason for your selection.**

Response

The judges I most admire are the Staten Island Judges who have touched my life and who have helped shape my approach to the bench. These include Judge Mark Costantino, with his passion for seeing parties before the court as real people; Judges Vito Titone and Tom Sullivan, who are blessed with a substantive and practical understanding of the law and who appreciated that their decisions not only resolved controversies but gave guidance to the bar; and Judge Peter Cusick for his judicial temperament. In addition, I have admired from my college days Justice Hugo Black for his dedication to liberty and the Bill of Rights.

2. **Before you went to the state bench, you had a long and distinguished career as a legislator in the New York State Assembly. I have always said we should be confirming judges who interpret the law rather than make the law. You have been in a position to do both.**

   - **Given your experience, how do you view the role of a judge as distinct from the role of a legislator?**

Response

I am extremely proud of my 19 years in the New York State Assembly. Service in the legislature permitted me to use my knowledge of the law and advocacy skills on behalf of my community, which was an honor and a privilege. The actual tasks of lawmaking afforded me insight into the harmony of law, as we revised and advanced it. Now a trial judge for four years, I never lose sight of the fact that I am still in public service but in a very different way. I am no longer the politician. I am no longer the advocate. And, I no longer have an agenda. My role as a state judge, as I see it, is to know and understand what is required by the state and federal constitutions and the laws and to see that the cases and controversies of the real people and entities before me are resolved accordingly with fairness, justice, and evenhandedness. I strive to do so everyday with wisdom and energy.

3. **How has your experience as a legislator affected your view of the deference that is due the legislature by a judge called upon to interpret a duly enacted law, and what is your view of the deference that is due? Please respond specifically with reference to the level of deference, if any, owed by federal judges to the Congress**

Response

My long experience as a legislator affords me a unique perspective upon the deference owed by a judge interpreting enacted law. Clearly, there is nothing more important in statutory construction than the plain words used by the legislative branch. After that follows any specific findings embodied in the statute itself, then contemporaneous debate, memoranda and reports to give definition where the "plain" language does not give clear resolution. Of course a federal judge must begin with the presumption that a statute is constitutional. If a statute includes findings, the Supreme Court has held that such findings also are due deference by the courts. I can assure the Committee that I have brought required deference to legislative intent in my approach to applying state statutes. I believe the same level of deference is required of federal judges applying laws enacted by Congress. More important, I can assure the Committee I will bring that same deference to the federal bench when called upon to construe laws enacted by Congress, should I be confirmed.

SUBMISSIONS FOR THE RECORD

STATEMENTS

of

STEPHEN L. TOBER

and

E. OSBORNE AYSCUE, JR.

on behalf of the
STANDING COMMITTEE ON FEDERAL JUDICIARY

of the

AMERICAN BAR ASSOCIATION

concerning the

NOMINATION OF GREGORY F. VAN TATENHOVE

TO BE JUDGE OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY

before the

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

November 23, 2005

I. Statement of Stephen L. Tober

Mr. Chairman and Members of the Committee:

My name is Stephen L. Tober. I am a practicing lawyer in Portsmouth, New Hampshire, and I am the Chair of the American Bar Association's Standing Committee on Federal Judiciary. I am submitting this written statement for the hearing record to present the Standing Committee's peer review evaluation of the nomination of Gregory F. Van Tatenhove to be a United States District Court Judge for the Eastern District of Kentucky. This statement is divided into two sections. In this first section, I am pleased to summarize the Standing Committee's investigative procedures and present an overview of the investigation of the nominee. In the second section, E. Osborne Ayscue, Jr., a former member of the Committee and the circuit member who conducted this investigation, explains the basis for our rating of Mr. Van Tatenhove.

After careful investigation and consideration of his professional qualifications, a majority of our Committee is of the opinion that the nominee is "Not Qualified" for the appointment. A minority found him to be "Qualified."

A. Procedures Followed By the Standing Committee

Before discussing the specifics of this case, I would like to review briefly the Committee's procedures. A more detailed description of the Committee's procedures is contained in the Committee's booklet (commonly described as our *Backgrounder*),

Standing Committee on Federal Judiciary: What It Is and How It Works (2005).

The ABA Standing Committee investigates and considers only the professional qualifications of a nominee -- his or her competence, integrity and judicial temperament. Ideology or political considerations are not taken into account. Our processes and procedures are carefully structured to produce a fair, thorough and objective peer evaluation of each nominee. A number of factors are investigated, including intellectual capacity, judgment, writing and analytical ability, knowledge of the law, breadth of professional experience, courtroom experience, character, integrity, freedom from bias, commitment to equal justice under the law, and general reputation in the legal community.

The investigation is ordinarily assigned to the Committee member residing in the judicial circuit in which the vacancy exists, although it may be conducted by another member or former member. In the current case, Mr. Ayscue, in his capacity as a former member, was kind enough to undertake this investigation because the current Committee member from the Sixth Circuit was already conducting another investigation.

The investigator starts his or her investigation by reviewing the candidate's responses to the public portion of the Senate Judiciary Committee questionnaire. These responses provide the opportunity for the nominee to set forth his or her qualifications, including professional experience, significant cases handled and major writings. The investigator makes extensive use of the questionnaire during the course of the investigation. In addition, the investigator examines the legal writings of the nominee and personally conducts extensive confidential interviews with those likely to have information regarding the integrity, professional competence and judicial temperament of

the nominee, including, where pertinent, federal and state judges, practicing lawyers in both private and government service, legal services and public interest lawyers, representatives of professional legal organizations, and others who are in a position to evaluate the nominee's professional qualifications. This process provides a unique "peer-review" aspect to our investigation.

Interviews are conducted under an assurance of confidentiality. If information adverse to the nominee is uncovered, the investigator will advise the nominee of such information if he or she can do so without breaching the promise of confidentiality. During the personal interview with the nominee, the nominee is given a full opportunity to rebut the adverse information and provide any additional information bearing on it. If the nominee does not have the opportunity to rebut certain adverse information because it cannot be disclosed without breaching confidentiality, the investigator will not use that information in writing the formal report and the Standing Committee, therefore, will not consider those facts in its evaluation.

Sometimes a clear pattern emerges during the interviews, and the investigation can be briskly concluded. In other cases, conflicting evaluations over some aspect of the nominee's professional qualifications may arise. In those instances, the investigator takes whatever additional steps are necessary to reach a fair and accurate assessment of the nominee.

Upon completion of the investigation, the investigator submits an informal report on the nominee to the Chair, who reviews it for thoroughness. Once the Chair determines that the investigation is thorough and complete, the investigator then prepares the formal investigative report, containing a description of the candidate's background, summaries

of all interviews conducted (including the interview with the nominee) and an evaluation of the candidate's professional qualifications. This formal report, together with the public portion of the nominee's completed Senate Judiciary Committee questionnaire and copies of any other relevant materials, is circulated to the entire committee, composed of fourteen "circuit" members and the Chair. After carefully considering the formal report and its attachments, each member submits his or her vote to the Chair, rating the nominee "Well Qualified," "Qualified" or "Not Qualified." An investigator who is not a current member of the Standing Committee would not vote.

I would like to re-emphasize that an important concern of the Committee in carrying out its function is confidentiality. The Committee seeks information on a confidential basis and assures its sources that their identities and the information they provide will not be revealed outside of the Committee, unless they consent to disclosure or the information is so well known in the community that it has been repeated to the Committee members by multiple sources. It is the Committee's experience that only by assuring and maintaining such confidentiality can sources be persuaded to provide full and candid information. However, we are also alert to the potential for abuse of confidentiality. The substance of adverse information is shared with the nominee, who is given a full opportunity to explain the matter and to provide any additional information bearing on it. If the information cannot be shared with the nominee, it is not included in the formal report and is not considered by the Committee in reaching its evaluation.

B. The Investigation of the Nominee

Mr. Van Tatenhove was nominated on September 13, 2005. Mr. Ayscue, whom I

assigned to the investigation, began his effort on October 5, 2005, shortly after receiving the nominee's responses to the public portion of the Senate Judiciary Committee questionnaire and signed waiver forms.

On November 4, 2005, Mr. Ayscue submitted his informal report to me, reflecting the results of his investigation, including summaries of all of his confidential interviews and a description of his interview with the nominee. I carefully reviewed the report with Mr. Ayscue and was satisfied with the quality and thoroughness of the investigation and report. On November 5, 2005, Mr. Ayscue's formal report was transmitted to all of the members of the Committee. Those who had questions were encouraged to contact Mr. Ayscue directly.

After all of the Committee members had an opportunity to study the report and all the attachments, each member reported his/her vote regarding the rating of the nominee to the chair. A majority of the Committee found the nominee "Not Qualified" and a minority found him "Qualified." This vote was reported to you in a timely manner on November 10, 2005.

II. Statement of E. Osborne Ayscue, Jr.

Mr. Chairman and Members of the Committee:

My name is E. Osborne Ayscue, Jr.. I am a civil trial lawyer in Charlotte, North Carolina and, as Mr. Tober indicated, I served on the Committee for three years, from August 2001 to August 2004. During that time I participated in the evaluation of approximately 230 nominees to the U.S. Courts of Appeals and U.S. District Courts. I

was asked to undertake the investigation of the qualifications of Gregory F. Van Tatenhove to be a United States District Court Judge for the Eastern District of Kentucky. My investigation of the nominee was conducted in the same manner all investigations by the Standing Committee are conducted.

My investigation was conducted during October and early November. In addition to reviewing pertinent materials carefully, such as the nominee's responses to the questionnaire, his legal writings and other documents that he sent me to review, I solicited information from diverse members of the legal community who were likely to know him. As a result, my investigation of the professional qualifications of Mr. Van Tatenhove included confidential interviews with approximately 30 lawyers and judges who know and have worked with the nominee and who have direct knowledge of his professional qualifications. During each conversation I inquired how the person knew the nominee and what the person knew about the nominee's professional competence, judicial temperament and integrity that would bear on his qualifications to serve as a United States District Judge. I also inquired if they knew any reason why the nominee was not qualified to so serve. I also met privately with the nominee in his office. During the course of our meeting, concerns that had been identified during my investigation were discussed and the nominee was given an opportunity to rebut the adverse information and provide any other additional information.

As Mr. Tober explained, the Standing Committee assesses the professional qualifications of a nominee by evaluating his judicial temperament, integrity and professional competence. My investigation disclosed nothing that would impugn his integrity or judicial temperament. Indeed, everyone that I interviewed thought highly of

him, praising him for qualities such as his honesty, graciousness, collegiality, intellect, open-mindedness, industriousness and diligence. My sense, after my two-hour interview with him, was that he soundly deserved these accolades. Mr. Van Tatenhove is well-regarded by the legal community with which he works.

Those interviewed, however, expressed substantial concern over his competence to be a district court judge due to his lack of relevant professional experience, specifically, the absence of any significant trial or courtroom experience. Some of the comments made by those I interviewed were as follows: "(H)e hasn't tried very many cases"; "(H)e is not necessarily the most experienced"; "(H)is lack of trial experience concerns me"; and "(H)is lack of trial experience is troubling." Comments such as these were laced throughout the 30 interviews I conducted. Other individuals reaffirmed the infrequency with which he has appeared in court by making statements such as: "I have never seen him try a case"; "I do not get to see him in the trenches much"; "I do not remember him being in court on a case"; and "I do civil work and I have no contact with him or anyone in his office."

Our Committee members strongly agreed with these concerns, and our conclusion that the nominee is "Not Qualified" reflects our collective belief that the nominee does not have the breadth, depth and relevancy of experience to qualify him at this time for a lifetime appointment to a U.S. District Court.

Our *Backgrounder* explains that professional competency encompasses qualities of intellectual capacity, judgment, writing and analytical ability, and most particularly in this case, knowledge of the law and breadth of professional experience. There should be strong evidence that the nominee is professionally competent to manage and resolve the

hundreds of diverse matters a federal judge is likely to encounter. Some of those matters call upon a federal judge to resolve very complicated and challenging factual and legal issues. A district court judge must regularly make on-the-spot decisions in the courtroom that require a solid grounding in procedural and substantive law across a broad spectrum of fields. We therefore believe that a critical measure of professional competence in a nominee to a District Court is the breadth and depth of his or her courtroom and trial experience. A nominee should have substantial, relevant and recent courtroom and trial experience.

Trial experience brings with it not only what one learns from involvement in the litigation process as an advocate, but also what one learns from observing how the judges before whom one appears -- the good ones, the mediocre ones and the bad ones -- handle their job. The Standing Committee knows that much of this can be learned only from experience. Therefore, we believe that ordinarily a nominee to the federal bench should have been admitted to the bar and engaged in the practice of law for at least twelve years and have had substantial courtroom experience. A lawyer with that amount of experience is more likely to have been exposed to and have knowledge of a broader spectrum of legal issues; handled more complex and sophisticated legal matters; and developed more comprehensive and thoughtful perspectives than one lacking such experience.

This guideline is not an arbitrary standard. It is derived from over fifty years of experience in evaluating nominees and in absorbing the feedback that we get from interviewing trial lawyers and judges about what the job of a trial judge demands.

Nor is the guideline a hard-and-fast rule that is applied as an automatic disqualifier. It is, at best, a flexible guideline that provides one measure of professional

competence. A nominee may have practiced for less than 12 years but still have a broad exposure to many facets of the law and substantial trial experience, e.g., by being a lead attorney in a complex case that extends over a multi-year period. It is also possible that a nominee may lack substantial courtroom experience but still be professionally qualified for appointment to the bench because of the totality of his or her other legal experiences. Our *Backgrounder* specifically acknowledges this by stating: "Significant evidence of distinguished accomplishment in the field of law may compensate for a nominee's lack of substantial courtroom experience." There seems to be widespread, tacit agreement with this guideline, given that the vast majority of nominees that we have been asked to rate over the years have had more than 12 years of experience. Nonetheless, nominees with less than 12 years of experience on occasion have been found qualified by the Standing Committee. During my three-year tenure on the Standing Committee, I can specifically remember two nominees to District Court positions that had less than 12 years of experience who received favorable ratings from our Committee.[1]

Mr. Van Tatenhove did not receive a favorable rating because he does not have substantial courtroom or trial experience, nor has he yet acquired the breadth and depth of other legal experiences, the totality of which might compensate for this deficiency. In his particular circumstance, that he has practiced law less than 12 years has provided him with less opportunity to acquire the requisite knowledge and experience than a nominee

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1 From the 103rd through the 108th Congress (1993-2004), the Standing Committee evaluated 753 nominees to the federal bench, eight of whom (all district court nominees) were rated "Not Qualified." We provided explanations for the "Not Qualified" ratings of six nominees (the other two withdrew prior to their hearing). Two "Not Qualified" ratings were based on issues involving judicial temperament; one "Not Qualified" rating was based on the nominee's lack of substantial trial experience, quality of his writing and lack of candor; and the other three "Not Qualified" ratings were based entirely on the nominees' lack of substantial courtroom and trial experience or other compensatory distinguished experience. Of these three nominees, two had practiced less than 12 years and one had practiced for over three decades.

to a district court should possess.

While I would like to emphasize that it is not the quantity but the quality of professional legal experience that qualifies a nominee, I am sure you would like an explanation of how the Committee quantifies his years of experience.

Mr. Van Tatenhove was licensed to practice law in 1990. During his first year of employment as an attorney, he clerked for a federal district judge. This particular judge acted as a mentor to his clerks and encouraged them to sit in on trials. After his judicial clerkship, he spent four years -- from 1990 to 1994 -- in the Department of Justice Honors Program, handling a variety of issues, many of which were unique to the federal government. After that, he was the Chief of Staff and Legal Counsel for a newly elected Congressional member, a post he held for seven years. In 2001, he returned to his native Kentucky as the United States Attorney. Because of the nature of his particular clerkship, that year can be described as a year engaged in the practice of law or as a year of surrogate practical experience. His years at the Department of Justice and his current employment as United States Attorney also factor in, giving him a total of eight or nine years of experience practicing law. My investigation convinced me that his responsibilities during his tenure as counsel to a Congressional member did not include activities that related to the civil or criminal litigation process and did not qualify as engaging in the practice of law.

I again want to emphasize that our substantial concerns over his competence are not because he has practiced law for less than 12 years, *per se*, but rather because he does not have a record of substantial, practical and varied legal experience. Let me elaborate.

His listing of the ten "most significant litigated matters" that he "personally

handled" consisted entirely of civil cases in which he was involved in the Department of Justice eleven to fifteen years ago. Five of those matters were still pending when he left the Department, two were dismissed on motion and two were settled before adjudication. The tenth, his only actual trial experience, consisted of a two-day evidentiary hearing twelve years ago before a Federal Magistrate Judge in Texas in an apparently routine employment discrimination case.

His experience in the Department of Justice eleven to fifteen years ago, his only civil litigation experience, appears to have been analogous to that of a mid- to upper-level associate in a large law firm, handling pretrial motion and discovery practice, but without substantive trial experience. Many of his assignments involved substantive issues that would rarely find their way onto a District Judge's docket.

Those of us who are trial lawyers know that the civil litigation process as it has evolved over the years since the nominee was last involved in it, is in many ways light years beyond what he experienced. As just one example, Rules of Evidence, Rules of Civil Procedure, and Rules of Criminal Procedure -- over which he must have full command -- have continued to change and in many respects have moved on. Consequently, the fact that his limited trial experience was acquired many years ago also concerned the Standing Committee.

As United States Attorney during the last four years, he has been an administrator and spokesman for his office. He has never tried a criminal case in his career.

In summary, his record discloses that he has had limited and time-remote trial experience in relatively confined areas of the law. On the face of his own very candid account of his experience, he fell short of the published standard articulated by our

Committee's *Backgrounder* in both respects.

I called this shortcoming to his attention in our first introductory conversation and urged him to suggest avenues of inquiry that might help me to evaluate any experience he had had that might be considered a surrogate for actual trial experience. Following up on this inquiry, I looked at all his exposure outside the practice of law -- judicial clerkship, congressional staffer, member of the Attorney General's Advisory Committee -- that seemed to enhance the overall gravitas of his resume. None of these experiences, other than whatever he observed during his 1989-90 clerkship the year after he finished law school, involved anything that appeared to qualify as a surrogate for trial and courtroom experience.

I laid out in my report to the Standing Committee all the facts I had uncovered in my investigation. After careful review of the report, a majority of the members of the Standing Committee felt that, on the undisputed facts, the nominee has very limited trial or courtroom experience that was acquired over a decade ago, and that he lacks the depth and breadth of professional experience that would compensate for his insufficient courtroom experience. A majority of the Standing Committee, therefore, is of the opinion that the nominee is "Not Qualified" because he lacks the requisite professional qualifications to preside over the litigation process or over civil and criminal trials.

The Standing Committee takes most seriously its responsibility to conduct an independent examination of the professional qualifications of judicial nominees. There is no bright-line litmus test as to whether a nominee is or is not "Qualified." Our recommendation is not the result of tallying the comments - pro and con - about a particular nominee. Rather, in making our evaluation, we draw upon our previous experience, the information and knowledge we gain about the nominee during the course of our investigation, and our independent judgment.

Thank you for this opportunity to share our views.

STATEMENT OF HILLARY RODHAM CLINTON ON THE NOMINATIONS OF ERIC VITALIANO AND JOSEPH BIANCO TO THE FEDERAL BENCH OF THE EASTERN DISTRICT OF NEW YORK

November 1, 2005

I am honored today to introduce two fine New Yorkers, Eric Vitaliano and Joseph Bianco, whom the President has nominated to the federal bench in the Eastern District of New York.

Both men have had remarkable careers as lawyers and as public servants. Their careers have been marked by achievement and distinction. If confirmed to the bench of the Eastern District of New York, I have no doubt that they will continue to exemplify those traits that have been the hallmark of their respective careers – a respect for the rule of law and a devotion to pursuing justice and fairness over ideology.

All New Yorkers should be proud of Judge Vitaliano. He was born on Staten Island and attended college at Fordham University. He graduated from New York University School of Law, where he served on the Executive Board of the New York University Law Review. After law school, Judge Vitaliano clerked for United States District Judge Mark A. Constantino of the Eastern District of New York, and worked for seven years for the prestigious Manhattan law firm of Simpson Thacher & Bartlett. From 1983 until 2002, Judge Vitaliano served the people of Staten Island as a well-respected member of the New York State Assembly. During his career in the State Assembly, he had a long and notable record of accomplishments, including leading the successful fight to close the Fresh Kills Landfill and advocating for tough and thoughtful criminal reform. Most recently, Judge Vitaliano has served the people of New York as a judge on the New York State Supreme Court.

New Yorkers should be equally proud of Joseph Bianco. Mr. Bianco is a devoted public servant who has spent the majority of his professional career as a prosecutor. Raised in Brooklyn, Mr. Bianco is a graduate of Georgetown University and Columbia University Law School. After law school, Mr. Bianco clerked for United States District Judge Peter K. Leisure of the Southern District of New York and worked for a short time at Simpson Thacher & Bartlett before joining the U.S. Attorney's Office in

Manhattan for nine years. During that time he distinguished himself as a tough but fair prosecutor. He was so well regarded, that he was promoted to the position of Chief of the Organized Crime Unit, where he oversaw the prosecution of some of the most complicated criminal cases in the nation. After another short stint in private practice, the Attorney General of the United States called on Mr. Bianco to join the Department of Justice as a Deputy Assistant Attorney General, where he has once again served his nation admirably.

New Yorkers, and indeed all Americans, are fortunate that we have lawyers such as these who are so keenly devoted to public service and who possess the qualities we need in judges – a steadfast dedication to the rule of law and a commitment to the application of justice. Both of these men have demonstrated these qualities throughout their respective careers, and I commend Senator Schumer for all of his efforts in making sure that our federal judiciary is honored with men and women of such distinction.

Statement of Senator Patrick Leahy
Ranking Member, Judiciary Committee
Hearing on Judicial Nominations
November 1, 2005

Today the Committee will consider the nominations of four individuals for lifetime positions on United States District Courts. It is in the District Courts, the federal trial courts, that the people, crime victims, criminal defendants, and civil litigants come into contact with our federal system of justice and its human face: federal judges. Before a case gets to a circuit court or even to the Supreme Court, they start as cases and controversies involving real people with real problems. We should never forget that. Over the last four months and into the immediate future this Committee is devoting its attention to a successor to Justice O'Connor on the Supreme Court. One of her great strengths is that she is a jurist who so often considered the impact of the law on real lives and real people.

The four people before us today come highly recommended by their home-state Senators, both Democrats and Republicans, and include two Italian-American nominees. I am told that if confirmed, will be the only two Italian Americans on the bench in the Southern District of New York. As the grandson of an Italian immigrant, I share the pride of that community.

I know that Judge Vitaliano and Mr. Bianco bring more than just their heritage to the bench, including prosecutorial experience and judicial experience, and I look forward to their testimony and to further reviewing their records. Mr. Burgess and Mr. Van Tatenhove also come highly recommended, and they have personal experience with the Senate, having worked here for their Senators as young men. They have gone on to have fine legal careers, both of them giving significant periods of their lives to public service. I am pleased they could be here today for this hearing.

If these nominees are confirmed, it will mean that President Bush will have seen 222 judges confirmed, in addition to one Supreme Court justice. To date 218 of the President's nominees have been confirmed by the Senate, a figure that comes out to nearly 98 percent. This is an extraordinary achievement and speaks to what we can achieve when we work together on consensus nominees chosen to serve justice rather than partisan political ends.

Unfortunately, sometimes the President forgets, and sends nominees whose appointments are political and ideological, intended to move the courts to the right. I have opposed those nominees, and will continue to oppose them if they are not appropriate for the bench. But the vast majority of nominees for the lower courts, like those here today appear to be, have been non-controversial and easily confirmed.

I hope the same will ultimately said of Mr. Bianco, Judge Vitaliano, Mr. Burgess and Mr. Van Tatenhove.

As I have repeatedly remarked throughout the last five years, the Senate is able to move expeditiously when we have consensus nominees. I look forward to receiving testimony from the nominees on today's hearing and hope that we can continue to act in a bipartisan manner in considering the lifetime appointments to our federal district courts.

SENATOR McCONNELL'S REMARKS ON THE NOMINATION OF GREGORY VAN TATENHOVE TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF KENTUCKY, GIVEN BEFORE THE SENATE JUDICIARY COMMITTEE
SD-226
November 1, 2005

Mr. Chairman, Ranking Member Leahy, Fellow Senators,

It is my great honor and privilege today to introduce to you Gregory Van Tatenhove, the President's nominee to be the next United States District Judge for the Eastern District of Kentucky.

I have known Greg for more than 20 years, and during the course of these hearings, I believe this distinguished committee will come to know what I know: that he is an intelligent, composed man of integrity who has a great passion for the law.

Greg was confirmed as U.S. Attorney for the Eastern District of Kentucky just days after September 11, 2001. Since then, as the chief law-enforcement officer for half of our state, he has placed a special emphasis on prosecuting the War on Terror.

Greg previously served from 1990 to 1994 as a trial attorney in the Department of Justice. He was hired under the Attorney General's Honors Program, a very competitive process that hires only the best and brightest lawyers based on merit, not political ties.

He was assigned to the Federal Programs Branch of the Civil Division, which litigates on behalf of the President, members of the President's Cabinet, members of Congress, and more than 100 federal agencies and officials in federal courts across the nation. This job gave Greg a thorough exposure to most aspects of civil litigation.

Before joining the Justice Department, Greg served as a law clerk for Judge Eugene Siler Jr. of the U.S. District Court in the Eastern District of Kentucky.

From Judge Siler he learned first-hand how a judge presides in a just and fair manner, with a measured temperament. Of course, while clerking for Judge Siler, Greg also gained a great familiarity with the court over which he has now been nominated to preside.

Greg has also spent time here in the legislative branch. Immediately prior to his current post, he served for seven years as chief of staff and legal counsel to Representative Ron Lewis of Kentucky. Greg gave the congressman his sage advice while overseeing his Washington and district offices and administering a budget of over $1 million annually.

I first came to know Greg when he joined my office in 1985 as a legislative assistant, focusing on tax, budget and trade issues. At the time I was a newly elected Senator, and Greg became one of my first and most trusted aides. I can personally attest that Greg is thoughtful, intellectually curious, and driven to master any challenge he is faced with.

Greg graduated from Asbury College in Wilmore, Kentucky and then attended my alma mater, the University of Kentucky, for law school. However, unlike me, Greg graduated from UK at the top of his class and was the only member of his class to serve as both an editor of the Kentucky Law Journal and a National Moot Court competition finalist.

In addition to his remarkable career, Greg has a remarkable family; they are very proud of him and what he has achieved. Here today are his wife, Jane, and his children Cooper and Catherine.

It was clear to me 20 years ago when I hired Greg, even then a young man of great accomplishment, that he would go on to greater success. I am very proud to sit before you now and unequivocally recommend him to be a federal judge.

Greg's entire career has prepared him for this moment. As a Capitol Hill aide, a Justice Department attorney, and a U.S. Attorney, he has come to understand the relationship between our three branches of government—that it is elegant in its simplicity, yet also profound enough to have sustained the greatest democracy the world has ever seen.

Greg has ably safeguarded the experiment in liberty that our Founders began. Now, he has been asked to continue that duty, in a position of even greater responsibility. I am confident he has the wisdom and the integrity to excel at that task.

I appreciate the committee's expeditious handling of his nomination, and I look forward to his confirmation. Thank you for allowing me to testify on his behalf.

CONFERENCE CALL REGARDING NOMINATION OF GREGORY VAN TATENHOVE

FRIDAY, NOVEMBER 18, 2005

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

The Committee met, pursuant to notice, at 3:06 p.m., in room SD–240, Dirksen Senate Office Building.

Participants: Senator Sessions, Cornyn, Schumer, Stephen Tober, Esq., American Bar Association, Ozzie Ayscue, Esq., American Bar Association, Robert Evans, American Bar Association, Denise Cardman, American Bar Association and Senate Staff present Peter Jensen, Chip Roy and Bob Schiff.

P R O C E E D I N G S

Senator SESSIONS. I think we are all here. Steve Tober, who is the Chair of the Standing Committee on Judiciary for the ABA for New Hampshire; and Ozzie Ayscue, who did the work up on Tatenhove. He is in Charlotte.

We have Joe Biden's staffer and John Cornyn, and a couple of—Bob Evans and Denise Cardman with the ABA staff people. I would just say this. Chairman Specter asked that I conduct this conference call to discuss the ABA's rating of Greg Van Tatenhove, who has been nominated for the District Court Judge for the Eastern District of Kentucky. I understand that representatives are here, Tober and Ayscue.

Mr. Tober, I appreciate your presence.

Senator SCHUMER. Jeff, could I just interrupt? This is being transcribed by a reporter just like at a hearing, right?

Senator SESSIONS. Yes, that is correct.

Senator SCHUMER. And when will we get the transcription, a couple of days?

Senator SESSIONS. Maybe the reporter who is here—

Mr. JENSEN. Senator, this is Pete Jensen. I work for Chairman Specter. We have requested that we get it back later today.

Senator SESSIONS. OK, very quick turnaround.

Senator SCHUMER. OK, great, thanks. Go ahead, Jeff. Sorry to interrupt.

Senator SESSIONS. Mr. Tober, do you have a statement that you would like to make at this time? We would be glad to hear any thoughts you have on it.

Mr. TOBER. I do, Senator, and I appreciate the opportunity to do that. I know everybody has a very busy schedule. I will try to be very brief.

First of all, I want to thank the Senate Judiciary Committee for the opportunity to be heard on this important nomination, and I do want to express the hope, the concern, the belief that by doing this by teleconference is an isolated and singular event and not some precedent that will go on in the future for reasons that as I talk further I think will become self evident.

We take the role we play in judicial nominations extremely importantly, and I do not think there is any substitute for the regular process within the normal course. And I think you all know, the ABA process has been something that has developed over generations of time and effort, and it is a very well-thought-out and very good one, and I hope that we can restore the way we were doing things.

Very quickly, I just want to point out that with respect to Mr. Van Tatenhove, the nomination, as I understand it, was formally announced on September 13th. The evaluation was started upon our receipt of the signed waiver forms. That is our regular practice, and that occurred on October 5th. The investigation was completed within the requisite time and circulated before November 5th, so within 1 month, between October 5th and November 5th, the investigation was conducted, written and circulated. And then our vote was taken and the rating was released within the next 5 days on November 10th. So that is the 30 days plus 5 that we try to adhere to rigorously in our process.

Ozzie Ayscue was good enough to stand in and do this evaluation for us. Ozzie served on this Committee as the Fourth Circuit representative from 2001 to 2004. He, in that timeframe, had the opportunity to review, vote on and participate in well over 230 evaluations. Ozzie is one of the most premier and seasoned individuals that served on this committee, and I was pleased that he could stand in because the regular sitting Committee representative from the Fourth Circuit was involved at that time in another process, and that was the evaluation of Harriet Miers. So Ozzie was kind enough to help us with this.

There is no question that the evaluation that he conducted was thorough. It was thoughtful. It was comprehensive. He maintained, as we always do, the confidences of the individuals with whom we speak, and during the course of his investigation he contacted 40 judges, lawyers, other people in the legal community who would have contact the nominee, Mr. Van Tatenhove, and he received substantial material information from 30 of those 40 contacts within that timeframe.

Let me get to the point of what the evaluation demonstrated. With respect to positive things, Mr. Van Tatenhove presented no issues whatsoever with respect to integrity or his potential for judicial temperament. He was found through the investigation to be a very bright, capable and honest man, and he is collegial, gracious, and has a very good personality from all indications in this investigation.

What arose, however, was substantial concern regarding his professional competence. I think you are familiar with what we call "the backgrounder", which is our printed standards that we adhere to, The backgrounder talks in terms of professional competency encompassing qualities of intellectual capacity, judgment, writing and analytical ability, and most particularly in this case, knowledge of the law and breadth of professional experience.

Some of the sample comments that came from the investigation were as follows: "He hasn't tried very many cases, is not necessarily the most experienced." "His lack of trial experience is trou-

bling." Those are not isolated comments. They lace throughout the investigation from enumerable individuals among the folks who—

Mr. SCHIFF. Bob Schiff, with Senator Feingold.

Mr. TOBER. Who were able to pass comment along to Ozzie Ayscue in the investigation.

The backgrounder also has something that we call, if you will, the 12-year rule. It is a flexible rule. It is not a hard and fast rule. What that means is we have a rule in which we look for at a minimum 12 years of legal experience, practical legal experience as a floor, as a base for somebody's experience in the law, as something that we would hope to see when they are nominated to the Federal District Court. This 12-year-rule, if you will, has been around for quite a period of time. It shows up in our printed backgrounder at least back in 1977, and in fact, Senator, back then it was something on the order of 12 to 15 years as a floor. It was revised over the course of time to bring it to 12 years, but in reality that rule, that standard, if you will, has been around for a lot longer than that.

Senator SESSIONS. As a written standard?

Mr. TOBER. Yes, sir. It is in our backgrounder. It is in the glossy material that we hand out to everybody who is involved, the nominee, the individuals with whom we speak. It is on our web page. It is our bible, if you will, of how we try to do things.

And it refers, Senator, when we talk about this 12-year-rule, there are a couple of comments tied around it that I want to bring to the attention of this Committee.

One of the things we look for in determining this 12-year-rule, is substantial courtroom and trial experience as a lawyer or a trial judge. It is very important for nominees, for both the appellate and the trial courts. Now, there are people, Senator, who do not necessarily have exactly 12 years. They may have less than that. They may have more than that. It is not meant to be any kind of a litmus test, it is meant to be a generalized standard. So we recognize in our backgrounder that there may be, and I am quoting, "significant evidence of distinguished accomplishment in the field of law which may compensate for a nominee's lack of substantial courtroom experience."

But let me underscore that in this nomination of Mr. Van Tatenhove, he is being nominated for life to the Federal trial bench, and so it became very important to see what kind of trial experience Mr. Van Tatenhove would be bringing to this job, keeping in mind that we have no issue with integrity or his potential for judicial temperament.

What we found was this: Mr. Van Tatenhove has been—

Senator SCHUMER. Is this in writing, as if you are reading from something, Steve?

Mr. TOBER. I just have notes I have written to myself.

Senator SCHUMER. OK.

Mr. TOBER. We are going to—in fact, thank you for that. We would like to submit a written statement after the fact.

Senator SCHUMER. Please. That would be great.

Mr. TOBER. Which will cover all this. But these are my notes that I am just looking at.

Senator SCHUMER. OK, sure.

Mr. TOBER. He was licensed in 1990, and of those 15 years in which he has been continuously licensed, eight of them constitute, in the opinion of the committee, the practice of law. And those eight were 4 years with the Department of Justice at the beginning of his career, and then 4 years as United States Attorney for the Eastern District of Kentucky. He has a 7-year period, much more contemporaneous period, in which he was working for Congress. Even he admitted in his interview with Ozzie Ayscue that he was not practicing law in a formal sense while he was working in Congress. And so the Committee drew the judgment, as did the investigator, that Mr. Van Tatenhove presented with 8 years of legal experience.

So that means that we had to look around for that other significant evidence of distinguished accomplishment. What we did is, for one place, we look at his trial work, what did he do for those 8 years that would have brought him to a courtroom?

And here is the troubling part. As you all know, when they fill out Senate questionnaires nominees indicate their 10 most significant cases. Mr. Van Tatenhove did that. Of his 10 most important cases, first of all, all of them were civil and all of them go back to his time at the Department of Justice, which puts them back 11, 12 years in time at a minimum. Of those 10 cases—

Senator SCHUMER. So it is a fair guess he did not try any cases as U.S. Attorney.

Mr. TOBER. He tried—that is correct. He did not try any cases as U.S. Attorney, Senator. He was—and I believe he admits to this—he was an administrator for most of his time, if not all of his time as U.S. Attorney. And then Ozzie Ayscue can weigh in on that.

But of the 10 cases, five of them were still pending when he left the Department of Justice and moved on. Two of the 10 were dismissed on motion; two were settled before they ever were adjudicated; and one he tried. And the one he tried was a 2-day evidentiary hearing to a Federal Magistrate. So we have an extremely limited capacity for experience in the courtroom.

The bottom line that this Committee determined is that this nominee, while a very nice gentleman of no question integrity and no question temperament, has the experience of one 2-day trial 12 years ago in the process of the practice of law, and that was a civil case. He has never tried a criminal case. He has never been before a jury. He has never done anything along those lines other than that one trial.

Senator CORNYN. Mr. Tober, may I ask a question at this point? This is John Cornyn.

Mr. TOBER. Sure, Senator.

Senator CORNYN. Just so I am clear, so the ABA does not credit any time that a lawyer works on Congressional staff. For example, each of us have lawyers who work to advise us on the Senate Judiciary Committee on everything from nominations to legislation, you name it, but would it be correct to say that the ABA would not credit any of that kind of experience either as time served as a lawyer that would meet the ABA's standard?

Mr. TOBER. No, Senator. That would not be a fair statement of a general nature. It may well be a fair statement in this particular

case. And the reason I say that—and Ozzie Ayscue talked to Mr. Van Tatenhove about that very issue—is that Mr. Van Tatenhove's personal particular experience working for Congress was not of the type that would have exposed him to the kind of trial experience that one was looking for when you are nominated to the trial bench. While he did talk in terms, Senator, of having worked on Congressional—excuse me—constitutional issue and some other parts that were component parts of the practice of law—we do not deny that—it was not within the setting of having a command of rules of evidence, of rules of civil procedures, of rules of criminal procedure, of having to rule on objections. None of that really would have come from his experience working within the context of Congress.

Senator CORNYN. Just to followup on that real quickly and then we can move on, just so we are clear, none of our counsel who would advise us on nominations, legislation, constitutional amendments and the like would have that kind of experience either. The day-to-day procedural matters, ruling on matters of evidence, or arguing cases to juries, so it is not clear to me how Mr. Van Tatenhove's experience would be distinguished, let's say, from the staff of the Senate Judiciary Committee in terms of crediting time for this purpose.

Mr. TOBER. Well, I cannot speak to what others may do or not do, Senator. Obviously, you can do that with far more understanding than I can, but I want to underscore, we take these one case at a time, and we look at the individual as they present himself or herself. And we talk to them about our concerns, and this is one of the things that indeed we did do.

Senator CORNYN. Thank you.

Senator SCHUMER. Let me ask this. Are you finished, Steve, with your—

Mr. TOBER. I just wanted to do one more thing.

Senator SCHUMER. Go ahead. Why don't you finish?

Mr. TOBER. One more thing. The vote, as you know from our letter, was a majority "not qualified" and minority "qualified." And I guess I wanted to say that I want the Senate Committee to understand that every member of my Committee recognizes that there is a very real person on the receiving end of a "not qualified" rating. It is not anything we miss, that in fact these nominations have faces. I asked my committee, and I have asked my committee, and I will continue to ask my committee, to vote their conscience when they in fact have one like this, to look very hard at it, particularly if it is going to be a "not qualified" result in their mind, because it obviously affects people's lives.

Having said that, this Committee came up with a majority "not qualified."

Senator SCHUMER. Can you tell us the vote, Steve, number?

Mr. TOBER. I can only tell you, Senator, that it was a majority "not qualified," but I can also tell you—I do not mean to be disingenuous—our backgrounder defines it, and it says that "when the nominee receives a specific rating from a majority (8 or 9 members), or a substantial majority (10 to 13 members)." This was a majority.

Senator SCHUMER. OK, got it. And there are 13 total?

Mr. TOBER. There are 14 members on the Committee plus me, but I take my role to be the vote in the case of a tie.

Senator SCHUMER. So you do not vote?

Mr. TOBER. Only in a tie.

Senator SCHUMER. OK. So it could have been 8–6 or 9–5.

Mr. TOBER. That is correct.

Senator CORNYN. Mr. Tober, may I ask one other question about this standard. The mentioned the 12 years trial experience standard would apply for both a Federal District Court and a Circuit Court; is that correct?

Mr. TOBER. The 12 years is the practice of law, but—

Senator CORNYN. It is practice of law, OK.

Mr. TOBER. Yes.

Senator CORNYN. Now, would this also apply to a nominee for the U.S. Supreme Court?

Mr. TOBER. Well, I do not know why it would not. The Committee believes—I am reading from our backgrounder, Senator—"The Committee believes that ordinarily a nominee to the Federal bench should have been admitted to the bar and engaged in the practice for at least 12 years." But if I can continue to finish the paragraph?

Senator CORNYN. Sure.

Mr. TOBER. "In evaluating the experience of a nominee the court recognizes that opportunities for advancement in your profession for women and members of minority groups may have been limited. Substantial courtroom and trial experience as a lawyer or a trial judge is important for nominees for both the appellate and the trial courts. Additional experience that is similar to in-court trial work, such as appearing before or serving on administrative agencies, or arbitration boards, or teaching trial advocacy or other clinical law school courses, is considered by the Committee in evaluating a nominee's trial experience. Significant evidence of distinguished accomplishment in the field of law may compensate for a nominee's lack of substantial courtroom experience."

Senator CORNYN. So just one last question in that vein. If you are a law professor, let's say, would that qualify as the kind of legal experience that would satisfy the 12-year rule?

Mr. TOBER. I think Louis Brandeis probably thought it did but—I do not mean to be cute about it—I would think if someone was teaching law it would be in a related sense, and it could well be considered as the distinguished accomplishment in the field of law that would compensate for the lack of trial experience.

Senator CORNYN. OK, thank you very much.

Senator SCHUMER. Just following up on John's, I have a few more myself. I understand this is not a rigid rule but sort of a guideline. Do you look for more trial experience for a person in the district court level than at the appellate court level? It seems to me a professor of law is better suited at the appellate—who has never practiced and never been on trial—might be better for the appellate law than at the district court level.

Mr. TOBER. Senator, I can say for myself, having been on this Committee for 3 years before chairing it, I gave that active consideration. I thought that someone who was going to be sitting on a trial bench should understand the smell of the courtroom, so to

speak, and that someone who is going to be sitting on an appellate bench could perhaps have come there from a slightly different place in their life's experience.

Senator SCHUMER. OK. My other questions, if I might continue, Jeff, if you do not mind?

Senator SESSIONS. Chuck, go ahead. I have a few, but you can go ahead while you are at it.

Senator SCHUMER. How often do you recommend people positively without the 12-year experience? I mean are there five examples in the time you have been—how long have you been chairman, Steve?

Mr. TOBER. For about 3 months, Senator.

Senator SCHUMER. So you have been on about three and a half years.

Mr. TOBER. That is correct.

Senator SCHUMER. And Mr. Ayscue—am I pronouncing that right?

Mr. AYSCUE. Correct.

Senator SCHUMER. How long have you been on?

Mr. AYSCUE. I was on the Committee for 3 years. I am an alumnus who was called back to active duty in the Van Tatenhove case.

Senator SCHUMER. And did your 3 years overlap, each of you?

Mr. AYSCUE. Yes.

Mr. TOBER. Yes.

Senator SCHUMER. OK. So how many times in that time did you give someone a positive recommendation who did not have the 12 years, out of how many? There may have been very few people recommended without the 12 years.

Mr. TOBER. Anecdotally, I know we have done it. I do not know that I can come up with the numbers. Ozzie, do you have any sense?

Mr. AYSCUE. I do recall several who were obviously outstanding and had substantial trial, intense trial experience, who did not have that many years in the practice, plus with respect to whom the Committee did not bat an eyelash about.

Senator SCHUMER. So in other words, if someone got out of law school, went to the U.S. Attorney's Office, started off doing trials, became a Bureau Chief and did that and got great recommendations for 8 years or 9 years, that would not stand in their way, just hypothetically, somebody like that who had done lots of trials, was a Bureau Chief and trial lawyer before that.

Mr. TOBER. I am trying to think. I did the evaluation of Jeffrey Howard for the Circuit Court of Appeals in the First Circuit, and I believe that was sort of similar to his background. That is on a trial bench, obviously, but I think if you totaled up his active years in practice it was probably below 12, but he had many other things of a distinguished nature going for him, and he was found qualified.

Senator SCHUMER. Right. And how often have you found people not qualified at least in your experience, who did not have the 12 years in addition to Mr. Van Tatenhove?

Mr. TOBER. I would say that it was a very low number, but again, Senator, I do not know—we can probably get this information for you.

Senator SCHUMER. You know, since you are going to do a written statement, if you could, that would be great.

Mr. TOBER. Let me suggest that I will ask our staff to come up with numbers from both of the questions you asked.

Senator SCHUMER. Great. I think that is it.

Senator SESSIONS. That is good. I remember Bonnie Campbell, that it had come up, from Iowa, and had never tried a case at all. But I do feel like this individual was involved pretty significantly in some litigation.

First let me ask you, did you count the year—you did not mention it, but did you count the year that he was a clerk to a Federal District Judge?

Mr. TOBER. Ozzie, you want to answer that?

Mr. AYSCUE. I can answer that. After having four years, the Federal clerkship, first year, 4 years at Department of Justice, between 11 to 15 years ago, a 7-year hiatus when he was not actually practicing law, and the 4 years in the U.S. Attorney's Office in which he was a supervisor and not trying cases. I brought this to his attention, urged him to suggest avenues of inquiry that might help me evaluate any experience he had that might be considered a surrogate for actual trial experience. I looked at his exposure, his judicial clerkship for a trial judge, his work as a Congressional staffer, a member of the Attorney General's Advisory Committee, all of which seemed to enhance the overall gravatus of his resume, but none of these experiences other than what he observed during his clerkship, which was from 1989 to 1990, the first year after he finished law school, really involved anything that appeared to qualify as a surrogate for trial experience.

Senator SESSIONS. But you would normally count, do you not, clerking for a Federal judge as just one of the 12 years?

Mr. AYSCUE. Yes, I would.

Senator SESSIONS. That would make it nine, as I would add up here, four DOJ, four as a United States Attorney, and one.

Let me just say this in general. I respect you for having standards. We do hope that you will try to apply them equally across the board whatever nominee comes forward. But I respect that, and it definitely provides valuable information to us as we evaluate nominees. I am one who believe that a nominee for a district judge should have some trial experience unless they have extraordinary other capabilities that they could bring to the office. So I do not dispute how particularly how you calculate it. But we in the Senate obviously have a different standard. We are charged with trying to determine whether or not this person would make a good Federal judge, and as you noted, there are a lot of positive qualities that he has been noted for.

With regard to his trial record, it should not be, I think, diminished too much. We had a hearing yesterday or the day before, and we found that only 1.6 percent of civil cases go to trial.

There has been a real change in the work of a Federal judge. They manage litigation, they manage discovery, pre-trial motions on summary judgment and those kinds of things. And cases are being disposed of well over 95 percent, and I think over 95 percent of Federal cases disposed of by plea.

So he was in this Attorney General's honors program, in a Federal programs branch that was noted for handling especially complex and even precedent-setting cases. And he won the Department of Justice Special Achievement Award and he handled quite a number of cases; that a number of them settled, I don't think might be as significant, Mr. Ayscue, as maybe it would have been for a practicing attorney 20 years ago, 30 years ago, when I was starting out.

But will you comment on that? I mean, he represented the Army-Air Force Exchange Service in a Title VII case, which is good experience for what they do in Federal court today. He represented the FBI in a large and complex Freedom of Information case, which tends to come up a lot, those regulatory matters.

The Department of State he represented in a complex matter involving historic preservation regulations, the Foreign Missions Act, demolition of property owned by the Republic of Turkey. The Corps of Engineers he represented in a recreational use of property condemned as part of a waterway project for the region.

So he listed ten cases, but I don't think those were the only ten cases he ever handled, is that correct? I mean, these were just ten he listed as significant cases.

Mr. AYSCUE. He was asked to list the ten most significant litigated matters which he personally handled.

Senator SESSIONS. Yes.

Senator SCHUMER. And how many did he actually have trial experience on on that? You said that before, one or two, I think.

Mr. AYSCUE. One.

Senator SCHUMER. One, right.

Senator SESSIONS. Well, yes, a trial, but when you—

Senator SCHUMER. Jeff, I understand that. I mean, we are not here making the arguments.

Senator SESSIONS. Sure.

Senator SCHUMER. We just want to hear what the ABA has to say and then let each person read the transcript and evaluate it for him or herself.

Senator SESSIONS. I think that—

Senator SCHUMER. I mean, I am not going to get up and argue with you on this.

Senator SESSIONS. All right.

Senator SCHUMER. But let me say this: I mean, I would just ask, I guess, you, Jeff, and Senator Specter's staff person that the record be kept open so we can get other members who might wish to submit questions, and that this transcript be distributed to people.

I just want to let you all know that I am not going to let this go through this afternoon. I mean, I think this is enough of an issue—I am not sure how I come down on it, but it is enough of an issue that we ought to wait until we come back in December. I don't think that does any undue harm, and so I would like the record to be kept open, members to submit questions, the ABA to submit a written statement. And then we will distribute it and dispose of this on the 12th of December—

Senator SESSIONS. All right.

Senator SCHUMER [continuing]. When we return, or whenever it is, the 13th or whatever it is.

Mr. TOBER. Can I just ask a clarifying question?

Senator SCHUMER. Yes.

Mr. TOBER. Would you like us to be submitting our present statement in advance of the questions or all at once?

Senator SCHUMER. Probably do it, yes, as soon as you can. The written statement should be as soon as you can and the answers to the questions anytime up to December 12th, I guess.

Mr. TOBER. We would be happy to do that.

Senator SCHUMER. OK.

Senator SESSIONS. One final question I would ask and that is with regard to the role of a United States Attorney in the Eastern District of Kentucky. As a United States Attorney, you also are responsible for everything that occurs in the office and are, by necessity, drawn into the plea negotiations, the settlement negotiations, the legal issues that are pending and how they may come out and how that may affect the strategy that the attorneys may have.

Did you consider that, that even though he may not have been a trial United States Attorney that he gained sometimes broader experience by being responsible for supervising a wide variety of cases that came before him?

Mr. TOBER. Do you want me to answer that, Ozzie, or would you like to answer it?

Mr. AYSCUE. The answer is we certainly did. That is part of the mix. One of the things I found was that whether or not his predecessors tried cases depended on whether they had been trial lawyers before they became the United States Attorney, because he had some predecessors who were well known for cases as the U.S. Attorney and others who were administrators. But we did take that into consideration very much so.

Senator SESSIONS. Well, it is a just a factor, I think, that we can all give evaluation to.

Chuck, on written questions, why don't we try to have those questions in within 1 week? Otherwise, we wouldn't be able to get the answers back probably in time for the 12th.

Mr. TOBER. Senator Sessions, could I just offer one other thought?

Senator SESSIONS. Yes.

Mr. TOBER. And I think it comports with what you are asking us. In our backgrounder we define professional competence in a very broad, embracing way. It encompasses—and I am reading from it—"such qualities as intellectual capacity, judgment, writing in the analytical ability," and then on it goes, "through knowledge of the law and breadth of professional experience."

We don't necessarily say you have to be a trial lawyer to be a trial judge. I want to make that clear if it wasn't.

Senator SESSIONS. I know you haven't in the past.

Mr. TOBER. I mean, someone could be a real estate lawyer or a probate lawyer. If they bring special talents to this and they are going to serve a lifetime on the bench and they are fair and honest and open, I mean you can't ask for much more. But this one caught the attention of this committee, with the understanding that it was a difficult vote, because—

Senator SCHUMER. Hello. I am sorry.

Mr. TOBER. I am sorry—just because of the nature of the experience demonstrated in the report.

Senator SESSIONS. Thank you for the time that you give. It is a public service. The insight of the bar is a valuable to us. Obviously, we have our own ultimate responsibility under the Constitution to vote aye or nay to the President's nominee, and we will consider that carefully.

So we will have any questions in by December 5th. Then we will be in shape to close this out, I think.

Senator SCHUMER. Well, I just wanted to go over that. I had to drop off for a second because I had to take another call. So we are saying the ABA report—your written report gets to us by next Friday. Is that what we were saying?

Mr. TOBER. You give me a deadline, Senator, and we will make it.

Senator SCHUMER. OK. Well, how about by Wednesday, is that all right? I mean, Thursday and Friday are—is Friday better for you? I don't care.

Mr. TOBER. We will have it to you by Wednesday, by the end of the day.

Senator SCHUMER. By Wednesday, and then let's have the questions submitted by the following Monday. And that way you can have a week to answer them and that will still give people a week to look at it all by the time the 12th rolls around.

Does that sound OK, Jeff?

Senator SESSIONS. The questions that I am referring to, I think, are the questions from any of the Senators—

Senator SCHUMER. Yes, me, too.

Senator SESSIONS [continuing]. To the nominee by December 5th—I mean the ABA.

Senator SCHUMER. Yes, that is right.

Senator SESSIONS. OK.

Senator SCHUMER. So in other words—I don't have a calendar in front of me, but by Wednesday the report comes out. Senators submit questions by the following Monday, the 28th.

Senator SESSIONS. Yes.

Senator SCHUMER. And your answers come back the 5th and that gives people a week before the 12th.

Senator SESSIONS. It makes good sense.

Senator SCHUMER. OK, great.

Senator SESSIONS. Thank you. We appreciate your—

Senator SCHUMER. Mr. Tober and Mr. Ayscue, thank you very much for taking the time here. And I just want to tell you, Mr. Tober, I completely agree with you that we should not do this this way. We had unusual circumstances, but I am going to try to make sure we do it the normal course henceforth.

Mr. TOBER. I appreciate that very much, Senator. Thank you.

Senator SESSIONS. Thank you all.

Senator CORNYN. Thank you, gentlemen.

Senator SCHUMER. Thanks, everybody.

[The conference call was concluded at 3:39 p.m.]

NOMINATIONS OF VIRGINIA MARY KENDALL, OF ILLINOIS, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS; KRISTI DUBOSE, OF ALABAMA, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF ALABAMA; AND W. KEITH WATKINS, OF ALABAMA, TO BE UNITED STATES DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF ALABAMA

TUESDAY, NOVEMBER 15, 2005,

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

The Committee met, pursuant to notice, at 2:32 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Jeff Sessions, presiding.

Present: Senators Sessions and Durbin.

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

Senator SESSIONS. The meeting will come to order.

I am delighted to welcome and chair this panel of outstanding judicial nominees, two from my home State of Alabama. I will defer my opening remarks until other Senators arrive, and they may want to speak also.

With the appearance of Senator Shelby, our senior Senator from Alabama, I would like to recognize him at this time, and would just note that Senator Shelby is a skilled attorney who has practiced law in his career before his governmental experience. He understands the importance of the Federal Judiciary. He understands what it is like for a lawyer to practice before a judge, and he takes these matters very, very seriously.

Richard, it is a pleasure for me to have you here ando receive your remarks at this time.

PRESENTATION OF W. KEITH WATKINS, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF ALABAMA, BY HON. RICHARD SHELBY, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SHELBY. Thank you, Mr. Chairman. Senator Sessions, I appreciate working with you as my colleague, and I also appreciate the work you do on the Judiciary Committee. We are on different committees. You are a Chairman of a Subcommittee on the Armed Services Committee, Chairman of the Subcommittee, and of course a member of the Judiciary Committee. I am on the Appropriations Committee and the Banking Committee, but we cannot serve on the same Committees. So I think overall we try to work together.

I am here today, I am just going to focus on Keith Watkins, if I can, because I do not think Kristi needs any introduction to you or to the Judiciary Committee. But she has got my blessing, as you well know, both of us.

I want to thank you for allowing me to be here today and to introduce Keith Watkins. Keith has been nominated by President Bush to serve as a judge on the U.S. District Court for the Middle District of Alabama. I am also proud to support his nomination. I have known him for many, many years, since he basically was in law school, and I knew he was practicing some in Tuscaloosa.

I believe he will make an outstanding Federal judge. He is a native of Alabama. He received his undergraduate degree from Auburn University, his law degree from the University of Alabama. He has been in private practice of law, practicing law, Senator Sessions, every day since 1976, and is currently a partner at the firm of Calhoun, Faulk, Watkins and Faircloth in Troy, Alabama.

He has represented his clients, everybody believes, in a fair and deliberate manner, and I believe he is an intelligent and honest man who will serve our Nation well.

I encourage my colleagues to treat him fairly, and to give him an opportunity to show you that he will interpret the law and not make the law. I believe he will also prove to this Committee and to the Senate and to the people of Alabama on his ability to be fair and impartial in hearing cases before him, should he be allowed to serve on the U.S. District Court for the Middle District of Alabama.

Again, I want to thank you for holding this hearing today, and I hope that you will vote him out of this Committee and allow the full Senate to consider his nomination.

Mr. Chairman, I also want to recognize his family. He is joined here by his wife, Terri, his two children, Scott and Emily, as well as his parents, Harold and Joanne Watkins.

I am glad to support him, and I believe I am allergic to something here.

[Laughter.]

Senator SHELBY. Thank you very much.

Senator SESSIONS. Very good, Senator Shelby. I know you have to chair the hearing for the new Federal Reserve Chairman. What a special event that is also, very important nomination. I think we have a good nominee, and I know your Committee will delve into that deeply.

Thank you very much for your comments.

Senator SHELBY. Thank you.

PRESENTATION OF KRISTI DUBOSE, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF ALABAMA, BY HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SESSIONS. I also am pleased to share with Senator Shelby his remarks about Keith Watkins, but I would like to say that welcoming Judge Kristi DuBose to the Committee marks one of the best days of my Senate career. In most instances when you introduce a nominee, you know his or her reputation and legal acumen based upon recommendations by others, but with Judge Lee, I have firsthand experience. From my experience, I know that she is first rate in all issues across the board.

She graduated magna cum laude from my alma mater, Huntingdon College, where she remains active in the Alumni Association, I am pleased to see, with a double major in history and business. In 1986 she graduated from the Emory University School of Law with distinction in the top 10 percent of her class.

After law school she clerked for a Federal District Judge in New Orleans, Judge Beer, for the Eastern District of Louisiana, which is very good experience for the job she holds today, since she worked for the very kind of judge she would now be.

Then in August 1990, I made the wise decision to hire her to be an Assistant United States Attorney in the Criminal Division in the Southern District of Alabama. During her 3 years of service in the United States Attorney's Office, Judge Lee excelled in every capacity. I know that during that period, she tried close to, if not more, than 20 jury criminal cases, filed an equal number of appeals before the Eleventh Circuit Court of Appeals, writing those briefs herself. So she has been exposed to a great deal of the aspects of Federal practice as an attorney.

Remember in 1991 when she successfully prosecuted, at the time, one of the largest marijuana cultivating cases in the United States. She also prosecuted bank fraud cases, conspiracy cases and public corruption cases. In one case she prosecuted as a sole prosecutor six defendants on the charge of manufacturing and distributing methamphetamine.

After spending a brief stint in a District Attorney's office in Covington County, Alabama—a good experience to have that perspective—in 1994, when I was elected to the Attorney General's job of the State of Alabama, she joined me as one of my Deputy Attorney Generals. She served there for 2 years, focusing primarily on important public corruption cases and working with the State legislature to implement a Speedy Trial Act, a General Fraud Statute, and to revamp the State ethics law.

When I was fortunate enough to be elected to the Senate, I brought Kristi with me to serve as my Chief Counsel on this Judiciary Committee, and she also served as my counsel on the Senate Ethics Committee. And by the way, there is no one I know that has any higher standards of probity and ethics than Judge Lee. I know that in this capacity, as Senate Judiciary Committee staffer, she won the respect of colleagues on both sides of the aisle. In fact, when I mentioned to Senator Leahy, our Ranking Member, that she might be under consideration for this appointment, he told me he would be pleased to lend his support.

In January of 2000, Judge Lee was appointed a Magistrate Judge in the Southern District of Alabama, so for the past 5 years she has been doing the actual job of judging, and doing it well. In the Southern District of Alabama, the Magistrate Judges, pursuant to an agreement by the parties, can actually try a case and carry it all the way through the trial process. She has full experience as a Federal Judge. She will be able to hit the ground running, once confirmed.

I have talked to the judges in the Southern District, and I know that they look forward to Judge DuBose joining them in this new capacity. They tell me that she has the proper judicial temperament, is faithful to the rule of law, and a pleasure to work with. Of course, they did not have to tell me those things because I know it firsthand.

Judge DuBose will do well on the Southern District. Her integrity is impeccable. She has a keen intellect, a respect for the rule of law, and I look forward to supporting her nomination.

Senator Obama, it is great to have you with us. I know you have a busy schedule. I have some remarks I would like to make about our nominee, Keith Watkins, from Alabama, but I will withhold those at this time, and would be delighted to hear from you on nominee Virginia Kendall. Thank you for sharing your time with us.

PRESENTATION OF VIRGINIA MARY KENDALL, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS, BY HON. BARACK OBAMA, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator OBAMA. Thank you so much, Senator Sessions. I very much appreciate the opportunity. Senator Durbin is waylaid. He will be here soon, but I wanted to go ahead and take the opportunity to introduce Virginia Kendall, who is the nominee to the U.S. District Court for the Northern District of Illinois.

I would like to first of all acknowledge that our hopefully soon-to-be judge has her family here today, her daughter and her son, two of Virginia's three children, if I am not mistaken. We have her husband, mom and brother, and a sister, so we have got the full complement here.

Ms. KENDALL. is a native of the great State of Illinois. She spent her entire career working in the State. She received her bachelor's and master's degree from Northwestern University, her law degree from Loyola University.

It is extraordinarily fitting that Ms. Kendall has been nominated to the Northern District since she severed as an intern for District Court Judge George Marovich while in law school, and after graduation worked in his office as a clerk.

After he clerkship, Ms. Kendall joined the U.S. Attorney's Office in Chicago, where she has dedicated herself to representing the interests of some of the most vulnerable members of our society, namely our children. As Deputy Chief of the Criminal Division, she coordinates Federal and State investigations of child exploitation cases, and as Senator Durbin I am sure will mention, she has prosecuted some of the ground-breaking cases around the Nation on this issue, including the Nation's first Internet kidnapping case.

Not only has Ms. Kendall distinguished herself as an outstanding lawyer and public servant, she is an outstanding member of the community. She has been active in community service activities, experiences that I believe will inform her work as a judge and will benefit both plaintiffs and defendants appearing in her courtroom.

Ms. KENDALL. brings to the bench what she has brought to her long legal career, boundless energy, a sense of fairness, and a strong commitment to the rule of law.

Just to make mention, Mr. Chairman, of how we came about this decision, Senator Durbin and myself interviewed a number of candidates. We have a wonderful tradition in Illinois of bipartisanship in trying to select appropriate judicial nominees. I think it is fair to say that Senator Durbin and I were both extraordinarily impressed with not only Ms. Kendall's wonderful resume, but more importantly I think, her enormous passion for the issues that she has worked on. She is a true advocate, in the best sense of the word, and I think her temperament is one that will be very well suited to the bench.

I am just so proud that she is here with us today, and I know Senator Durbin shares my pride.

Let me just thank the Committee for holding this hearing, and I look forward to Ms. Kendall's swift confirmation.

Senator SESSIONS. Thank you, Senator Obama, for those good words. We hear good reports on Ms. Kendall, and look forward to the hearing proceeding, and I am sure to confirmation. We would be glad to have you stay, but if you have to go, we will understand.

I will recognize Senator Durbin to make some comments, and he is a skilled attorney himself, a passionate advocate for the legal system in this country, and I am always pleased to work with him.

PRESENTATION OF VIRGINIA MARY KENDALL, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS, BY HON. RICHARD DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator DURBIN. Thank you, Senator Sessions. I want to thank you for chairing this, and especially thank Senators Specter and Leahy. We are near the end of the session. Any excuse will do not to have a hearing, and yet they were kind enough to give us this hearing for these judicial nominees. I think it reflects the fact that they are people of quality, they are nominees that come to us without political controversy, and we feel confident that the Senate, when hearing your qualifications, will join us in supporting them.

I also want to join with Senator Obama, and thanking him personally, for his role in this process. And, Senator Sessions, I would like to tell you that we had House input as well. Speaker Dennis Hastert, because he is the ranking Republican on the House side, was an important part of the process. Most of you know that the President approves nominees for the court, and usually the highest Ranking Member of his party is part of that process. I had agree long ago with Senator Fitzgerald, a Republican, my Republican colleague for 6 years, that we would share this task, and that every fourth nomination would go to the minority Senator, a Senator not likely to have a nomination otherwise. Senator Fitzgerald appointed several people when there was a Democrat in the White

House, and I appointed several with a Republican in the White House, with his concurrence.

And so I turned to Speaker Hastert and said, "Now you are the ranking Republican. Shall we carry on in this tradition?" He said yes. I noted to him that the next vacancy was mine, so it was a real test as to whether it would be bipartisan. It was completely. From start to finish, through all the nominees, Speaker Hastert was involved in reviewing their background, preparing questions, having the final word on the names that were submitted.

The White House asked—and this was a little unusual—that we submit two names so that they could choose between them at the White House level. We sent the names of two extremely qualified people. I felt confident either one could do this job and do it well. And the White House made the decision to choose Virginia Kendall. I could not be happier.

She is an exceptional person. You have heard about her background. You certainly heard about her family, and I hope you heard about her mom, who is here today, and I had a chance to meet with her earlier and her wonderful family, and as she said, the only regret is that her dad could not be with us, and I wish he could be, but I bet he is looking down and smiling that his daughter has reached this level of achievement.

She has done such a great job, not only in working with her family and doing things that are necessary in her community and neighborhood, but also becoming someone highly respected in the legal community. It is amazing all of the accolades that poured in when she was nominated, and they came from so many different levels. The first I heard of her was from some of her former students in law school, who thought she was the best professor they had. That speaks very well of Virginia Kendall's ability not only to understand the law, but to teach it, which is part of this learning experience.

She and her husband have been involved in Cristo Rey Jesuit High School in Chicago, which is an amazing success story of a high school in the area of Pilson, low income, Hispanic area that has just been a dramatic success, and it speaks well of her family commitment to them.

One of her biggest supporters is her boss, Patrick Fitzgerald, well known to most as a U.S. Attorney in the Northern District of Illinois, in addition to a few other assignments. He has written about her, and I want to quote, "Virginia Kendall," he says, "I can also assure you that Ginny is a warm and compassionate person who is very attentive to the human needs of those she works with and supervises. Ginny's combination of legal talents, experience as a prosecutor, supervisor and instructor, and commitment to bettering the communities most in need of help, would stand her in great stead if she were selected as a Federal Judge in this district." That is from her boss, and you expect kind words from a boss or she might not be working there.

But we also heard some great words from her opposing counsels, attorneys who were on the other side in a lawsuit, and what they had to say, some of them, was just nothing short of amazing. One of her opposing counsels described her as, quote, "honorable, decent, ethical, someone with an ideal temperament." As an attorney

who has practiced before judges, I love to hear that last phrase, ideal temperament.

Another opposing counsel said Virginia was, quote, "down to earth, honest, straightforward, reliable and full of integrity."

Mr. Chairman, it does not get much better than that. I am honored to join Senator Obama and Speaker Hastert in presenting her nomination to the Senate Judiciary Committee. Thank you.

Senator SESSIONS. Thank you, Senator Durbin.

PRESENTATION OF W. KEITH WATKINS, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF ALABAMA, BY HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SESSIONS. I am also pleased to introduce to the Committee, Keith Watkins, a native of Pike County, Troy, Alabama, and an individual destined to be an outstanding jurist. He graduated from Auburn University in 1973—had a pretty good game this weekend. Got his law degree from University of Alabama in 1976—which was not so good for Alabama this weekend.

Dick, you watched the Auburn game Saturday, I believe you told me.

Senator DURBIN. Yes.

Senator SESSIONS. I dare say there are few people who bring more wealth of actual legal and human experience to the District Court than will be brought by Keith Watkins. He is more than a practitioner, which he has done exceedingly well for many years. He is an arbitrator and a mediator. This alternative dispute resolution experience is the kind of experience I believe that could be helpful to the District Court, and I have no doubt it will be an asset to the parties and other judges in the Middle District of Alabama.

Since graduating from law school in 1976, Mr. Watkins has been in the private practice of law except for a 3-year stint when he served as a public defender for the city of Troy between the years of '80 and '83. That practice has panned the spectrum of legal issues. He has represented criminal defendants, filed cases on behalf of plaintiffs, defended businesses from lawsuits, engaged in real estate law, as well as business and estate planning, drafted wills, handled domestic cases and represented foundations, churches, businesses and political organizations.

In short, he is a super legal practitioner. In recent times Mr. Watkins has placed an emphasis on mediation and has mediated more than 200 cases. I believe that this experience is something that will help him help parties resolve disputes quickly without unnecessary delay and cost.

He has done more than his share of community service, both locally and abroad, from building houses for Habitat for Humanity and working to start a local Boys and Girls Club, to doing carpentry work on the Jamaica Baptist Women's Union Orphanage in Jamaica. I believe he has made a number of trips outside the country to assist others. His pro bono record is very impressive.

When I first met him, he told me he had just completed a will codicil for an elderly lady, and that her payment was in the form of baking him a pie.

[Laughter.]

Senator SESSIONS. I have been impressed with Mr. Watkins since Senator Shelby brought his record to my attention. I have talked to judges and lawyers in the Middle District, and they tell me he will do an outstanding job. He has a reputation for character and integrity and hard work. I have not met anyone that has made any complaint against him.

So I am pleased to add my strong support to Mr. Watkins. He comes from the heart of the Middle District of Alabama. I know he is excited about the opportunity of this position.

Both of the Alabama nominees, from my experience and investigation are hard working; they are intelligent; they have great integrity; they can manage a caseload; and I think they both can make a decision, which is an important thing in a judge. So I am pleased to have them here.

We would ask that the three of you, if you would, step forward, and before you sit down, if you would raise your right hand, I will administer the oath.

Do you swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. KENDALL. I do.

Judge DUBOSE. I do.

Mr. WATKINS. I do.

Senator SESSIONS. Thank you. Please take your seats.

I know Senator Durbin had a number of things on the floor, but I will recognize him at this time to go first.

Senator DURBIN. Thank you very much, Senator Sessions. It is going to be tough to ask hard questions of Virginia Kendall, because I have asked her these questions and I know her answers, and so I will direct them to the panel, just kind of general statement of your feelings about the role of a judge. I mentioned earlier the question of temperament. Senator Strom Thurmond used to always make a point of raising that question when people were about to take a lifetime position on the Federal bench. What he was looking for, and I think we all look for, is some sort of indication of your feeling about your role in this judgeship and how treating clients and attorneys is an important part of it.

Mr. Watkins, as the man who received the pie as your compensation, I know that you are a humble man, so let me ask you to start off if you would, please.

STATEMENT OF W. KEITH WATKINS, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF ALABAMA

Mr. WATKINS. Thank you, Senator Durbin. I do appreciate the President's confidence in me to nominate me for this position, and the Committee having this hearing, and thank you for your question.

I think temperament is the key ingredient for the running of a courtroom and for engendering respect for the Judicial Branch among the folks who come forward. A former partner of mine sent me an e-mail a couple of weeks ago, and he said that, remember, should I be confirmed, that people will remember being mistreated long after they have forgotten being ruled against. And I believe

that is the truth, and as a practicing attorney for 29 years, in I cannot tell you how many courthouses, with few exceptions I have been treated the way I needed to be treated and wanted to be treated as an attorney, and I would do likewise. I can appreciate that situation with attorneys and litigants. They will receive fair treatment from me and equal justice under the law.

[The biographical information of Mr. Watkins follows:]

SENATE QUESTIONNAIRE

I. BIOGRAPHICAL INFORMATION (PUBLIC)
W. KEITH WATKINS

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

   Answer: William Keith Watkins
   William K. Watkins
   W. Keith Watkins
   Keith Watkins

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

   Answer: Residence - Troy, AL
   Office - 78 S. Court Square (shipping) P.O. Box 489 (USPS), Troy, AL 36081

3. Date and place of birth:

   Answer: 7-5-51, Troy, Pike County, AL.

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

   Answer: Married to Teresa Marie Madigan Watkins, Registered Nurse; Employed at Troy Regional Hospital, 1330 Hwy 231 S., Troy, AL 36081

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

   Answer: University of Alabama 1973 - 1976, J.D. 1976
   Auburn University 1970 - 1973, B.A. 1973
   Troy University 1969 - 1970

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

   Answer: 1998 – Present – Calhoun, Faulk, Watkins & Faircloth, LLC, Attorneys at Law, Troy, Alabama – Partner/Owner
   1995-1998 – Calhoun, Faulk, Watkins & Clower, Attorneys at

Law, Troy, Alabama – Partner/Owner
1990-1994 – Calhoun, Faulk, Watkins, Clower & Cox, Attorneys at Law, Troy, Alabama – Partner/Owner
1987-1990 – Calhoun, Watkins & Clower, Attorneys at Law, Troy, Alabama – Partner/Owner
1985-1986 – Clower, Watkins & Douglas, Attorneys at Law, Troy, Alabama – Partner/Owner
1984-1985 – Troy State University, Troy, Alabama – Adjunct Professor, Constitutional Law
1980-1983 – City of Troy, Alabama –Public Defender
1978-1985 – Clower & Watkins, Attorneys at Law, Troy, Alabama – Partner/Owner
1974-1978 – James R. Strudwick, Attorney at Law, Tuscaloosa, Alabama – Law Clerk, Partner
1974 – Honorable Riley P. Green, Circuit Judge, Troy, Alabama – Summer Law Clerk
2005-Present – CKT, LLC (non-managing member)
2005-Present – WE, LLC (non-managing member)
2004-Present – Rosewood Martin, LLC (Managing & sole member)
2004-Present – Turkey Mountain, LLC (non-managing member)
2003-2005 – Heather Dawn Holmes Gulledge Brundidge Trust (Trustee)
2003-2005 – Heather Dawn Holmes Gulledge 231 Trust (Trustee)
1998-2005 – GSW, LLC (non-managing member)
1998-2002 – Towneast, LLC (member)
1997-2003 – TFI, LLC (member)
1994-Present – DQV, LLC (member)
1996-1997 – Camelot Park, LLC (IRA)
1993-2005 – Kyle Brown Medical Insurance Trust (Trustee)
1987-1988 – Brundidge Farms, Inc. (minority shareholder)
1986-1992 – Woodland Properties (investor - partnership)
1986-1987 – J.B. Wiley Law Office (purchased assets in 1986)
1985-Present – Powermaster, Inc. (director,shareholder-family business)
1985(est.) – Battery Supply Corporation (no records-do not recall connection)
1997-Present – SouthTrust/Wachovia Bank (local director)
1985-1993 – Pike County Bank (director)
1985-1992 – Gibson, Carden & Watkins (partner)
1984-2005 – R.D. Easters Trust (Trustee)
1993-2005 – Fuller Trust (Trustee)
1984-1992 (est.) – Woodland Associates I, Ltd. (Limited partner)
1983-1985 – Barnes & Watkins Partnership (partner)
1982-1984 – Easters & Watkins Partnership (partner, family business)
1980-1981 – Watkins & Moore Partnership (partner)

1978-Present – Five Brothers Partnership (partner, family business)
1978-1979 – C&W Resource Group (partner)
1977-1978 – C&W Coal Co, Inc. (shareholder, officer, director)
1972-1976 – Dynacraft, Corp. (Employee, family business)

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

Answer: None

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

Answer: None

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

Answer: Pike County Bar Association, 1978 - Present
Alabama Bar Association, 1976 - Present
American Bar Association, 1976 - 1994
Alabama State Bar, Commissioner for the 12th Judicial Circuit, 1991 - 1994
Member, Alabama State Bar Task Force for Alternative Dispute Resolution (includes one year liaison to said task force from Alabama Bar Commission), 1991-1994

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

Answer: I belong to the following organizations:
Alabama Academy of Attorney Mediators
American Arbitration Association
Christian Legal Society
Society for Professionals in Dispute Resolution (SPIDR)
I am unaware of lobbying activities conducted by these organizations.

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

Answer: All Alabama state courts, admitted September 29, 1976; Federal District Court, Northern District of Alabama, admitted 1977; Federal District Court, Middle District of Alabama, admitted 1979 (approx.); Federal District Court, Southern District of Alabama, admitted 1989 (approx.).

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

    Answer: Co-author, "Mediation in Alabama", *The Alabama Lawyer*, May, 1991. I have made no speeches on issues involving constitutional law or legal policy.

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

    Answer: Excellent. Last physical examination was September 29, 2005.

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

    Answer: None

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

    Answer: Not Applicable

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

    Answer: None

17. Legal Career:

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

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

   No

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

   No

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

   1976-78 Strudwick & Watkins, 214 Alston Building, Tuscaloosa, AL, 35401 – Partner/Owner
   1978-85 Clower & Watkins, 104 South Brundidge Street, Troy, AL, 36081 – Partner/Owner
   1985-86 Clower, Watkins & Douglas, 104 South Brundidge Street, Troy, AL 36081 – Partner/Owner
   1987-90 Calhoun, Watkins & Clower, 104 South Brundidge Street, Troy, AL 36081 – Partner/Owner
   1990-95 Calhoun, Faulk, Watkins, Clower & Cox, 104 South Brundidge Street, Troy, AL 36081 – Partner/Owner
   1995-98 Calhoun, Faulk, Watkins & Clower, 104 South Brundidge Street, Troy, AL 36081 – Partner/Owner
   1998-Present Calhoun, Faulk, Watkins & Faircloth, LLC, 78 South Court Square, Troy, AL 36081 – Partner/Owner

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

RESPONSE:

1. 1976-78.

From September 29, 1976 until approximately July 31, 1978, I practiced in the firm of Strudwick & Watkins in Tuscaloosa, Alabama. I clerked for Mr. Strudwick while in law school, and became a partner as soon as I passed the bar.

My practice in Tuscaloosa was a general practice consisting of real estate transactions, domestic cases, probate matters, mental health commitments, general civil litigation, criminal litigation, personal injury, business transactions, corporations and partnerships, contract cases and some social security disability and bankruptcy matters.

2. 1978-1987.

On or about August 1, 1978, I began practice in my hometown of Troy, Alabama with James G. Clower. Within a year or two, I was made a partner in the firm of Clower & Watkins. For a brief period we practiced under the name of Clower, Watkins & Douglas. My practice was very similar to the practice I had in Tuscaloosa, except that I did not do bankruptcy and social security disability. In 1979 or 1980, I became the public defender for the city of Troy and served in that capacity for two or three years. I was also handling criminal appointments on a routine basis.

3. 1987-1990.

In the summer of 1987, Richard F. Calhoun joined the firm, and we practiced under the name of Calhoun, Watkins & Clower until 1990. The character of the practice began to change somewhat in that I began to acquire some corporate clients and focused more heavily on business organization, planning, and economic development. During this period I became counsel to the Industrial Development Board of the City of Troy, Alabama.

4. 1990-present.

In the summer of 1990, we began practice under the name of Calhoun, Faulk, Watkins, Clower & Cox. This firm was a merger of the original firms of Clower & Watkins, Brantley & Calhoun, and Orme & Faulk. During this period, business, estate planning, probate, real estate, mediation and economic development began to dominate my practice, but the practice has remained essentially a general practice. My litigation practice is and has always been evenly divided between representation of plaintiffs and defendants. It was during this period that I began to focus on mediation as a part of my practice.

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

Typical clients include individuals, farmers, physicians, small businesses, and a few corporate clients. I also represent several foundations, churches, and charitable entities, including the local arts corporation, economic development corporation, Cattlemen's Association and Cattlemen's Foundation, and numerous incorporated church bodies. In the latter part of my career, I have specialized in civil mediation.

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

I have appeared in court frequently from the beginning of my practice in 1976. The first fifteen years included frequent appearances in criminal and civil matters. The last fifteen years, most appearances have been in civil matters.

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

3. What percentage of your litigation was:
   (a) civil: 70%
   (b) criminal: 30%

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

   My best estimate is that I have tried as sole counsel between 150 and 200 cases to verdict or judgment. In addition, I estimate that I have tried a dozen or more as chief counsel, and two dozen or more as associate counsel.

5. What percentage of these trials was:
   (a) jury: 10%
   (b) non-jury: 90%

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

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

    Answer:

LITIGATED MATTERS

WILLIAM KEITH WATKINS
RESPONSE TO SENATE QUESTIONNAIRE
QUESTION 18

Style/Court Docket	Client	Summary	WKW Participation	Judge	Opposing Counsel
State of Alabama v. Marion Williams Circuit Court of Pike County, Alabama CC-78-10	Marion Williams, defendant	Felony, Obtaining Property Under False Pretense Tried: 10-17-78 Tried: 02-02-79	Prepared and tried case to two juries. Both juries were hung, no conviction; charges dismissed.	First Trial: Hon. Riley P. Green (deceased) Second Trial: Hon. Eris F. Paul (deceased)	Hon. Robert W. Barr, Asst. District Attorney (Now Circuit Judge) P.O. Box 805, Troy, AL, 36081 (334) 566-1307
State of Alabama v. Marion Williams; Circuit Court of Pike County, Alabama CC-78-50	Marion Williams, defendant	Felony, Obtaining Property Under False Pretense Tried: 01-31-79	Prepared and tried jury case. Charges dismissed during trial for improper venue.	Hon. Eris Paul (deceased)	Hon. Louis Stephens, District Attorney (deceased)
State of Alabama v. James Roland Myers Circuit Court of Pike County, Alabama CC-80-3	James Roland Myers, defendant	First Degree Rape Tried: 2-27-80	Co-lead counsel with Thad Yancey for defense. Prepared case and tried before jury. Outcome: Conviction Appealed: Upheld	Hon. Eris Paul (deceased)	Joel Folmar, District Attorney (retired) 202 Oleander Drive, Panama City, FL, 32413 (850) 234 - 7841

State of Alabama v. LaDonna Tucker Circuit Court of Pike County, Alabama CC-85-65	LaDonna Tucker, defendant	Murder Tried: 12-15-88	Co-lead counsel with Cary Dozier, Esq. Prepared and tried murder for hire jury case. Outcome: Conviction. Settled on appeal when trial transcript lost.	Hon. Gary L. McAliley, P.O. Box 812, Troy, AL, 36081, (334) 566 - 6896	Hon. Joel Folmar, District Attorney (Retired) 202 Oleander Drive, Panama City, FL, 32413 (850) 234 - 7841
Old Mount Pleasant Baptist Church v. Burch Circuit Court of Pike County, Alabama CV-92-115	Plaintiff	Civil action against contractor for fraud and negligent repairs Tried: 10-22-93	Sole counsel for Plaintiff. Prepared and tried case to $70,381.66 judgment. Collected judgment (without interest) through bankruptcy court.	Hon. Gary L. McAliley, P.O. Box 812, Troy, AL, 36081 (334) 566 - 6896	Hon. Larry C. Jarrell (now Asst. District Attorney), P.O. Box 812, Troy, AL, 36081 (334) 566 - 6896
Fred Backer v. Bobby Ray Cox Circuit Court of Barbour County, Alabama CV-91-47	Plaintiff	Civil action: Church split and dispute Tried:	Sole Counsel for Plaintiff, Pastor of Baptist Church. Conducted court-ordered church vote. Tried and appealed. Parties settled after appeal.	Hon. William Robertson (Retired) P.O. Box 475 Clayton, AL, 36016	Hon. James Martin (Trial) P.O. Box 14, Eufaula, AL, 36072 (334) 687 - 2766 Hon. Robert Bradford (Appeal) P.O. Box 116 Montgomery, AL, 36101-0116 (334) 834 - 7600

Susan Stagliano, Plaintiff v. James Stagliano, Defendant Circuit Court of Coffee County, Alabama DR-98-M-138	Plaintiff	Child Custody of special needs child, allegedly abused First Trial- 02-01-99 and 04-06-99 Second Trial- 08-14-02 and 04-22-03	Sole counsel for Plaintiff mother. Tried in conjunction with divorce action. Child severely handicapped by stroke allegedly caused by abuse of care-giver; Obtained joint custody, sustained on appeal; Subsequently re-tried for change of custody; Full custody awarded to Plaintiff	Hon. Gary McAliley (First trial) P.O. Box 812, Troy, AL, 36081 (334) 566 - 6896 Hon. Robert W. Barr (second trial) P.O. Box 805, Troy, AL, 36081 (334) 566-1307	Hon. Jodee Rowe Thompson, Rowe & Thompson P.O. Box 311305 Enterprise, AL, 36331 (334) 347 - 3401
Lester v. Taraz Lester, Plaintiff Circuit Court of Coffee County, Alabama DR-89-23	Defendant, Taraz Lester	Child Custody and Divorce Hearing: 09-17-93	Sole counsel to mother. Entered special appearance to contest jurisdiction. Lost jurisdictional motion in trial court; Appealed - Trial Court reversed.	Hon. John B. Crawley (now Alabama Court of Civil Appeals) Judicial Building 300 Dexter Avenue Montgomery, AL, 36104-3741 (334) 242 - 4207	Hon. Warren Rowe, Rowe & Thompson P.O. Box 311305 Enterprise, AL, 36331 (334) 347 - 3401

McClure v. McClure Circuit Court of Pike County, Alabama	Plaintiffs	Sale for division of property in a large family	Sole Counsel for plaintiffs in family division of property. Prepared and tried case; sold and divided property pursuant to final order; Cleared title to property based upon 1907 and 1911 deeds	Hon. Riley P. Green (deceased)	
Maddox v. Maddox Circuit Court of Pike County, Alabama DV- 2004 - H - 47	Defendant-Husband	Divorce and Property Division	Sole counsel for physician husband in property division of substantial assets. Tried on May 11, 2005.	Hon. Thomas Head 230 Court Avenue Elba, AL 36323 (334) 897 - 5525	Hon. Wade Baxley P.O. Drawer 1486 Dothan, AL, 36302-1486 (334) 793 - 6550

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

Answer: Significant legal activities are divided into four categories:

A. Mediation

A substantial part of my practice since 1990 has been private mediation of pending civil actions. I have mediated over two hundred cases, with several settlements higher than $500,000. Mediations have included a broad range of subject matters, many involving complex litigation and multiple parties.

For example, a recent products liability case in federal court was successfully mediated for a plaintiff who lost four fingers in a cotton mill accident. Another products liability case involved the wrongful death of a truck driver in a fire resulting from an overturned gasoline tanker truck. This successful mediation settlement followed the demonstration of the tank safety pop-off mechanism which had allowed fuel to spill in the

accident. Another successful mediation occurred in an attorney malpractice and theft case in which the plaintiff homeowner deposited $300,000 in an attorney's trust account, which sum was subsequently stolen by the attorney.

Other cases mediated successfully involved wrongful death of a pedestrian, severe injury in a farm accident, a contract dispute over the sale of a multi-million dollar horse and cattle ranch, child custody and child abuse cases, and routine personal injury, fraud, insurance and real estate cases.

B. Criminal Defense

In 1991, I was appointed to serve as co-lead counsel in a capital murder case. I actively investigated and prepared the case for trial. After extensive negotiations with the district attorney, a jury was struck, but the case settled for life without parole on the day of trial. The sentencing phase was tried before a jury.

I have also served as lead counsel or co-lead counsel in several rape cases. For instance, I was sole counsel to a defendant college student in a first degree rape case. After investigation, we demanded and received a preliminary hearing. After the preliminary hearing and further investigation of physical evidence, charges were dropped.

C. Significant Civil Litigation

My practice has been almost equally divided between plaintiffs and defendants in civil litigation. Examples of matters litigated, but settled prior to trial, include a wage and hour case in the District Court for the Middle District of Alabama in which I served as co-lead counsel for plaintiffs, husband and wife, who operated a service station for defendant seven days a week, 365 days a year. The plaintiffs were not compensated for time in excess of forty hours per week. After investigation, filing suit, and discovery including party depositions, the case was settled in favor of the plaintiffs for a confidential amount.

In state court, I have represented plaintiffs in complex litigation against promoters and securities counsel for fraud, misrepresentation, conspiracy and legal malpractice in the promotion of a venture and distribution of associated of private placement memoranda. This particular case took several years to conclude, and involved proceedings in the bankruptcy court, state circuit court, and ancillary proceedings in courts in other states. I led a team of lawyers in all of these areas to a successful settlement for a confidential amount. Prior to my taking litigation aspects of the case, a prominent Washington firm had extensively investigated the facts and had declined the case. That firm had concluded that the case would likely evolve into multi-party complex litigation of great length and expense. Their analysis of the litigation was correct. However, the team assembled for the plaintiffs was able to obtain

a substantial recovery for our clients.

The above are samples of a diverse general practice in civil litigation in courts throughout Alabama.

D. Significant Non-Litigation Matters

I have served as counsel to the Industrial Development Board for the City of Troy, and to the Pike County Economic Development Corporation. These activities have required work in bond issues, corporate and public finance, and real estate development law. I represented Wal-Mart Stores East, Inc. in the placement and construction of a $90 million distribution center in Opelika, Alabama, and a $100 million distribution center in Brundidge, Alabama. In both instances, I served as sole counsel to Wal-Mart to negotiate and verify local and state incentives; to handle all real estate issues including negotiation of the lease and attendant title work and zoning issues; to verify labor and employment; to negotiate easements and access, site development grant, tax abatements and local bond issues; to work with engineers for layout of site plan, utilities and the like; and in one instance, to negotiate an inducement agreement with state and local officials for a package worth $22 million in credits and abatements. These negotiations required two meetings with the Governor and other meetings with state officials regarding the project, and negotiations with landowners to purchase sites.

Another example of legal matters handled during my career is the sale of a 100,00 watt FM radio station. I served as lead counsel to a team of lawyers, accountants and engineers in a transaction involving real estate leases, federal communications law, significant tax issues, corporate law issues for two corporations, due diligence and due diligence response, and associated activities.

Economic development has also been a significant area of my practice and volunteer activities. At the time I moved back to my home county, the area was economically depressed. I became active in economic development, donating much time and energy to public entities promoting economic development, tourism, recreation, the arts and humanities, and education. I led a recruitment team which successfully enticed four industries to Pike County in 1984 and 1985, and was named the Volunteer Industrial Developer of the Year in 1985 for the State of Alabama by the Industrial Developers Association of Alabama.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

RESPONSE:

A. Calhoun, Faulk, Watkins & Faircloth, LLC – I will disassociate from my firm and be paid by the firm for my interest in the assets of the firm. I anticipate compensation for legal services rendered before my appointment. The amounts and dates are unknown.

B. DQV, LLC – I own 51% of this venture. My brother owns 49%. The venture consists of one building leased to a Dairy Queen franchisee. This venture produces passive rental income which is disclosed on my tax returns, and which will continue in like manner in the future.

C. Turkey Mountain, LLC – I own 19% of this venture, which is primarily timberland. I anticipate no income except from periodic sales of timber in compliance with good timber management practices. I do not know amounts or dates of receipts.

D. Powermaster, Incorporated – I own one-third of this family business. The other two-thirds are owned by my brothers. I receive no income from this business, and do not anticipate receiving any income in the future.

E. CKT, LLC – I own one-third of this venture to develop 20 acres of commercial property in Troy, Alabama. Robert K.T. Cole is the managing member. Sources, amounts and dates of anticipated receipts are not known.

F. Rosewood Martin, LLC – I own 100% of this limited liability company, which owns 104 acres of open land in Pike County, Alabama. I have received no income from this property, and anticipate none in the immediate future.

G. WE, LLC – I own 50% of this limited liability company. The other 50% is owned by Emory Earl Ellis, Sr., who is the managing member. The sole asset of this Company is a mineral royalty agreement. If any income is produced, I will be entitled to 50% after expenses. No income has been produced.

H. Lucas Property. I own this 128 acre property on the outskirts of Troy, Alabama. It is primarily timberland. It has produced no income, and I anticipate none in the immediate future.

I. Saco Property. I own a one-half interest in this 167 acre tract of timberland in north Pike

County. My brother owns the other one-half interest. I anticipate no income from this partnership except routine timber cutting in conformity with good forestry practices.

J. Elba Property. I own 25% of my grandfather's farm in Elba, Coffee County, Alabama. This is primarily timberland, though there is an old house located on the property. I anticipate no income in the immediate future, except from the routine cutting of timber in conformity with good timber management practices.

K. Madison Street Office – I own this former law office in Troy, Alabama. It is under contract to be sold to James and Paulette Key, who currently occupy the building.

L. North Carolina Property – I own and rent out a cabin in North Carolina. Income from rentals varies, but has been less than $2,000.00 per year.

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

RESPONSE.

Any conflict of interest will be resolved by consulting applicable statutes, the Code of Conduct for United States Judges, and Rules and Regulations of the Judicial Conference of the United States. I will maintain a comprehensive list of former clients and business partners. I know of no litigation or financial arrangements that are likely to present potential conflicts of interest during my initial service in the position to which I have been nominated.

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

RESPONSE.

No.

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

RESPONSE.

See financial disclosure report, attached.

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

RESPONSE.

See attached financial net worth statement with schedules.

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

RESPONSE.

In the 1980s, and perhaps early 1990s, I served either on or as counsel to a committee called "Friends of Steve Flowers" which sent fund-raising letters for Steve Flowers, a candidate for State Representative in the Alabama Legislature. I was not an officer of this committee, nor did I handle any of the funds raised. I am advised by Mr. Flowers that he served as his own treasurer in those campaigns, and that there has never been any adverse action taken against his campaigns by any regulatory body. I also served as counsel to the Steve Flowers Federal Exploratory Congressional Campaign Committee in 1995.

AO-10
Rev. 1/2004

FINANCIAL DISCLOSURE REPORT

Calendar Year 2004

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (Last name, First name, Middle initial) Watkins, William K	2. Court or Organization U.S. District Court, M.D. AL	3. Date of Report 10/3/2005
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge Nominee	5. ReportType (check appropriate type) (●) Nomination, Date 9/28/2005 ( ) Initial ( ) Annual ( ) Final	6. Reporting Period 1/1/2004 to 8/31/2005
7. Chambers or Office Address 78 South Court Square Post Office Box 489 Troy, Alabama 36081	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer_____ Date_____	

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

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions)

☐ NONE - (No reportable positions.)

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Member/ Partner	Calhoun, Faulk, Watkins & Faircloth, LLC
2.	Member	Rosewood Martin, LLC
3.	Member (sold 7/05)	GSW, LLC
4.	Member	DQV, LLC (family business)
5.	Member (no management responsibility)	CKT, LLC
6.	Member (no management responsibility)	WE, LLC
7.	Director, Shareholder	Powermaster, Inc. (family business)
8.	Local Director - Advisory	Wachovia Bank, Troy, Alabama Branches

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions)

☐ NONE - (No reportable agreements.)

	DATE	PARTIES AND TERMS
1.	2005	Calhoun, Faulk, Watkins & Faircloth, LLC - Purchase by law firm of my ownership interest - to be determined

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Watkins, William K	10/3/2005

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1.	2003	Calhoun, Faulk, Watkins & Faircloth, LLC	$224, 972.00
2.	2003	South Trust Bank - Director's Fee	$1,200.00
3.	2004	Calhoun, Faulk, Watkins & Faircloth, LLC	$201,551.00
4.	2004	South Trust Bank - Director's Fee	$1,200.00
5.	2005	Calhoun, Faulk, Watkins & Faircloth, LLC	$130,688.00
6.	2005	South Trust Bank - Director's Fee	$1,000.00

B. Spouse's Non-Investment Income - (If you were married during any portion of the reporting year, please complete this section. (dollar amount not required except for honoraria)

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

	DATE	SOURCE AND TYPE
1.	2004	Troy Regional Hospital - Nurse - salary
2.	2005	Troy Regional Hospital - Nurse - salary

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

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

☐ NONE - (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1.	Exempt	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Watkins, William K	10/3/2005

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

☐ NONE - (No such reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1.	Exempt		

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)

☐ NONE - (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE
1.	South Trust Bank	GSW Real Estate Loan	P1
2.	First National Bank of Brundidge	Signature	K
3.	South Trust Bank	JB Wiley Real Estate Loan	K
4.	Regions Bank	North Carolina Real Estate	L
5.	SunTerra Financial	Maui Timeshare	K
6.	South Trust Bank	Lucas Real Estate Loan	K
7.	South Trust Bank	Dairy Queen Real Estate Loan	N
8.	Federal Land Bank	Rosewood Martin Real Estate Loan	M
9.	Troy Bank and Trust Company	Turkey Mountain Real Estate Loan	L
10.	Troy Bank and Trust Company	Saco Real Estate Loan	M
11.	Wachovia Bank	CKT Real Estate Loan	N

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Watkins, William K	10/3/2005

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)

☐ NONE - (No reportable liabilities.)

CREDITOR	DESCRIPTION	VALUE CODE
12. Patricia G. Dickens	CKT Real Estate bridge loan	P1
13. Chase/ Bank One	Credit Card	J
14. Chase Platinum	Credit Card	K
15. Citi Card	Credit Card	J
16. MBNA	Credit Card	J
17. MBNA	Credit Card	K
18. American Express	Credit Card	J

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Name of Person Reporting	Date of Report
Watkins, William K	10/3/2005

VII. INVESTMENTS and TRUSTS -- income, value, transcations (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A -H)	(2) Type (e.g. div. rent. or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	(2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)									
1. Rental - South Brundidge Street, Troy, AL	B	Rent	L	T	Exempt				
2. Rental - DQV, LLC (51% interest), Troy, AL	D	Investment	N	R					
3. Rental - Needmore Road (McVay), Troy, AL	B	Rent	K	T					
4. Rental - Love Street, Troy, AL	B	Rent	K	T					
5. Needmore Farm (2/3 interest), Troy, AL	A	Investment	O	W					
6. Needmore Farm (2/3 interest), Troy, AL, Royalty Interest	A	Investment	J	W					
7. Court Square Law Office (1/3 interest), Troy, AL	A	Investment	L	W					
8. Elba Farm (1/4 interest), Coffee County, AL	A	Investment	L	W					
9. Sylva, North Carolina cabin	B	Investment	M	Q					
10. Sylva, NC, 30.67 acres (contract to close on 10/15/05)	A	Investment	N	Q					
11. Rental - 123 Madison Street, Troy, AL	E	Investment	L	W					
12. County Barn property (1/2 interest), Troy, AL	A	Investment	J	W					
13. Lucas Farm (128 acres), Pike County, AL	A	Investment	M	W					
14. Lucas Farm (128 acres), Pike County, AL, Royalty Interest	A	Investment	J	W					
15. Carlisle Lot (1/2 interest), Troy, AL	A	Investment	J	W					
16. Suzie Smith Place (30 acres-IRA), Troy, AL	A	Investment	L	W					
17. Suzie Smith Place (30 acres-IRA),Troy,AL,Royalty Interest	A	Investment	J	W					
18. Saco (1/2 interest,167 acres), Pike County, AL	A	Investment	M	W					

1. Income/Gain Codes. (See Columns B1 and D4)	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000
	F = $50,001-$100,000	G = $100,001-$1,000,000	H1 = $1,000,001-$5,000,000	H2 = More than $5,000,000	
2. Value Codes. (See Columns C1 and D3)	J = $15,000 or less	K = $15,001-$50,000	L = $50,001-$100,000	M = $100,001-$250,000	
	N = $250,000-$500,000	O = $500,001-$1,000,000	P1 = $1,000,001-$5,000,000	P2 = $5,000,001-$25,000,000	
	P3 = $25,000,001-$50,000,000		P4 = $More than $50,000,000		
3. Value Method Codes (See Column C2)	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market	
	U = Book Value	V = Other	W = Estimated		

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Name of Person Reporting	Date of Report
Watkins, William K	10/3/2005

VII. INVESTMENTS and TRUSTS – income, value, transcations (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

	A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A -H)	(2) Type (e.g. div. rent. or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
19.	Saco (1/2 int/, 167 acres),Pike Co., AL, Royalty Interest	A	Investment	J	W	Exempt				
20.	Rosewood Martin, LLC (104 acres), Troy, AL	A	Investment	M	W					
21.	Rosewood Martin, LLC (104 acres),Troy, AL,Royalty Interest	A	Investment	J	W					
22.	Turkey Mountain, LLC (19% interest), Pike County, AL	A	Investment	K	W					
23.	Turkey Mtn., LLC(19% int.), Pike Co., AL, Royalty Interest	A	Investment	J	W					
24.	CKT, LLC (1/3 interest), Real Estate Development	A	Investment	N	R					
25.	WE, LLC (50% interest), Royalty Interest	A	Investment	J	W					
26.	GSW, LLC (1/3 interest), Real Estate Development	A	Investment	O	T					
27.	Powermaster, Inc. (1/3 interest), family business	A	Investment	K	W					
28.	A.G.E. Jt. Ten/ Centennial Money Market Trust	A	Interest	J	W					
29.	[A.G. E. TMW IRA] Coca-Cola Co.	A	Dividend	J	T					
30.	Regions Financial Corp. - common	A	Dividend	J	T					
31.	Investment Co. of America	A	Dividend	J	T					
32.	[A.G.E. - WKW - SEP] Centennial Money Market Trust	A	Interest	J	T					
33.	American International Group, Inc. - common	A	Dividend	J	T					
34.	Boeing Company - common	A	Dividend	J	T					
35.	Chevron Texaco Corp. - common	A	Dividend	J	T					
36.	Sisco Systems, Inc. - common	A	Dividend	J	T					

1. Income/Gain Codes: (See Columns B1 and D4)	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000	
	F = $50,001-$100,000	G = $100,001-$1,000,000	H1 = $1,000,001-$5,000,000	H2 = More than $5,000,000		
2. Value Codes: (See Columns C1 and D3)	J = $15,000 or less	K = $15,001-$50,000	L = $50,001-$100,000	M = $100,001-$250,000		
	N = $250,000-$500,000	O = $500,001-$1,000,000	P1 = $1,000,001-$5,000,000	P2 = $5,000,001-$25,000,000		
	P3 = $25,000,001-$50,000,000		P4 = $More than $50,000,000			
3. Value Method Codes (See Column C2)	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market		
	U = Book Value	V = Other	W = Estimated			

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Name of Person Reporting	Date of Report
Watkins, William K	10/3/2005

VII. INVESTMENTS and TRUSTS – income, value, transcations (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g. div. rent. or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	(2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
37. Citi Group, Inc. - common	A	Dividend	J	T	Exempt				
38. Coca-Cola - common	A	Dividend	J	T					
39. Colonial Properties Trust	A	Dividend	J	T					
40. Comcast Corp. - common	A	Dividend	J	T					
41. ConocoPhillips - common	A	Dividend	J	T					
42. Exxon Mobil - common	A	Dividend	J	T					
43. General Dynamics Corp.- common	A	Dividend	J	T					
44. General Electric Co. - common	A	Dividend	J	T					
45. Hersheys Food Corp. - common	A	Dividend	J	T					
46. Intel Corp. - common	A	Dividend	J	T					
47. IBM - common	A	Dividend	J	T					
48. Johnson & Johnson - common	A	Dividend	J	T					
49. Lowe's - common	A	Dividend	J	T					
50. MBNA - common	A	Dividend	J	T					
51. Microsoft - common	A	Dividend	J	T					
52. Nextel - common	A	Dividend	J	T					
53. Pfizer - common	A	Dividend	J	T					
54. Southwest Airline Company - common	A	Dividend	J	T					

1. Income/Gain Codes:	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000
(See Columns B1 and D4)	F = $50,001-$100,000	G = $100,001-$1,000,000	H1 = $1,000,001-$5,000,000	H2 = More than $5,000,000	
2. Value Codes:	J = $15,000 or less	K = $15,001-$50,000	L = $50,001-$100,000	M = $100,001-$250,000	
(See Columns C1 and D3)	N = $250,000-$500,000	O = $500,001-$1,000,000	P1 = $1,000,001-$5,000,000	P2 = $5,000,001-$25,000,000	
	P3 = $25,000,001-$50,000,000		P4 = $More than $50,000,000		
3. Value Method Codes	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market	
(See Column C2)	U = Book Value	V = Other	W = Estimated		

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Name of Person Reporting	Date of Report
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VII. INVESTMENTS and TRUSTS – income, value, transcations (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A -H)	(2) Type (e.g. div. rent. or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	(2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
55. Target Corporation - common	A	Dividend	J	T	Exempt				
56. Time Warner - common	A	Dividend	J	T					
57. United Technology - common	A	Dividend	J	T					
58. Viacom - common	A	Dividend	J	T					
59. Wachovia Corporation - common	B	Dividend	K	T					
60. Wal-Mart Stores, Inc. - common	A	Dividend	J	T					
61. Wal-Green Company - common	A	Dividend	J	T					
62. [CHS - TMW 401(k)] Scudder Flg. Inv. Val. Builder A	A	Dividend	L	T					
63. CHS Company Stock Fund	A	Dividend	J	T					
64 E.D. Moseley Note	A	Interest	J	V					
65. Accounts Receivable - Law Firm	A	Other	K	W					
66. Law Firm - 1/3 interest		None	J	W					
67. SouthTrust Bank - Dimensions Account	A	Interest	J	T					
68. Principal: Variable Universal Life Policy	A	Int. & Div.	J	T					
69. Northwestern Mutual WKW 318 Variable Universal Life	A	Int. & Div.	J	U					
70. Northwestern Mutual TM 010 Extraordinary Life	A	Int. & Div.	J	T					
71. Northwestern Mutual WKW 575 Extraordinary Life	A	Int. & Div.	J	T					

1. Income/Gain Codes:	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000
(See Columns B1 and D4)	F = $50,001-$100,000	G = $100,001-$1,000,000	H1 = $1,000,001-$5,000,000	H2 = More than $5,000,000	
2. Value Codes:	J = $15,000 or less	K = $15,001-$50,000	L = $50,001-$100,000	M = $100,001-$250,000	
(See Columns C1 and D3)	N = $250,000-$500,000	O = $500,001-$1,000,000	P1 = $1,000,001-$5,000,000	P2 = $5,000,001-$25,000,000	
	P3 = $25,000,001-$50,000,000		P4 = $More than $50,000,000		
3. Value Method Codes	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market	
(See Column C2)	U = Book Value	V = Other	W = Estimated		

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Watkins, William K	10/3/2005

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

In Section VII:

Items 29, 30 and 31 are held in an A.G. Edwards IRA for Teresa M. Watkins.

Items 32 through 61 are held in A.G. Edwards SEP for William K. Watkins.

Items 62 and 63 are held in Teresa M. Watkins' 401(K) plan with her employer.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Watkins, William K	10/3/2005

IX. CERTIFICATION.

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

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

Signature Date October 3, 2005

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH
AS OF 10/01/05

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

ASSETS				LIABILITIES			
Cash on hand and in banks		10	000	Notes payable to banks-secured			0
U.S. Government securities-add schedule				Notes payable to banks-unsecured		75	000
Listed securities-add schedule				Notes payable to relatives			0
Unlisted securities--add schedule		25	000	Notes payable to others			0
Accounts and notes receivable:				Accounts and bills due		4	000
Due from relatives and friends		6	580	Unpaid income tax (estimated)		5	000
Due from others (Accounts Receivable-Law Firm)		30	000	Other unpaid income and interest			
Doubtful				Real estate mortgages payable - see schedule	1	186	622
Real estate owned-add schedule	2	492	100	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		98	700				
Cash value-life insurance		23	696				
Other assets itemize:							
1031 Transactions		300	000				
IRA, SEP, Retirement		272	126				
1/3 Law Practice (excluding A/R)		10	000	Total liabilities	1	270	622
CKT, LLC - Capital Account		103	000	Net Worth	2	100	580
Total Assets	3	371	202	Total liabilities and net worth	3	371	202
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor (See schedule)	1	303	920	Are any assets pledged? (See Real Estate Schedule)			
On leases or contracts				Are you defendant in any suits or legal actions? No			
Legal Claims				Have you ever taken bankruptcy? No			
Provision for Federal Income Tax		10	000				
Other special debt							

Schedule of Real Estate Owned

WILLIAM KEITH WATKINS

Description	KW Value	Mtg. Amt. - KW%
House & 2.5 ac. (built 1991)	$275,000.00	$50,000.00 $137,000.00
Needmore Farm (110 ac)	550,000.00	-
Court Square Law Office (1/3 interest)	70,000.00	24,000.00
Elba Farm (120 ac) (1/4 interest)	75,000.00	-
Sylva N.C. (Cabin & 2 Lots)	160,000.00	94,000.00
123 Madison - office	72,000.00	48,688.89
DQV - Dairy Queen (1/2 interest)	331,500.00	180,000.00
Co Barn (IRA) (1/2 interest)	8,000.00	-
Lucas (127 ac)	192,000.00	42,500.00
SunTerra EVR, Maui*	30,000.00	-
Rosewood Martin, LLC (104 ac)	115,000.00	103,100.00
Carlisle Lot (1 ac) (1/2 interest)	10,000.00	-
Suzie Smith (30 ac - IRA)	39,000.00	-
Saco (167 ac) (1/2 interest)	150,000.00	125,000.00
Turkey Mountain, LLC (200 ac) (19% interest)	64,600.00	60,000.00
CKT, LLC (20.79 ac) (1/3 interest)	350,000.00	322,334.00
(TOTAL KW VALUE)	**$2,492,100.00**	**$1,186,622.89**

Owned jointly with spouse

Senate Questionnaire
Financial Schedules

WILLIAM KEITH WATKINS

Unlisted Securities:

170 Shares, Powermasters, Inc. (Family business - 1/3 ownership)	$25,000.00

Contingent Liabilities

DQV, LLC - William Keith Watkins has guaranteed 100% of DQV debt; Total 10/01/05	$336,920.00
CKT, LLC - William Keith Watkins has guaranteed 100% of CKT debt.	$967,000.00

III. GENERAL (PUBLIC)

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

RESPONSE.

My wife and I served as foster parents for a period of time in the mid 1980's, at the request of local juvenile officers. There was a shortage of foster parents at the time.

On at least two occasions, I have worked on a Habitat for Humanity house in Pike County, Alabama. On both occasions, I devoted a full Saturday to working on the project.

In the summer of 1992, I participated in the construction of a church building for a Korean congregation in Indianapolis, Indiana. The trip lasted a week, during which I worked from 6:00 a.m. until 8:00 p.m. four days, and 6:00 a.m. until 4:00 p.m. two days, doing general carpentry and roofing.

I have organized and led four trips to Jamaica to do repair and carpentry work on the Jamaica Baptist Women's Union Orphanage in Anchovie, Jamaica, and other projects in Jamaica. One such trip had 54 volunteers, another had 23 volunteers. In addition, I raised all the funds to buy materials for the projects. All projects were done at no cost to the orphanage. The duration of these trips was from four days to two weeks each.

I have on countless occasions provided pro bono services to clients who were unable to afford my services. I have recently completed a will and power of attorney, with attendant advice, for an elderly African American woman who could not pay. I am also handling a collection demand matter for another elderly African American woman who cannot afford to pay for my services. I estimate that I handle ten to twenty of such pro bono matters a year. I have provided free services in establishing a foundation to start boys and girls clubs in our area (Fred Baxter Foundation) and in the formation of a local child advocacy center (Pike Regional Child Advocacy Board, Inc.).

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

RESPONSE. I do not belong and have not belonged to any such organizations.

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

RESPONSE.

There is no selection commission in this jurisdiction. In April, 2005, the selection process was initiated by Senator Richard Shelby who invited me to submit a resume'. After doing so, I met with Senator Jeff Sessions. I was subsequently informed that my name would be submitted to the President. At the end of May, 2005, I interviewed with Associate White House Counsel, and was subsequently informed by the White House that I had been selected to move forward in the process. After interviews with representatives of the Federal Bureau of Investigation and completion of Form SF-86, I was informed by the White House that my nomination would be forwarded to the Senate, which was done in late September, 2005.

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

RESPONSE. No.

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

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

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

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

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

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

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

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

RESPONSE.

Litigants deserve a fair, predictable and consistent judiciary which operates within established rules and law. Courts which unilaterally create new causes of action, procedures or jurisdiction engender the distrust of the legal community and, more importantly, the citizenry. The people are ultimately best served by a system which is fair, impartial, cost-effective and circumspect. Litigants should expect equal treatment under the law and to be equally subject to the law.

The doctrine of separation of powers is due the utmost respect of the judiciary. Accordingly, judicial restraint requires that matters before federal courts involve aggrieved persons with standing and an actual controversy. Problem resolution, affirmative governmental duties and social concerns are best left to legislative bodies who speak for the people in these areas. Having spoken, legislative pronouncements should not be easily or routinely upset by the judicial branch.

I am firmly committed to the principle that this is a nation which operates under the rule of law. Under the principle of *stare decisis*, Constitutional principles and established doctrines and rulings are to be followed by trial courts, irrespective of whether a district judge agrees with the principle or the outcome required by application of the principle.

AFFIDAVIT

I, William Keith Watkins, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

November 2, 2005 (DATE)

(NAME)

Kelli Jones (NOTARY)

Senator DURBIN. Judge DuBose?

STATEMENT OF KRISTI DUBOSE, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF ALABAMA

Judge DUBOSE. Thank you, sir. For the last 6 years it's been my job to try to provide a place for the litigants and the attorneys to be able to come and get a fair and equitable hearing. And they leave the courtroom, I hope—my goal—when they leave the courtroom is they understand that I have applied the law the way the legislature intended me to apply the law.

[The biographical information of Judge DuBose follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Kristi Kaye DuBose, Kristi DuBose Lee

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

Residence: Fairhope, AL 36532
Office: 113 St. Joseph Street, Mobile, Alabama 36602

3. Date and place of birth.

Brewton, Alabama October 1, 1964

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

Single

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

Huntingdon College 1982-1986 B.A.(Magna cum laude) History/Business, 1986

Emory Univ. Law School 1986-1989 J.D.(with distinction), 1989

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

Jan. 1986-May 1986 - Intern, Alabama House of Rep.

May 1986-August 1986 - Intern, Alabama State Bar

June 1987-Aug. 1987 - Law clerk, Hon. Marion Pope, Georgia Court of Appeals

December 1987-May 1989 (school year) - Clerk, Emory Law Library

June 1988-Aug. 1988 - Law clerk, Georgia Atty General's Off.

Sept. 1988- July 1989 - Law clerk, U.S. Atty's Office, N.D. of Georgia

Aug. 1989 - Aug. 1990 - Law clerk, Hon. Peter Beer, E.D. of Louisiana

Aug.1990 - Oct. 1993 - Assist. U.S. Attorney, S.D. of AL

Oct.1993 - June 1994 - Home with infant

June 1994 - Dec. 1994 - Part-time Assist. District Atty in Covington County

Dec. 1994 - Dec. 1996 - Deputy Attorney General, Alabama Attorney General's Office

Jan. 1997 - Dec. 1999 - Chief Counsel, Senator Jeff Sessions

Jan. 2000 - present - U.S. Magistrate Judge, S.D. of Alabama

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received. **NO**

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

   Member of Order of the Coif (top 10% law school)

   1992 DOJ Sustained Excellence in Litigation Award

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

   Alabama State Bar
   American Inn of Court
   Mobile/Baldwin Christian Legal Society (Board Member since 2003)

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

    Member Huntingdon College Alumni Board (does not lobby)

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

Alabama Supreme Court admitted 1989 - present
District Court S.D. of Alabama 1990 - present
Louisiana State Bar 1990 (1991 voluntarily assumed inactive status)

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

I have not published.

I have given several speeches mainly related to the function of the Magistrate Judge in Federal Court. As a representative of Senator Sessions I often spoke to constituents about various legislative matters. These speeches to my knowledge were neither written or recorded.

I have attached a speech I gave to the student body at Huntingdon College entitled Justice in Gender. (Attachment 1)

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

I am in excellent health. June 2005

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

U.S. Magistrate Judge, United States District Court, Southern District of Alabama - appointed January 2000

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations

for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

TEN SIGNIFICANT OPINIONS

1) *Lamm Auto Stores v. GKN Parts* (00-0043) -summary judgment on breach of contract (Affirmed by 11th Cir.(01-15913)) (Attachments 2 & 2a)

2) *U.S. v. $22,991,* 227 F.Supp.2d 1220 (S.D.Ala. 2002)-bench trial on civil forfeiture action (Consent case)

3) *Mobile Bay Wood Chip v. Marubeni Corp.* (02-0096)-Motion to Remand (adopted by District Judge) (Attachment 3)

4) *McDonald v. Brunswick* (01-0637) -Motion to Remand (adopted by District Judge) (Attachment 4)

5) *Sonnier v. CPSI,* 168 F.Supp.2d 1322 (S.D.Ala. 2001) - Summary judgment on ADA and ADEA claims (Consent case)

6) *Guy v. Barnhart* (01-446) - Social Security appeal (affirmed by the 11th Cir. (02-15244)) (Attachments 5 & 5a)

7) *King v. Georgia Pacific* (03-829) - Summary Judgment on ADA claim (adopted by District Judge) (Attachment 6)

8) *Dickinson v. S.D. Warren* (03-0142) - Summary Judgment on ERISA claim (Affirmed by 11th Cir. 2004 WL 3106922) (Attachment 7)

9) *Reeves v. Dillard* (02-323) - Summary Judgment on state law negligence claims (Consent Case) (Attachment 8)

10) *Bituminous v. Batchelor's* - Summary Judgment on construction of indemnity agreement (Consent Case) (Attachment 9)

REVERSALS

1) *Bolen v. Barnhart* (01-0776)- Plaintiff Bolen appealed an adverse decision by an ALJ wherein he was denied his application for disability insurance benefits. The issues presented on

appeal were 1) whether the ALJ erred in failing to state the weight given to certain evidence relating to plaintiff's mental impairment and 2) whether the ALJ erred in failing to find that plaintiff had a severe mental impairment.

I issued an opinion which was adopted by the District Court finding that the ALJ did not commit reversible error. I reasoned that because the record as a whole indicated Bolen did not have a severe mental impairment, the failure to state the weight given to the evidence was harmless error which did not affect the ultimate determination that Bolen was not disabled. On appeal, the 11th Cir. found that the ALJ committed reversible error by failing to specify the weight given to certain mental impairment evidence and thus remanded to the District Court for further proceedings. (Attachment 10 & 10a)

2) *U.S. v. Brown* (02-00185) I entered an opinion granting the defendant's motion to reconsider his pre-trial detention and thereafter set conditions of release. (Attachment 11) The District Court reversed the decision and detained . (Attachment 11a)

3) *U.S. v. Gericare* (99-0366) I issued an order on a discovery motion wherein I found the request to produce ALJ Medicare opinions for a ten year period to be overly burdensome. The order covered numerous other requests which were granted in part and denied in part. (Attachment 12) On appeal the District Court set aside my determination that the request concerning ALJ opinions was overly burdensome and ordered that the government produce the opinions.(Attachment 12a)

4) *O'Shields v. McConnell* (98-0171) - Petitioner O'Shields filed for habeas relief from his state court conviction alleging, inter alia, that his confession was coerced. I issued an opinion denying the petition (which was adopted by the District Judge) and finding that the state court's determination that the confession was not coerced was not an unreasonable application of Supreme Court law. (Attachment 13) The 11th Cir. determined that the state court's original determination (which the state court later reversed) that the confession was coerced was correct and thus remanded the case for the District Court to apply a harmless error analysis. (Attachment 13a) On remand I issued an opinion denying the petition based on harmless error which was adopted by the district court and affirmed by the 11th Cir.(Attachment 13b & 13c)

5) *Anderson v Barnhart* (02-0838) Plaintiff Anderson appealed from the denial of her request for social security disability arguing that the ALJ erred by not finding her disabled and by finding she could perform light work. I issued an opinion finding that substantial evidence supported the ALJ's opinion. The District Judge declined to adopt my opinion and remanded the

case to the ALJ for vocational expert testimony on the issue of whether plaintiff could perform light work. (Attachments 14 & 14a)

6) *Everitte v. Massanari* (00-0072) Plaintiff Everitte appealed from the denial of his request for childhood social security disability arguing that the ALJ erred by failing to find him disabled due to epilepsy and ADHD. I issued an opinion finding that substantial evidence supported the ALJ's opinion. The District Court declined to adopt my opinion and remanded the case to the ALJ for additional evidence on the issue. (Attachments 15 & 15a)

7) *U.S. v. Maria Garcia-Flores* (03-126 & 03-221) On the government's motion I detained the defendant. The defendant appealed and the District Judge reversed and set conditions of release. The defendant's release was subsequently revoked after she failed to appear at trial. (Attachments 16 & 16a)

SIGNIFICANT CONSTITUTIONAL OPINIONS

1) *Anderson v. Jones* (00-84) - Summary judgment on §1983 claim (11th Cir. dismissed appeal as frivolous) (Attachments 17 & 17a)

2) *Mooney v. Price* (02-426) - State Habeas Corpus (adopted by District Judge) (Attachment 18)

3) *U.S. v. Petite* (02-0043) - Motion to Suppress (adopted by the District Judge (Attachment 19)

4) *Besselaar v. Siegelman*, 2001 WL 936196 (S.D.Ala. 2001)(Affirmed by 11th Cir. (01-13217) §1983 claim

5) *Britford v. Holt* (02-0378) State habeas claim (Attachment 20)

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

I have not held an elected public office.

Aug. 1990 - Oct. 1993 - appointed Assistant U.S. Attorney, Southern District of Alabama

June 1994 - Dec. 1994 - appointed an Assistant District Attorney, Covington County, Alabama

Dec. 1994 - Dec. 1996 -appointed a Deputy Attorney General, State of Alabama

January 1997-December 1999 - Chief Counsel to Senator Jeff Sessions

17. Legal Career:

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

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

I was a law clerk to Federal District Judge Peter Beer in the United States District Court of the Eastern District of Louisiana from August 1989 - August 1990.

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

I have not practiced alone.

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

Aug. 1990 - Oct. 1993 - appointed Assistant U.S. Attorney, Southern District of Alabama, 63 South Royal Street, Suite 600, Mobile, Alabama 36602.

June 1994 - Dec. 1994 - appointed an Assistant District Attorney, Covington County, Alabama, Covington County Courthouse, Andalusia, Alabama 36420.

Dec. 1994 - Dec. 1996 -appointed a Deputy Attorney General, State of Alabama, Attorney General's Office, 11 South Union Street, Montgomery, Alabama 36130.

January 1997-December 1999 - Chief Counsel to Senator Jeff Sessions, 335 Russell Senate Office Building, Washington, DC 20510.

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

I worked for the U.S. Attorney's Office in the Southern District of Alabama until October 1993. In that position I worked primarily as a criminal prosecutor handling over 120 criminal cases. I tried approximately 20 criminal jury cases in District Court as sole or chief counsel. I wrote and filed briefs in approximately twenty-one cases before the 11th Cir. and argued before the 11th Cir. an estimated seven times. I was also responsible for the civil social security appeals which required approximately 15% of my time. I would estimate that I handled 100 social security appeals to the District Court.

From June 1994 - December 1994 I practiced part-time as an Assistant District Attorney where I handled general criminal trials and the juvenile docket in state court. In this capacity I tried 3 -5 jury criminal cases and 10-15 juvenile bench trial cases as sole counsel.

In December 1994 I was appointed a Deputy Attorney General where I was designated the Deputy in charge of special criminal prosecutions. In this capacity I handled mainly public corruption investigations and prosecutions. I tried 2-3 jury criminal cases in state court as chief counsel.

From January 1997- December 1999 I served as the Chief Counsel to Senator Jeff Sessions.

I was appointed as U.S. Magistrate Judge for the S.D. of Alabama in January 2000.

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

I have primarily practiced as a criminal prosecutor, thus my client was either the United States or the State of Alabama.

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

I appeared frequently in court as a criminal prosecutor. I did not appear in court from 1997-1999 while I was chief counsel to Senator Sessions.

2. What percentage of these appearances was in:
   (a) federal courts; **80%**
   (b) state courts of record; **20%**

phone 850-623-4844 and R.T. Ratchford, 314 S. Baylen Street, Pensacola, Florida, 32501; phone 850-432-7661.

2) *U.S. v. Lynn* (CR 90-101) I prosecuted Mr. Lynn on an indictment that charged conspiracy to manufacture and distribute methamphetamine. Trial was held before District Judge Charles R. Butler. Lynn was convicted by jury and received a life sentence. I handled the appeal to the 11th Cir. where the conviction was affirmed. (C.A. No. 91-7234). The defense attorney was James W. May, P.O. Box 549, Foley, Alabama 36536; phone 251-943-2881.

3) *U.S. v. Monish* (92-0028) I prosecuted Mr. Monish on an indictment that charged bank fraud. Monish was convicted by jury before District Judge Brevard Hand. I handled the appeal to the 11th Cir. where the conviction was affirmed but the case was remanded for re-sentencing. (C.A. No.92-6665). Defense attorney at trial was Robert Clark, P.O. Box 2705, Mobile, Alabama 36652, phone 251-433-5860. Appellate counsel was Cecily Kaffer, P.O. Box 1287, Mobile, Alabama 36633, phone 251-432-1811.

4) *U.S. v. McCormick* (91-0080) I prosecuted Mr. and Mrs. McCormick on an indictment that charged conspiracy, use of fire to commit a felon, arson, fraud by wire and fraud by mail. The McCormicks were convicted by jury on all counts before District Judge Charles R. Butler. I handled the appeal to the 11th Cir. where the convictions were affirmed. (C.A. No.91-7882) The panel consisted of Circuit Judges Birch and Johnson and Senior District Judge Daniel Thomas. The defense attorneys at trial were John W. Kelly, P.O. Box 303, Selma, Alabama 36702, phone 334-875-5770 and William T. Faile, P.O. 381, Selma, Alabama 36702, phone 334-874-9477. Appellate counsel was Ron Wise, 2000 Interstate Park Dr. Ste. 105, Montgomery, Alabama, phone 334-260-8005.

5) *U.S.v. Patton* (91-00258) I prosecuted Mr. Patton on an indictment that charged possession of a firearm after a felony conviction i.e. armed bank robbery. The defendant was convicted by jury before District Judge Alex T. Howard. I handled the appeal to the 11th Cir. where the conviction was affirmed but the case remanded for re-sentencing. (C.A. No. 92-6392) The defense attorney was Gregory Hughes, 501 Church Street, Mobile, Alabama 36602, phone 251-433-3671. Appellate counsel was Cecily Kaffer, P.O. Box 1287, Mobile, Alabama 36633, phone 251-432-1811.

6) *U.S. v. Feldman* (89-0072) Mr. Feldman was indicted along with 21 other defendants on charges of conspiracy to import and distribute vast quantities of powder cocaine and marijuana over a seven year period. I handled only Feldman's appeal to the 11th Cir. where the conviction was affirmed. (C.A. No. 90-7125) The panel consisted of Circuit Judges Edmondson, Barkett and Fay. Appellant counsel was Jeffrey Duffey, 600 S. McDonough Street, Montgomery, AL 36104, phone 334-834-4100.

(c) other courts.

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

However, as a U.S. Magistrate Judge for the past 6 years I have primarily handled civil litigation.

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

I have tried as sole or chief counsel approximately 35 criminal cases.

5. What percentage of these trials was:
(a) jury; **70%**
(b) non-jury.**30%**

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

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

In all of the following cases I was either the lead prosecutor or the sole prosecutor. Cases cited in 1-8 were prosecuted in federal court in the Southern District of Alabama. The year of prosecution is referenced in the case number.

1) *U.S. v. Hall* (CR 91-0143) I prosecuted two defendants on an indictment that charged cultivating marijuana in a national forest. It was reported as the largest cultivation case in the United States in 1991. The defendants were convicted by jury. I also handled the appeal to the 11th Cir. where the convictions were affirmed. (91-7974) The case was tried before District Court Judge Richard Vollmer. The defense attorneys were Raymond Arnold, 221 East Government Street, Pensacola, Florida 32502,

7) *U.S.v McMennemy*, et.al, (91-0256) I prosecuted six defendants on an indictment charging conspiracy to manufacture and distribute amphetamines. Three defendants were convicted by jury and three defendants were convicted as a result of a plea. The case was prosecuted before District Court Judge Richard Vollmer. The defense attorneys included Paul Brown, P.O. Box 40456, Mobile, Alabama, phone 251-438-4691, Barker Stein, P.O. Box 1186, Montrose, Alabama 36559, phone 251-928-9597, and Richard Horne, P.O. Box 916, Mobile, Alabama 36601, phone 251-432-4421. (There were also three attorneys from Texas for which I have been unable to locate current addresses or phone numbers.)

8) *U.S. v. Horn et.al* (92-00148) I prosecuted sixteen defendants who were indicted on charges of tax fraud relating to the electronic filing of false tax returns. The case was prosecuted before District Judge Alex T. Howard. All defendants were convicted on their guilty plea. The lead defense attorney was Thomas Haas, 252 State Street, Mobile, Alabama 36603, phone 251-432-0457.

9) *Alabama v. Myers* (CC93-144 & CC93-145) I prosecuted Mr. and Mrs. Myers on felony theft of property charges. This case was significant because Mr. Myers was a police officer and had used his position to file a false police report concerning an alleged theft at his home. The second trial (the first trial ended in mistrial) was before Covington County Circuit Judge Ashley McKathan and resulted in a conviction by jury. The defense attorney was Bart Taylor. (Mr. Taylor was subsequently disbarred after a felony conviction.)

10) *Alabama v. Boykin et al* (CC95-1049) I prosecuted two deputy sheriffs on an indictment charging that they had used their office for personal gain. Specifically, the deputy sheriffs were extorting money from the families of criminal defendants. The defendants were convicted by jury before Circuit Judge Chris Galanos who was sitting by designation in Conecuh County Circuit Court. The defense attorneys were Max Cassady, 201 Rural Street, Evergreen, Alabama 36401, phone 251-578-5252, and Everett Price, P.O. Box 707, Brewton, Alabama 36427, phone 251-809-0402.

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

1) As Deputy Attorney General I was the lead state prosecutor in the investigation of several high level public officials. One of these investigations resulted in the

prosecution of the former legal advisor to the Governor of Alabama and a state senator. These defendants pled guilty in state court.

2) As Deputy Attorney General I was involved in promoting the Attorney General's legislative agenda. This agenda included a proposed state speedy trial act, a state general fraud statute and the revamping of the state ethics law. My role, as it related to the speedy trial act and the general fraud statute, was to draft the legislation and give speeches to explain and promote the legislation. As to revamping the state ethics law, I participated as a member of a committee that was responsible for revision to the state employees ethics law.

3) As Chief Counsel to Senator Sessions I worked primarily on Judiciary Committee issues. I was also counsel to Senator Sessions when he served on the Ethics Committee.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

Enrolled in Federal Thrift Savings Program and FERS retirement.

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

In the Southern District of Alabama there is a local rule which requires the parties to file with their initial pleadings a disclosure statement. This disclosure statement identifies the parties as well as any parent companies, subsidiaries and affiliates. These disclosure statements are reviewed by the assigned judges, at which time the judge determines whether recusal is necessary. The judge then indicates on the disclosure that it has been reviewed by chambers. I have followed this procedure for the last five years and will continue to do so. I will also continue to follow the Judicial Code of Conduct and applicable statutes for Federal Judges.

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

No.

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

See attached Financial Disclosure Report.

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

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

   I have never held a position with a political campaign. In November 1994 I served as a poll watcher during the election.

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks	16,000			Notes payable to banks-secured			
U.S. Government securities-add schedule	20,000			Notes payable to banks-unsecured			
Listed securities-add schedule				Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule	266,000		
Real estate owned-add schedule	420,000			Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property	45,000						
Cash value-life insurance							
Other assets itemize:							
Thrift Savings **IRA**	140,000 8,500						
				Total liabilities	266,000		
				Net Worth	383,500		
Total Assets	649,500			Total liabilities and net worth	649,500		
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	n		
On leases or contracts				Are you defendant in any suits or legal actions?	n		
Legal Claims				Have you ever taken bankruptcy?	n		
Provision for Federal Income Tax							
Other special debt							

AO-10 (WP)
Rev. 1/2004

FINANCIAL DISCLOSURE REPORT
FOR CALENDAR YEAR 2004

Report Required by the Ethics in Government Act of 1978, (5 U.S.C. App. §§101-111)

1. Person Reporting *(Last name, first, middle initial)*	2. Court or Organization	3. Date of Report
DuBose, Kristi K.	S.D. of AL	10/03/05
4. Title *(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)* District Judge - nominee	5. Report Type (check appropriate type) __x_ Nomination, Date 9/28/05 ___ Initial ___ Annual ___ Final	6. Reporting Period 1/01/04 - 10/03/05
7. Chambers or Office Address 113 St. Joseph Street Mobile, AL 36602	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date_____	

IMPORTANT NOTES: The questions accompanying this form must be followed. Complete all parts, checking the NONE box if your answer is none or zero. Attach additional pages if needed.

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

	POSITION	NAME OF ORGANIZATION/ENTITY
☐	NONE (No reportable positions.)	
1	Trustee	"Revocable Trust #1"
2		
3		

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

	DATE	PARTIES AND TERMS
x	NONE (No reportable agreements.)	
1		
2		

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

	DATE	SOURCE AND TYPE	GROSS INCOME
A. Filer's Non-Investment Income			
x	NONE (No reportable non-investment income.)		
1			$
2			$
3			$
B. Spouse's Non-Investment Income - If you were married during any portion of the reporting year, please complete this section. (dollar amount not required except for honoraria)			
☐	NONE (No reportable non-investment income.)		
1			
2			

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Kristi K. DuBose	10/03/05

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

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

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

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

	SOURCE	DESCRIPTION	VALUE
☐	NONE (No such reportable gifts.)		
1	Exempt		$
2			$
3			$
4			$

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

	CREDITOR	DESCRIPTION	VALUE CODE*
x	NONE (No reportable liabilities.)		
1			
2			
3			
4			
5			

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

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Kristi K. DuBose	10/03/05

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

A. Description of Assets (including trusts)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (Int., Div., Rent, Royl.)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (Purch., Sold, Exchange)	(2) Date (Month-Day)	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if not a reportable transaction)
NONE (No reportable income,									
1 Regions Bank - CD's	A	Int.	J	T	EXEMPT				
2 Regions Bank - IRA	A	Int.	J	T					
3 Treasury Bonds	A	Int.	K	T					
4 Revocable Trust #1	A	-	-						
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									

Income Gain Codes: A=$1,000 or less; B=$1,001-$2,500; C=$2,501-$5,000; D=$5,001-$15,000; E=$15,001-$50,000; F=$50,001-$100,000; G=$100,001-$1,000,000; H=Over $1,000,000

Value Codes (Col. C): J=$15,000 or less; K=$15,001-$50,000; L=$50,001-$100,000; M=$100,001-$250,000; N=$250,001-$500,000; O=$500,001-$1,000,000; P=Over $1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=Over $25,000,000

Value Method Codes (Col. C): Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash Market; U=Book value; V=Other; W=Estimated

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Kristi K. DuBose	10/03/05

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

Part VII line 4 - Revocable Trust is unfunded.

IX. CERTIFICATION.

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

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

Signature Kristi K. DuBose Date 10/03/05

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. App., § 104.)

FILING INSTRUCTIONS

Mail signed original and 7 additional copies to

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

FINANCIAL STATEMENT SCHEDULE

ASSETS

U.S. Government securities

Treasury Bonds $20,000

Real estate owned

Personal Residence $420,000

LIABILITIES

Real estate Mortatge

Personal Residence $266,000

III. GENERAL (PUBLIC)

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

   I have been a public employee my entire career. As such I have not been able to engage in pro bono activities. However, I feel I have attempted to fulfill my moral obligation to serve the disadvantaged through my religious and civic participation. I am a supporter of the Boys and Girls Club, the Salvation Army, the Mobile Food Band and various women's and children's shelters. I have worked through the local church in local missions, homeless shelters, food closets, with disadvantaged youth and currently as a Stephen minister.

   I also believe that as a public prosecutor I served the disadvantaged, particularly the victims of crime.

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

   No.

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

   There is not a selection commission in my jurisdiction. The judge who held the position that I seek announced his intention to take senior status approximately two years prior. I expressed an interest in person and in writing to Senator Shelby and Senator Sessions and requested that they review my merits. I was later interviewed by both Senators,

once by Senator Shelby and twice by Senator Sessions. I was then notified by Senator Sessions that he would be submitting my name for possible consideration. I was later interviewed by White House Counsel and Counsel from the Department of Justice.

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

   No.

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

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

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

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

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

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

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

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

Federal Courts are courts of limited jurisdiction. The limits of this jurisdiction should be strictly observed and only exercised when the parties have standing and the issues are ripe

for adjudication, thus having an actual case or controversy as required. Moreover, in order to fulfill its proper role the court should refrain from injecting personal morals or policy into its opinions. To avoid intruding on the legislative and executive functions the court must adhere to established constitutional principles and precedent. The court must continuously respect the legislative prerogative to either act or not act on certain issues.

AFFIDAVIT

I, Kristi K. DuBose, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

October 20, 2005 (DATE)

Kristi K. DuBose (NAME)

Lindy Jane Thomas (NOTARY)

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Dec 11, 2005
BONDED THRU NOTARY PUBLIC UNDERWRITERS

Senator DURBIN. Thank you.

Ms. Kendall?

STATEMENT OF VIRGINIA MARY KENDALL, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS

Ms. KENDALL. Thank you, Senator, and thank you for your kind introduction.

It is foundation for our system that people have access to the courts and that they feel that they can address their grievances to the court, and that can only be done if they are assured that their rights will be protected, that they are assured that they will be treated with respect when they appear before the judiciary, and that is the type of judge that we need in the judiciary, the type of judge that is only appropriate in this system. Thank you.

[The biographical information of Ms. Kendall follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Virginia Mary Kendall
Virginia Mary Cowhey (maiden name)
Nickname: Ginny

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

Residence: Glenview, Illinois
Work: Dirksen Federal Building, US Attorney's Office, 219 S. Dearborn, Chicago, IL 60604

3. Date and place of birth.

Evanston, IL; January 25, 1962.

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

Married to Preston Kendall
Vice President of Cristo Rey Network
2244 S. Wolcott #1N
Chicago, Illinois 60608

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

School	Attendance Dates	Major		Degree
University of Illinois, Champaign	8/80 through 5/81	English		n/a
Northwestern University	9/81 through 6/84	Writing	BA	1984
Northwestern University	1/85 through 6/87	English	MA	1987
Loyola University of Chicago School of Law	8/88 through 5/92	Law	JD	1992

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

United States Attorney's Office — *June 1995 - present*
Northern District of Illinois

Assistant United States Attorney

Deputy Chief, Criminal Division — *March 2003 - present*

Project Safe Neighborhoods Coordinator — *June 2003 - present*

Child Exploitation Coordinator — *June 1999-March 2005*

United States Attorney General's Advisory Committee on Nationwide Child Exploitation Investigations — *June 2003 - present*

Loyola University School of Law
Adjunct Professor — *1995 - present*

Chambers, Hon. George M. Marovich — *August 1992 - June 1995*
United States District Court - Northern District of Illinois
Law Clerk

Loyola Law School — *1990-1992*
Assistant to Writing Director,

National Sudden Infant Death Syndrome Foundation — *1984-1987*
President

Indian Hill Investments L.P.
Shareholder — *1996-2004*

Prarie Recreational Developments Inc. — *1982 - present*
Shareholder

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

number and type of discharge received.

I have not had any military service.

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

Professional Awards and Honors:

Chicago Crime Commission Star of Distinction Award 2004
For outstanding performance in the *Project Safe Neighborhoods* Initiative and the Coalition Against Child Exploitation

FBI's Letter of Recognition 2004
For outstanding work on the case of United States v. Segal and Near North Insurance, a RICO, insurance, wire, and mail fraud investigation resulting in the conviction of both defendant and his corporation and a $30 million forfeiture judgment.

FBI Director's Letter of Recognition 1998
For outstanding work on the case of United States v. Romero, the first Internet kidnaping case prosecuted nationally using electronic evidence to demonstrate a pattern of molestation impacting multiple victims in five states.

Nominated by the United States Attorney for the Northern District of Illinois for the Department of Justice's *Director's Award* for work on the case of United States v. Romero and Internet child exploitation investigations.

FBI's Letter of Recognition (2000)
For outstanding work on the case of United States v. Ivory et al, a thirty defendant accident fraud scheme investigation involving the falsification of claims resulting in a nearly $1 million loss. All defendants convicted.

Nominated by the United States Attorney for the Northern District of Illinois for the Department of Justice's *Director's Award* for work on the case of United States v. Ivory et al, a thirty-defendant accident fraud case.
Women's Bar Association Scholarship, 1992

Intern, United States Attorney's Office, Northern District of Illinois
Intern, Honorable George M. Marovich, Northern District of Illinois

Williams Fellow, fellowship funded work-study in the Writing Program

Honors–University of Illinois 1981

Cum Laude–Northwestern University 1984

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

Women's Bar Association of Illinois; Chicago Bar Association; Illinois Bar Association; American Bar Association; Women's Leadership Committee - Loyola University School of Law; Loyola University School of Law Diversity Committee; Leadership Greater Chicago Fellow; Chicago Council of Lawyers; Loyola University School of Law Circle of Advocates

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

St. Philip the Apostle parish, Art Institute of Chicago, Chicago Shakespeare Theater, Audubon Society, Cape May Bird Conservatory, Cousteau Society, Chicagoland Sudden Infant Death Syndrome Foundation, WTTW, Lincoln Park Zoo, Cristo Rey Viva Committee

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

State of Illinois	1993	Active
Northern District of Illinois	1995	Active
Seventh Circuit	1995	Active

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

Northwestern University Law Review, *"The Lost Child: Congress' Inability to Protect our Teenagers,"* 92 NW. U.L.Rev.1307, Summer 1998. Article discussing federal child exploitation statutes currently available for prosecuting sexual molestation of teen-agers, specifically, Title 18, United States Code, Section 2423(b) and how that statute is ineffective in prosecutions of this type when the teen is over a particular age.

Callahan's *Appellate Advocacy Manual Lawyer's Edition*, 1991 Cumulative Supplement, Chapter 11, Clark, Boardman, Callaghan 1991.
Drafted supplemental chapter on the art of oral argument (See acknowledgments). Author, John W. Cooley (847)328-7285; Supplemental chapter provides practice tips for effective oral argument before the appellate panel.

Published, *Builders of Ships*, **Helicon**, a literary magazine, 1984

Master's Thesis, *A Twitch Upon the Thread, A Study of Evelyn Waugh's Conversion to Catholicism*, 1987.

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

Excellent.

Last physical exam: July 15, 2005

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

None.

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

Not applicable.

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

Assistant United States Attorney from June 1995 to the present. Appointed.

17. Legal Career:

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

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

I served as a law clerk to the Hon. George M. Marovich in United States District Court for the Northern District of Illinois from 1992-1995.

2. whether you practiced alone, and if so, the

addresses and dates;

I have not practiced alone.

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

Subsequent to working for Judge Marovich, I was hired as an Assistant United States Attorney for the Northern District of Illinois where I have served since 1995.

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

As Judge Marovich's permanent clerk, I wrote draft opinions for the court on a variety of legal issues stemming from litigation in the areas of corporate, contract, tort, labor, patent, tax, and bankruptcy law. Throughout my nearly ten years with the USAO in Chicago, I have been promoted through various divisions and have performed the following roles:

General Crimes prosecutor (1995-1999)
Prosecuted a variety of cases from bank robberies, bank frauds, mail and wire frauds, gun and drug sales, and child exploitation cases. Began as a second chair to more senior trial attorneys during the first eighteen months of prosecution and progressed to first chair for the next two years. Began supervising child exploitation cases. Began training newer assistants in the area of trial practice and computer crimes within the office and began DOJ teaching for other assistants in other jurisdictions.

Narcotics/Gangs prosecutor (1999-2000)
Prosecuted drug trafficking organizations, gun trafficking cases and police corruption. Significant portion of investigations in this unit involved Title III wire-taps and undercover operations. Conducted trials as first assistant on regular basis. Continued training newer assistants in the areas of investigation involving computer searches, child exploitation issues, and practicing in the magistrate judges' courts within the USAO in Chicago and for assistants in other states for DOJ. Began creating training programs for the DOJ, lecturing on a national basis for other law enforcement

agencies, and serving as guest speaker and panelist for various seminars and training sessions. Continued supervising child exploitation cases by provided assistants with investigative advice, review of grand jury and trial issues, and aid in supporting victims.

Special Prosecutions/Public Corruption Prosecutor (2001-2003)

Prosecuted complex fraud cases, complex computer crimes cases, and public corruption cases involving a variety of public officials. Began the Michael Segal and Near North Insurance Investigation in fall of 2001. Began drafting more complex charges including charging corporations, more complex RICO charges, tax charges, and forfeiture proceedings involving numerous civil ramifications. Continued teaching internally in the USAO in Chicago and nationally for DOJ, other law enforcement agencies, and other public and private entities. Continued supervising assistant US attorneys in the area of child exploitation cases.

Supervisor, General Crimes (2003-2004)

Supervised newer assistants who were handling a variety of cases. Supervision included review of all written materials, courtroom work, and case management. Continued supervision and training internally and within DOJ in the areas of computer investigations, child exploitation, presenting complex evidence at trial, and victim/witness issues.

Supervisor, Child Exploitation (1997-present)

Review all grand jury investigations, charging and sentencing decisions, and compliance with victim/witness requirements in this area of law. Create and participate in DOJ training programs and serve on the Attorney General's National Advisory Committee that reviews all nationwide child exploitation cases.

Supervisor, Project Safe Neighborhoods (2003-present)
Meet regularly with Chicago Police Department commanders, representatives of ATF, US Marshals, Illinois Department of Corrections, local prosecutors offices, and community groups to create and implement an effective program to reduce gun violence in Chicago. Review all local cases with Cook County States Attorney's Office for potential federal prosecution and then assign the cases to federal prosecutors. Train federal prosecutors in the areas of effective charging, investigating, and presenting the cases to juries. Train local and federal law enforcement officers; create and implement a juvenile program in the local school system; work with grass roots organizations attempting to impact their communities; and review the effectiveness of the program with our research partners at the University of Chicago.

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

I have specialized in three areas of law:

Child Exploitation

As described above, I developed an expertise in the area of investigating complex child exploitation cases involving computers and the Internet through my work on the case of *United States v. Romero.* The case was the first of its kind prosecuted federally and set the stage for a new understanding of the insidious nature of a preferential child molester who grooms multiple victims simultaneously while managing his manipulation over a computer. The case led to the development of computer and Internet search warrants, the preservation and management of complex computer evidence, the management of a multi-state investigation, and the presentation of the electronic and expert witness evidence to a jury. The issues of victim protection were equally as challenging. This successful prosecution led to numerous others throughout the nation. I lecture annually for DOJ, serve on the Attorney General's Committee that reviews and evaluates literally all nationwide investigations in this area, and train law enforcement agencies including FBI, BICE, Secret Service and US Postal Inspectors.

Computer investigation

I have been training law enforcement agencies and prosecutors in the area of computer search investigations and Internet investigations for the past six years. My expertise includes how to obtain evidence maintained on both private and public service providers, how to manage and organize electronic evidence once it is seized, how to sort the evidence to preserve privileges, and how to present the evidence to juries. My expertise was utilized to draft the search warrants in the Michael Segal case involving the seizure of an entire server containing corporate communications from Near North Insurance; was key to the first Internet gun sales prosecution and remains critical in all of my fraud and public corruption investigations.

Gun Violence

I have developed an expertise in working with a variety of local law enforcement agencies and grass roots organizations to develop and implement a program to address one of the most complex issues in local politics: how to lower Chicago's murder rate. Through a steering committee and work with Chicago Police Department, federal agencies, local agencies and social service organizations, I have been recognized as having played a significant role in helping to create a program that effectively dropped the murder rate approximately 25% in one year. Through the use of parolee forums, juvenile training and education, increased federal prosecutions, gun teams and Marshals sweeps, the murder rate in the "hot zones" where our program is focused has dropped as much as 40%.

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

Although I never appeared in court during my first three years of practice because I was serving as a law clerk, I observed and worked on numerous trials on a regular basis with Judge Marovich. These trials and hearings included the complex civil litigation involving the asbestos claims for lung damage; the on-going Duran consent decree involving the over-crowding conditions in the Cook County prison; and numerous FELA, personal injury, malpractice, and contract disputes. Subsequent to clerking, however, I have been in court on nearly a daily basis. I have been the first chair of approximately twenty trials, have served on another ten jury trials, have had two bench trials, and have prepared for nearly one dozen other trials that have pleaded out at the last minute.

I have further conducted over thirty complex hearings that have involved the presentation of evidence in the areas of detention, suppression, and expert testimony. I have further conducted over 100 sentencing hearings.

2. What percentage of these appearances was in:
   (a) federal courts: 100%

   (b) state courts of record: 0%

   (c) other courts: 0%

3. What percentage of your litigation was:
   (a) civil: 0%
   (b) criminal: 100%

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

Twenty-four trials; only seven of which I was not the chief counsel.

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

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

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

1.	Case Name	Case Number	Judge	Attorney
	United States v. Robinette	02 CR 928	Pallmeyer	Kent Carlson (312)663-9601

This case involved the investigation and prosecution of a multiple child molester who groome children to be his victims through child motocross racing. The defendant was a coach of young boy and travelled with them throughout the Midwest at various races. He molested a number of childre over a span of at least ten years. The case involved interviewing and preparing for trial a number o minors and involved monitoring the significant victim issues. The defendant pleaded guilty.

2.	Case Name	Case Number	Judge	Attorney
	United States v. Disotuar,	01 CR 158	Judge Shadur	Bob Gevirtz (847)501-3388

This was a significant corruption investigation involving the head of the Weed 'N Seed Task Force in Bellwood/Maywood. Disotuar engaged in an extensive fraud scheme involving the use of counterfeit checks and fraudulently obtained credit cards. He also extorted drug dealers for cash for his own personal benefit. The judge sentenced Disotuar to eight years in prison pursuant to my motion for upward departure for the extraordinary abuse of trust exhibited by Disotuar. The judge held that his behavior offended the Court as well as the Constitution. The case is significant in that the Bellwood and Maywood communities have struggled to clear out the drug dealing in their communities and the message sent by the Court was strong: the abuse of power will not be tolerated. I was the lead prosecutor on this case.

3.	Case Name	Case Number	Judge	Attorney
	United States v. Ivory, et al.	98 CR 922;	Judge Gettleman	Gene Steingold (312) 726-060 Bob Edwards

(312) 554-0270

Decision reported at United States v. White, 240 F3d. 656 (7th Cir. 2001)

This case was significant because it involved a long-term investigation and undercover operation into the world of accident fraud which costs the community and insurance industry millions in loss amounts each year. It took two years of investigation before I was able to charge this case but when it was charged, 27 defendants pleaded guilty and one defendant was convicted after a jury trial. The defendants were required to pay hundreds of thousands of dollars in restitution and an auto body shop on the south side of Chicago no longer operates as the hub of this fraudulent activity. I was the lead prosecutor on this case.

Trial Partner was Zachary Fardon, First Assistant US Attorney for – District, TN

4.

Case Name	Case Number	Judge	Attorney
United States v. Harris,	00 CR 291	J. Gettleman	Harvey Silitz (312)902-5511
United States v. Denning	01 CR 308	J. Hibbler	

These two cases involved tax investigations into accounts held in an off-shore bank account in the Cayman Islands. Defendant Harris was the president of a luxury home building company and defendant Denning was the president and owner of Honey Baked Hams. The cases were presented together because the source of information, a cooperating bank official from the bank, was the same. A review and analysis of the documents and a solid theory of the case led to the guilty pleas of both defendants in these multi-million dollar tax fraud prosecutions. I was the lead prosecutor on both cases.

5.

Case Name	Case Number	Judge	Attorney
United States v. Solis,	97 CR 814;	Judge Manning;	Jed Stone (312)943-7881

Decision reported at United States v. Solis, 223 F3d. 676 (7th Cir. 2000)

This was a significant case because it involved domestic terrorism. Solis was a teacher at DePaul University who placed a bomb at a marine recruiting center to advocate the release of individuals who has been convicted for domestic terrorism. The case involved many hearings including an audibility determination of the undercover tape recordings and a suppression hearing. The defendant was convicted after a multi-week trial. I was the second chair of this case.

Trial partner: Jon Bunge (Kirkland & Ellis) 312-861-2256

6.	Case Name	Case Number	Judge	Attorney
	United States v. Romero,	96 CR 167	Judge Kocoras	John Sullivan (312)855-1289

Decision reported at United States v. Romero, 189 F3d 576 (7th Cir. 1999).

Romero was the first Internet kidnaping case ever charged in the country. The case went to trial and the jury hung on the significant charges but convicted on obstruction. We tried the case a second time and convicted the defendant based on the victim's testimony, Internet and computer evidence, and the unique theory of inveigling. I was the lead prosecutor on the case. A more thorough discussion of the case is contained within this application.

Trial Partner: Diane MacArthur (312)353-5352

7.	Case Name	Case Number	Judge	Attorney
	United States v. Johnson et al.,	01 CR 473	J. Lefkow.	Bill Murphy (312)697-0022

This case involved the removal of DUI convictions from the records of the Secretary of State. The scheme allowed numerous drivers back onto the rode who had previously had their driver's licenses revoked due to alcohol abuse. Sixteen defendants were convicted and sentenced as part of the investigation. I was the lead prosecutor on the case.

8.	Case Name	Case Number	Judge	Attorney
	U.S. v. Robert Carter,	04 CR 308	Judge Leinenweber	Mark Hersh 312-207-6427

This case involved a fraud scheme involving approximately $17 million of insurance proceeds that were diverted by defendant and then laundered by his wife. The case involved a complex tracing of assets, the seizure of numerous assets and the forfeiture of the proceeds of the scheme. Defendant pleaded guilty and will be sentenced next month. His wife is still facing charges. I am the lead prosecutor on the case.

9.	Case Name	Case Number	Judge	Attorney
	U.S. v. Hughes & Miles	04 CR 233	Judge Coar	Anthony Shumann (312)236-3544

This was a significant gun trafficking case that was charged as part of Chicago's Project Safe Neighborhoods program. Hughes was an Indiana resident who purchased numerous weapons for Miles who was a member of the New Breeds street gang. The guns were distributed in Chicago, primarily in public housing projects, and were used to guard drug trafficking spots. Both defendants pled guilty and the straw purchaser agreed to cooperate. Defendant Hughes is currently signed up to participate in Indiana's parolee forums as part of our Project Safe Neighborhoods message.

10	Case Name	Case Number	Judge	Attorney
	United States v. Bellas,	98 CR 306	Judge Andersen	Brad Harris 630-368-9500

No decision reported. Defendant died during proceedings.

Although this case was not reported, it was significant in the area of gun prosecutions. It was the first Internet gun case prosecuted nationally. The defendant sold a weapon to a minor over the Internet and mailed the weapon to the child through the U.S. mails. Prior to this point, there had been information from various sources that Internet gun sales were occurring, but no case had ever investigated the use of web-sites to sell weapons. In the first of its kind prosecution, we charged Bellas with the illegal sale of firearms based significantly upon the evidence obtained through Internet service provider searches. The defendant passed away prior to the resolution of the case. I was the lead prosecutor on this case.

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

One of the most significant legal activities I have pursued has been the co-coordination of the district's Project Safe Neighborhoods ("PSN") program. The program involves a cooperative effort to reduce gun violence through a multi-faceted initiative, including bringing an increased number of carefully-selected gun prosecutions into the federal system, developing close working relationships with our local and federal law enforcement partners, using a wide range of investigative techniques, directing education and outreach efforts at juveniles, and working to make affected communities aware of our efforts to reduce gun violence.

Throughout the program, I have aided with the training and coordination of PSN "Gun Teams" that are comprised of officers from the Chicago Police Department and the Bureau of Alcohol, Tobacco, Firearms & Explosives who work in the four designated districts with the goal of conducting more search warrants for firearms, making more firearms arrests, and taking guns off the street.

On a regular basis, I have worked as the co-coordinator who meets once or twice a month with a representative of the Cook County State's Attorney's office to review all gun cases that have been presented to that office, in an effort to identify offenders suitable for federal prosecution because of a violent criminal history, a significant role in gang activity, or a previous or current role in narcotics trafficking. I conduct regular training sessions within the USAO to train federal prosecutors on the proper handling of the state-seized evidence, interviewing the police officers involved in the cases, investigating the case on a federal level, trial, and sentencing.

I have further been involved in the implementation and continuation of parolee forums for released offenders. Upon release from custody, all Illinois Department of Corrections prisoners receive a letter informing them of the severe federal penalties for possession of firearms by felons, and warning them that both federal and local authorities are aggressively investigating those violations. In addition, at least twice monthly,

parolee forums are held in the police districts targeted by PSN. All gun offenders who are being released by the Illinois Department of Corrections on parole to those districts are required to attend these one-hour forums, during which representatives of both local and federal law enforcement warn the parolees of the consequences of picking up a gun, the increased vigilance by law enforcement officers regarding their potential possession of firearms, and the increased likelihood that they will be prosecuted federally and receive a stiffer sentence. After the law enforcement representatives speak, a member of the community who has served time speaks to the parolees and describes the need to break from one's criminal past and move towards a future away from violence and gangs. After the community member's presentation, representatives of social service organizations in the community offer help in the areas of obtaining employment, writing resumes, seeking spiritual guidance, and breaking alcohol and drug addictions.

Finally, I have spearheaded the juvenile program within which all junior high and high school students in the Chicago Public Schools are currently receiving anti-violence programs sponsored by PSN. The classes focus on self-esteem, choices, leadership, independence, and responsibility and each class uses an anti-gun theme to work with these issues. The program incorporates two courses, Hands without Guns, and In My Shoes, another program designed to send a similar message but through a different vehicle: ex-offenders and ex-offenders who have been hurt and/or maimed by gun violence.

Throughout the program, I have also worked to establish a media campaign that included the placement of PSN ads on billboards in the targeted districts and on the interstate expressway between Indiana and Chicago, a known supplying state to the city. The ad campaign has been updated for 2004 and is up and running. It includes billboards and numerous Chicago Transit Authority buses and trains. In addition, the national PSN television ads have been airing throughout 2004 on various local television stations.

The legal work on PSN has allowed me to work outside of the office to offer concrete reforms that have a significant impact on the immediate community and has been both fulfilling as a prosecutor and rewarding personally.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

   I have no previous firm, employer, client, or membership relationships for which I anticipate any future income. I participate in the government's Thrift Savings Plan/401(k) plan.

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

   If I were to identify a conflict of interest, such as the awareness that I was expected to rule upon an issue with a company with which either I, or a close family member, have a financial interest in, I would follow the Code of Conduct for United States Judges. At this stage in my career, having served solely as a federal employee, I can not envision a significant conflict that would prevent me from doing my job. However, as a federal prosecutor, I have received annual training in the area of recognizing and handling conflicts of interest for the past ten years. I would refer to the Code of Conduct and the accompanying statutes and the case law and opinions that have addressed these issues in the past.

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

   I desire to continue teaching at Loyola Law School or other local law schools in accordance with the applicable statutes and rules of the court.

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

See attached financial disclosure report.

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

Se attached Net Worth Statement.

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

No.

AO-10 (WP)
Rev. 1/2004

FINANCIAL DISCLOSURE REPORT
FOR CALENDAR YEAR 2004

Report Required by the Ethics in Government Act of 1978, (5 U.S.C. App. §§101-111)

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
Kendall, Virginia M.	United States District Court for the Northern District of Illinois	9-30-05
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	5. Report Type (check appropriate type)	6. Reporting Period
U.S. District Court - Nominee	X Nomination, Date 9-28-05 X Initial ___ Annual ___ Final	1/01/04 to 8/31/05
7. Chambers or Office Address 219 S. Dearborn Chicago, IL 60604	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	

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

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

	POSITION	NAME OF ORGANIZATION/ENTITY
[ ]	NONE (No reportable positions.)	
1	Assistant United States Attorney	Northern District of Illinois
2	Shareholder	Prarie Recreational Developments Inc.
3	Part Time Faculty	Loyola University School of Law

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

	DATE	PARTIES AND TERMS
[ ]	NONE (No reportable agreements.)	
1		
2		

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

	DATE	SOURCE AND TYPE	GROSS INCOME
A. Filer's Non-Investment Income			
[ ]	NONE (No reportable non-investment income.)		
1	2005	Loyola University School of Law -teaching salary	$ 800.00
2	2004	Loyola University School of Law -teaching salary	$ 800.00
3	2003	Loyola University School of Law -teaching salary	$ 800.00
B. Spouse's Non-Investment Income - If you were married during any portion of the reporting year, please complete this section. (dollar amount not required except for honoraria)			
[ ]	NONE (No reportable non-investment income.)		
1	2005	Cristo Rey Network salary	
2	2004	Cristo Rey Network salary	

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Virginia M. Kendall

Date of Report: 9-30-05

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

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

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

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

	SOURCE	DESCRIPTION	VALUE
	NONE (No such reportable gifts.)		
1		Exempt	$
2			$
3			$
4			$

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

	CREDITOR	DESCRIPTION	VALUE CODE*
	NONE (No reportable liabilities.)		
1	Citibank Visa	credit card	K
2			
3			
4			
5			

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

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Virginia M. Kendall

Date of Report: 9-30-05

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

	A. Description of assets (including trust assets)	B. Income during reporting period (1) Amt. Code1 (A-H)	B. (2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting period (1) Value Code2 (J-P)	C. (2) Value Method Code3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
	Place "(X)" after each asset exempt from prior disclosure.									
	NONE (No reportable income,									
1	Prarie Recreational Developments Inc.	A	Int.	M	W	exempt				
2	JPMorgan Chase Bank - accounts	A	Int.	E	T					
3	Columbia Midcap Value FndA	A	div.	J	T					
4	Bank One Trust 1	C	div.	N	T					
5	Bank One Trust 2	B	div.	J	T					
6	Guardian Life Insurance Co.	A	Int.	J	T					
7	MFS ValuePund	A	div.	J	T					
8	One Group Intermed. Bond	B	div.	K	T					
9	Oppenheimer US Govt.	B	div.	K	T					
10	Citbank Deposit	A	div.	J	T					
11	S&P Midcap 400	A	div.	L	T					
12	UTS SPDR Ser 1	A	div.	K	T					
13	Vanguard Tot. Stock Mkt. Viper	A	div.	L	T					
14	Eagle National Bank	A	int.	K	T					
15	Fidelity Magellan	D	div.	M	T					
16	Fidelity Puritan	B	div.	L	T					
17	Scutter International C Fund	C	div	K	T					

1	Income/Gain Codes: (See Col. B1, D4)	A=$1,000 or less F=$50,001 - $100,000	B=$1,001-$2,500 G=$100,001-$1,000,000	C=$2,501-$5,000 H1=$1,000,001-$5,000,000	D=$5,001-$15,000 H2=More than $5,000,000	E=$15,001-$50,000
2	Value Codes: (See Col. C1, D3)	J=$15,000 or less N=$250,001-$500,000 P4=$25,000,001-$50,000,000	K=$15,001-$50,000 O=$500,001-$1,000,000	L=$50,001 - $100,000 P1=$1,000,001-$5,000,000 P5=More than $50,000,000	M=$100,001-$250,000 P2=$5,000,001-$25,000,000	
3	Value Method Codes: (See Col. C2)	Q=Appraisal U=Book value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market	

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Virginia M. Kendall	9-30-05

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

	A. Description of Assets (including trust assets)	B. Income during reporting period (1) Amt. Code1 (A-H)	(2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting period (1) Value Code2 (J-P)	(2) Value Method Code (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
	Please "(X)" after each asset exempt from prior disclosure.									
	NONE (No reportable income, assets, or transactions)									
18	Scutter Dreman Small Cap Value C Fund	B	div.	K	T	exempt				
19	Caterpillar Stock	A	div.	K	T					
20	Washington Nat. Variable Annuity	A	int.	J	U					

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

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Virginia M. Kendall	9-30-05

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

IX. CERTIFICATION.

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

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

Signature Virginia M. Kendall Date 9-30-05

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. App., § 104.)

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		14	000	Notes payable to banks-secured		20	000
U[illegible] investment securities-add schedule		36	200	Notes payable to banks-unsecured			0
Li[illegible]-add schedule		700	000	Notes payable to relatives			0
Unlisted securities-add schedule			0	Notes payable to others			0
Accounts and notes receivable:				Accounts and bills due		5	000
[illegible] relatives and friends			0	Unpaid income tax			0
[illegible]			0	Other unpaid income and interest			0
[illegible]			0	Real estate mortgages payable-add schedule		200	000
Real estate owned-add schedule	1	025	000	Chattel mortgages and other liens payable			0
Real estate mortgages receivable			0	Other debts-itemize:			0
Autos and other personal property		35	000				
Cash value life insurance		69	400				
Other [illegible]							
401K [illegible]		164	700				
401K (spouse)		56	400				
Pers[illegible]		60	000	Total liabilities		225	000
				Net Worth	1	935	700
Total [illegible]	2	160	700	Total liabilities and net worth	2	160	700
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor			0	Are any assets pledged? (Add schedule)			no
Other [illegible] contracts			0	Are you defendant in any suits or legal actions?			no
Legal [illegible]			0	Have you ever taken bankruptcy?			no
Provision for Federal Income Tax			0				
Other specified debt			0				

Virginia Kendall - net worth schedules

US Government Securities	
Oppenheimer US Govt Treasury Class A	36,200
Listed Securities	
Columbia MidCap Value Fund Class A	3,000
MFS Value Fund Class A	7,000
OneGroup Intermediate Bond	34,740
OneGroup MidCap Growth Fund Class A	1,940
OneGroup Equity Index Fund Class A	7,600
S & P Midcap 400	38,610
Dep Recpts Midcap Spdrs	15,210
USTS Spdr Trust Series 1	35,502
Vangaurd Total Stock Mkt Viper	36,928
Equity Portfolio	15,002
Eagle National Bank of Miami	29,805
Caterpiller Inc.	53,556
Eagle Broadband	3,784
Mamma.com Inc.	10,585
Prosoft Training	888
UBS Cash Fund	1,245
UBS USBank Deposit Account	1,128
Kendall GR/GPK Descendants Trust	403,404
TOTAL	699,927
Real Estate	
Personal residence	775,000
5% minority interest in 32 acre parcel in unincorporated Lake County Milwaukee Avenue, Wheeling (Prarie Recreational Development Inc.)	250,000
TOTAL	1,025,000
Mortgage on personal residence	
Cimmaron Mortgage Company	200,000
Secured Bank Loan	
Ford Motor Credit	20,000

III. GENERAL (PUBLIC)

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

Service:
Loyola Academy High School Summer Service Program; Moderator: Tacna, Peru (2001)
Women's Bar Association/Black Women's Law Caucus Trial Training (2000);
Judge, Moot Court Competitions for local law schools (1992 to present);
President, Chicagoland Sudden Infant Death Syndrome Foundation (1984-1987);
Speaker/Trainer, Internet Safety for the Chicago Public Schools (2000);
Member, Loyola School of Law Strategic Planning Committee (2001);
Speaker, Cristo Rey Center for the Working Child, Missions Appeal (Summer 2002);
Speaker, Cristo Rey Jesuit High School, trial program (2000-2002);
Speaker, Wilmette Internet Safety within the home and school (2003);
Speaker, Loyola Academy gun violence presentation (January 2004);
Guest Speaker, Chicago Public Schools, TV Show: PSN (October 2003).
Chicago Public Schools, Internet Safety Training;
Cristo Rey Jesuit High School, Viva/Scholarship Committee;
National Center for Exploited & Missing Children (1998);
Loyola University School of Law Diversity Committee (1998);
Loyola University School of Law Ethics Training/Panel (1998–present);
Coach, Jessup International Moot Court Team, Loyola University School of Law (1997);
Coach, ISBA Moot Court Team, Loyola University School of Law (1993-1995);
Speaker, Honors Moot Court Program, Loyola University School of Law (1995–present);
Loyola University School of Law Mentor Program;
Judge, Moot Court Competitions (1995 to present);
President, Chicagoland Sudden Infant Death Syndrome Foundation;
Member, Loyola University School of Law Women's Leadership Committee/Mentor;
Intern Coordinator, United States Attorney's Office (1995-1998);
Coordinator, Arai Middle School Mock Trial Program (2000-2003).

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

so, list, with dates of membership. What you have done to try to change these policies?

No.

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

I do not believe there is a selection commission in my jurisdiction. I believe that commissions can be created for various selection processes but I did not speak with any members of a selection commission. I submitted a resume to Senator Durbin's Office over one year ago because I heard that there was an opening. I received a call from the Senator's office in January 2005 and was asked to fill out a long application that was nearly identical to the questions that I have been asked in this form. In March 2005, I was informed by Senator Durbin that I was one of three finalists for the position and that I would need to be interviewed by Senators Durbin and Obama and that Speaker Hastert would also be invited to the interview and would weigh in on the process because the process would be bi-partisan. In April 2005, I was interviewed by Senators Durbin and Obama at the United States Capitol offices of Senator Durbin. The interview lasted approximately one hour. In May 2005, Senator Durbin notified me that I was one of two names that he would be sending to the White House Counsel's office for review and that one of the two individuals would be selected. In June 2005, I interviewed with the White House Counsel and was notified one week later that I was selected to present my background materials for clearance.

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

No.

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

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

criticism that alleges that the judicial branch has usurped-many of the prerogatives of other branches and levels of government.

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

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

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

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

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

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

The role of the federal judiciary in the federal judicial system and in society as a whole is defined by legal precedent in a hierarchal judicial system. The district judge's role is to determine the facts, view those facts through the standard of review, and apply the law as it has been interpreted by the courts above her. Our system of government works best when each of the branches of government adhere to the defined, and distinct, roles set forth when our government was first established. It is within the legislature's province to draft, present, and vote on laws that impact the communities it serves, it is within the judiciary's province to interpret those laws, and it is within the executive branch's province to enforce those laws. Cases are brought to the district court with very defined parameters and the legal issues are briefed based on the unique position of the parties before the court. These discrete disputes are handled by district court judges across the country daily by applying precedential law to the facts and providing reasoned decisions in an efficient manner.

AFFIDAVIT

I, Virginia M. Kendall, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

Virginia M. Kendall

10-27-05

October 27, 2005

(NOTARY)

"OFFICIAL SEAL"
Dorothy Flores
Notary Public, State of Illinois
My Commission Exp. 12/26/2005

Senator DURBIN. Let me just ask one other question if I can in the short time remaining.

Senator Sessions knows that one of my heroes is an Alabama Federal Judge by the name of Frank Johnson, and when I visited Alabama with John Lewis, Congressman from Atlanta, Georgia, and he took me to Montgomery and Birmingham and Selma and talked about that stormy period of civil rights emergence in America. He said one person who does not receive enough credit is Frank Johnson, who had the courage to rule that we could have a march in Selma.

For his courage, Judge Johnson was ostracized by many in his community, faced threats on his life, threats on his family. Courage is an element which we all like to believe we have when it is needed, but I would like you to address that element because there are times when a judge has to do what is right even if it is unpopular.

Ms. Kendall?

Ms. KENDALL. Thank you, Senator. Well, certainly as a judge you're always addressing every issue from the perspective of the precedent that came before you. And so in most instances you will have the ability to rely on that precedent and feel comfortable with a decision. And in those unique circumstances, those very unique areas where for once there is an issue that you need to address probably by first impression, for example, I think courage will come into play to apply the law, to look to the legislative intent, determine what was necessary and to make that correct decision.

Senator DURBIN. Judge DuBose?

Judge DUBOSE. Well, it's been my experience that I had to learn that I had to give up the hope of popularity back in high school, and that I have to have the courage to apply the law the way you intended, and that's what I have been doing, and that is what I intend to continue if I am fortunate enough to be confirmed.

Senator DURBIN. Mr. Watkins?

Mr. WATKINS. Senator, I am a witness to that era. I lived in the Middle District at the time, and actually, Representative Lewis is from my county. I don't know him personally, but I know his brothers who live in Troy.

I have to say that I admire that level of courage, and that I think that is an absolute prerequisite to a judge at this level. And I would give you my word that I have the courage to do exactly what I believe is right.

Senator DURBIN. Thank you.

Thank you, Mr. Chairman.

Senator SESSIONS. Good questions, Senator Durbin. Oftentimes the choices become difficult, and it will be a lonely time for you, but we believe you have those qualities of integrity and character and strength of conviction to do the right thing. It is interesting that we have discussed Rosa Parks and her death in the last week or so, and gone through that, and talk about Judge Frank Johnson's role in that first case, and the courthouse that he presided in so long, Judge to be—we think—Watkins will be serving in.

I forgot to ask you to identify your families. Ms. Kendall, would you take a moment to identify for us and introduce us those that are with you?

Ms. KENDALL. Thank you, Senator. I appreciate that. I have a large contingent from Illinois. I have my husband, Preston, almost 25 years; and my son, Preston; my daughter, Maeve, who came down from Madison, Wisconsin; and I have another son, Connor, who is studying hard up at Marquette today, and is here in spirit; my mother, Marie Cowhey; and my brother, Jim Cowhey; and one of my sisters, Cathy Cowhey; and two good friends, John and Kris, Krasnodebski and Boyaris.

Thank you for having us.

Senator SESSIONS. Very good.

Judge DuBose?

Judge DUBOSE. Thank you. I have with me my daughter, Hannah, who turned 13 yesterday; and my husband, Ben Hatfield of 48 hours; friend Chuck Diard—

Senator SESSIONS. Making a number of lifetime commitments.

[Laughter.]

Judge DUBOSE. In 1 week. Gail Linkins, Sheila Jacoby and Lisa Welch.

Senator SESSIONS. Very good.

And Mr. Watkins?

Mr. WATKINS. Yes, sir. I have my wife, Teresa; and my daughter, Emily from Nashville; son, Scott Watkins and his fiancee, Jenny Webb; my nephew Jacob Watkins—stand up, Jacob—and his father, my brother, John Watkins; and my father, Harold Watkins, a Navy veteran and a member of the greatest generation; and my mother, Joanne Watkins; and my uncle, T. Bob Davis; and good friends Sam and Jill Casey from up here; and Todd and Pam Perlstein from Troy, Alabama.

Senator SESSIONS. Very good. Thank you for introducing those for us.

I would like to pursue a little bit more about the first question that Senator Durbin had, and to seek a commitment from you that as Judge Thomas in Mobile used to say, "Remember, you are appointed, not anointed." And each of you, we hope, will serve quite a long time. Have you given thought to your role as a servant; yes, a courageous tough decisionmaker managing the court, but also as a individual who serves the public and the parties that come before it, and would you share some thoughts about that?

Ms. KENDALL. Thank you, Senator. I have been privileged to serve only in the public sector in the Northern District of Illinois, in Chicago, for my entire career. And I have been privileged to serve as an Assistant United States Attorney. And each day when I—even on the most hectic of days, when I am running from courtroom to courtroom, there are moments when I sit back and I look out at the courtroom and I think, This is remarkable, this is really remarkable that the Founders thought of this and it is really working and it's playing out. Every day, little justices and very significant justices every day.

And I can only think that it would be the greatest of honor to serve as a judge within that system, and I believe that over the years working in the prosecutor's office of service that I will have the next level of service in that position if the Committee and the Senate would be so kind as to move me to that next level of service.

Senator SESSIONS. Well, good.

Judge DuBose?

Judge DUBOSE. I certainly made the commitment to continue what I hope I've been doing for the last 6 years. I practiced in the Southern District of Alabama in front of some very fine judges, and I appreciated the way I was treated, and I tried to extend the same respect to the attorneys as well as the parties.

I realize every day when a party appears in front of me, they, too, have families—daughters, husbands, wives—and this affects their life. This is probably the most important thing that is happening in their life, and I should pay them attention and I should pay them the respect that they deserve. And that is what I hope to continue to do, and I make that commitment to you.

Senator SESSIONS. Good. Mr. Watkins?

Mr. WATKINS. Thank you, Senator. I echo the remarks of my colleagues. The only thing I would add would be that there is a model of leadership called servant leadership, and that is a model I subscribe to. I think that's the best form of leadership. And I think by serving, that engenders respect for the system and for the court and for the decisions of the court. And I give you my commitment to be a servant leader.

Senator SESSIONS. Judge DuBose, we are going to have a hearing later this week on the Federal judiciary and the caseload that they carry. And one of the things we will discuss is the role of the magistrate judge. You have been a magistrate judge now over 5 years. What thoughts have you to share with us about how you might use a magistrate judge or how the magistrate judges are used in the Southern District of Alabama?

Judge DUBOSE. Well, in the Southern District of Alabama, I have had the opportunity to be what we call fully utilized. We are allowed to participate in all cases. I handle all discovery in all civil cases that are assigned to me. I am often—if they consent to me, I even try the civil cases.

Senator SESSIONS. If both parties consent, then you sometimes try those cases as a Federal district judge would.

Judge DUBOSE. I sit as a district judge to try those cases. In criminal cases, we handle from the arrest, search warrants, arrest warrants, from arrest all the way through sitting, presiding over the jury selection, the natural jury selection. Then it goes to the district judge. And I have handled summary judgments, motions to remand, motions to dismiss on what we call a report and recommendation, where basically we do the legal research and we write the opinion and we give that report and recommendation to the district judge.

The parties are allowed an opportunity to object or further comment, and the district judges often adopt the report in full without revision.

So I have been given a lot of opportunities. It is very helpful. In the Southern District, as you well know, we only had one district judge for a time period, and the magistrate judges were allowed to participate fully in the system.

Senator SESSIONS. Are you a believer in that? Do you recommend that other Federal judges use magistrate judges more?

Judge DUBOSE. I think it's the most efficient way to move the court docket and to give the parties—we're able to give most of our

parties a trial within a year, which is probably a record. I need to ask my clerk of court here, but we move the cases and it is because of the magistrate judges and their help that we are able to do so.

Senator SESSIONS. Ms. Kendall, have you done much work before a magistrate? Have you got any thoughts—well, first of all, I understand when you say "full utilization," in the Southern District magistrates are allowed to do almost everything that——

Judge DUBOSE. Everything that the statute and the Constitution allows us to do.

Senator SESSIONS. I don't know how broadly they are used in Northern Illinois, but do you have any thoughts on that?

Ms. KENDALL. Yes, Senator. We have a very talented magistrate judge group in Chicago. The only difference, it appears to me, from what Judge DuBose said is that we don't have magistrate judges do jury selection. That would be only for the district court judge, if it was a felony case. Other than that, all of the other issues that she mentioned are issues that we also present, and in my clerking years, I know that it was a wonderful thing to be able to rely on some of these very seasoned civil litigators to resolve discovery disputes and other matters and write the reports and recommendation, and they always moved the case along at a faster pace. So they are very efficient and helpful to the district court judge.

Senator SESSIONS. I tend to agree. We do not want to have an exponential increase in the number of Article III judges. One way to do that is to allow some of the work to be done by the magistrate judges, also providing ultimately that right of every litigant to be before an Article III, senatorially confirmed, lifetime-appointed Federal judge.

Mr. Watkins, you have been a senior partner in a firm, and you have had lots of different works and clients and demands on your time. I believe that case management is an important aspect of a good judge. You have practiced before probably hundreds of judges, appeared before a hundred or more, probably several hundred judges in your career. What are your thoughts and what commitment can you give us that you will manage your docket, make sure that people have a prompt ruling when appropriate, and that justice is dispensed as speedily as possible?

Mr. WATKINS. Thank you, Senator. I have had the experience in court, as I shared with you before, of a case being delayed many years for a decision after it was tried. And I think not to be just trite, but justice delayed is justice denied, in criminal cases and in civil cases.

You don't make it in a small-town practice if you don't manage your work. I don't have law clerks. I don't have paralegals. The witnesses, I interview the witnesses, I write the briefs, I do the pleadings, I try the case, handle the appeals, whatever comes up.

So I have 29 years of surviving by managing my own personal docket. I can't tell you how delighted I am to think, should I be confirmed, that I would have a staff to help with that.

[Laughter.]

Mr. WATKINS. Including law clerks. And so I give you my commitment to keep the docket current. I understand there are a lot of cases already there for refer to Judge "X." There are over 250 already assigned to Judge "X."

Senator SESSIONS. And be sure that all the dogs will be assigned to Judge "X," too, when each of you get there. That is part of the ritual, I think.

Tell us, Mr. Watkins, about your observations on mediation that maybe our other nominees would benefit from, and also we will be thinking about that perhaps as we go forward this week to discuss the Federal judiciary's caseload.

What are your observations and insights from your extensive mediation experience?

Mr. WATKINS. First, I will note that our judges in the Middle District do encourage mediation, and it's a very active practice. I have mediated several Federal cases. Probably a majority of my cases have been State cases.

Mediation is assisted settlement negotiation. Senator, 98 percent of cases in the Federal system, civil jury cases, are not tried. A lot of them go out on summary judgment. But only 2 percent of the cases, according to current statistics, are tried; in Alabama State courts, only 3 percent.

Unfortunately, a lot of cases settle on the courthouse steps after expense, time, delay, aggravation, tempers, and those kinds of things. And I like to tell litigants that that is not an atmosphere of the courthouse that you would buy an old pick-up truck in. Why would you settle a major case in that kind of an atmosphere?

Mediation takes you into a private office, usually, or into private rooms in the courthouse, separate the parties, and do the Henry Kissinger back-and-forth to convince them of why it is necessary—or why it is appropriate to settle a case.

Each side has a good advocate. As a mediator I advocate, too. I advocate settlement because that is the probabilities on the case. It is a good thing, and Alabama was actually late coming to a lot of use of mediation, but it will help tremendously keep the dockets clear.

Senator SESSIONS. Is there time in the process when a Federal judge could initiate the appointment of a mediator? Do you have any thoughts on that?

Mr. WATKINS. Yes, sir, the magistrate judges handle that in our district, and private mediators like myself do likewise, usually by agreement of the parties, and they are paid privately by the parties. But at some point in mediation or at a point when the parties can agree to it—I'm sorry, at some point in discovery or at a point when the parties can agree to it is when it should be done. When discovery is relatively, roughly complete, if the plaintiff has survived the motion for summary judgment, then it's a good time for mediation at that time. The parties should be encouraged prior to that to cut expense in the judicial system and in the private litigation system.

Senator SESSIONS. Ms. Kendall, you, like Judge DuBose, had the honor of standing up in court and representing the United States of America, which is a thrill to be able to do. But you also, I noticed, have become an expert and have written on child abuse problems. Would you share some of your thoughts on that problem?

Ms. KENDALL. Certainly, Senator, and I believe I share your background, as well, as a prosecutor someplace, right? It is such a

privilege to serve as a Federal prosecutor and stand up and say that you represent the people.

The work that I have done in the area of child exploitation started happenstance, really, by a case that came on a duty day. But over the years, I have had to explore how to investigate and initiate prosecutions primarily that have involved the Internet and that have involved that class of children that is between 12 and 18 years of age, which is an at-risk group. And I have had the pleasure of working with the Department of Justice in helping them to look at the statutes that we had in the past that may not have addressed that group, and I have had the pleasure of working with victims and trying to show them all of the statutory rights that Congress passed for them to aid them in the process. And it has been an absolute honor to be able to say that there is some change in that area and that the victims in these cases are being helped.

Senator SESSIONS. Good. Well, I would just say this to you: You have gotten the nomination of the President of the United States. You have had extensive support in your home districts. You have won the respect of your fellow practitioners and those who have known your professionally. And each of you have a tremendous background of public service and a commitment to helping and serving others. So I think those are qualities that are important.

I guess most of all we pay you for your judgment. That is what you will be dispensing, judgment, but I am impressed with all of you. I think that the Senate will be also. As we wrap up this year's session, I am not sure how it will develop, but if there is a way, maybe there will be an opportunity to move you through before we recess for the year.

Do any of you have anything else that you would like to say, any complaints that you would like to offer?

[Laughter.]

Senator SESSIONS. I will ask you—a "yes" would be sufficient—do you know the salary that you will be paid and are you willing to work for it?

Ms. KENDALL. Absolutely.

Judge DUBOSE. Yes, sir.

Mr. WATKINS. I don't know the salary, but I'm willing to work.

[Laughter.]

Senator SESSIONS. Well said. Well, you will probably receive some raises, but perhaps not as many as some on the bench would like. But it is a demanding job. We look forward to your service, and we will conclude the hearing at this time. I look forward to chatting with you for a few moments after we conclude.

If there is nothing else to come before the Committee, we will be adjourned.

[Whereupon, at 3:16 p.m., the Committee was adjourned.]

[A submission for the record follows.]

SUBMISSION FOR THE RECORD

United States Senator * Alabama
For More Information Contact:
Katie Boyd (202) 224-6518

FOR IMMEDIATE RELEASE
November 15, 2005

STATEMENT OF SENATOR RICHARD SHELBY

Introduction of Mr. Keith Watkins

WASHINGTON D.C. - Today the U.S. Senate Judiciary Committee held hearings to examine the nominations of Virginia Mary Kendall, to be United States District Judge for the Northern District of Illinois, Kristi Dubose, to be United States District Judge for the Southern District of Alabama, and W. Keith Watkins, to be United States District Judge for the Middle District of Alabama. Senator Richard Shelby (R-AL) made the following statement on behalf of Mr. Keith Watkins:

"Chairman Specter, Senator Leahy, I want to thank you for allowing me to be here today to introduce Mr. Keith Watkins. Keith has been nominated by the President to serve as a judge on the United States District Court for the Middle District of Alabama."

"I am proud to support his nomination and believe that he will make an outstanding federal judge. A native of Alabama, Keith received his undergraduate degree from Auburn University and his law degree from the University of Alabama. He has been in private practice since 1976 and is currently a partner at Calhoun, Faulk, Watkins & Faircloth in Troy, Alabama."

"Keith has represented his clients in a fair and deliberate manner and I believe he is an intelligent and honest man who will serve our nation well. I encourage my colleagues to treat him fairly and give him an opportunity to show you that he will interpret the law, not make the law."

"I believe he will prove to you his ability to be fair and impartial in hearing cases before him should he be allowed to serve on the US District Court for the Middle District of Alabama."

"Again, I want to thank my colleagues for holding this hearing today and trust that you will have the confidence necessary to vote him out of this Committee and allow the full Senate to consider his nomination."

"Mr. Chairman, before I step aside I would like to recognize Keith's family. He is joined here today by his wife, Terry; his two children, Scott and Emily; as well as his parents Harold and Joanne Watkins. I also want to recognize his other family members and thank them all for joining Keith here today." Senator Shelby concluded.

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