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S. HRG. 109–999

CONFIRMATION HEARING ON THE NOMINATIONS OF MICHAEL BRUNSON WALLACE TO BE U.S. CIRCUIT JUDGE FOR THE FIFTH CIRCUIT AND VANESSA LYNNE BRYANT TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF CONNECTICUT

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

SEPTEMBER 26, 2006

Serial No. J–109–115

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NOMINATIONS OF MICHAEL BRUNSON WALLACE, TO BE U.S. CIRCUIT JUDGE FOR THE FIFTH CIRCUIT AND VANESSA LYNNE BRYANT, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF CONNECTICUT

TUESDAY, SEPTEMBER 26, 2006

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

The Committee met, pursuant to notice, at 3:33 p.m., in room 226, Dirksen Senate Office Building, Hon. Arlen Specter, Chairman of the Committee, presiding.

Present: Senators Sessions, Cornyn, Brownback, Leahy, and Kennedy.

OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Chairman SPECTER. The Judiciary Committee will now proceed with the nomination of Michael B. Wallace to be U.S. Circuit Judge for the Fifth Circuit, and following that, the hearing for Vanessa L. Bryant to be U.S. District Judge for the District of Connecticut.

As is our practice, we will hear, first, introductions from the Senators. With the nomination of Mr. Wallace listed first, we will turn at this time to the distinguished Senator from Mississippi, Senator Lott.

PRESENTATION OF MICHAEL B. WALLACE, NOMINEE TO BE CIRCUIT, JUDGE FOR THE FIFTH CIRCUIT, BY HON. TRENT LOTT, A U.S. SENATOR FROM THE STATE OF MISSISSIPPI

Senator LOTT. I cannot get my microphone to work here, Mr. Chairman.

Chairman SPECTER. We will take that up with the Rules Committee, Senator Lott.

[Laughter.]

Senator LOTT. I think I know somebody there that maybe can help us with that.

Chairman SPECTER. If we cannot get an adequate appropriation.

Senator LOTT. We may have to redecorate this whole room, as a matter of fact.

Chairman SPECTER. I want to say at the outset that it was not planned that way.

[Laughter.]

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Senator LOTT. Well, thank you very much, Mr. Chairman. My senior colleague, Senator Cochran, is attending a briefing that I am sure the Chairman is familiar with. We thank you for going ahead with this hearing today for these very fine nominees that have been submitted by the President.

I know Senator Cochran will have some personal remarks, but let me just take a few minutes to say that I am pleased to be here and to support the nomination of a gentleman and an outstanding lawyer that I have known, he and his family, for probably 30 years now or more.

It is one of those cases where I knew his parents. He is from Biloxi, Mississippi, a great international city that has been through an awful lot in the last year. So, I have known his family, he and his wife and children. They are here. Brilliant daughters, all of them. One of his daughters actually worked in my office. So, I know this nominee quite well.

I have always been tremendously impressed with his intellect, his character, and even his athletic ability. After he finished at Biloxi High School, he went to Harvard University.

I questioned his wisdom on that, but he did go and actually played football. He graduated cum laude from Harvard University. He received his J.D. from the University of Virginia Law School in 1976, where he served on the Law Review and was in the Order of the Coif.

After he graduated, he clerked for a Supreme Court Justice in Mississippi, Harry G. Walker, and then Associate Justice William H. Rehnquist of the U.S. Supreme Court.

Following his Supreme Court clerkship, he returned to Mississippi and took his father's place in a small Biloxi legal partnership. During his 2 years with Sekul, Hornsby, Wallace & Teel—and one of the esteemed members of that law firm is actually here today, Claire Hornsby is a pioneer for women in the legal profession in our State and in this area. Mike participated in the general practice of law.

From 1980 to 1983, he worked in Washington, DC for me, first as a research assistant with the Republican Research Committee in the House of Representatives, then following my election as Whip in the House, as counsel in the Whip's office.

In 1983, he became an associate with the Mississippi firm of Jones, Mockbee & Bass in Jackson, and became a partner. The firm merged with one of the most renowned law firms in the State, Phelps Dunbar, where he remains a partner today.

His practice focuses on complex commercial and constitutional litigation and includes a significant amount of appellate work.

Though he was embarking on what would become a widely respected and successful private practice, Mike continued his commitment to public service through the end of the 1980s. He served as Director of the Legal Services Corporation, a Presidential appointed and Senate confirmed position, from 1984 to 1990.

Mike Wallace has never ducked tough issues or difficult issues. In more cases than not, he did a very persuasive job on the evidence, or with the knowledge that he had, was successful in the courtroom and in every walk of life that he has participated in.

One of his law partners indicated that he has prevailed in about 80 percent of the appellate cases that he has handled.

He has been criticized for unapologetically and vigorously asserting arguments for his clients, which is ridiculous, given that that is the obligation of every attorney.

He has been criticized sometimes for things he did while working for me. I was the person in the leadership position. He worked under the direction of the person he was serving. So, I feel particularly aggrieved when I see those sort of unfair allegations.

He has handled cases at every possible level in both State and Federal judicial systems, including, in 2002, he argued and won a case before the U.S. Supreme Court.

I have been very concerned by some of the charges that have been leveled against him by nameless, faceless detractors who have questioned his fitness to be a judge. Those critics could not be more wrong.

He is one of the most qualified people you could possibly find to serve on an appellate court, as is evidenced by his background, his education, his experience, his Washington experience, his working at the Supreme Court. I know him to be a considerate, personable, courteous, kind, and thoughtful family man.

He is active in his church, Trinity Presbyterian, where he has not been content just to sit on the back pew. He has been aggressively involved, teaching a very popular Sunday school class, and recently he traveled with his church and a predominantly African-American Baptist church to Honduras to build houses for the poor.

Bishop Ronny Crudup of the New Horizon Church in Jackson, in his letter to the Judiciary Committee, had this to say of Mike after he helped form a partnership between New Horizon and Trinity Presbyterian: "It was the hard work of Michael Wallace and other progressive, open-minded, Christ honoring leaders at Trinity Presbyterian Church who, in a year's time turned an awful decision (not to enter the partnership) into a premier interracial church partnership in the State of Mississippi."

Throughout his life, Mike has shown a calling to public service. I have listed some of the things. He served in legislative roles and as Chairman of the Legal Services Corporation where, in my opinion, he took actions to deal with some of the problems that that entity had.

After years of having to fight almost every year over its funding, after it was really changed and focused toward providing indigent legal services, has from that day to this annually gotten funding, including as far back as the Reagan administration, without fights because we are generally satisfied that they are doing what they should be doing.

During the impeachment trial of President Clinton, I needed good legal counsel. Once again, Mike left his law firm to come and work with me as we tried to do the right thing in those uncharted waters.

Many would disagree with how we did it, or whether we did it at all, but I think most would agree we did it responsibly, carefully, within the Constitution, in a timely fashion, and in a way that most people would think was a credit to the institution. Mike helped with that.

So I am here, Mr. Chairman, to say that I have every confidence in this lawyer. I think he is one of the most brilliant legal minds I have ever known, and I think he would be a credit to the Fifth Circuit Court of Appeals. I put my full support behind his nomination.

Thank you for having this hearing.

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

Chairman SPECTER. Thank you very much, Senator Lott.

We turn now to the senior Senator from Mississippi, Senator Cochran.

PRESENTATION OF MICHAEL B. WALLACE, NOMINEE TO BE CIRCUIT, JUDGE FOR THE FIFTH CIRCUIT, BY HON. THAD COCHRAN, A U.S. SENATOR FROM THE STATE OF MISSISSIPPI

Senator COCHRAN. Mr. Chairman, I am pleased to join my friend and colleague in the Senate to support the nomination of Mike Wallace to serve as a member of the Fifth Circuit Court of Appeals. Mike is exceptionally well qualified to serve as a member of this court. He is a highly skilled lawyer with a wide range of experience that will enable him to serve with distinction.

Mike is joined today, as you have probably been advised, by members of his fine family and fellow lawyers from our State. His wife, Barbara, is a lawyer in Jackson, Mississippi. His daughter, Molly, is pursuing a Master's degree in Speech Pathology at the University of Memphis. His daughter Ellie is a junior at the University of Southern California. His daughter Grace is a junior at St. Andrew's Episcopal School in Jackson, Mississippi. His sister, Jane May Daughtery of Biloxi is here as well.

Mike's long-time former law partner and my good friend, Claire Hornsby of Biloxi is here. She is a former president of the Harrison County Bar Association and was the first woman to practice law in the Mississippi Gulf Coast. She is here supporting Mike's confirmation.

Other distinguished Mississippians in the legal profession who know Mike Wallace well are here: Reuben Anderson, former State Supreme Court Justice in Mississippi, who is now Mike's partner at the law firm of Phelps Dunbar.

And my former classmate from the University of Mississippi, Scott Welch, who practices law with Baker Donaldson in Jackson and currently serves on the American Bar Association's Board of Governors, is here to support Mike Wallace.

Mike graduated cum laude from Harvard University in 1973. He attended the University of Virginia School of Law, where he served on the Law Review, a top student at that university. He was a member of the Order of the Coif.

After graduating from law school, Mike clerked for Justice Harry Walker on the Supreme Court of Mississippi, and then for Associate Justice William H. Rehnquist in the U.S. Supreme Court.

He then joined the law firm of Sekul, Hornsby, Wallace in Biloxi, where he practiced for 2 years and then came to Washington to serve as an Assistant Research Analyst for the U.S. House Repub-

lican Research Committee, when my friend, Senator Lott, was Chairman of the Research Committee.

Then he served as counsel, as Senator Lott pointed out, during the impeachment proceedings. But after he was counsel to the Research Committee, he served in the Whip's office as counsel in the House.

Well-versed in a wide range of legal matters, a top student everywhere he has ever been, widely respected, and justly so. He has been involved with complex litigation.

In our State, if you had a tough lawsuit you went to see Mike Wallace. If you had something complicated to figure out, you consulted with Mike Wallace. He has been involved in litigation in State and Federal courts throughout the United States.

In 1999, Mike was called on for the toughest job ever, to serve as impeachment counsel to the Senate of the United States. My friend and colleague was the Majority Leader of the Senate at that time and he tried to find the best, the smartest, the most capable person to help us do that job and do it right, and consistent with the Constitution and the laws of the United States, and in a fair manner that would reflect credit on the country and the U.S. Senate.

He achieved that result. He served the Senate during a very difficult challenge to this institution's fitness to serve as a court of impeachment of the President of the United States. Think about that.

I hope the Committee will carefully review the nomination. The President has chosen well, and I recommend the Committee report favorably his confirmation to the Senate.

Chairman SPECTER. Thank you very much, Senator Cochran.

As is the practice after the introductions are made, Senators do not customarily remain. So if you choose to exit, people will understand the practice of the committee.

We now turn to Senator Christopher Dodd, for the introduction of Vanessa L. Bryant to be U.S. District Judge for the District of Connecticut.

Senator DODD. Mr. Chairman, this is a Rules Committee matter again with the microphone.

Chairman SPECTER. Well, let the record show that both the Chairman and Ranking Member of the Rules Committee have had first-hand evidence of the need for further additional funding for the Judiciary Committee so that we can secure adequate equipment.

[Laughter.]

Senator DODD. A pretty shoddy way of doing that.

Chairman SPECTER. And may the record further show that it was not a preconceived plot.

[Laughter.]

PRESENTATION OF VANESSA LYNNE BRYANT, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF CONNECTICUT, BY HON. CHRISTOPHER DODD, A U.S. SENATOR FROM THE STATE OF CONNECTICUT

Senator DODD. Well, thank you very much, Mr. Chairman. I am pleased to be here today with my colleague, Senator Lieberman, in introducing Judge Vanessa Bryant of Avon, Connecticut to sit on

the U.S. District Court for the District of Connecticut. We thank the Committee for taking the time to hear her and to allow her to be before the Committee.

I want to congratulate Judge Bryant on her nomination to the U.S. District Court. I would also like to acknowledge the members of Judge Bryant's family who are here today. She is joined by her husband, Tracy Rich, who is the Executive Vice Chairman and General Counsel of the Phoenix Company in Hartford, Connecticut; her son Bryant, a student at Bowdoin College; her daughter Dana, who is a student at Oberlin College; and her mother Muriel, who is here as well. So, it is a pleasure for us to welcome them to this Committee room.

I would also note, Mr. Chairman, that the Attorney General of Connecticut, Richard Blumenthal, is here to speak as well on behalf of our nominee, along with the State president of the NAACP, Scot Esdaile, among other people from Connecticut who have come down on behalf of this nominee.

President Bush nominated Judge Bryant to fill the vacancy created by U.S. District Court Judge Dominic Squatrido, on the recommendation of Connecticut Governor Jodi Rell. Governor Rell had a number of potential candidates, Mr. Chairman, to fill this seat, but she was most favorably impressed with Judge Bryant, as we are, and hence our presence here this afternoon.

Judge Bryant is a product of Stanford and Norwalk public schools. She graduated from Howard University with Honors, and went on to receive her law degree at the University of Connecticut.

Upon graduation from law school, Judge Bryant was hired as an attorney for the Hartford firm of Day, Berry & Howard, one of our most distinguished law firms in the State of Connecticut, and subsequently worked for the Aetna Life & Casualty Company and Shawmut Bank.

From 1990 to 1992, Judge Bryant served as vice president and general counsel of the Connecticut Housing and Finance Authority, which finances the construction of affordable housing and helps low-income families purchase their own homes.

She later served as managing partner at the Hartford-based law firm of Hawkins, Delafield & Wood. In 1998, former Governor Roland nominated Judge Bryant to the Connecticut Superior Court, to which she was easily confirmed, I may point out.

In 2003, she was elevated to become the administrative judge in the Litchfield Judicial District. Judge Bryant rose the next year to her current position as the presiding judge for the Hartford Judicial District, Civil Division, overseeing all civil cases in the Hartford court and assigning the caseloads for judges under her jurisdiction.

Outside of the courtroom, Judge Bryant has devoted, Mr. Chairman, a great deal of her time to important volunteer work in Connecticut through the Oliver Ellsworth Inn of Court. She has served as a mentor and role model for young attorneys in our State. It is also notable that, if confirmed, Judge Bryant will be the first African-American woman to serve on the Connecticut Federal bench.

As someone who supports this nomination of Vanessa Bryant to the U.S. District Court for the District of Connecticut, I want to thank you, Mr. Chairman, and the Committee for scheduling this

confirmation hearing today, and to know that we support this nomination very strongly and hope the Committee will look favorably upon this nomination.

Chairman SPECTER. Thank you very much, Senator Dodd.

We now turn to Senator Lieberman.

PRESENTATION OF VANESSA LYNNE BRYANT, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF CONNECTICUT, BY HON. JOSEPH I. LIEBERMAN, A U.S. SENATOR FROM THE STATE OF CONNECTICUT

Senator LIEBERMAN. Thanks very much, Mr. Chairman, Senator Cornyn. I am glad to join with my senior colleague, Senator Dodd, in introducing Judge Vanessa L. Bryant to your Committee at this, her confirmation hearing on her nomination to become a U.S. District judge, but to also say that we are not just here to introduce her, but to endorse her and to urge the Committee to favorably report on her nomination to the bench.

As Senator Dodd said, Judge Bryant's name was originally raised by Governor Rell, our colleague, as Governor of our State. I had not known her before, but I have gotten to know her. I have reviewed her record.

I have heard from people who have worked for her, with her, appeared against her in court, appeared before her in her time as judge, and the reports are extremely favorable, coming from people whose judgment I respect and whose standards are high.

Senator Dodd spoke to the facts of Judge Bryant's biography, her curriculum vitae. I would just say that at each stage of this career, considerable experience in the private sector, some in the public sector before she went on the bench, and then from the time she has gone on the bench she has, in my opinion, performed very, very well.

Judge Joseph Pellegrino, who is the Chief Court Administrator in the State of Connecticut, whose duties include assigning judges, considering their service, recommending judges for promotion, has in one public statement, a statement to us on Judge Bryant, called her "a super-star". That is a very, very high compliment from a demanding member of the Connecticut bench who is the Chief Court Administrator.

The facts speak to this. As an administrator, Judge Bryant has a proven record in both the Hartford and Litchfield courts, where she has worked on speeding up clogged caseloads.

When Judge Bryant took over the Hartford Judicial District Civil Division in September of 2005, there were just over 2,100 civil cases pending. By December of 2005, four or 5 months later, that number was reduced by nearly 25 percent, to 1,594.

I will say also that as a trial judge, Judge Bryant had a reversal rate of 6.4 percent, which is to say, in only 6.4 percent of the cases that she rendered decision in which were appealed, only 6.4 percent of the time was she reversed. That is an enviable record.

Even with her heavy workload, she has found time to volunteer both her professional skills to young lawyers, as Senator Dodd indicated, and also at her church, the Asylum Hill Congregational Church in Hartford.

She is here with her family. It is a wonderful, proud, involved family of citizens. Her mother, proud mother, justifiably proud, her husband, two children.

I said I had not met Judge Bryant before she was nominated. I hope this will not bias the Chairman or the members of the committee. Her son did work in my purposive, but ill-fated, Presidential campaign in 2004.

[Laughter.]

So, this speaks to his idealism, and I will say, generally, the good judgment of the members of this family.

I know that there is some controversy around this nomination from the Bar Associations. I would just say, personally, that I have spent some time on the record here and I have listened to people who have called, and I have read the letters of people who have written. They are strong and they are positive. So, I come before you to strongly endorse this nomination.

Senator Dodd said Judge Bryant should be confirmed on the merits, but in this country that celebrates the breaking of barriers, and all of us have had the opportunity at one time or another to do so, it should not be passed over that, if confirmed—and I would say when confirmed—Judge Bryant will be the first African American woman to serve on the Federal bench in New England.

We are at the end of the session. We are going to recess at the end of this week. Mr. Chairman and members of the Committee, I hope you will find it possible, if not this week during the lame duck session, to report this nomination to the full Senate. The Federal district bench in Connecticut is a busy one. I know probably everybody says that to you.

Attorney General Blumenthal, who himself and through his Assistant AGs has appeared before Judge Bryant many times, can testify more personally than I can, because I have not been there in a while. But we need to fill this vacancy on the bench, and I hope we will find it possible together to bring Judge Bryant to confirmation before the end of this calendar year.

Mr. Chairman, I thank you very much for your courtesy and I wish the Committee well.

Chairman SPECTER. Thank you very much, Senator Lieberman.

As I said earlier, it is not the custom of introducing Senators to stay beyond the point of their introduction, so people will understand if you go back to your other duties.

Senator LIEBERMAN. Thank you, Mr. Chairman.

Chairman SPECTER. Michael B. Wallace, please step forward, and Vanessa L. Bryant. We will swear you in together. If you will please raise your right hands.

[Whereupon, the nominees were duly sworn.]

Chairman SPECTER. You may be seated, Mr. Wallace.

Judge Bryant, if you will sit back, we will take Mr. Wallace first, as he is listed first on the agenda, and his nomination is for the Court of Appeals.

Mr. Wallace, welcome to the Judiciary Committee.

Mr. WALLACE. Thank you, Senator.

Chairman SPECTER. It is our custom, if you would introduce your family, we would appreciate your doing that at this time.

Mr. WALLACE. I would be happy to do that. I was pleased that Senator Cochran was able to do that. My wife, Barbara Wallace is here with me. Our oldest daughter Kyle, who is a second-year student at the University of Virginia Law School is here. And our daughter Molly, and our daughter Ellie, and our daughter Gracie, I think Senator Cochran told you what those young ladies were doing. We are all pleased and happy to be here with you today.

Chairman SPECTER. Thank you, Mr. Wallace.

As is our custom, we will proceed now with whatever statement you care to make to the committee.

STATEMENT OF MICHAEL BRUNSON WALLACE, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE FIFTH CIRCUIT

Mr. WALLACE. Thank you, Mr. Chairman. I do not have an opening statement. I do want to thank the President for his confidence in me. I do want to thank our two Senators, Senator Cochran and Senator Lott, for their kind words today, for their many years of friendship to me.

As Senator Lott mentioned, I am a Biloxian, and as a Biloxian I certainly want to thank the American people you represent for your generosity to us since the storm. It means very much.

And while it may seem a little odd, I want to thank my friends, Rob McDuff and Carroll Rhodes, for coming all the way from Mississippi to testify against me today. I also thank, certainly, my partner, Reuben Anderson and Scottie Welch, that the Committee has invited.

I think the best way this Committee can find out the truth is to hear from well-informed people in possession of the actual facts, to hear from both sides. It works well in the courtroom and I know it will work well today.

You have had my questionnaire for some time, and I do not think there is any more I need to say, Mr. Chairman. I am happy to answer your questions.

[The biographical information of Mr. Wallace follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Michael Brunson Wallace

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

Residence: Ridgeland, MS 39157

Office: 111 East Capitol Street, Suite 600
Jackson, MS 39201

3. **Date and Place of Birth:**

12/01/51; Biloxi, Mississippi

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

Barbara Louise Childs Wallace
Attorney at Law
Wise, Carter, Child & Caraway
600 Heritage Building
P.O. Box 651
Jackson, MS 39205-0651

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

Harvard University, Cambridge, MA 9/69 to 6/73, B.A. 1973

University of Virginia School of Law, Charlottesville, VA, 9/73 to 5/76, J. D. 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.**

6/74 to 8/74	Chancery Clerk, Harrison County, Second District, Biloxi, MS; Summer Assistant
6/75 to 8/75	Markbys, London, England; Summer Associate
9/75 to 5/76	The Research Group, Charlottesville, VA; Legal Researcher

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7/76 to 6/77	Supreme Court of Mississippi, Jackson, MS; Law Clerk
7/77 to 7/78	Supreme Court of the United States; Law Clerk
7/78 to 6/80	Sekul, Hornsby, Wallace & Teel, Biloxi, MS; Partner
7/80 to 1/81	United States House of Representatives, Republican Research Committee, Washington, D.C.; Research Analyst
1/81 to 7/83	Office of the Republican Whip, United States House of Representatives, Washington, D.C.; Counsel
8/83 to 10/83	Administrative Conference of the United States, Washington, D.C.; Legislative Consultant
11/83 to 9/86	Jones, Mockbee, Bass & Hodge, Jackson, MS; Associate
10/86 to date	Phelps Dunbar LLP, Jackson, MS; Partner

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 served in the military.

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

I graduated cum laude from Harvard. At Harvard, I received the Harvard National Scholarship, the Alfred P. Sloan Scholarship, and the National Merit Scholarship. I was named to the Order of the Coif at the University of Virginia School of Law, where I served on the Virginia Law Review.

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 you have held in such groups.**

Legal Services Corporation, Director from 1984 to 1990.

I belong to the Mississippi State Bar, and I have belonged to the Harrison County Bar and the Hinds County Bar.

Charles Clark American Inn of Court; I served as Program Chair of the Inn of Court in 1998 and 1999

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Republican National Lawyers Association

Federalist Society, I have served on the National Practitioners Advisory Council of the Federalist Society for approximately 10 years.

In 2000, I was inducted into the American Academy of Appellate Lawyers.

I am a member of the Appellate Advocacy Committee of the Defense Research Institute; I served as its vice chair from 2001 to 2003, and I served as chair from 2003 to 2005.

Since 2004, I have served on the Bench-Bar Advisory Committee organized by Chief Justice Jim Smith of the Supreme Court of Mississippi, and as a member of the Special Committee on Judicial Election Campaign Intervention.

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.

The Mississippi State Bar is active in lobbying before public bodies. To the best of my knowledge, none of the other organizations to which I belong engage in lobbying. In addition to the legal organizations described above, I belong to Covenant Presbyterian Church in Jackson.

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

Supreme Court of Mississippi, 1976

Supreme Court of the United States, 1984

United States District Court, Southern District of Mississippi, 1978

United States District Court, Northern District of Mississippi, 1983

United States Court of Appeals for the Fifth Circuit, 1979

United States Claims Court, 1984

United States Court of Appeals for the Third Circuit, 1991

United States Court of Appeals for the Federal Circuit, 1984

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United States Court of Appeals for the Eleventh Circuit, 2003

United States Court of Appeals for the Eighth Circuit, 2004

There have been no lapses in membership except for the Fifth Circuit. The Fifth Circuit was divided while I was working in Washington, and I learned that I needed to apply for readmission when I returned home. I believe I was readmitted in 1984.

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.

Wallace, "Getting Control of the Record: Using Appellate Rules to Protect and Present Your Case," in A Defense Lawyer's Guide to Appellate Practice (Defense Research Institute 2004)

Craig & Wallace, "From the Crossing of the Rubicon to the Return of a Republic, The Mississippi Supreme Court's View of the Judicial Role, 1980 - 2004" (Federalist Society, 2004)

Wallace, "An Important Defense Tool," For the Defense (April, 2004)

Wallace, "Persuading the Court," For the Defense (July, 2001)

Certworthy (newsletter of the Appellate Advocacy Committee of the Defense Research Institute), numerous short reports on committee activities 2001-05)

Wallace, "The Voting Rights Act and Judicial Elections," in State Judiciaries and Impartiality: Judging the Judges (National Legal Center for the Public Interest, 1996)

Wallace, "Out of Control: Congress and the Legal Services Corporation," in L. Crovitz & J. Rabkin, The Fettered Presidency: Legal Constraints on the Executive Branch (1989)

Wallace, Ad Astra Sine Aspera: Chadha Transcends Adversity, Benchmark 13 (Fall 1983)

Wallace & Stamps, Corporate Free Speech and Campaign Finance in Mississippi, 490 Miss. L. J. 819 (1978)

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

My last full physical examination was on September 21, 2005. My health is excellent.

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 officially reported, please provide copies of the opinions.**

I have never been a judge.

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.**

From1984 to 1994, I was an appointed member of the Administrative Conference of the United States.

I served as a director of the Legal Services Corporation, by appointment of the President and confirmation of the Senate, from 1984 until 1990.

In 2004, Mississippi Governor Barbour appointed me to the Special Committee on Judicial Election Campaign Intervention

I was the Republican nominee for Mississippi House of Representatives District 116 in 1979, but I was not elected.

17. **Legal Career:**

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

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

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you were a clerk;

7/76 to 6/77	Law Clerk to the Honorable Harry G. Walker, Justice, Supreme Court of Mississippi, Jackson, MS
7/77 to 7/78	Law Clerk to the Honorable William Rehnquist, Associate Justice, Supreme Court of the United States, Washington, D.C.

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

I have never 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;**

7/78 to 6/80	Partner Sekul, Hornsby, Wallace & Teel 958 Howard Avenue Biloxi, MS 39533
7/80 to 1/81	Research Analyst House Republican Research Committee 1616 Longworth House Office Building Washington, DC 20515
1/81 to 7/83	Counsel Office of the Republican Whip 1622 Longworth House Office Building Washington, DC 20515
8/83 to 10/83	Legislative Consultant Administrative Conference of the United States, 2120 L. Street, N.W., Suite 500 Washington, DC 20037
11/83 to 9/86	Associate Jones, Mockbee, Bass & Hodge 1080 Flynt Drive, Suite E Jackson, MS 39208

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10/86 to date	Partner Phelps Dunbar LLP 111 East Capitol Street, Suite 600 Jackson, MS 39201
1/99 to 2/99	Special Impeachment Counsel to the Senate Majority Leader United States Senate Washington, DC

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?

After leaving my second judicial clerkship, I returned home to Biloxi to take my father's place in his small firm with his three partners. For the next two years, I engaged in a fairly typical small-city general practice. I did a great deal of domestic work, including contested divorces, child custody disputes, and child support collections. I litigated several real estate disputes, particularly eminent domain matters, as well as small commercial disputes. I also administered several estates and guardianships, and handled a couple of appeals from bankruptcy court judgments. In addition to the bankruptcy disputes, I litigated a couple of commercial matters in federal court, but the overwhelming bulk of my practice consisted of litigation in state courts, including appeals to the Supreme Court of Mississippi.

From 1980 through 1983, I served in Washington with Representative Trent Lott. While he served as Chairman of the Republican Research Committee, I assisted him with research projects for the Republican leadership, with special emphasis upon legal matters. After he became Whip in 1981, I served as his counsel for the next three years. I assisted Representative Lott in handling legal problems for his constituents, as well as advising him on legal matters on the floor of the House. In addition, I participated in the primary work of the Whip's office, which was to communicate with Republican Members of the House. Before leaving Washington to return to Mississippi, I worked for several months at the Administrative Conference of the United States, assisting the Chairman on certain legislative matters of particular concern to him.

In November of 1983, I became an associate with Jones, Mockbee & Bass, a small general litigation firm in Jackson, Mississippi. As an associate, I worked on many of the same types of cases as I had in Biloxi, although the mix was significantly different. I continued to do some domestic practice, but not nearly as much as before. I undertook some plaintiffs' personal injury litigation for the first time. The bulk of my practice consisted of commercial litigation, although much more complex and costly than in my previous experience. I also handled a small amount of constitutional litigation, representing the Mississippi Republican Party in the Congressional redistricting dispute following the 1980 census, and representing a discharged state employee in a § 1983 claim.

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In 1986, Jones, Mockbee, Bass & Hodge merged with Phelps Dunbar, and I became a partner in the new firm. My domestic work disappeared altogether, and I concentrated on constitutional and commercial litigation. I also handled the appellate work concerning any trial in which I had been involved. As the years progressed, I was asked more often to handle appeals from cases handled by other lawyers at the trial level. Although I continue my work in the trial courts, about half of my practice now consists of appeals.

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

Because my present practice concentrates on major litigation, I have very few regular clients. Because of my numerous contacts around the country, I am most typically retained by businesses from other areas of the United States which have been sued in Mississippi. In recent years, I have been asked by Philip Morris and Ford Motor Company to handle the great bulk of their appellate work in Mississippi. I have also been involved in litigation on behalf of Mississippi clients, but few Mississippi clients regularly engage in litigation of the magnitude that I generally undertake. However, I have handled a substantial amount of such litigation on behalf of Mississippi Baptist Health Systems and Wayne Farms, a major poultry producer.

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 appear in trial court regularly to argue motions and, when necessary, to try cases. I also regularly argue matters before the Supreme Court of Mississippi and the United States Court of Appeals for the Fifth Circuit. In 2002, I argued and won a case before the Supreme Court of the United States.

I appeared in court much more often during my two years in Biloxi. Mississippi had not yet adopted the Federal Rules of Civil Procedure, so there was very little discovery and no summary judgment; accordingly, fewer cases were resolved short of trial. Moreover, in those days I handled many small cases, instead of a few big ones. On the average, I was probably in court two or three times a week. As an associate at Jones, Mockbee, Bass & Hodge, I appeared in court approximately as often as I do now.

2. What percentage of these appearances was in:

(a)	**federal courts:**	20%
(b)	**state courts of record:**	75%
(c)	**other courts:**	5%

My work load divides almost equally between state and federal court. However, because of the greater frequency with which our state court judges agree to hold hearings, probably seventy-five percent of my trial court appearances have been in state court. I argue federal

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appeals and state appeals with equal frequency, generally averaging one or two of each every year. I have also appeared in arbitrations and administrative proceedings.

3. What percentage of your litigation was:

(a) **civil:** 100%
(b) **criminal:** 0%

I have assisted in a couple of criminal matters on a pro bono basis. All the rest of my practice has been civil.

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

I estimate that I have tried approximately 50 cases.

During my two years in Biloxi, I probably tried 15 or 20 cases a year. One of my partners would prepare the domestic cases for trial, and I would litigate them as chief counsel. On the commercial and real estate cases, as well as the more complicated domestic cases, I would generally prepare them for trial, and my father would assist me at trial.

During my three years as an associate at Jones, Mockbee, Bass & Hodge, I averaged two trials a year. My recollection is that I tried one case as sole counsel and another as associate counsel. On the remainder, I served as chief counsel, with the assistance of a partner or another associate.

As a partner at Phelps Dunbar, I have probably tried between 20 and 30 cases. My best estimate is that I have been associate counsel on a quarter of the cases, sole counsel on another quarter, and chief counsel on the remainder.

5. What percentage of these trials was:

(a) **jury:** 10%
(b) **non-jury:** 90%

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18. Litigation: Describe the ten most significant litigated mattes which you personally handled. Give the citations, if the cases were reported, and the docket number and dates 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. Carver v. Carver, Chancery Court of Harrison County, Second Judicial District. This divorce was tried before Chancellor William Stewart for a period of several days in 1979. On several occasions thereafter, Chancellor Stewart heard our petitions for citation for contempt for failure to pay support. I represented a housewife whose husband of over twenty years, a retired Army officer, wished to divorce her without alimony. Colonel Carver was successful in obtaining the divorce, but Mrs. Carver was awarded substantial alimony and child support, as well as reasonable attorneys' fees and an equitable distribution of the assets of the marriage. Numerous and successful contempt petitions were necessary to secure actual payment of the award. The chief significance of the case is that the Court recognized and protected the substantial contribution which an Army wife makes to her husband's career, even in the absence of gainful employment. My father, Thomas L. Wallace of Biloxi (now deceased), assisted me in the trial of this case. Colonel Carver's counsel was George Lewis of Ocean Springs, Mississippi (now deceased).

2. Shewbrooks v. AC&S, 529 So.2d 557 (Miss. 1988). I filed this action in the Circuit Court of the First Judicial District of Hinds County against numerous asbestos-related businesses on behalf of two Delaware residents whose statute of limitations at home had already expired. Circuit Judge William Coleman dismissed the complaint under the doctrine of forum non conveniens, because the plaintiffs were Delaware residents and their exposure to asbestos had taken place in Delaware. The judgment was initially affirmed by an equally divided Supreme Court of Mississippi. The Supreme Court, however, granted our petition for rehearing and reversed by a vote of 5 to 4. The case established the proposition that the doctrine of forum non conveniens would not be applied in Mississippi to deprive non-resident plaintiffs of access to our courts where no forum elsewhere was available to them by reason of the expiration of statutes of limitation. The case also reaffirmed the principle that the Mississippi statute of limitations would apply to such actions, even though the cause of action had accrued elsewhere. I was assisted on the brief on appeal by Julie Sneed Muller, who now practices law at Purdy & Germany, P.O. Box 24206, Jackson, Mississippi 39225; 601-914-1735. My referring counsel

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was Thomas Crumplar, Jacobs & Crumplar, P. O. Box 1271, Wilmington, Delaware 19899. Counsel for the numerous defendants were as follows:

Michael S. Allred
The Allred Firm
Post Office Box 3828
Jackson, MS 39207
601-713-1414

Walter G. Watkins
Forman Perry Watkins Krutz &Tardy
188 E. Capitol Street
Jackson, MS 39225-2608
601-960-8600

Jon Mark Weathers
630 Main Street
Hattiesburg, MS 39403
601-545-1551

Natie P. Caraway
Wise Carter Child & Caraway
Post Office Box 651
Jackson, MS 39205
601-968-5500

W. F. Goodman III
Watkins & Eager
Post Office Box 650
Jackson, MS 39205
601-948-6470

Kenneth E. Bullock
Attorney at Law
113 Parker Drive
Laurel, MS 39440

Ronald G. Peresich
Page, Mannino Peresich & McDermott
Post Office Drawer 289
Biloxi, MS 39533

Curtis Coker (Deceased)
Daniel Coker Horton & Bell
Post Office Box 1084

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Jackson, MS 39215

Don W. Moore
Overstreet & Kuykendall
Post Office Box 961
Jackson, MS 39205
(last known address)

William C. Reeves
Smith Reeves & Yarborough
6360 I-55 North, Suite 201
Jackson, MS 39211

Walter W. Epps, Jr.
Post Office Box 3037
Meridian, MS 39303

James O. Dukes (Deceased)
Bryant, Colingo, Williams & Clark
Post Office Box 10
Gulfport, MS 39501

Thomas W. Tardy, III
Forman Perry Watkins Krutz & Tardy
Post Office Box 22608
Jackson, MS 39225

Edward J. Currie, Jr.
Currie Johnson Griffin Gaines & Myers
Post Office Box 750
Jackson, MS 39205

3. Burrell v. State Tax Commission, 536 So.2d 848 (Miss. 1989). In the spring of 1986, the Mississippi Legislature passed a statute to exempt the Grand Gulf Nuclear Power Plant from ad valorem taxation by Claiborne County, and to impose instead a special state tax, the proceeds of which would be divided between the state and the various cities and counties for which the Grand Gulf Plant provided electric service. At the same time, the Legislature proposed an amendment to § 112 of the Mississippi Constitution to provide a special exception for nuclear power plants from the provision which assures to each county the right to tax public utilities within its boundaries. The constitutional amendment had to be approved by the voters, and the special election was promptly scheduled for June of 1986.

I was retained by the Claiborne County Board of Supervisors to challenge the statute and the constitutional amendment. I promptly filed two lawsuits on the county's behalf. The first was heard before a three-judge panel, composed of Circuit Judge Grady Jolly, District Judge

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Tom Lee, and District Judge Henry Wingate, in the United States District Court for the Southern District of Mississippi. The second was heard before Chancellor Stuart Robinson in the Chancery Court for the First Judicial District of Hinds County.

The federal case was tried on its merits for a week in November of 1986. The Court refused to vacate the referendum for having been held without prior approval under § 5 of the Voting Rights Act, 42 U.S.C. § 1973c. The Court rejected the county's claim of intentional racial discrimination and its argument that the conduct of the special election on short notice had resulted in discrimination, in violation of § 2 of the Act. The Court dismissed the county's Fourteenth Amendment claims for lack of jurisdiction under the Tax Anti-Injunction Act. The Supreme Court of the United States affirmed without opinion.

Shortly after the filing of the federal action, the county filed a parallel action in Chancery Court, contending that the submission of the constitutional amendment violated § 270 of the Mississippi Constitution, but the Chancellor granted the State's motion to dismiss. Following the judgment in the federal action dismissing the county's constitutional claims, the county sought to amend to pursue those claims in state court, but Chancellor Robinson denied the amendment.

On appeal, the Supreme Court of Mississippi, by an equally divided vote, affirmed the Chancellor's judgment on the state law claims. The Court nevertheless unanimously reversed the Chancellor's refusal to permit amendment of the complaint to assert the federal constitutional claims, and it remanded the case for trial.

The case was tried for a week during April of 1990. Following trial, the Court received briefs and took the case under advisement. Before judgment could be rendered, a special session of the Legislature adopted legislation to settle the county's claim. The county's share of the tax receipts was increased from $4.8 million per year to $8 million per year for the life of the plant. The taxes previously paid by the plant, which had been held in escrow by order of the Supreme Court since 1986, were released, and $2 million from that fund was paid to the county.

Because the case was ultimately settled on terms satisfactory to the county, the federal constitutional issues it raised were never conclusively decided. However, the case did establish that such issues must be heard by state courts, and that amendments for that purpose should be liberally granted. The federal litigation established that the district courts have wide remedial discretion where states proceed in contravention of § 5 of the Voting Rights Act.

I was assisted in both halves of the litigation by my partner, E. Clifton Hodge, Jr., still of the Jackson Office of Phelps Dunbar. Our associate Jean Hogan Sansing also assisted in both halves; she is now practicing law at Gholson, Hicks & Nichols, 710 Main Street, Columbus, MS 39703; 662-327-1485. I was assisted in the federal litigation by Professor George Cochran of the University of Mississippi School of Law, University, Mississippi 38677; 662-914-9814, and in the state litigation by Allen Burrell, Drake & Burrell, Post Office Box 366, Port Gibson, Mississippi 39150; 601-437-5811. I was also assisted in the state litigation by our associate John Richard May, who is with the Sanford Knott & Associates firm, P.O. Box 23121, Jackson, Mississippi; 601-355-2000. The State was represented in both halves of the litigation by Robert

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Sanders, who at that time was with the Attorney General's Office, State of Mississippi. Mr. Sanders is currently at the Young Williams law firm; Post Office Box 23059, Jackson, Mississippi 39225; 601-948-6100.

4. Gulfport Cablevision, Inc. v. Post-Newsweek Cable Inc., United States District Court for the Southern District of Mississippi. In this case I represented Post-Newsweek, which held a cable television franchise for Gulfport, Mississippi. Gulfport Cablevision had subsequently received a franchise from the city, but was unhappy with the terms it received. It sued Post-Newsweek and the city, charging a conspiracy in restraint of trade, in violation of state and federal antitrust statutes, and a conspiracy to deprive it of its rights under the First Amendment. We promptly filed a motion to dismiss for failure to state a claim, arguing that to permit discovery to proceed on such vague and unsubstantiated arguments of conspiracy would unduly threaten Post-Newsweek's own rights under the First Amendment. By order of October 24, 1988, District Judge Walter Gex granted our motion to dismiss the First Amendment claims, finding insufficient allegations of conspiracy to meet the standard required under § 1983. However, the Court declined to dismiss the antitrust claim, finding the allegations of conspiracy sufficient to meet the somewhat lower standards of pleading established under those statutes. The plaintiff, however, having lost its First Amendment claim, promptly dismissed its entire case with prejudice. Chief counsel for Post-Newsweek was Jack Weiss, then my partner in our New Orleans office, and now with Gibson Dunn and Crutcher, 200 Park Ave., Fl 47, New York, NY. Our local counsel in Gulfport were Jess Dickinson, now a Justice of the Supreme Court of Mississippi, and Rodger Wilder, Balch & Bingham, Post Office Box 130, Gulfport, MS 39502; 228-864-9900. Counsel for the City of Gulfport were James Wetzel, Post Office Drawer I, Gulfport, MS 39502; 228-864-6400; and Billy Hood, now deceased. Lead counsel for Gulfport Cablevision was Phillip Wittman of Stone, Pigman, Walther, Wittman & Hutchinson, 546 Carondelet Street, New Orleans, LA 70130-3588; 504-581-3200. Local counsel was William L. Guice, III, Rushing & Guice, Post Office Box 1925, Biloxi, MS 39533; 228-374-2313.

5. Franklin Telephone Company v. Telephone & Data Systems, Inc., Chancery Court of Franklin County, Mississippi. Franklin Telephone, a Mississippi, independent telephone company, had formed a corporation called Cellular South, Inc., with TDS of Chicago to seek the FCC wireline cellular telephone license for the Jackson, Mississippi, metropolitan area. Franklin, as a local company, had the right to apply for the license; TDS took a minority stake in the venture, claiming that its cellular expertise would be useful in obtaining the license and operating the system. TDS was not able to secure the Jackson license for CSI, but the licenses were obtained for the Biloxi/Gulfport and Pascagoula metropolitan areas of the Gulf Coast. As the FCC proceeded to consider license applications for rural areas of Mississippi, TDS claimed that Franklin had an obligation under the corporate opportunity doctrine at Mississippi common law to use its right to seek those rural licenses on behalf of CSI. Franklin disagreed, and sought a declaratory judgment confirming its right to pursue those license on its own behalf; Delta Telephone, a sister company of Franklin's, also sought to invalidate a contract with TDS to form a company to seek the license for Warren County, Mississippi. After a week's trial before Chancellor R. B. Reeves in April of 1990, followed by an additional day of testimony in June of that year, the Court granted Franklin's declaratory judgment, and dismissed TDS's counterclaims against Delta and Franklin. It found that the contract between Franklin and TDS

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made any further operations in rural areas optional, and that this agreement precluded the operation of the corporate opportunity doctrine. The Court further found that, although Delta had not carried out its agreement with TDS to seek the Warren County license, TDS had not been damaged thereby. TDS did not appeal the Franklin judgment, and subsequently dismissed its appeal from the Court's refusal to grant relief against Delta. The case primarily reaffirms that commercial enterprises can rely on the terms of their contracts, notwithstanding whatever creative legal theories their business associate might devise. I served as lead counsel for Franklin and Delta, and was assisted by my partner E. Clifton Hodge, Jr., of the Jackson Office of Phelps Dunbar. Our local counsel was Mayes McGehee, Courthouse Square, P.O. Box 188. Meadville, MS; 601-384-2343. Chief counsel for TDS was Charles McKirdy, Rudnick and Wolfe, 203 North La Salle, 18th Floor, Chicago, IL 60601; 312-368-2106. Local counsel for TDS was Robert Weaver of Watkins Ludlam & Stennis, P.O. Box 427, Jackson, MS 39205; 601-949-4900.

6. Watkins v. Mabus, 771 F.Supp. 789 (S.D. Miss.), affirmed in part and appeal dismissed in part, 112 S.Ct. 412 (1991). This action was filed in June of 1991 by black plaintiffs, including members of the Black Legislative Caucus, when the Justice Department failed to approve Mississippi's 1991 legislative redistricting under § 5 of the Voting Rights Act. I represented the Mississippi Republican Party, a necessary defendant in the case by virtue of its conduct of Republican primaries. The plaintiffs asked that the State be enjoined from using the 1991 plan, as well as its predecessor, approved as nondiscriminatory by the Justice Department in 1982. The Justice Department, as amicus curiae, joined the plaintiffs in asking the Court to order the 1991 elections to be held under a temporary plan to be devised by the Court. The Mississippi Democratic Party and the State Board of Election Commissioners were original named defendants, and the Court permitted the Joint Legislative Redistricting Committee and the House Elections Committee to intervene as defendants. The members of the three-judge District Court were Circuit Judge Rhesa Barksdale, District Judge Tom Lee, and District Judge Charles Pickering.

The Republican Party took the position that it was essential that elections be held on time, and that the only plan which could insure timely elections was the existing 1982 plan. The case proceeded to trial on the plaintiffs' motion for preliminary injunction for a week during July. As the various legislative parties proceeded to put on evidence attacking each other's remedial plans, the state officials and the Democratic Party joined the Republican Party in asking the Court to hold elections on the time under the existing 1982 plan. The Court agreed, finding that the plaintiffs had not proven that the existing 1982 plan discriminated on the basis of race. Although it had become, by the passage of time, malapportioned under the one-man-one-vote principle, the Court held that it could continue to be used because of the imminence of elections and the lack of time to prepare a satisfactory alternative.

The plaintiffs appealed to the Supreme Court of the United States, and were twice denied injunctive relief pending appeal. On the merits of their appeal, the Court, by a vote of 7 to 2, dismissed the appeal in part, and affirmed the remainder of the District Court's judgment. Shortly after the 1991 elections, the Legislature adopted a new plan, satisfactory to all parties, and a special election was held in 1992.

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This case established the principle that a district court, adjudicating a redistricting case on an emergency basis, is not bound to choose between the alternatives presented by interested parties, but may maintain the status quo through an additional election, scheduling additional hearings thereafter to produce a fair and nondiscriminatory plan after full consideration.

I was the sole counsel for the Republican Party. The plaintiffs were represented by the following counsel:

Carroll Rhodes
P.O. Box 588
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601-894-4323

John L. Walker
P.O. Box 22849
Jackson, MS 39225
601-948-4589

Johnny C. Parker
Tulsa University Law School
3120 E. 4th Place
Tulsa, OK 74104
918-459-3896

Deborah McDonald
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Natchez, Mississippi 32121
601-445-5577

Wilbur O. Colom
406 Third Avenue North
Columbus, MS 39703-0866
662-327-0903

Mike Sayer
119 Theobald Street
Greenville, MS 87301
601-334-6827

The Democratic Party was represented by:

Jim Warren
Carroll Warren & Parker, PLLC
City Centre, 200 South Lamar Street

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Suite 900 North
P.O. Box 1005 Jackson, Mississippi 39215-1005
601-592-1010

The State Board of Election Commissioners was represented by:

Attorney General Mike Moore (now at 10 Canebrake Blvd., Suite 150, Flowood, MS 39232)
Steve Kirchmayr, Deputy Attorney General (now deceased)
Giles Bryant, Special Assistant Attorney General (now deceased)
P.O. Box 220
Jackson, MS 39205
601-359-3680

The Joint Legislative Redistricting Committee was represented by:

Champ Terney (now deceased)
Hubbard Saunders (now on the staff of the Supreme Court of Mississippi)
Bill Allain
P.O. Box 22965
Jackson, MS 39205
601-982-3330

The House Elections Committee was represented by:

John Reeves
555 Tombigbee Street
Jackson, MS 39201
601-355-9600

The United States was represented by:

John K. Tanner
Voting Section, Civil Rights Division
Department of Justice
P.O. Box 66128
Washington, DC 20035
202-307-2897

7. Pro Choice Miss. v. Fordice, 716 So.2d 645 (Miss. 1998). An abortion clinic, two physicians, and an organization called Pro-Choice Mississippi filed suit in the Chancery Court of the First Judicial District of Hinds County, Mississippi, asserting claims under the Mississippi Constitution to bar the enforcement of two Mississippi statutes, one regulating informed consent to abortion and the regulating parental consent for minors, together with a Health Department regulation setting licensing standards for physicians seeking to perform abortions. Attorney

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General Mike Moore asked me to assist in defending him, Governor Kirk Fordice, and the Health Department.

On cross-motions for summary judgment, Chancellor Patricia Wise found the Mississippi Constitution to protect the right to abortion, but that the right was not unduly burdened by the statutes. With regard to the licensing regulation, the Chancellor found that plaintiffs had not exhausted administrative remedies. I was primarily responsible for briefing and arguing the issues in the Chancery Court and on appeal. In a series of divided votes, the Supreme Court affirmed the Chancellor's rejection of plaintiffs' claims. By a vote 6-3 the Court agreed that the Mississippi Constitution protects the right to an abortion, but the Court unanimously upheld the parental consent statute. The informed consent statute, which included a 24-hour waiting period, was upheld by a 6-3 vote. The dismissal of the challenge to the regulation was also affirmed by a 6-3 vote. The opinion established the existence of a very limited right to abortion under the Mississippi Constitution and clarified the requirement of exhaustion under Mississippi administrative law. I was assisted by my associate Robert Higginbotham, Jr., who is now with the firm of Massey Higginbotham & Vise, P.O. Box 13664, Jackson Mississippi, 601-420-2200. My co-counsel was T. Hunt Cole of the Attorney General's office. He is now at the firm of Forman Perry Watkins Krutz & Tardy, P.O. Box 22608, Jackson, Mississippi 39225; 601-960-8600. Plaintiffs were represented by Robert B. McDuff, a sole practitioner whose address is 767 N. Congress Street, Jackson, Mississippi 39202; 601-969-0802. Plaintiffs were also represented by Catherine Albisa of New York and Kathryn Kolbert, 3620 Walnut Street, Philadelphia, Pennsylvania.

8. In re Corr-Williams Tobacco Co., 691 So.2d 424 (Miss. 1997). This original mandamus action in the Supreme Court of Mississippi related to an action brought by Attorney General Mike Moore in the Chancery Court of Jackson County, Mississippi, against tobacco companies and Mississippi distributors to recover funds expended by the Mississippi Division of Medicaid for the treatment of diseases allegedly caused by cigarettes. By statute, the Mississippi Legislature had given the Governor administrative responsibility for Medicaid, requiring his approval of all litigation brought on behalf of the Division. Governor Kirk Fordice refused to authorize the Attorney General's suit, and I was asked by Philip Morris, Inc., to seek a writ of prohibition or mandamus from the Supreme Court on the grounds that the suit had been filed contrary to the instructions of the authorized state officer. Mandamus is an extraordinary remedy, and the Supreme Court rarely hears arguments on such petitions, but it agreed to do so in this case. However, by a 6-1 vote, the Supreme Court refused to consider the merits of the petition. "The definitive issue of who has the authority and right to file such a suit, the Governor or the Attorney General, is an issue which may adequately be decided by this Court on appeal on the merits." Id., at 427. The Chief Justice, in dissent, concluded that relief after final judgment would be insufficient and that the petition should be granted on its merits. On remand, the defendants settled the case for several billion dollars. The State was represented by Attorney General Moore, now in private practice at 10 Canebrake Blvd., Suite 150, Flowood, MS 39232, and by Richard F. Scruggs of the Scruggs Law Firm, 120A Courthouse Square, Oxford, Mississippi 38655. I argued the case for Philip Morris on behalf of all defendants. Assisting me in preparation of the brief was Murray Garnick of Arnold & Porter, Thurman Arnold Building,

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Joe R. Colingo
Colingo Williams Heidelberg Steinberger & McElhaney

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Butler Snow Stevens & Cannada
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601-948-5711

Bruce Merritt
Debevoise & Plimpton

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Bruce Ginsberg
Davis & Gilbert
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New York, NY 10019
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Franke Rainey & Salloum
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Gulfport, Mississippi 39502
228-868-7070

David W. Clark
Bradley Arant Rose & White, LLP
One Jackson Place, Suite 450
188 E. Capitol Street
Jackson, Mississippi 39215
601-948-8000

9. Chevron U.S.A., Inc., v. Smith, 844 So.2d 1145 (Miss. 2002). Plaintiffs, owners of 55 acres of uninhabited pine land in the Brookhaven oil field, brought suit in the Circuit Court for the First Judicial District of Hinds County, Mississippi, against Chevron and its successors as operator of the field, alleging that their property had been contaminated by naturally occurring radioactive material ("NORM") produced during drilling operations. I was not involved in the preparation of the case for trial, but I was asked to assist with legal research and the preparation of jury instructions for the trial, which extended over a period of seven weeks. Although the property was worth no more than $55,000, the jury returned a verdict against Chevron of $2,349,275, the amount which plaintiffs' evidence indicated would be necessary for remediation of the property. Circuit Judge James E. Graves, Jr., now a Justice of the Supreme Court of Mississippi, denied post-trial motions, and Chevron appealed. My partner Luther Munford and I worked together on the appellate briefs, and I argued the case on appeal. By a vote of 6-3, the Supreme Court reversed, finding that the Circuit Court lacked jurisdiction over the complaint because plaintiffs had failed to exhaust their remedies before the Mississippi Oil and Gas Board. The majority observed that the Mississippi Legislature had given the Board general authority to

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regulate oil production and specific authority over NORM. The opinion further observed that the public would be better protected by remediation preformed under the jurisdiction of the Board, as there was no assurance that landowners would use a money judgment to remediate their property. Although the three dissenters agreed that the Circuit Court had jurisdiction over the claim, they found that an award of damages should not exceed the $55,000 value of the property. The case further developed the doctrine of exhaustion of remedies under Mississippi law, and clearly delineated the responsibility of the Board for remediation of oil field pollution in Mississippi. Although plaintiffs never sought relief from the Board, Chevron voluntarily implemented a remediation plan under Board supervision. My partner, Reuben Anderson, represented Chevron at trial, together with the following counsel:

Robert Allen
Allen, Allen, Boerner & Breeland
214 Justice Street
P.O. Box 751
Brookhaven, MS 39602
601-833-4361

William Keffer
Miller Keffer & Pedigo
8401 N. Central Expressway
Suite 630, L.B. #10
Dallas, TX 75225
214-696-2050

Robert Meadows
King & Spalding
1100 Louisiana, Suite 4000
Houston, TX 77002
713-654-4949

Plaintiffs were represented by David T. Cobb, of Biloxi, who is now deceased. Plaintiffs' other counsel were

Robert L. Johnson
1187 Martin Luther King St.
Natchez, MS 39120
601-442-9371

Jay Bowling
P.O. Box 449
Meridian, MS 39302

Stuart H. Smith
Law Offices of Sacks & Smith

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New Orleans, LA 70130
504-593-9600

Robert Russell Williard
P. O. Box 2019
Brandon, MS 39043
601-824-1296

10. Branch v. Smith, 538 U.S. 254 (2003); Mauldin v. Branch, 866 So.2d 429 (Miss. 2003). These separate but related cases stemmed from Mississippi's loss of a seat in the House of Representatives after the 2000 census, and the Mississippi Legislature's failure to agree on a redistricting plan. The state court litigation was filed by registered voters who asked the Chancery Court for the First Judicial District of Hinds County, Mississippi, to draw its own redistricting plan and to mandate its use in the 2002 elections. The only named defendant was the Mississippi State Board of Election Commissioners, but Republican voters were allowed to intervene as defendants. The State asked Chancellor Patricia Wise to order the joinder of the Executive Committees of the Mississippi Republican Party and the Mississippi Democratic Party, because they are charged by law with administering party primaries, and the Court initially agreed. I represented the Mississippi Republican Party and promptly filed an answer challenging the jurisdiction of the Court and alternatively seeking enforcement of state and federal statutes which require Representatives to be elected at large when the Legislature fails to redistrict following the loss of a seat. The Court, however, reversed its joinder order, excluding the political parties from the trial. The Court, after trial, adopted plaintiffs' proposed plan, and ordered that it be submitted to the Attorney General of the United States for approval under § 5 of the Voting Rights Act. No approval was ever granted. The Republican Party and the Republican intervenors appealed to the Supreme Court of Mississippi.

Shortly before the Chancery Court case went to trial, another group of Republican voters filed suit in the United States District Court for the Southern District of Mississippi against the State Board of Election Commissioners and the Executive Committees of the two parties. The voters who had filed suit in Chancery Court were allowed to intervene as defendants. The Republican plaintiffs sought to enjoin the enforcement of any judgment to be entered by the Chancery Court until both the plan and the procedures which had led to its adoption had been approved under § 5. They asked that the District Court enforce the state and federal statutes requiring at-large elections or, alternatively, that it devise its own redistricting plan. After trial on the merits, the District Court enjoined the enforcement of the Chancery Court plan and imposed its own plan, rather than ordering at-large elections. The three-judge District Court was composed of Circuit Judge Grady Jolly of the Court of Appeals for the Fifth Circuit, and District Judges Henry Wingate and David Bramlette.

The intervening Democratic voters appealed to the Supreme Court of the United States, and the Republican voters and the Mississippi Republican Party filed a conditional cross-appeal, seeking enforcement of the at-large statute. The Court noted probable jurisdiction of both

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appeals, but denied relief pending appeal, with the result that the 2002 election was held under the District Court's plan. Shortly after the election, I argued the case on behalf of the Republican Party and the Republican plaintiffs. The Court affirmed the District Court's judgment on direct appeal, finding that the Chancery Court plan had never been approved under § 5 and that the Attorney General had not acted improperly in refusing to review the plan while an appeal was pending to the Mississippi Supreme Court. The Court also affirmed on the cross-appeal, although Justice O'Connor, joined by Justice Thomas, would have remanded for enforcement of the at-large statute.

Meanwhile, the parties had briefed the appeal of the Chancery Court judgment before the Supreme Court of Mississippi. I argued the case on behalf of the Republican Party and the intervening Republican voters. After full consideration of the appeal on the merits, the Supreme Court reversed the Chancery Court judgment and adhered to its earlier precedent finding that Mississippi courts lack jurisdiction to impose redistricting plans of their own. The decision effectively removed Mississippi courts altogether from the political controversy surrounding redistricting decisions.

In representing the Mississippi Republican Party in both cases, I was assisted by my associate Christopher Shaw of Phelps Dunbar, who is now at Carroll, Warren and Parker, at 188 E. Capitol St., Jackson, MS 39201, (601)592-1010. In both cases the State Board of Election Commissioners was represented by Attorney General Mike Moore, who is now at 10 Canebrake Blvd., Suite 150, Flowood, MS 39232, and by T. Hunt Cole who is now with Forman Perry Watkins Krutz & Tardy, P.O. Box 22608, Jackson, Mississippi 39225. The Democratic Chancery Court plaintiffs, who intervened in District Court, were represented in both cases by Robert McDuff, 767 N. Congress Street, Jackson, Mississippi 39202, and Carlton Reeves of Pigott Reeves Johnson & Minor, 775 N. Congress Street, Jackson, Mississippi. The Mississippi Democratic Party was represented in both cases by John Griffin Jones and Herbert Lee, Jr., Jones Funderburg & Sessums, P.O. Box 13960, Jackson, MS 39286. The Republican plaintiffs in the District Court were represented by Arthur F. Jernigan and Staci O'Neil of Watson & Jernigan, P.O. Box 23546, Jackson, Mississippi 39225. They were assisted by Keith Ball who is now with Currie, Johnson, Griffin, Gaines & Myers P.O. Box 750, Jackson, MS 39205, and Grant Fox of Fox & Fox P.O. Box 797, Tupelo, Mississippi 38802, who also represented the Republican intervenors in the Chancery Court. The United States was represented as amicus curiae at argument before the Supreme Court of the United States by James A. Feldman of the Office of Solicitor General. Richard F. Scruggs of the Scruggs Law Firm, 20A Courthouse Square, Oxford, Mississippi 38655, assisted with the representation of the Republican intervenors, and participated in oral argument before the Supreme Court of Mississippi.

19. <u>Legal Activities</u>: 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 the question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

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I have very little involvement with business transactions, so all of my legal work involves litigation in one form or another. Because approximately half of my practice involves appellate work, many of my cases have already proceeded through trial before my involvement begins.

However, my appellate cases occasionally settle before oral argument. One of the most significant of those was the asbestos judgment entered against Westinghouse Electric Corporation after a trial before Judge Kathy Jackson in the Circuit Court of Jackson County, Mississippi. Although asbestos cases have been filed in Mississippi for a quarter century, very few of them have actually gone to trial, and even fewer have been appealed. After the Westinghouse trial was fully briefed, the matter was settled the week before oral argument.

I brought another appeal on behalf of the Wayne Farms division of Continental Grain Company after it had been subjected to a $16,000,000 punitive damages judgment for alleged mistreatment of chicken growers in an action litigated before Judge Billy Joe Landrum in the Circuit Court of the Second Judicial of Jones County, Mississippi. The parties settled before oral argument, after the issue had been briefed. I advised Wayne Farms in redrafting its contracts with the growers to include an arbitration provision. We successfully defended challenges to that contract before the United States District Court for the Southern District of Mississippi and a board of arbitrators, and very little litigation has been filed against Wayne Farms in the ensuing years, although a new case is now pending on appeal before the Fifth Circuit.

Probably the most significant litigation to settle before trial was a sequel to the Franklin Telephone litigation described above. TDS invoked a contractual right to be bought out of its interest in Cellular South but the parties litigated over the price. After extensive discovery, the parties reached a resolution before trial.

From 1984 until 1990, I served as a director of the Legal Services Corporation.

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II. FINANCIAL DATA 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 will not receive any payment in any form when I leave Phelps Dunbar; when I stop working, my income stops. I do have a retirement account which is managed for the firm by Fidelity Investments. My understanding is that I retain that retirement account when I leave the firm, but I have made no decision whether to leave it in the hands of Fidelity.

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 own no interest in any business enterprise, other than that which may be held for me in my retirement account by Fidelity. Should I be confirmed, during my period of initial service I will be particularly watchful for actual or potential conflicts arising from cases involving former clients, my former firm, or my financial holdings. While I serve as a judge, in all circumstances, I will follow the letter and spirit of the Code of Conduct for United States Judges, applicable statutes, policies and procedures to avoid any potential or actual conflict of interest arising from my financial arrangements or my prior association with parties or attorneys appearing before the Court.

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, 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 compete the attached financial net worth statement in detail (Add schedules as called for).**

   See Attached Net Worth Statement

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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 been involved in political campaigns ever since my parents took me to Nixon headquarters in Biloxi in 1960. I have been involved, one way or the other, in every significant Republican campaign since then, except between 1976 and 1978, when I served as a law clerk for two Supreme Courts. I have worked for Senator Lott in each of his contested elections, with a special concentration on research. When I returned home from Washington in 1978, I worked in phone banks in Harrison County for Senator Cochran. I conducted my own unsuccessful campaign for the Mississippi House of Representatives in 1979, and I was co-chairman of the Harrison County Reagan-for-President campaign in 1980. I was state counsel for Mississippi in each of President Bush's campaigns in 2000 and 2004. I have served as general counsel of the Mississippi Republican Party for approximately 15 years. I have never held a paid position in any campaign.

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AO-10 (WP)
Rev. 1/2004

FINANCIAL DISCLOSURE REPORT
FOR CALENDAR YEAR 2003

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
Wallace, Michael B.	Fifth Circuit	2/13/2006
4. Title *(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)* Circuit Court Nominee	**5. Report Type (check appropriate type)** X Nomination, Date 02/08/06 ___ Initial ___ Annual ___ Final	**6. Reporting Period** 1/1/2005 to 1/31/2006
7. Chambers or Office Address 111 East Capitol Street, Suite 600, Jackson, Mississippi 39201	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.** Reviewing Officer _____ Date _____	

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

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

	POSITION	NAME OF ORGANIZATION/ENTITY
	NONE (No reportable positions.)	
1	Partner	Phelps Dunbar LLP
2	General Counsel	Mississippi Republican Party
3		

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

	DATE	PARTIES AND TERMS
	NONE (No reportable agreements.)	
1	1987	Phelps Dunbar 401(K) and Savings Plan - Trustee, Fidelity Investments - Self-Directed
2		

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

	DATE	SOURCE AND TYPE	GROSS
A. Filer's Non-Investment Income			
	NONE (No reportable non-investment income.)		
1	2004	Phelps Dunbar	$ 656,871
2	2005	Phelps Dunbar	$ 455,249
3	2005	Federalist Society, Honorarium	$ 2,000
4	2006	Phelps Dunbar	$ 30,000 M/L
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	Wise, Carter, Child & Caraway - Salary	

39984.028

2	2006	Wise, Carter, Child & Caraway - Salary

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Michael B. Wallace	2/13/2006

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	BancorpSouth	Line of Credit	K
2			
3			
4			
5			

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*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

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Michael B. Wallace	2/13/2006

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	BancorpSouth account	C	Interest	L	T	Exempt				
2	Bank Plus account	A	Interest	J	T					
3	Residential rental, Biloxi, MS	A	Rent	K	Q					
4	Commercial rental, Biloxi, MS	A	Rent	J	Q					
5	Fidelity Equity Income Fund	C	Div.	L	T					
6	Fidelity Retirement Money Mkt.	E	Div.	O	T					
7	Miss. College Savings Acct. #1	C	Div.	L	T					
8	Miss. College Savings Acct. #2	B	Div.	L	T					
9	Miss. College Savings Acct.#3	A	Div.	K	T					
10	Miss. College Savings Acct. #4	A	Div.	K	T					
11	USAA Universal Life	C	Div.	M	T					
12	Prudential Universal Life	B	Div.	K	T					
13	Jefferson-Pilot Whole Life	A	Div.	J	T					
14	AIG Annuity	A	Interest	J	T					
15	Schwab Money Market Fund	B	Div.	L	T					
16	Agilent Technologies Inc.		None	J	T					

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

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FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Michael B. Wallace

Date of Report: 2/13/2006

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

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure.	Amt. Code1 (A-H)	Type (e.g., div., rent or int.)	Value Code2 (J-P)	Value Method Code (Q-W)	Type (e.g., buy, sell, merger, redemption)	(2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ **NONE** (No reportable income, assets, or transactions).									
17 Cisco Systems Inc.		None	J	T					
18 Freescale Semicond Class B		None	J	T					
19 GAP Inc.	A	Div.	J	T					
20 Hewlett-Packard Company	A	Div.	J	T					
21 Medcohealth Solutions		None	J	T					
22 Merck & Co Inc.	A	Div.	J	T					
23 Motorola Inc.	A	Div.	J	T					
24 Nokia Corp. Spon ADA F 1 ADR Rep. 1 Nokia Corps	A	Div.	J	T					
25 Texas Instruments Inc.	A	Div.	J	T					
26 Longleaf Partners Fund	A	Div.	K	T					
27 Mutual Qualified Fund	A	Div.	J	T					
28 Eastgroup PPTY Md Corp.	A	Div.	J	T					
29 Columbia Young Investor 1	A	Div.	J	T					
30 Columbia Young Investor 2	A	Div.	J	T					
31 Columbia Young Investor 3	A	Div.	J	T					
32									

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
	Michael B. Wallace	2/13/2006

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 Michael B. Wallace Date 2/9/06

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

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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		83	199	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule	1	046	914	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		97	812
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		228	651
Real estate owned-add schedule		512	242	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		150	000				
Cash value-life insurance		160	624				
Other assets itemize:							
AG Annuity		6	754				
Mississippi College Savings Accounts		184	767				
				Total liabilities		326	463
				Net Worth	1	818	037
Total Assets	2	144	500	Total liabilities and net worth	2	144	500
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	YES		
On leases or contracts (Law Firm Debt)		158	000	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							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Fidelity Retirement Money Market Fund	$ 792,196
Fidelity Equity Income Fund	85,036
Schwab Money Market Fund	76,697
Agilent Technologies, Inc	6,273
Cisco Systems, Inc.	2,971
Freescale Semicod CL B Class B	1,338
GAP Inc.	6,238
Hewlett-Packard Company	5,421
Medcohealth Solutions	379
Merck & Co. Inc.	2,139
Motorola Inc.	11,225
Nokia Corp. Spon. ADR F	3,676
Texas Instruments, Inc.	4,169
Longleaf Partners Fund	15,177
Mutual Qualified FD CL Z	14,388
Eastgroup PPTY MD Corp.	14,949
Columbia Young Investor Fund	4,642
Total Listed Securities	$ 1,046,914

Real Estate Owned	
Personal residence	$ 475,000
Residential rental (50 % interest)	29,575
Commercial rental (11.1% interest)	7,667
Total Real Estate Owned	$ 512,242

Real Estate Mortgages Payable	
Personal residence	$ 228,651

Assets Pledged: Personal residence (mortgage)

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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 of professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

During the two years that I practiced in Biloxi, I frequently represented ordinary individuals who were unable to pay market rates for legal services. Our office was down the block from South Mississippi Legal Services, and people would frequently knock on our door after being told they were too prosperous to be eligible for Legal Services. I represented many of those people in domestic disputes, as well as disputes with landlords and the city government. I have no time records from those years, but I feel confident in saying that I spent much more than the twenty hours a year now recommended by the American Bar Association.

During my six years as director of Legal Services Corporation, the directors were paid a per diem for time spent attending board meetings, but we were not compensated for the substantial amounts of work that we did in preparing for those meetings and discharging other duties, such as testifying before Congress. My firm no longer has records of my non-compensated time for the late 1980s, but I have little doubt that I spent well over 100 hours each year in uncompensated LSC work.

Our firm participates in the pro bono project sponsored by the Mississippi State Bar. For several years, I was pro bono coordinator for the firm, making sure that referrals we received from the project were assigned to the proper lawyers. I did not keep time records on those matters, but I feel confident that during those years I spent more than the twenty hours a year recommended by the ABA.

In 1993 and 1994 I assisted my partner George Healy of our New Orleans office in his work on a capital case. That work ultimately resulted in the reversal of the conviction by the Supreme Court of the United States in Kyles v. Whitley, 514 U.S. 419 (1995). Because of my experience at the Supreme Court, I offered advice and assistance in the preparation of briefs and arguments in that case.

The pro bono rule which governs my ethics responsibilities is Rule 6.1 of the Mississippi Rules of Professional Conduct. The text of that rule includes governmental and educational organizations among the clients eligible for pro bono services, and it also recognizes the value of services provided at a reduced rate. I have complied with these aspects of Rule 6.1 in several ways.

From 1997 to 2003, I assisted in coaching the mock trial team at St. Andrew's Episcopal School, which participated in the mock trial contest sponsored by the Mississippi State Bar. For two years, my daughter was a member of the team, but I coached both before and after

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her participation in the project. The team twice won the state championship and went as far as the national semifinals.

I also provide free services as general counsel of the Mississippi Republican Party, which performs a governmental service by administering primary elections pursuant to Mississippi law. Executive committees at the municipal, county, and state level are made up of volunteers, and they frequently seek my assistance in understanding their statutory responsibilities. The free services I provide in this regard always amount to more than twenty hours a year.

I generally do not litigate for free on behalf of the Mississippi Republican Party, although I have done so in some emergency matters of brief duration. I have been paid for my services in redistricting disputes, but I do so at a substantially reduced rate from my regular fee. I have also been asked to represent the State of Mississippi and its officers in various litigated matters, and I have provided those services at an identical reduced rate.

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 discriminated - - 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 belong to no 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).**

   There is no selection commission. Senator Lott called to inform me that he and Senator Cochran had included my name on a list sent to the President. I met with Judge Gonzalez and his incoming successor as White House Counsel, Harriet Meiers. I later met with staff from the Department of Justice. After completing nomination paperwork and after a background investigation was conducted, I was informed by the White House that the President would be sending my nomination forward. My nomination was submitted to the Senate on February 8, 2006.

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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 criticisms that alleges that the judicial branch as usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of the "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.**

From the time I was first hired by the Chancery Clerk's office at the age of 18, I have been employed in various governmental capacities at the local, state, and federal level. I have served in a staff position in the judicial and legislative branches, and I was appointed by President Reagan and confirmed by the Senate to an executive position. That experience has given me some insight into how our government is supposed to work and how the courts fit into that system.

The preamble to the Constitution confirms that our government has been established by the people of the United States, and our courts, like other parts of that government, play the role that the people have instructed them to play. The courts must examine their jurisdiction in every case, because, where the people have not authorized

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the courts to speak, the courts must remain silent. The jurisdiction of the federal courts was authorized by the people in the Constitution itself, but it must be conferred in particular cases by act of Congress. If Congress has not affirmatively authorized its jurisdiction, a federal court can do nothing. Even where Congress has authorized jurisdiction, a federal court must determine whether the Constitution allows such jurisdiction to be granted; where it does not, the court cannot act.

Where jurisdiction does exist, the courts must follow the law the people have prescribed, whether that law is found in the Constitution or in applicable statutes. Although state courts have authority to create law through the process of common law adjudication, the federal courts possess that authority only in the rarest of instances. The federal courts should always be seeking to apply the will of the people, because, as Hamilton observed, they have no will of their own.

Proper application of these principles will usually, but not always, result in the enforcement of the people's will as expressed by statute. The people in their Constitution delegated certain powers to Congress and reserved others to the States. The wisdom of particular exercises of those powers is no concern of the federal courts. However, the Constitution does place certain restrictions on the exercise of those powers, and Congress has imposed many others on state and local governments. It is not activism to enforce constitutional restrictions or statutory restrictions, when authorized by the Constitution. It is a judge's sworn duty.

A court should hesitate before rejecting the work of the people's elected representatives. Those representatives are equally sworn to defend the Constitution, and it is often difficult to determine how the framers of the Constitution would have intended their work to apply to the problems affecting later generations. Indeed, the fact that Congress or a plurality of state legislatures has adopted a position on a particular issue is by itself strong evidence that their ancestors in adopting the Constitution would not have intended a different position to prevail. However, the framers did believe in limited government, and they intended to restrict their own authority and that of their descendants to take particular actions, particularly those detrimental to religious and racial groups and those who had acquired property by honest toil. Where a legislative body or an executive at any level of government neglects those restrictions, the courts have no choice but to enforce them.

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AFFIDAVIT

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

Feb. 23, 2006 (DATE)

Michael B. Wallace (NAME)

FREDA GAIL NATIONS NOTARY PUBLIC COPIAH COUNTY, MS

Freda Gail Nations (NOTARY)

Notary Public State of Mississippi At Large
My Commission Expires: August 4, 2006
Bonded Thru Holden, Brooks & Garland, Inc.

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Chairman SPECTER. Mr. Wallace, the American Bar Association has raised some very serious allegations and I want to give you every opportunity to respond.

On page 13 of the ABA's testimony, they say that you "have not shown a commitment to equal justice under law." Further, the ABA says that you do not "understand or care about issues central to the lives of the poor, minorities, the marginalized, the have-nots, and those who did not share your view of the world."

Of particular concern, according to the American Bar Association, was your positions taken relating to the Voting Rights Act, and more specifically the case of *Jordan* v. *Winter*.

The American Bar Association reports that you advanced legal positions that were "not well founded" and that you did so in a manner that suggested you were "advancing your own personal views on the interpretation of the Voting Rights Act without regard to the law or the ultimate merits of the litigation and the impact on African-American citizens of Mississippi."

How would you respond to that American Bar Association testimony?

Mr. WALLACE. Thank you, Mr. Chairman. There is a lot in there, the general conclusions reached in that report about my lack of commitment to equal justice under the law and my lack of sympathy for the problems of the poor.

I was raised in a small law office in Biloxi. I know about the problems of equal justice and I know about the poor. It is a small town. I had the opportunity, with my father and with his partners, including Ms. Hornsby, who is here today, to see people who needed help and to have the opportunity to give it to them.

If I were not interested in equal justice and in the rights of the poor, I never would have gone home to Mississippi. I could have easily stayed up here in Washington and represented rich people for a lot more than I get for representing the same people in Mississippi.

But I went home because I want to make Mississippi a better place to live. I think I have been able to help do that. It is important to me to see to it that it is a better place for my children.

The litigation under the Voting Rights Act was litigation that I undertook on behalf of my client, the Mississippi Republican Party. I have been active in that party my whole life.

My father was one of those people who came home from World War II, they had seen how the rest of the world worked, they saw the things that the rest of the world had that we did not have in Mississippi, and they set their minds about to bringing us into the modern times. That is why he was Eisenhower Chairman in Harrison County in 1952.

So when I came home, it was natural that when the party was looking for representation and consultation with a Mississippi delegation, I was hired to defend the *Jordan* v. *Winter* case.

In that case, before we got involved, the Federal court had already created the first black majority district in Mississippi and had created another district that had a substantial minority population. All we did on behalf of the Mississippi Republican Party was to seek to preserve the plan that the court had already put into place.

The arguments we made were fair. The arguments we made were discussed with the Senate when I was first confirmed to Legal Services when I had my first hearings back in 1983, because we had these same voting rights discussions then.

The Senate knew what positions I was going to take on behalf of my client. It imposed no impediment to my confirmation then. I think we litigated fairly, fully, and properly on behalf of the party, and any criticism based on my representing my client to the best of my ability is unfounded in this case.

Chairman SPECTER. Mr. Wallace, on pages 14 and 15 of the ABA's testimony they report concerns about another Voting Rights case, *Branch* v. *Smith*. The ABA states, "Mr. Wallace argued for the creation of at-large districts for the election of Mississippi Congressional representatives, a position the lawyer said would have eliminated the only majority African-American single-member district in Mississippi.

Lawyers state that the U.S. Supreme Court rejected the position advanced by Mr. Wallace in *Branch* v. *Smith* that allowed single-member districts in Mississippi." Is the ABA's representation of your role in this litigation accurate?

Mr. WALLACE. I do not think it is entirely accurate, Mr. Chairman. The Republican Party had been sued in that litigation and we were obliged to take a position. The position we took, is that an Act of Congress ought to be enforced.

It may surprise you to know that there is an Act of Congress on the books that says whenever a State loses representation after a Census, if the legislature cannot agree on a redistricting, everyone must be elected at-large. That is what the statute says.

Having served here in the Congress, as Senator Lott mentioned, my daughter is the fourth generation of Wallaces to serve on a staff position here. I respect statutes passed by Congress. We put that statute before the court. The trial court decided not to enforce it.

But we were not seeking to eliminate an African-American representation in Congress. We told the Supreme Court, and I told Justice Ginsberg when she asked me in an oral argument, will this not dilute minority votes, and I said there are plenty of mechanisms that our courts have used in Mississippi to make sure that minorities can be elected, even from white majority multi-member districts.

I told her there was no doubt that such an election under that statute would produce an African-American Congressman. It was never our intention to take away that representation, and it would not have been the effect had the court decided the statute applied in that circumstance.

Chairman SPECTER. On page 16 of the ABA's testimony there is a list of unattributed quotes that are provided with no context. There is certain questioning of the process of unattributed quotes, but the American Bar Association has put this into the public record and, as a matter of fairness, you ought to have an opportunity to make whatever response you choose.

These unattributed quotes are as follows: "He has an instinct contempt for the socially weak, including the poor and minorities"; "the poor may be in trouble, he is just not open to those issues";

"he does not like poor people or anyone not just like him"; "he will be like 1965, not 2006."

You are invited to make a response.

Mr. WALLACE. Mr. Chairman, it is very difficult to respond to partial quotations from unknown people. But I am happy to say that we have four distinguished lawyers from Mississippi here today who know me, who know what kind of man I am.

I was pleased to see that Mr. McDuff, in his testimony, acknowledged that I have always been civil and cooperative to him and people with whom he is working, and I do not have any doubt Mr. Rhodes will tell you the same thing. I think when you finish talking to those four gentlemen today, you will have a true picture of my character and my behavior.

Chairman SPECTER. On page 17 of the ABA's testimony you were described as "narrow-minded in your views, lacking in tolerance, entrenched in your views, insensitive, intolerant, high-handed, not willing to yield to logic or facts, rigid, inflexible, overly opinionated, one-dimensioned, locking into a point of view and not open to the position of others."

You are invited to respond.

Mr. WALLACE. I find those charges difficult to understand, Mr. Chairman. Like most litigators, most of the cases I take get settled. Litigators vigorously represent their clients' interests. They fight hard for the positions their clients take. But at the end of the day, once the facts in the law have been thoroughly explored, most cases settle, and most of mine do.

If I were as narrow-minded and as intransigent as those quotes would make out, my cases would not settle, and I probably would not get hired. Not too many clients can afford to try case after case just for the fun of it.

Chairman SPECTER. Mr. Wallace, on page 19 of the ABA testimony your ability to be free from bias is called into question. Many express concerns about your ability to follow precedent or to put your own personal views aside when judging cases.

The ABA testimony further says that you "had filed pleadings and taken positions that certainly did little or nothing to advance the merits of the case," and suggesting that you were "deviating from existing precedent" in some of those positions.

Would you care to respond to that?

Mr. WALLACE. Two things, Mr. Chairman. Yes, I would be happy to. Freedom from bias is a difficult thing for me to understand. I grew up in a difficult time in Mississippi, as many of these other witnesses did.

I remember quite clearly my mother explaining to me in no uncertain terms how people are expected to believe, and I think I have maintained those standards throughout my life. If I had any sort of bias, I would not be a partner in the most integrated law firm in the State. I would not send my children to the most integrated school in the State.

I would not, as Reverend Crudup points out in his letter, have represented my church in helping to build a biracial Christian coalition in Jackson, Mississippi to improve communications and relations in the community. None of that would have happened if I were a person of bias.

As far as precedent is concerned, I worked for two excellent appellate judges, Justice Walker and Justice Rehnquist. They taught me the meaning of precedent. They taught me how to read it and they taught me to respect it. As a lawyer, that is important. When my clients come to me, they want to know what the law is.

They do not want to hear a lot of theory, they want to know what they can do and what they cannot do. If you do not respect precedent, you cannot give them a good answer to that question. I think I have been able to give my clients good answers.

Chairman SPECTER. Mr. Wallace, it has been reported that you were interviewed on three separate occasions by ABA investigators. The ABA Standing Committee on the Federal Judiciary's Handbook requires that a nominee be given a "full opportunity to rebut the adverse information and provide any additional information bearing on it." Do you believe that you were given an opportunity to rebut the information, as required by the ABA Handbook?

Mr. WALLACE. No, I do not believe that, Senator. I certainly do not think that I needed to know the names of the individuals who gave the quotes that you said, but the ABA testimony contains specific charges about specific litigation that was not discussed with me in the initial interview.

In the third interview we had last week, I was given enough information to deal with one charge. They revealed to me that a former Bar president in New Hampshire had said that I behaved improperly in presiding over a Legal Services Committee hearing held in New Hampshire.

With that information, I was able to get the transcript from the committee, from the Legal Services Corporation, and to forward it to the committee. It is 243 pages of the most boring detail work in amending the Code of Federal Regulations that anyone can imagine. There was not any support.

We worked all day and we came to a reasonably amicable result. But I do not think anybody who could read those 243 pages could possibly find it to support the charges that Mr. Ross made against me.

Chairman SPECTER. As has been widely publicized, you received a "Not Qualified" rating from the ABA. Can you tell the Committee your opinion of the rating and the process, as you see it from your point of view, that the ABA used to arrive at that rating? Essentially, do you think it was a fair evaluation and an accurate rating?

Mr. WALLACE. Senator, I'm not a member of the ABA. I do not really have standing to tell them how to do their business. I have told you that I do not believe that they lived up to the standards they have expressed, that you will be given an opportunity to rebut the charges against you. I think I should have had that opportunity. I do not think that I had it.

But as to whether or not I am qualified, I would just ask once again that you consider the testimony of the Mississippians who know me, the two Senators who you have just heard from, the four lawyers on both sides of the issue that you are going to hear from in a few minutes.

I think, if I were as unqualified as the association makes out to be, it is unlikely that I would have had the opportunity to serve three Presidents of the United States that I have. I am proud of

their confidence in me and I hope that, at the end of the day, this Committee will share it.

Chairman SPECTER. Did the ABA, in your opinion, consider all the relevant information? Specifically, do you know whether the Standing Committee contacted people you asked them to contact?

Mr. WALLACE. I know that at the outset they did not. My friend, Judge McConnell from the Tenth Circuit, who is my daughter Molly's godfather, called up before the hearing and said, why has the ABA not called me? I said, I do not know. The first investigator came to see me. I said, please be sure to call Judge McConnell. That did not happen.

When the third set of investigators came to see me, I said, please call Judge McConnell. At that point I know that it did happen, but there were other people that I mentioned that I would hope they would have called. Some of them I know were not calling. Some of them, I have not heard from.

Chairman SPECTER. Can you be specific as to who they were?

Mr. WALLACE. Certainly. Ms. Askew was a member of the Board of Visitors at Georgetown, one of my classmates, who is the General Counsel at Georgetown. I asked her to go ahead and call their General Counsel. I know that did not happen.

Now, I asked a couple other people. I do know they called Judge McConnell this last week. I do not know whether they called any of the other folks that I mentioned. But at the outset, no, they just did not call the folks I suggested to them.

Chairman SPECTER. Anybody else, specifically?

Mr. WALLACE. I specifically asked them to call Bob Bauer. Bob was my counterpart on the Democratic side of the aisle during the impeachment proceedings. He represented the Democratic Leader, Senator Daschle.

The argument had been made that I could not work with people, and I suggested that that was a pretty tough crucible in which to work. I think that he and I worked together pretty well. I do not know whether or not that happened. I have not talked to Bob this week.

I also suggested they might call the dean at the Maryland Law School, who is a friend of our family. I do not know whether that happened. I have not had a chance to find out. This has only been since last Monday that they last came to see me. I think that is a full list, Mr. Chairman.

Chairman SPECTER. Mr. Wallace, as you see it, do you believe that there were material misstatements of fact in the ABA testimony regarding your background?

Mr. WALLACE. I certainly think their characterizations of some of the cases that I have been involved in are substantially inaccurate. As to the opinions of people, I do not think there can be such a thing as an accurate opinion. I mean, they may very well be reporting the opinions they heard.

I do not think those opinions are well founded. The difficulty is, I never was told the supposed facts behind those opinions, so there was no opportunity to explore them and to rebut them.

Chairman SPECTER. Mr. Wallace, it has been reported that while working with then-Representative Lott, you helped write a letter urging the Reagan administration to defend Bob Jones University's

tax-exempt status, despite its racially discriminatory policies. That has led some to argue that you took a discriminatory position.

What response, if any, would you care to make on that issue?

Mr. WALLACE. Congressman Lott, as he then was, was particularly interested in that litigation because church schools in Mississippi were being threatened with the loss of their exemption, not because they were discriminatory, but because they did not meet extremely onerous burdens of proving that they were not.

The Congressman expressed that feeling to the President. He filed a brief as a pro se with the Supreme Court of the United States, which is there for anybody to read.

It is not a defense of discrimination, it is merely a description of principles of statutory construction which said that religious and educational institutions are entitled to an exemption.

It denied that the Internal Revenue Service was entitled to make public policy. But the concern that Congressman Lott had, as expressed in his brief, was that executive agencies should follow the law.

The fact that a discriminatory institution might benefit from that is no more an endorsement of discrimination than a lawyer is endorsing murder when he defends an accused client, as I have had the opportunity to assist my partners in doing in pro bono cases in Mississippi.

Chairman SPECTER. Mr. Wallace, in 1983 testimony you are reported to have expressed general support for the Voting Rights Act, saying that it has "had a tremendous effect in my home State of Mississippi with regard to its primary goal of assuring people" the right to vote.

But you took exception with Section 2 of the Act, to the extent that it measured discrimination in terms of disparate results rather than showing a discriminatory intent. Some have contended that that was a cramped or unduly restrictive—

Mr. WALLACE.—said to be an unfair interpretation, it is certainly not something I hid from the Committee. I remember having that discussion at my confirmation hearings with Senator Hatch, who, as you will remember, worked very hard on the Voting Rights Act amendments in 1982.

I made quite plain to the Committee the positions that I would be taking for my clients in the Mississippi litigation, and neither Senator Hatch nor the Senate as a whole considered those positions out of bounds.

Ultimately, those positions were rejected by several courts. The first court to reject them was in the Louisiana litigation that year, and the lawyer that made the same arguments I did, Martin Feldman, was promptly confirmed to the District Court bench in Louisiana, where he still sits.

So the Senate most familiar with the 1982 Act, while perhaps disagreeing with the positions we took on behalf of our clients, certainly did not consider those positions disqualifying.

Chairman SPECTER. Mr. Wallace, it is reported that you assisted then-Congressman Lott in taking a position, in a letter dated October 21, 1981, to prevent the Department of Justice from sending Federal inspectors into the Mississippi County jails.

Would you please give the Committee what the circumstances were of that letter and what position was taken, and what your participation, if any, was?

Mr. WALLACE. I would be happy to, Mr. Chairman. The letter did not object to the sending of inspectors into Mississippi County jails, as I recall. I do not have it in front of me, but I think it is in the record from my confirmation hearings 20 years ago. In fact, according to the newspapers, inspectors went into the county jails within a few days after that letter.

The inspectors apparently did not see anything particularly wrong at the time. Then a couple of days later, there was a fire in the Biloxi jail in which a number of prisoners died. It was a terrible and tragic event, but it was completely unrelated to Congressman Lott's letter. He did not ask that inspectors stay out of the jails and, in fact, the inspectors went into the jails.

His concern was that Deputy Attorney Schmultz had made commitments to him about the ongoing prison litigation in Mississippi, and those commitments had not been kept by the lawyers in the field.

A Member of Congress, as you can imagine, is quite concerned that commitments made by the executive branch should be kept. But there was no request in that letter that inspectors should stay out of Mississippi jails.

Chairman SPECTER. Mr. Wallace, in your 1983 hearing for Community Legal Service Director, the issue was raised that you could not answer in full, expressing confidentiality concerns. Is there any confidentiality concern which is limiting your testimony today in any way on that subject?

Mr. WALLACE. No, Mr. Chairman. As you heard Senator Lott here today, he does not believe that the work done for his staff is a proper subject of inquiry, but he has not claimed any privilege with regard to that. I am free to be open, and I have been open in accordance with my oath to this Committee.

Chairman SPECTER. With respect to your tenure as Director of Legal Services Corporation, there are statements that you sought to impose unreasonable limits on the type of matters that the Legal Services Corporation could support and sometimes voiced support of its outright abolition.

First of all, did you ever argue that it should be abolished?

Mr. WALLACE. To the contrary, Mr. Chairman. I told President Reagan's staff, when my nomination was under consideration, that I supported the corporation. I told Senator Hatch's committee, under oath, that I supported the corporation. I did then and I do now. I have never acted in any way inconsistent with that oath. I did attempt to reform the corporation.

As Senator Lott has said here, I think the reforms that we put into place, taking the corporation out of an active role in politics, putting it into the kind of ordinary services to the poor, have helped to preserve it.

In the paper in Jackson yesterday it said the local Legal Services folks were trying to keep people from being evicted from a HUD-funded project. That is exactly the sort of thing Legal Services ought to be doing, and Congress expects it to do.

Indeed, by the end of the program, President Reagan had abandoned his opposition to legal services. He supported its continuation. He put it back in the budget. I think that is because of the successful work we did in reforming the corporation, and I think in large portion that is why the corporation is still here today.

Chairman SPECTER. Did you ever contend that the Community Legal Services' operation was unconstitutional?

Mr. WALLACE. I did not contend that the corporation was unconstitutional. I did suggest that I thought the appointment mechanism for the board had real constitutional problems, and here is why.

When Congress set it up, it did not set up the corporation as a traditional, independent agency, the sort that has traditionally been upheld by the U.S. Supreme Court.

It is not unusual for Congress to set up executive branch agencies where the President cannot fire the particular officers, but by declaring that we were not Federal officers, Congress immunized us to impeachment.

The directors of the Legal Services Corporation, so far as I can tell, can neither be fired by the President, nor impeached and removed by the Congress. It seems to me very unwise to attribute $300 million of taxpayers' money every year to folks where there is no emergency mechanism for removing them when the time arises. That was my objection, not to the corporation, but to its particular mode of government.

Chairman SPECTER. Mr. Wallace, a question was raised about certain lobbying activities said to have been undertaken by you. Senator Redman, the Ranking Republican on the Appropriations Subcommittee on Oversight for the Legal Services Corporation raised an issue as to the propriety of people on the board who lobby.

What response, if any, would you care to make to that?

Mr. WALLACE. If it is the instance that has been reported in some of the writings about me over the last month, there was a lobbying effort at one point to change our appropriation. We had consistently been appropriated about $300 million a year.

In our last year, as I told the Committee, President Reagan said, all right, I do not want to abolish the corporation any more, I want to keep it, but I want to fund it at $250 million.

I thought that when the President of the United States would come five-sixths of the way to meet us, that I thought it was incumbent upon us to go the rest of the way to meet him. We agreed. Our board agreed to endorse the President's budget.

And, yes, we sent people up here to try to promote that budget. Every agency in the government has lobbyists to support its budget. They usually call them the Office of Legislative Affairs, or something like that. But what they are, is lobbyists. We had them and we used them.

Chairman SPECTER. Mr. Wallace, I have taken a good deal more time than is customary, except for Supreme Court nominees, almost up to the 30-minute mark, but have sought to put before the Committee all of the issues known to the staff and to me to give you an opportunity to respond.

Just one more comment. I have expressed publicly the concerns about the first report by the American Bar Association because key officials had very substantial public controversy with you in the past, and I was concerned about the impartiality.

Accordingly, I wrote to the ABA on two occasions, June 22 and August 7 of this year, and received a detailed reply on September 14 from Theodore Olson on behalf of the American Bar Association's Standing Committee on the Federal Judiciary, where they have made very substantial changes and have conducted an additional inquiry.

I do not want to overly focus on that, but I do want to make, without objection, these letters a part of the record. They may be the subject of further inquiry when the ABA testifies later.

Let me yield at this time to Senator Kennedy.

Senator KENNEDY. Thank you, Mr. Chairman.

Welcome.

Mr. WALLACE. Thank you, Senator Kennedy.

Senator KENNEDY. Just following along on the Legal Service program, you supported the $55 million cut in 1988, as I understand it.

Mr. WALLACE. As I just explained, President Reagan came up five-sixths of the way and I thought it made sense to meet him the rest of the way.

Senator KENNEDY. And then you asked for a reduction of another $13 million the following year. Is that right?

Mr. WALLACE. I do not remember that, Senator, but it may be the case. I have not had a reason to look at that record in a long time.

Senator KENNEDY. Well, the record is that there was a reduction, and you supported that.

Mr. WALLACE. I have no recollection of what budget request we made in 1989, but I am sure the record will show.

Senator KENNEDY. And you opposed, in the Legal Service, the National Support Centers which assist the youth, the migrants, the Native Americans that deal with employment, housing, and health care for low-income Americans. You wanted to eliminate that program.

Mr. WALLACE. We wanted to take the funds that were available to us and concentrate them on services in local programs. We reoriented funds to the local programs as opposed to these national think tanks. Yes, Senator, we did that.

Senator KENNEDY. Did you pay outside lawyers to lobby Congress to reduce the corporation's budget?

Mr. WALLACE. As I explained, we did have lobbyists who reduced the corporation's budget. I think some of them may have been hired on a contract basis, as Federal help often is.

Senator KENNEDY. So you did not mind spending the money to hire the lawyers to reduce the corporation's budget, but you were cutting back on the programs, such as the National Support Centers that were serving some of the poorest of the poor.

Mr. WALLACE. Having secured President Reagan's support for the program, I thought it was important to get folks up here and try to explain it to the Congress. And sometimes, yes, that costs money, Senator Kennedy.

Senator KENNEDY. Well, sometimes it does not. Sometimes it does not.

Mr. WALLACE. That is true.

Senator KENNEDY. As someone who has followed the Legal Service program very closely, Warren Rudman, during that period of time, very familiar with the program during the time on it, we did not seem, with those board members, had the confidence of the members of the Congress.

Warren Rudman was very, very much involved in the support of those. I do not remember. I do not know of other agencies that go out and hire lawyers to reduce the budget of different committees.

If we could get back, in response to questions on the Bob Jones case, you, I think, commented to the Chairman about that. That case obviously, as you know, is enormously important for civil rights because it held that private organizations that discriminate based on race are not entitled to the tax-exempt status.

Most Americans would think that that was a matter of simple fairness. If you discriminate, you are not a charitable organization. Most Americans would understand that. So, you do not get the tax-exemption intended for charitable groups.

So Republican and Democratic administrations, dating back to the Nixon administration, agreed with that basic principle. In fact, even when the Reagan administration decided to abandon the long-standing rule in the Supreme Court, prominent administration officials strongly objected, including Ted Olson, who was then the head of the Office of Legal Counsel, Roscoe Edgar, Commissioner of the IRS, and the Acting Solicitor General Lawrence Wallace.

But you disagreed. Even after the Supreme Court ruled eight to one that discriminatory institutions are not entitled to tax-exemption, as I understand it, you continued to hold the opposite view.

When you were nominated to head the Legal Services Corporation you testified that "I personally believe that the interpretation of the Internal Revenue Code advanced by the Department of Justice which supported tax-exempt status for the university was correct."

Mr. WALLACE. That was my testimony, Senator. I think if you read Congressman Lott's brief, you will see he never argued that discriminatory institutions were charitable. I do not think he ever made that argument, and I do not think I ever endorsed it.

What he did say, is that it was stipulated in that case that Bob Jones was both religious and educational, and that was important to Congressman Lott because church schools in Mississippi were being harassed by the IRS. It was a statutory argument that, under the statute passed by Congress, it is sufficient to be religious or educational. It is not necessary that you also be charitable.

The question of whether or not it was a good idea to give a tax deduction to a discriminatory institution was not the subject of Congressman Lott's brief. He discussed only the proper interpretation of the statute.

Senator KENNEDY. Well, do you still believe that private schools that discriminate based on race deserve to be tax-exempt?

Mr. WALLACE. I have never believed that, Senator. I simply said that I believed that the administration interpreted the statute cor-

rectly in saying that religious and educational institutions, under the statute adopted by Congress, were entitled to that exemption.

Senator KENNEDY. And this is even after the Supreme Court ruled eight to one that discriminatory institutions are not entitled to the tax-exemption?

Mr. WALLACE. I think that my testimony came after that, and I said that I had been persuaded by the brief the administration had filed.

Senator KENNEDY. Well, let me get it straight. So you are saying that after the Supreme Court, your position changed. I think that is important to note, because I had understood you to continue to hold an opposite view from the Supreme Court decision. Am I wrong on that?

Mr. WALLACE. I mean, obviously, Senator, the Supreme Court has spoken and the law means what the Supreme Court says it means.

Senator KENNEDY. But what did you say? What was your position? Did you at that time change and alter your position or did you reaffirm your earlier position?

Mr. WALLACE. The position I took in the testimony then, which again was after the Supreme Court had acted, is that I thought the administration brief and Congressman Lott's brief fairly applied the statute. But I never said that I thought, as a personal opinion, discriminatory schools ought to get tax exemptions. I have never said that, and I do not say it now.

Senator KENNEDY. But the Supreme Court ruled eight to one.

Mr. WALLACE. Yes.

Senator KENNEDY. And you continue to hold your own view. You find that there are legal reasons for it. And I understand that, but I just wanted to be able to be clear for the record.

Mr. WALLACE. And the dissenter and the concurrence, I guess, at the Supreme Court also saw some legal reasons for it. Yes, Senator.

Senator KENNEDY. All right.

Coming back to the Section 2 of the Voting Rights Act that outlaws the voting requirements that have the purpose or effect of discriminating based on race, it is one of the most effective aspects of the Voting Rights Act, as you will remember, in 1982 Congress amended Section 2 to overturn the *Mobile* case. The Voting Rights Act includes an effects test.

That amendment outlawed voting practices whose effects would deny or dilute voting rights because of race, national origin, or language minority. Under the amendment, the voters can stop discriminatory practice without needing to dig up the ancient records to prove the intent, which may have designated the system earlier. That was not the position of Senator Hatch. I respect that. We have had long discussions and debates on it. I understand that.

Our goal was to finally dismantle the voting—those that believed that we ought to have the effects test and believed that the 1965 Act, which talked about prohibiting discrimination, had been interpreted in that particular way up to the *Mobile* case.

But anyway, in the 1982 Act, our goal was to dismantle Jim Crow, the voting systems that excluded minorities from participation in the democracy.

Now, you have consistently opposed the Section 2 in efforts to end the minority vote dilution, and not just in the early days of your career. We see it even in positions you took as recently as 2003. I am going to give you a chance to react.

Press reports state that as the Congressional staff in 1981 and 1982, you worked hard to keep Congress from amending Section 2 to include the effects test. I can understand that. We had a Supreme Court nominee here that had the same position recently.

When that effort failed, you attacked Section 2 in court. In *Jordan* v. *Winter*, you argued that Congress did not amend Section 2 to include an effects test, and that minorities still had to prove discriminatory intent if they wanted to stop practice to dilute their vote.

The court called your argument "meritless" and held that it "runs counter to the plain language of amended Section 2, its legislative history and judicial and scholarly interpretation."

In 1991, in *Chisholm* v. *Edwards*, you argue that Section 2 does not apply to judicial elections at all. We had a brief comment on that exchange with the Chairman.

The Supreme Court rejected that view in *Chisholm* v. *Romer*, noting that the 1982 amendments to Section 2 was intended to broaden the law, and that it would be anomalous to read it to withdraw judicial elections from coverage.

In 2003, you argued in *Branch* v. *Smith* that when the legislature fails to redistrict to reflect the new Census data, the court must order at-large elections. Justice Scalia wrote the opinion rejecting your view.

Had you prevailed, the only Mississippi district with an African-American would have been destroyed and it would have been far more difficult for African-Americans to elect their chosen candidates.

Now, I am particularly troubled by your repeated position that Congress did not enact an effects test when it amended Section 2 in 1982. You should have known otherwise, having served in the Congress that the amendment was enacted.

Do you still believe that Section 2 of the Voting Rights Act prohibits only intentional discrimination?

Mr. WALLACE. Well, no, I do not believe that. The Supreme Court has resolved that to the contrary.

Senator KENNEDY. You also argued that including an effects test in Section 2 would be unconstitutional. Is that still your position?

Mr. WALLACE. Well, I do not think that was ever my position. That was a position that was taken on behalf of the Republican Party in Mississippi, as I said. It was an identical position taken by the Louisiana government in the case of *Major* v. *Trinh*.

These were issues that were thoroughly discussed at my last confirmation hearings. At that time I think they were well within the bounds of argument that a lawyer is entitled to make on behalf of his client.

Senator KENNEDY. Well, the question was, you also argued that including an effects test would be unconstitutional. The question is, is that still your position? I am not asking you whether you had that position previously. Is that still your position?

Mr. WALLACE. My answer is, it was never my position, Senator Kennedy. It was my client's position, which I argued on behalf of my client, as did other litigants in our part of the world at that time.

Senator KENNEDY. So you accept that Section 2 applies to judicial elections?

Mr. WALLACE. The Fifth Circuit originally ruled that it did not. I had actually forgotten I had been involved in that case until I read the long work those folks had done yesterday.

I feel sorry for putting them through all of that to dig that up. But I was asked to participate in that case by our democratic Attorney General, Mike Moore.

Mississippi was in that litigation. I was representing the State of Mississippi as an amicus in that case, and that was the position that the Democratic Attorney General and the State of Mississippi took. It was a position that originally was accepted by the Fifth Circuit.

Senator KENNEDY. Well, as I say, that is not the position—you are saying, individually, that was not your position then, but you were taking it as an attorney. It is not your position now. You understand and support the constitutionality of the effects test.

Mr. WALLACE. I absolutely can.

Senator KENNEDY. All right. In 2003, on the *Branch* v. *Smith* case, you made an argument that would have eliminated Mississippi's only African-American district by relying on the 1941 statute that clearly had been superseded.

You had that exchange with the Chairman here. You said a lot of people do not know it, but there was a 1941 statute. But what you did not explain in response to the Chairman, was that that had been superseded. In rejecting your position by the 1967 statute, it was superseded.

So when you told the Chairman that a lot of people do not know about it, but there is a law on the books, a 1941 Act that permitted this kind of action, you did not mention to the Chairman that there had been a 1967 Act that superseded the 1941 Act.

Mr. WALLACE. With respect, Senator, that was the argument that the losing side made in that case. By a six to three vote, the Supreme Court decided that the 1967 Act did not repeal, by implication, the 1941 Act. But they went on to decide that the 1941 Act, though still on the books and applicable in certain cases, did not apply here.

Senator KENNEDY. Well, I hope the Chairman will have a chance to just hear what you said now and what is your response, because I listened very carefully and one would gather from your response to the Chairman—he is a superb lawyer and he can make his own judgment—but in rejecting your position in that case, Justice Scalia wrote that your view was contradicted both by the historic context of Section 2's enactment and by the consistent understanding of all courts in the nearly 40 years since that enactment.

So those positions seem to go far beyond the fair advocacy of your client and create a strong impression that somehow you are pursuing an agenda.

Mr. WALLACE. Well, Senator, the only agenda I have ever pursued as a lawyer is the agenda of my client, in that case, the Mis-

sissippi Republican Party. As I say, there were six members of the court that agreed with us that the 1941 statute is still valid.

Justice O'Connor and Justice Thomas agreed that it applied in this case, so we were wrong, but we were certainly not beyond the bounds of fair advocacy if we were able to have so much of our argument accepted by several members of the Supreme Court of the United States.

Senator KENNEDY. Is there any indication in your background and experience where you took the other side on Voting Rights cases? Did you ever represent plaintiffs in those cases?

Mr. WALLACE. Oh, absolutely, Senator.

Senator KENNEDY. Have we got the list of those cases?

Mr. WALLACE. It is in my questionnaire. I was hired by the governing board of a black majority county, Claiborne County. When the State legislature took away the right to tax the most valuable asset in their county, the Grand Gulf Nuclear Power Plant, they hired me to file a Voting Rights Act case on their behalf as plaintiffs to restore that power.

We eventually settled the case. The county has been collecting, I think, an extra $4 or $5 million a year as a result of the positions I was asked to take on their behalf in a race discrimination voting rights case.

Senator KENNEDY. I know there are others. I just have two other areas I want to cover quickly, which I will try to do. In 1989, the Legal Times wrote that you expressed resentment under Section 5, the landmark law requiring States with a history of discrimination obtain Federal pre-clearance for voting changes.

You reportedly told the Legal Times, "It bothers me to see Mississippi discriminated against," referring to Section 5's requirement, "on necessary voting changes with the Federal Government."

Do you still think Section 5 of the Voting Rights Act discriminates against the covered States?

Mr. WALLACE. I do not remember talking to the Legal Times. I do remember what Governor Winter said when he came here 25 years ago.

Senator KENNEDY. I am not asking you that.

Mr. WALLACE. I agree that Mississippi is ready for self-government, Senator. But the Congress has seen to the contrary. Congress has been careful that no judge outside the District of Columbia is allowed to enforce Section 5.

So anything I may have said on Section 5 in the past will have no effect on anything that I may rule, if I am confirmed to the Fifth Circuit, because you have denied that court jurisdiction over such cases.

Senator KENNEDY. Well, I have the document here that says "Wallace does acknowledge his resentment that Mississippi, along with other States, must submit redistricting plans to the Department of Justice." That is your—

Mr. WALLACE. I do not think resentment is the word. I have told you what I think, Senator.

Senator KENNEDY. But you still support Section 5?

Mr. WALLACE. It is a decision that Congress has made, and that Congress has full authority to make. That is what you are elected

for, and Section 2 of the Fifteenth Amendment gives you that authority.

Senator KENNEDY. Finally, on prison safety, I know you responded to the Chair on this issue. When you worked for Senator Lott when he was a member of the House, you sent the Department of Justice a letter which bears your initials, "MBW", objecting to the department's investigation of county jails in Mississippi and asking the department to allow the counties to meet lower safety standards in their jails. You understand that?

Mr. WALLACE. I think that was part of the letter that Congressman Lott then sent. Certainly all county jails wold be required to meet the standards set by the Constitution. That is what the Justice Department has the right to enforce.

Senator KENNEDY. Well, I assume, therefore, that you acknowledge that with the initials, the letter with "MBW" on it, was your letter.

You also demanded to know why the investigating attorney had not been fired. That was in the letter. The letter led, as I understand it, the Justice Department to halt the investigation. Less than a year later, the fire occurred. It was a year later, a fire occurred in a county jail. Is that the sequence that you understand?

Mr. WALLACE. I do not think so, Senator. First of all, Congressman Lott's letter I drafted in my capacity as a staffer. It went up through his chief of staff and he sent it to General Schmultz.

But I do not think that any investigations were stopped as a result of that letter, as I believe that there were inspectors in the jail within a couple of days after that letter was sent and within a couple of weeks before the fire actually took place. The inspections did not stop.

Senator BROWNBACK. Senator Kennedy, could I inquire, we have other members that want to ask some questions, too. I wanted to make sure that you were able to ask as many questions as you desired.

Senator KENNEDY. The Senator is quite appropriate. I was kind of surprised actually when the Chair went on for 25 minutes, myself. But I understand the good Senators, and I thank you.

Mr. WALLACE. Thank you, Senator.

Senator BROWNBACK. Thank you. Thank you, Senator Kennedy.

Mr. Wallace, I want to apologize in advance for not being here for a good portion of your presentation, so some of what I may ask may have been already covered. But if you will indulge me and still respond nonetheless, I would appreciate that. I think Senator Sessions has some questions as well.

I gather from some of the discussion here, and certainly just on basic race relations have been called into question here. However, in looking at your background, I look at that and I do not see the basis in your background of people raising that, what you have attempted to do on race relations and to try to improve those.

Would you articulate those issues to me and for me of your own background? Also, I think it would be useful, just for the record and for those that would watch and be interested in that issue as well, since it has come up so much.

Mr. WALLACE. As best I can tell, Senator, it all relates from the Voting Rights litigation that I was just discussing with Senator

Kennedy. Most of that I have done on behalf of the Mississippi Republican Party. Sometimes the positions the Party takes are adverse to black voters, but not always.

We have litigated on the same sides of some issues over the last three Censuses. Again, not everything I do is on behalf of the Republican Party. I have been hired by the Democratic Attorney General in Mississippi to help in such cases.

But the ones that people seem to notice are the ones where the Republican Party gets into conflict with some of the African-American plaintiffs. That does happen. That seems to be the basis of the concern. I do not think anybody has ever accused me of having any personal racial prejudice. It is not true.

I am involved in an integrated firm, an integrated school. You have got letters from two African-American ministers in the file to the Committee explaining the work we do on biracial communications in the Christian community in Jackson.

Just this weekend, our church started, as we always do every fall, in partnership with the New Hope Baptist Church, an African-American church, to build a Habitat house in downtown Jackson. We work on it about eight weekends every fall. We have done it for years, and we did it again this week.

So I think I am active in promoting racial reconciliation in Jackson, and have been for a long time. I think the criticism stems entirely from the litigation I was discussing with Senator Kennedy.

Senator BROWNBACK. Thank you.

Senator Sessions?

Senator SESSIONS. Well, I think you are correct.

If anybody says the slightest word that the Voting Rights Act has any invalidity to it, has the slightest comma, jot, or tittle, it is not perfect, then you are a racist, that you are insensitive. That is not so.

The Supreme Court has wrestled with these issues— lots of these issues. The Congress has voted, and I voted, to extend the Voting Rights Act. But I do believe that the State of Alabama, in my heart of hearts, will give people a fair chance in court today, unlike what they would have gotten 50 years ago. I think there has been a big change in the South and a lot of people feel strongly about that. But we want harmony, we want progress.

I was just glad to see your response to Senator Brownback's comments about the biracial outreach organization that you have been a part of, that your children attend integrated schools, that your church went with the New Hope Baptist Church to Honduras to do relief work and help poor people in Honduras. Did you attend any of those?

Mr. WALLACE. Senator, this year was my fourth year to go to Honduras. It is the second time that I have gone down with New Hope.

Senator SESSIONS. Let me just ask you, one of your critics apparently said secretly through the ABA Committee that you do not like poor people. Were the people you were trying to help down there poor people or rich people?

Mr. WALLACE. They are mighty poor, Senator. That is one reason I am happy now that all of my family, at one time or another, has gone down there with me. They need to see the responsibilities that

we have in this world, and I am glad to say that blacks and whites in Mississippi cooperate in meeting those responsibilities in Honduras and in downtown Jackson.

Senator SESSIONS. Well, I would just say this. The ABA's rating, in my opinion, should not be an embarrassment to you, but should be an embarrassment to them. I have defended the ABA. I am not opposed to their process of seeking confidential information. But all of us have to know that when they do that, there are dangers in doing that. People have an opportunity to spread untruths and the nominee has no real ability to respond to it.

But you got your undergraduate degree with Honors from Harvard University. You graduated from the University of Virginia School of Law, where you were on the Law Review there. You clerked for a Supreme Court Justice in Mississippi, and you clerked for the Chief Justice of the U.S. Supreme Court.

Let me ask you this. After that experience, do you think you would have been able to obtain a job in a Washington or New York law firm if you so chose?

Mr. WALLACE. I suppose I could have, Senator. I never thought to try. I think I am probably the only Supreme Court law clerk in the last 50 years who never got so much as a free meal out of it. I was always going home to Biloxi. That is what I did. I am proud to have gone home to try to make Mississippi a better place. I have worked with a lot of lawyers in New York and Washington, and I think I could hold my own.

Senator SESSIONS. I believe you could, too. I think that is why very, very important clients have chosen you to represent them in very, very important pieces of litigation. I think that is a testament to you.

I want to ask you to just clarify something. You said that some of the litigation you had took positions that would be adverse to the position taken by black voters' lawyers in the case. When we do these cases, laws have to be decided, the Constitution has to be decided. Somebody wins and somebody loses. Is that not true?

Mr. WALLACE. I have a friend who said the lawyer who first hired him pointed up at all of the reporters on the shelf and said, "Son, some lawyer lost every one of those cases in those books." It has been a helpful reminder, since I have lost a few of those myself.

Senator SESSIONS. I thought it was an ideal of the ABA that a person should be an aggressive advocate for their client, to assert principles that might be victorious in litigation, and that that should not be held against the lawyer. Certainly that is true with regard to representing the most disreputable criminal.

Lawyers are not condemned for trying to defend criminals, murderers, and rapists. Does that concern you that there seems to be a movement here to blame you for litigating a redistricting case in the way that your client would like you to litigate it?

Mr. WALLACE. As I have said, Senator, I do not know how I could possibly comment on what has impelled the ABA and the folks that have talked to them. I do understand it to be my responsibility as a lawyer to zealously represent my clients—that is one of the canons of ethics—and to do so to the maximum extent feasible within

the bounds of the law. I have always done that and no one has ever said anything to the contrary.

Senator SESSIONS. Well, I see one case that you handled, *Burrell* v. *State Tax Commission*, in which apparently you represented a predominantly African-American county.

Mr. WALLACE. Yes.

Senator SESSIONS. This was a county in which, I suppose, the officials and the majority in the county were African-American. They contested an unfair tax matter they thought was harmful to them, the poor people in that county. Which side did you take?

Mr. WALLACE. I took the side of the elected officials and their voters in Claiborne County, the African-American majority county. I filed a Voting Rights case on their behalf. I filed a race discrimination case in State court.

After litigating all the way to the Supreme Court of the United States and the Supreme Court of Mississippi, we were able to negotiate with the legislature a much fairer allocation of those tax dollars. I think that is a result with which my client was happy. I zealously represented those clients, as I have the Mississippi Republican Party.

Senator SESSIONS. Well, I think that is what good lawyers do. That is something that the American Bar Association should recognize, I believe.

What about this case you took on behalf of an African-American man convicted of murder and sentenced to death, and you argued that, you briefed that, before the U.S. Supreme Court?

Mr. WALLACE. I do not want to claim too much. My partner, "Bunky" Healy in our New Orleans office worked on that case for many years. When it was ready to go to the Supreme Court he asked me to help, because of my experience at the Supreme Court, in preparing the cert. petition and preparing the brief, and I did that.

Senator SESSIONS. It is a fairly exhaustive thing if you go before the U.S. Supreme Court.

Mr. WALLACE. It is.

Senator SESSIONS. Everything has to be exactly correct.

Mr. WALLACE. And we succeeded in obtaining a new trial for the plaintiff. He was condemned to death for murder. We thought that the State had not properly disclosed exculpatory evidence and we were able to convince the Supreme Court that that was right.

Once again, representing people in a murder case does not mean you are in favor of murder. You represent your client the best way you possibly can, and in that way we were successful at the highest court in the land.

Senator SESSIONS. Was this a rich white male or was this a poor African-American?

Mr. WALLACE. He was a poor African-American.

Senator SESSIONS. And you gave your time and effort to helping get his conviction reversed?

Mr. WALLACE. That was my responsibility as a lawyer. Yes, sir, I did that.

Senator SESSIONS. Mr. Chairman, I have gone past my time. But I think there is so much in here that we could continue to go and deal with that shows how wrong Mr. Wallace's critics are.

It is just breathtaking to me to hear this criticism of Mr. Wallace—a person of your ability, who worked for Democratic Attorney General Mike Moore who was here testifying about the tobacco case, he was a lead plaintiff lawyer in that case for the whole country; you have represented African-American counties; you have represented people condemned to death.

You turned down the opportunity to go to work for some of the biggest law firms in America at these incredible wages and prices they pay, and you have given yourself to Mississippi.

If you have an occasion every now and then to express some doubt about any jot and tittle of the Voting Rights Act, that does not make you a racist, because there are some problems with that Act that all of us recognize and it can be improved, and in the years to come I am sure it will.

Thank you, Mr. Chairman.

Senator BROWNBACK. Thank you, Senator Sessions.

I do want to enter into the record for Senator Leahy a statement. He regrets he had to leave because of the late hour and other commitments.

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

Senator BROWNBACK. I want to turn this over to Senator Cornyn. I am going to have to slip out for a little bit myself.

Senator Cornyn?

Senator CORNYN. Thank you, Mr. Chairman.

Welcome, and welcome to your family.

Mr. WALLACE. Thank you, Senator.

Senator CORNYN. I am afraid I am experiencing a little sense of deja vu here today, having sat through the confirmation hearings of Chief Justice Roberts and Justice Sam Alito, and hearing some of what I would consider unsubstantiated, rather wild allegations made against particularly Judge Alito.

Actually, I was reminded, in hearing about some of what appear to be anonymous, unsubstantiated allegations being made against you that unfortunately seem to have been included without much critique or reservation in the ABA report, of Senator Graham's memorable exchange with Judge Alito. I am going to ask you the same question that he asked him.

Mr. Wallace, are you a bigot?

Mr. WALLACE. No, sir.

Senator CORNYN. There are people who appear to be calling you a bigot.

Mr. WALLACE. I do not think anybody that knows me calls me a bigot, Senator.

Senator CORNYN. Well, Mr. Wallace, this is my problem. I am reading page 10 of the American Bar Association testimony that we are going to hear today, and I just want to read a couple of paragraphs and ask for your reaction.

On page 10, the first full paragraph, "The investigation revealed that Mr. Wallace has the highest professional competence. Mr. Wallace possesses outstanding academic credentials, having graduated from Harvard University in 1973 and the University of Virginia Law School in 1976. He was a law clerk to former Chief Justice William H. Rehnquist from 1977 to 1978.

Mr. Wallace is often described as a legal scholar of strong intellect, a quality lawyer with a quick legal mind. He is a highly skilled and experienced trial and appellate lawyer who is considered a go-to lawyer on certain litigation matters in Mississippi.

As discussed below, even those persons with serious concerns regarding Mr. Wallace's judicial temperament describe him as a brilliant lawyer, one who could ably master legal issues before him as a judge.

The investigation also established that Mr. Wallace possesses the integrity to serve on the bench. His integrity was described by many as 'impeccable,' 'outstanding', 'the highest,' 'absolute,' and 'solid'. Persons throughout the legal community stated that Mr. Wallace is a fine family man, an excellent husband and father."

Well, you can imagine how confused I am when I read that the American Bar Association has said that you are a person of integrity and repeating the glowing accolades that I have just recounted on page 10 in these two paragraphs in their testimony, but at the same time seem to allege that you do not have the temperament to deliver equal justice under the law, that you have insufficient regard for poor people and minorities.

If that were true, Mr. Wallace, I would think that you were not a man of integrity. I do not see how you can be a person of integrity and hold those kind of views with which you have been charged.

Can you perhaps try to help me understand what appear to be irreconcilable contentions about you?

Mr. WALLACE. I assume that the writer of that testimony must have a different understanding of integrity than the one you and I share, Senator. Integrity means wholeness.

It means that you behave the same way, honorably and consistently all the time. A person who has integrity cannot possibly treat people differently on no basis whatsoever.

Two weeks ago, the sermon was on the book of James, the part where James tells people not to be respecters of persons, not to treat rich people and poor people differently.

If there had been white people and black people in Palestine and Israel in those days, he would have said that, too. You cannot possibly behave your life consistently with that admonition and not be a person of integrity. I mean, that is what I think integrity means. It forecloses the kind of charges that the association has brought against me.

Senator CORNYN. Well, the other concern I have, Mr. Wallace, is that, of course, the way the American Bar Association has conducted its review means that the persons who made these statements against you in claiming your lack of integrity—that is my interpretation—are anonymous.

The American Bar Association's own rules, as I understand them, appear to foreclose using information in its report that is not presented to the nominee so that the nominee can refute it. Do you read the rules differently from me?

Mr. WALLACE. No, I read them the same way, Senator.

When I raised that with the last group of investigators who came to see me, they told me that I did not understand the rules. So,

I hope you will be able to get them to explain them to you while they are here today.

Senator CORNYN. I hope so, too.

You have been criticized for the clients that you have chosen to represent. Do you feel like that is a fair criticism for a lawyer who takes on the responsibilities as an advocate in an adversarial system of justice?

Mr. WALLACE. I do not think it is fair, and certainly in my early days in Biloxi you did not get to necessarily choose to represent clients. In a small town, if somebody needs help, you represent them, and that is what we did. But I have been happy to represent people who come to me.

As I said, I have been hired on several occasions by our Democratic Attorney General in Mississippi. We work together. We know each other. Even though we may be on different sides of the political fence, when we can be of assistance to each other we do that, and I have been happy to work with people from all parts of the political spectrum in Mississippi in my law practice.

Senator CORNYN. You have also been criticized for making legal arguments that did not ultimately prevail in court. Do you know any lawyer that has not made at least one legal argument that has not prevailed in some court?

Mr. WALLACE. None that has ever been to court. You do not keep a thousand batting average very long when you are a litigator.

Senator CORNYN. Do you understand that the American Bar Association's own standards on professional legal conduct state that "a lawyer acts properly in arguing for an extension, modification, or reversal of existing law"?

Mr. WALLACE. I do understand that to be the rule. I think it is also the rule under Rule 11. I have done that on occasion, and I have always been careful to identify to the court when I am doing that, that there is authority adverse to me and we ask you to reconsider that authority and come to a different conclusion.

But I have never hidden authority from the court. I have gone to the court and said, if you adhere to authority I am going to lose. That is a fact. But here is why I think it ought to be reconsidered. That is something that lawyers not only are entitled to do, but in certain circumstances it is part of the zealous representation of your clients that you are required to do.

Senator CORNYN. Getting back again to these anonymous allegations made without apparent, or at least in the record, without substantiation or further elaboration in the record, as a lawyer practicing in the State and Federal courts, in Mississippi and elsewhere, you are familiar with the hearsay rule, right?

Mr. WALLACE. I am, indeed.

Senator CORNYN. And do you know any court in the Nation that would admit anonymous allegations for proof of the truth of the matter asserted therein?

Mr. WALLACE. There are about 25 exceptions to the hearsay rule, as the Senator knows. My poor daughter had to study them all last year. But I do not know of any one that would apply to this hearsay, Senator.

Senator CORNYN. I think she agrees with you.

[Laughter.]

Mr. WALLACE. That it was a bad thing she had to study? I will bet she does.

Senator CORNYN. Well, you also stand accused, Mr. Wallace, of representing unpopular clients. How do you plead to that?

Mr. WALLACE. I do not doubt that I have done that on multiple occasions.

Senator CORNYN. Do you know any lawyer that has represented universally popular clients?

Mr. WALLACE. If a lawyer has represented only people that are popular, he is probably not paying close enough attention to his responsibilities to the public and to the Bar. I am not saying it is impossible, but I do not know of anybody.

Senator CORNYN. Tell me about some of the unpopular clients that you have represented.

Mr. WALLACE. Well, we have already discussed the capital case that we brought that we defended. Actually, we defend capital cases regularly. One of my partners in Jackson came to us from the Capital Defense Fund and he still does pro bono work. He is an excellent appellate lawyer. Part of my job is to help him with his briefs and his arguments and get him ready to go to court.

But certainly the case we brought on behalf of Claiborne County was unpopular. The legislature had gone so far to try to amend the Constitution to take this money away from this majority-black county, and that is what made it into a Voting Rights Act case, because there was an election, and they convinced hundreds of thousands of people in Mississippi they ought to take this money away. I do not think I have ever had a client who had more people vote against him in an election than Claiborne County did. So, I would say they were unpopular.

Senator CORNYN. Mr. Wallace, one of the things that concerns me about the American Bar Association report, is apparently both the Chairman of the Standing Committee, as well as the former president of the American Bar Association had been locked in some rather pitched battles with you when you were on the Board of Directors for the Legal Services Corporation.

I am sorry I had to step out a little bit earlier. But have you had a chance to explain a little about what those fights were about?

Mr. WALLACE. I do not think I have, Senator. We had a lot of difficulties. I explained in general terms that what we were doing in the Reagan administration was trying to reform Legal Services, to take it out of political litigation and put it into providing the ordinary needs for ordinary people. We had opposition to that.

Both Mr. Greco and Mr. Tober testified before our board and before our Committee against the changes that we were proposing. We heard them. I think we heard them politely.

I think we asked them questions about their position that were fair questions under the circumstances. Whether that has had any effect on what they have done in their offices in the ABA, I just have no way of knowing. I do not think I have seen either one of them in 20 years.

Senator CORNYN. As Chairman of the Legal Services Corporation, you advocated greater accountability and more effective legal services to the poor within the organization.

Can you explain how you envisioned improving the quality of legal services to the poor by adopting the measures that you were advocating or the reforms that you were seeking to accomplish?

Mr. WALLACE. Two things were very important to me. In the early 1980s, you will remember—and I suppose we always have budget difficulties in this country—it was a very tight budget time and the appropriation of the corporation had been cut back.

I saw no prospect that Congress was ever going to be able to appropriate all the funds to meet all the needs of poor people under a pure appropriations system. We went out and promoted other ways to provide legal services to the poor. We helped start the IOLTA program that many States use now, Interest on Lawyers Trust Accounts. I thought that might be something you would run into in Texas.

Senator CORNYN. No. I am familiar with it. I just wanted to make sure the record was clear and we did not lapse into acronyms that no one understood.

Mr. WALLACE. Thank you. I apologize for that. We worked very hard to get private lawyers involved in giving pro bono services. Our program in the Mississippi Bar, I think, has won awards on several occasions for involving private attorneys in services to the poor.

In order to be able to reach out to other sources of funding, I thought—and I think Congress believed—that we needed to cut back on cases that were widely perceived as political; whether they were or not might not make so much difference as the fact that they were perceived that way.

By getting Legal Services out of those political cases, we have had new sources of funding in Mississippi. The Chief Justice and the Supreme Court have imposed rules that collect more funds for legal services for the poor. The legislature has passed, and the Governor has signed, increases in filing fees to give more funds.

I supported those programs. They could do that because they knew that now that money would go to Legal Services programs who would put it to good use and who would keep it out of politics. That is what I was trying to do 20 years ago. I think we finally succeeded.

Senator CORNYN. And by your success, you mean that you have been able to provide a means of legal representation to people who otherwise would not be able to afford it?

Mr. WALLACE. That is what I was concerned with 20 years ago. I am still concerned with it. I am proud to say that it is still being provided in more and different ways than it had ever been before.

Senator CORNYN. Mr. Wallace, some of those who criticize your tenure at the Legal Services Corporation fail to remember that much of what you implemented during that time was essentially ratified when Congress, in 1996, enacted similar reform legislation. How, in your opinion, have these reforms improved Legal Services to the disadvantaged?

Mr. WALLACE. Well, I am proud to say that the reforms that we did through a regulatory fashion apparently worked so well—and of course I had been gone 6 years by the time that bill was passed—that Congress did adopt them into law. I think they are continuing to work well today.

As I have just said, I think I cannot tell you what is going on in 49 other States, but in Mississippi I think we are very happy and very proud of the work, both of our Legal Services programs and of the volunteer work being done by members of the Bar.

Senator CORNYN. Mr. Chairman, I would ask unanimous consent to make part of the record a letter addressed to Michael Greco, immediate past president of the American Bar Association, and copies sent to both the Chairman and Ranking Member, signed by 288 leaders in the American Bar Association expressing concern that the American Bar Association violated its own rules in the manner in which they conducted the evaluation in this case, and also they happened to mention the re-rating of Brett Kavenaugh, who now serves in the DC Court of Appeals, and raises the pertinent question about the obligation of a member of the Standing Committee to recuse themselves when there is a conflict of interest, or perhaps the appearance of partiality of a nominee, and I would ask that that be made a part of the record.

Senator SESSIONS. It will be made a part of the record.

Senator CORNYN. Thank you, Mr. Wallace. I believe that is all I have for now.

Senator SESSIONS. Thank you, Senator.

Mr. Wallace, I want to followup a little bit on that conversation you have had with Senator Cornyn, one of the able members of our Committee and former Justice on the Texas Supreme Court. I believe I heard you say that when you were Chairman of the board of the Legal Services Corporation—attempting to effect a reform of that corporation to focus its attention on actually representing poor people and to reduce the number of political-type lawsuits they were filing, reforms which I think most Americans supported at that time and still do—that one or more of the members of the ABA who were involved in your rating testified before you to criticize the decisions you made at that time or to oppose the decisions you made.

Mr. WALLACE. Mr. Tober and Mr. Greco both testified before our board. Ms. Tucker organized a panel discussion held out in Honolulu at the ABA meeting, the sum and substance of which was quite strident criticism of our board. Yes, Senator.

Senator SESSIONS. And let me get this straight. Are they involved in the Committee to do your evaluation?

Mr. WALLACE. Mr. Greco appointed them. Mr. Tober was the chairman, Ms. Tucker is a member.

Senator SESSIONS. So all three are directly involved in your evaluation and they were the ones who were leaders coming to Washington, DC to testify in opposition, conducting hearings in Hawaii at a panel at the ABA meeting to criticize your decisions that were really ratified by this Congress as time went on.

Mr. WALLACE. I believe that to be the case, Senator.

Senator SESSIONS. I would offer for the record an article from the Wall Street Journal of July 26, the lead editorial. "An ABA Hit Job," is the title of it. The subtitle is, "Political Payback Against a Judicial Nominee".

They trace the difficulties you are having today to the fact that the ABA did not agree with your positions at the time you headed the Legal Services Corporation. I think you handled yourself well

in that difficult time, and I do believe Congress has ratified your decisions.

I do believe that the Legal Services Corporation does not have the kind of criticism and carping that was constant before those reforms occurred.

Mr. WALLACE. Well, thank you, Senator. If I may say, just in case somebody puts in the New York Times editorial to the contrary later, I do think it is pretty good for a Biloxi boy to be batting 500 in Manhattan.

Senator SESSIONS. Well, you cannot win them all, as they say.

Mr. WALLACE. I do not expect to.

Senator SESSIONS. Just briefly, because I made comments about the Voting Rights Act. The Voting Rights Act, I believe, was pivotal in the South in empowering the African-American community. What are your thoughts, briefly, about the importance of that Act in changing the nature of politics and justice and equality in the South?

Mr. WALLACE. They are the same as I stated them 23 years ago. I do not think you could grow up in the South and not know how important it is to bring people into the system.

Our problem in Mississippi, when I grew up, is that we had a closed political system. It was not just closed against black people, it was closed against a lot of other people as well.

We worked very hard to build a competitive system in Mississippi. The expansion of the electorate did a great deal for that. I think Republican Members of Congress fully supported the Voting Rights Act. They put when people could vote. When two parties could compete for their vote, then you get a better system of government. I am proud of what we have done with that in Mississippi.

I think if you see how Mississippi has conducted itself over the last year in very difficult circumstances, Republican and Democrat, black and white, I think you show that we have matured, that we are able to cooperate, even while we compete. The Voting Rights Act has been a very big part of what we have been able to accomplish.

Senator SESSIONS. Any criticism you have is not for the utility or the validity of the Act.

Mr. WALLACE. None whatsoever, Senator.

Senator SESSIONS. Thank you. All right.

Do you have anything else you would like to add to this gathering before we go to the next panel?

Mr. WALLACE. Mr. Chairman, I deeply appreciate the committee's patience and their courtesy. I know how late it is in the session. If there has ever been a Committee that has had more difficult work to do under any session of Congress than this one, I do not know what it is. You all have had a hard task all year.

You have been unfailingly courteous to me throughout this process and I deeply appreciate your making the time to consider my nomination before you go home.

Senator SESSIONS. Very good. Thank you very much.

We will go to the next panel. Judge Bryant, I believe, is next.

STATEMENT OF VANESSA LYNNE BRYANT, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF CONNECTICUT

Judge BRYANT. Good afternoon. I would like to thank the Chairman and the members of the Committee for affording me this opportunity to further my nomination to serve as a judge of the District Court of the State of Connecticut. I would also like to thank my two Senators Christopher Dodd and Joseph Lieberman, as well as my Governor, Jody Rell, for their support for me in this endeavor.

My family is here present with me: my husband, Tracy Rich, who is the executive vice president and general counsel of the Phoenix Companies in Hartford, Connecticut; my son, Bryant Rich, who is a senior at Bowdoin College; my daughter, Dana Rich, who is a sophomore at Oberlin College; my mother, Muriel Bryant, who is retired, residing in Farmington, Connecticut, after retiring from Waldenbook as the most tenured employee ever in the company's history.

[The biographical information of Judge Bryant follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Vanessa Lynne Bryant

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

Residence: Avon, CT

Office: 95 Washington Street Hartford, CT 06103

3. Date and place of birth.

January 27, 1954 Queens, 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).

Mr. Tracy Leon Rich
Executive Vice President and General Counsel
Phoenix Companies, Inc
1 American Row
Hartford CT 06106

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

Howard University 1972 - 1975, B.A. 1975
University of Connecticut School of Law 1975-1978, J.D. 1978

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.

9/98 to Present, State of Connecticut Judicial Branch
10/96 to 9/98, Vanessa Bryant, Chapter 13 Trustee
6/92 to 9/98, Hawkins, Delafield & Wood
5/90 to 6/92, Connecticut Housing Finance Authority
9/89 to 5/90, Shawmut Bank
10/81 to 9/89, Aetna Life and Casualty Company
8/78 to 10/81, Day Berry and Howard
6/77 to 9/77, Day Berry and Howard
6/76 to 9/76, City of Stamford Connecticut Corporation Counsel
6/75 to 9/75, City of Stamford Connecticut

39984.040

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.

Quinnipiac College School of Law Moot Court Honor Society Judge
Chairperson Hartford Connecticut Human Relations Commission
Hartford's Representative to Capitol Region Conference of Governments Regional Planning Commission
Executive Committee Member and Strategic Planning Committee Chair United Way of the Capitol Area, Inc.

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.

Connecticut Bar Association
American Bar Association
George W. Crawford Law Association
Connecticut Judicial Branch Civil Task Force
Oliver Ellsworth Inn of Court
Board of Directors Connecticut Judges Association

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

Other than the organizations previously listed, I belong to no other 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.

Connecticut Superior Court, 1979 to Present
United States District Court for the District of Connecticut, 1980 to Present

There have been no lapses in membership.

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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.

Official judicial decisions only.

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

I am in good health.
My last physical examination was performed on April 18, 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.

After having applied to and having been deemed qualified by the Connecticut judicial selection commission in 1995, I was nominated, and after confirmation by the legislature, appointed by the governor to the Superior Court, a trial court of original jurisdiction in 1998. My term expires in April 2007.

Presiding Judge Civil Division Hartford Judicial District, September 2004 to Present
Administrative Judge Litchfield Judicial District, May 2003 to September 2004
Presiding Judge Civil Division New Britain Judicial District, Sept. 2002 to May 2003
Presiding Judge Waterbury Drug Court, September 1998 to March 2000
Presiding Judge Waterbury Domestic Violence Docket, September 1998 to Sept. 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.

A. Ten Significant Opinions

1. Avalon Bay v. Brookfield Planning & Zoning Commission
CV 02 0513808
July 23, 2004

This was an appeal of a decision of the Town of Brookfield Planning and Zoning Commission's denial of a variance and permit to construct an affordable housing development.

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The commission cited several valid public health and safety concerns. The commission met its burden of proving, based upon the evidence in the record, that its decisions were necessary to protect substantial public interests in health, safety, or other matters which the commission may legally consider. I also ruled that most of the cited public interests clearly outweigh the need for affordable housing; however, I found that the commission failed to prove that the public interests could not be protected by reasonable changes to the affordable housing development as required by law. I remanded the case for further commission proceedings.

2. AFSCME Council Local 4 Local 704 v. State of Connecticut Department of Public Health.
CV010805240
April 11, 2002
Affirmed: 80 Conn. App. 1

This case came before me on the union's motion to vacate an arbitration award. The parties failed to impose or disclose the contractual deadline for rendering the arbitration decision either in the submission or in the arbitration proceedings. The arbitrator rendered an award in favor of the state within a reasonable time after the parties jointly requested a ruling. After the adverse ruling, the union challenged the award, claiming that it was untimely and thus the arbitrator had no jurisdiction. I ruled that the union waived its contractual right to claim that the award was untimely. An appeal was taken to the Appellate Court which reversed my decision. That decision was appealed to the Supreme Court which reversed the Appellate Court and reinstated my decision.

3. Town of Enfield v. Enfield Shade Tobacco, LLC
CV 010809006.
May 8, 2002
Affirmed: 265 Conn. 376

Property owners brought action seeking to prevent defendants from storing, launching and landing helicopters on residentially and industrially zoned real property. I granted an injunction, ruling that the storage and use of the helicopter were at variance with the local zoning regulations. Defendants appealed. The Supreme Court affirmed my decision holding that: the helicopter used for crop dusting was not farm equipment; landing and launching helicopter was not permitted in residential area; and launching and landing of helicopter constituted operation of a heliport under zoning ordinance.

4. John Maurer v. Peter Gadiel et al.
CV 020087357S.
August 27, 2004.

This was a motion for summary judgment in a defamation action brought by a person who was a public official at the time of the alleged defamation. The defendants admitted that they wrote and caused to be published disparaging letters, but claim that they are entitled to summary judgment on several bases. First, they were exercising their First Amendment right of

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free speech. Second, the claimed that the plaintiff could not prove malice since they did not know him personally before the statement was made. Third, they argued that the letter was not extreme and outrageous. The motion was denied as there were genuine issues of material fact germane to the elements of defamation of a public official and further that, viewing those facts in a light most favorable to the plaintiff, there was probable cause that the claimed defamation occurred.

5. State v. New England Health Care Employees Union District Local 1199,
CV 000804025
March 14, 2993
Affirmed: 271 Conn. 127

Health care employees union moved to confirm an arbitration award reinstating a Department of Mental Retardation employee. The employee had been dismissed as a result of an incident in which he restrained an unruly client. The client struggled to break free and fell into a chair sustaining minor injury. I granted the application, ruling that the arbitration award did not violate public policy in favor of care and protection of persons with mental retardation under the particular facts of this case. The Supreme Court affirmed that decision.

6. Evans v Testa Development Associates
CV 010806425.
September 26, 2001

A prejudgment remedy of attachment was granted in this case alleging vexatious litigation. The defendants were a developer and its attorney. The plaintiffs had appealed a planning and zoning commission decision granting the developer's subdivision application. The developer brought suit against the plaintiffs while their appeal was pending. In order to bring a vexatious litigation suit a plaintiff must allege that the previous lawsuit terminated in his favor. In addition, the plaintiffs were immune from suit under the Noerr-Pennington doctrine which protects the rights of citizens to petition their government. I ruled that there was probable cause to sustain the suit and granted the prejudgment remedy.

7. Metropolitan District Commission, v. Connecticut Resources Recovery Authority.
CV 010809181.
October 12, 2001

This was an application for an injunction. The plaintiff sought to enjoin the defendant from exercising its rights under the contract. The application was denied based on the unlikelihood of prevailing on the merits due to the clarity and lack of ambiguity of the contract. I also denied the extraordinary remedy for failure to prove that irreparable injury as distinguished from compensatory damages would result from the absence of an injunction.

8. Statewide Grievance Committee v. Frederick Baldwin
CV 010807111
November 3, 2001

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This was a presentment of an attorney by the state grievance committee. The respondent attorney was accused of numerous violations of the Rules of Professional Conduct (the "Rules"). I found that he repeatedly over-drew his client funds account, repeatedly failed to comply with court orders, breached his duty of candor to the court, and failed to maintain and disclose accounting records which he was required to maintain and disclose to the grievance committee in accordance with the Rules. On the basis of those factual findings, I ruled that he posed a potential danger to his clients and to the public. After balancing the mitigating and aggravating factors, I suspended the respondent and appointed a trustee to protect the interests of his clients. I also ruled that the respondent could not be reinstated to the bar until he attended continuing legal education courses addressing his practice deficiencies and he demonstrated a knowledge of and an ability to adhere to the offended Rules.

9. Jane Doe v. Bradley Memorial Hospital
CV 010509999
July 24, 2003

This was a motion for summary judgment as to five counts of a complaint sounding in medical malpractice and ordinary negligence, negligent hiring, negligent infliction of emotional distress, Connecticut Unfair Trade Practices Act and loss of a consortium. Summary judgment was denied as to all counts. I ruled that the expert disclosure was timely and that expert disclosure was not necessary as the complaint was pleaded in the alterative of ordinary negligence. Summary judgment was denied as to negligent hiring as there was a genuine issue as to material fact, namely the alleged offender's employment status with the hospital at the time of the alleged negligence. There was also an issue of fact as to causation of any emotional distress suffered by the plaintiff. The Unfair Trade Practices Act count was sufficiently plead to implicate entrepreneurial act liability. Summary judgment was denied as to the loss of consortium claim as it is derivative of the other counts which the court previously ruled must be decided by the trier of fact.

10. Cameron v. New Hartford Planning and Zoning Commission
No. CV030091123
July 2, 2004

This was a zoning appeal. After determining that the court had jurisdiction, I considered the five legal challenges posed by the appellant. I ruled that the appellant failed to prove that: 1) the Commission failed to comply with the town plans of development, 2) a projected or connection street would be inappropriate in the proposed subdivision development, 3) the Commission failed to comply with the street planning and dead-end street sections of its subdivision regulations, 4) the Commission improperly reviewed the subdivision application to insure that potential connection options were utilized and that adequate options were left for future development and 5) the Commission failed to require the applicant to show that no feasible location for a projection of the proposed town road existed along the entire common boundary of the parties' property. I dismissed the appeal.

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B. List of Decisions Reversed:

855 Conn. 127	State v. New England Health Care Employees Union, Dist. 1199, AFL-CIO
8 Conn.App. 464	Allstate Ins. Co. v. Berube
Conn.App. 728	Birch v. Williams
80 Conn.App. 1	AFSCME, Council 4, Local 704 v. Department Of Public Health Supreme court Affirmed, reversing Appellate court. See above
76 Conn.App. 306	Sevigny v. Dibble Hollow Condominium Ass'n, Inc.
261 Conn. 673	Journal Publishing .o., Inc. v. Hartford Courant Co.
60 Conn.App. 761	State v. Wayne

C. List of Cases Decided Involving Constitutional Issues:

1. State v. Lindo, Murder trial. Rulings from the bench
   Affirmed: 75 Conn.App. 408, 816 A.2d 641 (2003

The defendant, Bryan Lindo appealed the judgment of conviction of murder, rendered after a jury trial over which I presided. On appeal, the defendant claimed that he was deprived of his rights to due process and a fair trial pursuant to the Fourteenth Amendment to the United States Constitution and Article First, § 8, of the Constitution of Connecticut because of prosecutorial misconduct during closing argument and cross-examination, thereby precluding the jury from giving fair consideration to his affirmative defense of extreme emotional disturbance. He also claimed that I improperly instructed the jury on the affirmative defense of extreme emotional disturbance.

I charged the jury expressly stating that the arguments and statements by the attorneys were not evidence in the case and that the jury was to accept the law as given by the court. I instructed the jury on the affirmative defense of extreme emotional disturbance. I denied the motion for a mistrial, ruling that my contemporaneous admonition of the state's attorney for the prosecutorial misconduct cured the prejudice. I further charged the jury to disregard the prosecutorial misconduct as part of my jury charge.

Although the Appellate Court was disturbed by some of the prosecutor's remarks and actions, it agreed with what they described as my "well reasoned analysis" from the bench and conclude that the conduct complained of was not substantially prejudicial in the context of the entire trial as to deny the defendant due process and a fair trial. The appellate court affirmed,

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ruling that I did not abuse my discretion and that I properly denied the defendant's motion for a mistrial.

2. Mauer v. Gadiel, (Conn.Super. WL 2164947 (2004)

In a defamation case, I denied summary judgment on the basis that under the first amendment to the United States Constitution, a public official, in order to recover damages for a defamatory falsehood relating to his or her official conduct, must prove that the statement was made with actual malice. I ruled that the plaintiff had alleged sufficient facts to establish probable cause.

3. Hunnicutt v. Rowland
CV 00803074
Hunnicutt v. Rowland
CV 00083077

Both of these cases were brought by a *pro se* inmate alleging breach of his constitutional rights by virtue of denial of drawing materials. The inmate used the material to draw cartoons depicting violent sexually explicit and defamatory images of corrections officials. I ruled that the First Amendment right of free speech is not unfettered and that the state has the right to restrict speech in order to preserve safety and order.

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.

Capital Region Conference of Governments Regional Planning Commission 1989 to 1982 - City Council Appointment

Hartford Human Relations Commission 1980 to 1982 - City Council Appointment

Board of Pardons, State of Connecticut, 1992 to 1998, 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 did not serve as a clerk

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

Yes, as Chapter 13 Bankruptcy Trustee, 1996-1998
185 Asylum Street
Hartford, CT 06103

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

Judge, 1998 to Present
Judicial Branch State of Connecticut
231 Capitol Avenue Hartford Ct 06106

Chapter 13 Bankruptcy Trustee, 1996 - 1998
Office of the Chapter 13 Bankruptcy Trustee
185 Asylum Street Hartford Ct 06103

Partner, 1992 To 1998
Hawkins, Delafield & Wood
185 Asylum Street Hartford Ct 06103

Vice President & General Counsel, 1990 - 1992
Connecticut Housing Finance Authority
999 West Street Rocky Hill, Ct 06067

Counsel, 1989 - 1990
Shawmut Bank
777 Main Street
Hartford, CT 06103

Counsel, 1981 - 1989
Aetna Life & Casualty Company
151 Farmington Avenue
Hartford, CT 06156

Associate, 1978 - 1981
Day, Berry & Hoard
185 Asylum Street
Hartford CT 06103

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?

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Presiding Judge Civil Division Hartford Judicial District, 2004 - Present
Manage the civil docket of over 2,500 civil jury and court cases claimed for trial with a staff of twelve judges, arbitrators, fact finders and attorney trial referees. Admit attorneys to the bar pro hac vice. Established standing orders for the Judicial District in furtherance of the Rules of Practice. Decide motions for continuance and for referral to mediation and other alternative dispute resolution proceedings. Preside over civil jury and court trials, attorney disciplinary matters, hearings in damages and examinations of judgment debtors. Conduct case evaluation, pretrial, status and trial management conferences. Assign pretrials, case evaluation, pretrial, status and trial management conferences, hearings and trials to judges. Conduct jury indoctrinations. Oversee management of the clerks and case flow offices.

Administrative Judge, Litchfield Judicial District, 2003 - 2004
Managed the civil, family, criminal and juvenile dockets. Managed a staff of five judges in three courthouses, with the assistance of arbitrators, fact finders and attorney trial referees. Established standing orders for the Judicial District. Decided motions for continuance and for referral to mediation and other alternative dispute resolution proceedings. Presided over civil, family, criminal and juvenile proceedings including jury and court trials, foreclosures, civil and family short calendar, administrative appeals, and Part A criminal arraignments, pretrials, sentencings and attendant canvasses. Conducted case evaluation, pretrial, status and trial management conferences. Assigned trials and case evaluation, pretrial, status and trial management conferences, and hearings to judges. Conducted jury indoctrinations. Reduced the median age of civil cases from thirteen to eleven months and civil court cases from 15.84 to 14.88 months. Attended to human resource, physical plant issues of the district. Oversaw the management of thee judicial marshals, clerks, court reporters, librarian, research clerk and family services division.

Presiding Judge, Civil Division-New Britain Judicial District, 2001 - 2002
Managed the civil docket of over 1,500 civil cases claimed for trial with a staff of four judges, arbitrators, fact finders and attorney trial referees. Established standing orders for the Judicial District in furtherance of the Rules of Practice. Decided motions for continuance and for referral to mediation and other alternative dispute resolution proceedings. Presided over civil jury and court trials, attorney disciplinary matters, hearings in damages and examinations of judgment debtors. Conducted case evaluation, pretrial, status and trial management conferences. Assigned pretrials, case evaluation, pretrial, status and trial management conferences, hearings and trials to judges. Conducted jury indoctrinations. Reduced the median age of civil jury cases from 14.28 to 11.20 months. Eliminated civil case backlog.

Judge, Civil Division Hartford Judicial District, 1999-2001
Preside over civil jury and court trials, attorney disciplinary matters, and special proceedings calendar. Conduct pretrial, status and trial management conferences. Conduct jury indoctrinations. Preside over all requests for extraordinary remedies, such as injunction, mandamus and declaratory relief, administrative and other governmental enforcement proceedings.

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Judge, Criminal Division Waterbury Judicial District, 1998 - 2000

Presiding Judge, Waterbury Drug Court - Presided over a specialty therapeutic court for drug-addicted offenders. Managed a team of social workers, bail commissioners, drug treatment specialists, public defenders and prosecutors. Assessed qualifications for admission of defendants into drug court in consideration for a guilty plea and an agreed upon sentencing range. Monitored compliance of offenders with therapeutic conditions, including in-patient treatment, out-patient treatment, employment, child support, and both mental and physical heath treatment mandates. Imposed sentences based on level of compliance or noncompliance.
Presiding Judge, Waterbury Domestic Violence Court - Presided over a specialty therapeutic court for persons accused of domestic violence offenses. Managed a team of social workers, bail commissioners, domestic violence counselors, public defenders and prosecutors. Monitored compliance of the accused with therapeutic conditions, including out-patient treatment, employment, child support, and mental heath mandates. Imposed sentences based on level of compliance or noncompliance.

Judge, Criminal Division - Presided over jury trials including jury selection and evidence. Decided legal and procedural questions including evidentiary questions pertinent to the admission of evidence. Charged the jury on the applicable law. Imposed sentences and supervised the jury. Conducted trials in which defendants were charged with murder, accessory murder, negligence with a motor vehicle (vehicular homicide), sexual assault on minors, drug possession, possession of drugs with intent to sell, sexual offenses, assault cases and other serious criminal offenses.

Judicial Branch, Member Civil Task Force, 2000 - 2004

Served on the Civil Task Force comprised of judges and practitioners charged with the responsibility of considering and proposing changes to the Rules of Practice, Rules of Professional Responsibility, Code of Evidence and legislation pertaining to the Judicial Branch as it pertained to civil procedure.

Partner, Hawkins, Delafield & Wood, 1992 - 1998

Represented issuers, underwriters and insurers of securities issued by government agencies, provided legal advice, drafted and negotiated legislation, financing programs and bond documents, conducted bond closings, advised grantees of low income housing tax credits, and managed satellite law office. Accomplishments include being a principal draftsperson of the $1.250 billion UConn 2000 financing program which revitalized and elevated the University of Connecticut within the cadre of flagship state institutions of higher education. Principal draftsperson of both Connecticut's Regional Water Authority Act and its Distressed Municipalities Act. Designed and conducted the multi state agency group homes' financing programs.

Chapter 13 Standing Trustee, 1996 - 1998

Office of V. L. Bryant, The Chapter 13 Standing Bankruptcy Trustee
Evaluated and advised Chief Bankruptcy Judge as to the compliance with the United States Bankruptcy Code of all Chapter 13 bankruptcy petitions filed in Fairfield County, Connecticut; conducted 506 hearings and performed due diligence, i.e., recommended plans for confirmation and dismissal. Started new chapter 13 trustee office and assumed responsibility for over 3,000

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pending bankruptcy plans as well as all new petitions filed. Administered bankruptcy plans. Hired and trained staff. Selected and learned to operate computerized plan management and disbursement program. Managed trustee office consisting of six para-professionals while maintaining municipal finance practice. Accomplishments include, standardizing plan documentation, creating case management mechanism and locating and equipping office. Received high Federal Bureau of Investigation security clearance.

Vice President And General Counsel, Connecticut Housing Finance Authority, 1990 - 1992
As chief legal officer for $3.5 billion captive housing finance authority of the State of Connecticut, advised the board of directors and senior management team on legal and finance issues relating to governance, human resources, state ethics laws. Worked on matters of freedom of information law, secondary market mortgage acquisition, tax-exempt and taxable bond financing, commercial real estate financing, workouts and commercial real estate foreclosures. Prepared and reviewed bond documents and issued legal opinions required for bond issuances. Managed legal department. Accomplishments include participation in $325million debt restructuring and record-setting volume of bond issuances.

Counsel, Shawmut Bank, 1989 - 1992
Represented the corporate, insurance and treasury departments in connection with the investment and issuance of multi-million dollar securities and derivatives. Accomplishments include representing the bank on its first deposit note issuance.

Counsel, Aetna Life and Casualty Company , 1981 - 1989
Counsel to the money markets, bond and real estate investment departments in connection with multi-million dollar debt and equity investments, both secured and unsecured, insured and uninsured. Drafted, reviewed, and negotiated financing transactions and advised clients concerning the legal and business implications of terms. Accomplishments include participation on cutting edge financing mechanisms such securitization of various unique assets including an orbiting satellite, the leveraged buy-out of Coca Cola Bottling Company of New York in the pre-Milken early 1980's, as mortgage-backed securities, the first privately-placed financing of an orbiting satellite.

Associate, Day, Berry and Howard, 1979 – 1981
Assessed value of, negotiated settlements of, drafted pleadings for, argued short calendar motions for civil cases.

Associate, Day, Berry and Howard, 1978 – 1979
Researched issues relating to, documented, and attended public hearings and closings for municipal finance transactions.

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

Typical clients were state and federal agencies, insurance companies and banks.

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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.

From 1979 to 1981 and 1996 to my appointment as a Judge on September 1, 1998, my court appearances were routine. I rarely appeared in court during the interim.

2. What percentage of these appearances was in:
(a) federal courts: 10%
(b) state courts of record: 90%
(c) other courts: 0%

3. What percentage of your litigation was:
(a) civil: 100%
(b) criminal: 0%

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

I tried three cases, all as sole counsel.

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.

Prior to my appointment as a Judge of the Connecticut Superior Court in 1998, I was a Chapter 13 Bankruptcy Trustee, a finance lawyer and a litigation associate. I was never a "first-chair" litigator and therefore have no significant litigation matters to report.

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References: I have represented, opposed, presided over cases tried by and/or worked with the following attorneys and Judges:

Justice Christine Vertefuille
Connecticut Supreme Court
231 Capitol Avenue
Hartford, CT 06106
860-757-2200

The Honorable John Langenbach
Chief Administrative Judge Civil Division
95 Washington Street
Hartford, CT 06206
860-548-2850

The Honorable John Downey
(Colleague and Former Client)
Superior Court
1061 Main Street
Bridgeport, CT
203-579-6540

Francisco Borges
Former State Treasurer
Landmark Partners
Simsbury, CT
860-651-9760

Richard Blumenthal
Attorney General
State of Connecticut
55 Elm Street
Hartford, CT 06103
860-808-5314

Catherine Lamarr, General Counsel
Office of the Treasurer
55 Elm Street
Hartford, CT 06103
860-702-3018

Edward Gasser
Gasser & Huget, L.L.C.
20 East Main Street

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Avon, CT 06001
860-674-83428

Richard Sigal
51 East 90th Street
Penthouse A
New York, NY 10128

Gail Hardy
400 Grand Street
Waterbury, CT
203-236-8136

Catherine Webster-O'keefe
72 Park Lane
New Milford, CT 06776
860-350-5009

Cynthia Daly
Law Offices Of Dennis Rinaldi, Jr.
10 Columbus Blvd, 3rd Fl
Hartford, CT 06106
860-549-1824

Herbert Shepardson
Cooney, Scully and Dowling
10 Columbus Blvd
Hartford, CT 06106
860-527-1141

Robert Gunendelsberfer
28 Park Lane
New Milford, CT 06776
860-354-4444

Dean Cordiano
Day, Berry & Howard
185 Asylum Street
Hartford, CT 06013
860-275-0100

Judith Dixon
Center Street
Winchester, CT
860-379-7531

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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. Uconn 2000: 1996 to 1998
   This project included legislation, master indenture and financing transactions to rebuild the infrastructure of the University of Connecticut. I was a central participant in the conceptualization, research and legislative drafting for this initiative. I was a principal draftsperson of the master and first three supplemental indentures and ancillary bonding documents. I advised the University, office of the State Treasurer, the Speaker of the House of Representatives and the Office of Policy and Management. I conducted the three initial bond closings along with another partner with the assistance of two associates.

2. Access: 1995 to 1996
   I was a principal draftsperson of this comprehensive act for state oversight and support for distressed municipalities. This was the first of its kind in the nation.

3. Regional water authority act: 1995
   I was the principal draftsperson of the regional water authority act which permits multiple municipalities to create a regional water authority with power to issue bonds and levy assessments.

4 Connecticut Housing Finance Authority Balance Sheet Restructuring 1991
   I was the lead authority executive on a team of investment bankers, financial advisors and outside bond counsel on a $325 million bond issue restructuring the Authority's bond obligations to match its assets and liabilities after a transfer of $54 million to the state to meet a state budget shortfall.

5 $89 Million Leveraged Buyout Of The Coca Cola Bottling Company Of New York, 1982.

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II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

None – A statutory retirement plan for Connecticut State Judges is available after ten years of service. At present, I am not eligible for benefits.

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 am confirmed, I would watch for potential conflicts and comply with the Code of Conduct for United States Judges, all applicable statutes, including 28 U.S. 455, and policies and guidelines.

I will also avoid investments in businesses in the jurisdiction in which I am sitting and diversify my investments. I would continue to avoid close personal relationships with litigators likely to appear before me. I would decline appointments to boards and foundations and otherwise strive to avoid even the appearance of impropriety or partiality.

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, I do not.

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.

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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 or played a role in a political campaign.

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AO-10 (WP)
Rev. 5/2004

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING
~~FOR CALENDAR YEAR 2005~~

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
BRYANT, VANESSA L.	DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT	1-30-06
4. Title *(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)* DISTRICT COURT JUDGE NOMINEE	5. Report Type (check appropriate type) _X_ Nomination, Date 1-25-06 ___ Initial ___ Annual ___ Final	6. Reporting Period 1-1-05 TO 12-31-05
7. Chambers or Office Address 95 WASHINGTON STREET HARTFORD, CT 06103	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	2002 TO PRESENT SUPERIOR COURT JUDGE	STATE OF CONNECTICUT
2	NONE	N/A
3	NONE	N/A

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

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

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	2006 YTD	STATE OF CONNECTICUT JUDICIAL BRANCH - SALARY	$ 3,884.9
2	2005	STATE OF CONNECTICUT JUDICIAL BRANCH - SALARY	$ 131,875
3	2004	STATE OF CONNECTICUT JUDICIAL BRANCH - SALARY	$ 125,000

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)

39984.058

☐ NONE (No reportable non-investment income.)

1	2006	PHOENIX COMPANIES, INC. SALARY AND BONUS
2	2005	PHOENIX COMPANIES, INC. SALARY AND BONUS

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
BRYANT VANESSA	1-30-06

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

☐ NONE (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1	EXEMPT	
2		
3		
4		
5		
6		
7		

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

☐ NONE (No such reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1	EXEMPT		$
2			$
3			$
4			$

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

☐ NONE (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE*
1	COUNTRYWIDE MORTGAGE	MORTGAGE ON RENTAL PROPERTY	M
2	MBNA	CREDIT CARD	K
3	MBNA	CREDIT CARD	K
4	CAPITAL HOLDINGS	CREDIT CARD	K

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5	BANK ONE	CREDIT CARD	K

[redacted]

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
BRYANT VANESSA L.	1-30-06

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., Sale, purch., 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 ASE TEST LED-ORD		NONE	J	T	EXEMPT				
2 AUTHENTICATE HOLDING CORP		NONE	J	T					
3 AMGEN, INC		ONE	J	T					
4 CALYPTE BIOMEDICAL		NONE	J	TT					
5 WALT DISNEY CO HOLDING CO	A	DIV	J	T					
6 HEWLETT PACKARD CO.	A	DIV	J	T					
7 MAXTOR CORP.		NONE	J	T					
8 MANUGUSTCS		NONE	J	T					
9 MASTEC INC		NONE	J	T					
10 NOVELL, INC		NONE	J	T					
11 PFIZER	A	DIV	J	T					
12 ALLIANCE BERNSTEIN GLOBAL A		NONE	J	T					
13 DRYFUS PREMIER FDS S&PSTAR		NONE	J	T					
14 STRIPS TINT 11/1516		NONE	L	T					

[redacted]

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FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
BRYANT VANESSA L.	~~3-29-05~~ 1-30-06

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 (1) Amt. Code (A-H)	B. (2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, exchange, redemption)	D. (2) Date: Mont. Day	D. (3) Value Code (J-P)	D. (4) Gain Code (A-H)	D. (5) Identity of buyer/seller (if private transaction)
Place "(X)" after each asset exempt from prior disclosure.						If not exempt from disclosure			
☐ NONE (No reportable income, assets, or transactions)									
15 VERISON COMMUNICATIONS	A	DIV	J	T					
16 RUSSELL EQUITY I-I	A	DIV	K	T	EXEMPT				
17 RUSSELL EQUITY II-I	A	DIV	K	T					
18 RUSSELL FIXED INCOME I-I	A	DIV	K	T					
19 RUSSELL SELECT VALUE I-I	A	DIV	K	T					
20 PHOENIX COS. COMMON STOCK	A	DIV	M	T					
21 FIDELITY BOND INDEX FUND	A	DIV	J	T					
22 PNX MULTI SECTOR BOND	A	DIV	K	T					
23 PNX ENG GROWTH	A	DIV	K	T					
24 PNX MULTI SECTOR FX INC	A	DIV	K	T					
25 BOSTON SCIENTIFIC	A	DIV	J	T					
26 GAP	A	DIV	J	T					
27 GOLDMAN SACHS	A	DIV	J	T					
28 IBM	A	DIV	J	T					
29 LEAHMAN BROTHERS	A	DIV	J	T					

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

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FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
BRYANT VANESSA L.	~~3-30-05~~ 1-30-06

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

A. Description of Assets (including trust assets)	B. Income during reporting (1) Amt. Code1 (A-H)	B. (2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting (1) Value Code2 (J-P)	C. (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: Mont h-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, assets, or transactions)									
30 MBNA	A	DIV	J	T					
31 PIXAR	A	DIV	J	T	EXEMPT				
32 POLO	A	DIV	J	T					
33 TIFFANY	A	DIV	J	T					
34 URBAN OUTFITTERS	A	DIV	J	T					
35 26 MALLARD DR AVON, CT	D	RENT	M	T					
36									
37									
38									
39									
40									
41									
42									
43									
44									
45									

1 Income/Gain Codes: (See Col. B1, D4)	E=$15,001-$50,000 F=$50,001-$100,000	A=$1,000 or less G=$100,001-$1,000,000	B=$1,001-$2,500 H1=$1,000,001-$5,000,000	C=$2,501-$5,000 H2=More than $5,000,000 D=$5,001-$15,000
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
	BRYANT VANESSA L.	1-30-06

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

III B CONTINUED
VI LIABILITIES CONTINUED
CHASE CREDIT CARD K
CITIBANK CREDIT CARD K
NELET STUDENT LOAN (COLLEGE) K
CHRYSLER FINANCIAL K

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 January 30, 2006

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 7-301
One Columbus Circle, N.E.
Washington, D.C. 20544

39984.063

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		4	000	Notes payable to banks-secured			
U.S. Government securities-add schedule		59	211	Notes payable to banks-unsecured			
Listed securities-add schedule		753	250	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		185	000
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		628	000
Real estate owned-add schedule	1	895	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		185	000				
Cash value-life insurance		10	000				
Other assets itemize:							
Mass Mututal Pension PV		400	000				
Phoenix Companies Pension PV		350	000				
				Total liabilities		813	000
				Net Worth	2	843	461
Total Assets	3	656	461	Total liabilities and net worth	3	656	461
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	YES		
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							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

U.S. Government Securities	
STRIPS-TINT	$58, 211
U.S. Savings Bonds	1,000
Total Government Securities	$ 59, 211
Listed Securities	
Spouse 401(k)	$ 275,000
Nominees 401(k)	103,000
Spouse stock options	370,250
Money Market Account	1,000
Investment Account	4,000
Total Listed Securities	$ 753,250
Real Estate Owned	
Personal residence #1	$ 750,000
Personal residence #2	1,000,000
Rental property	145,000
Total Real Estate Owned	1,895,000
Real Estate Mortgages Payable	
Personal residence	$ 52,000
Personal residence	467,000
Rental property	109,000
Total Real Estate Mortgages Payable	$ 628,000

Pledged assets: Personal vehicles

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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 responsibillties, listing specific instances and the amount of time devoted to each.

Over the years, I have served as member and/or director of many civic organizations including without limitation the United Way, Community Partners in Action, Hartford Human Relations Commission, Capital Region Conference of Governments Regional Planning Commission, N.A.A.C.P., Urban League, Connecticut Bar Association Municipal Law Committee, University of Connecticut Foundation, George Crawford Law Association, and Oliver Ellsworth Inn of Court.

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; I have declined membership in organizations with a recent history of or reputation for *de facto* or *de jure* discrimination against any group.

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).

To my knowledge, there is no judicial selection commission for federal judicial appointments in this jurisdiction.

I was recommended to the governor by an attorney who had appeared before me. I interviewed with the Governor's counsel. I was recommended to the White House by the Governor, my Congresswoman and one of my Senators. I was then interviewed by staff from the White House Counsel's office and the Department of Justice. I completed all nomination paperwork and a background investigation was completed. My nomination was submitted to the Senate on January 25, 2006.

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

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interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

Absolutely not.

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

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

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

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

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

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

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

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

Judicial independence is essential to our system of government. Having said that, judicial activism is problematic for at least 6 fundamental reasons. First, it is contrary to our tri-partite form of government. The role of the judge is separate and distinct from that of the other two branches of government. The role of the judge is to enforce and, where ambiguous or inconsistent, interpret the legislative or executive intent of, laws and regulations.

Second, issues of public policy are decided best by the legislative and executive branches because their processes involve a public vetting process. A policy which is the product of collective wisdom derived from a public vetting process is preferable particularly in a democratic society.

Third, judicial supplantation of the legislative or executive powers undermines the public

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confidence in the government and the rule of law. The upholders of the law must be adherents to the law. Our non-adherence could have a destabilizing effect on society.

Fourth, the citizenry's confidence in the rule of law is paramount and must be protected by assuring relative predictability of outcomes based on the application of precedent. If the public has no sense of the outcome of judicial proceedings they could resort to self-help and vigilantism.

Fifth, judges are individuals who, while selected elected public officials are, by design, not representative of the public and therefore pervasive judicial activism could have the effect of diluting the democratic process. Already too many citizens elect not to vote. Many choose not to because they feel it is futile. Judicial usurpation of power would increase and substantiate the perception of futility.

Finally, fundamental fairness necessitates an orderly and consistent set of rules applied evenly and fairly to all citizens. Judicial lawmaking on an individual case basis is inimical to fundamental fairness.

Judges take an oath to abide by the law. In my experience, the vast majority of judges concur with the view I have expressed and strive to perform their duty with integrity and adherence to the principles adopted by the founders consistent with their oath.

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AFFIDAVIT

I, VANESSA LYNNE BRYANT, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

March 3, 2006
(DATE)

VANESSA LYNNE BRYANT

(NOTARY)
March 3, 2006 My Commission Exp. Oct. 31, 2010

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Senator SESSIONS. Thank you very much, Judge Bryant. Thank you for introducing your two children who attend two superb liberal arts colleges in America, both of which are known for their abolitionist spirit that led to changes that occurred throughout our country in how the African-American community is treated.

You served as a Superior Court judge, as a presiding judge, and as an administrative judge since 1998. Would you give us some thoughts about how you would approach the challenges of a district judge with the experience that you have already?

Judge BRYANT. I would approach those challenges in similar fashion to that which I utilized in performing the functions of a Superior Court judge. I am a tireless worker. I research thoroughly. I listen actively and attentively. I decide fairly, decisively, and efficiently.

Senator SESSIONS. And how long have you been serving in judicial or judicial-like positions, how many years of experience?

Judge BRYANT. For 8 years, sir.

Senator SESSIONS. And tell me about the Superior Court judgeship, what your duties are there and what kind of rulings you must make there.

Judge BRYANT. The Superior Court is the trial-level court, as is the District Court. My responsibilities have been varied over the 8 years that I have served. Initially I was assigned to the Criminal Division. I was assigned to that division for two 1-year terms. I tried serious felony cases, including two murder cases. I have presided over in excess of 20 serious felony criminal cases.

After that assignment, I was afforded an opportunity to serve as a civil judge. I was assigned to the Hartford Judicial District. I presided over civil trials for 2 years. Thereafter, I was appointed the presiding judge for the New Britain Judicial District.

I was then asked to assume the role of administrative judge in the Litchfield Judicial District. The presiding judge is responsible for the civil docket. The administrative judge is responsible for the overall operation of the court facilities.

In my capacity as administrative judge in Litchfield, I was also the presiding judge for civil, criminal, family, and juvenile. I was responsible for all four dockets and three courthouses in that judicial district.

Thereafter, I was appointed the presiding judge in the Hartford Judicial District Civil Division. There I am responsible for the management of the civil docket. I was reappointed to that position in September of 2005, and reappointed yet again in September of 2006 after wide publication of the ABA opinion of me.

Senator SESSIONS. We have received a number of letters supporting your nomination. They note your excellent ability to manage your docket and the courtroom efficiently. As you know, there is a fine line between managing an efficient docket—and you have to be strong to do that—and ensuring the litigants a fair opportunity to be heard in court.

Would you discuss your philosophy and how you approach that role of a judge?

Judge BRYANT. Absolutely. There are competing interests. There is the broader interest of managing the docket and operating the judicial branch in an efficient fashion, and then there are the inter-

ests of the litigants which sometimes are in variance with the overall systematic obligations of a presiding judge.

I have endeavored to serve both of those masters, first by adopting standing orders, standing orders that specify exactly what the rules of procedure are in our district so that those standing orders are sent to attorneys well in advance of the time when they are ordered to, or have requested an opportunity, to appear in court.

We attempt mightily to ensure more than adequate notice of obligations to appear in court. We also communicate verbally in situations where we find that there may have been miscommunication, if people are not present. We also have under our rules of practice the ability to file a Motion for Reconsideration, Motion for Re-Argument. Our rules of procedure and—

Senator SESSIONS. Judge Bryant, as you deal with those issues and effect the rules that you have established, which I think is important, do you feel like you give litigants the chance to state their case if they disagree or you have to hold them to account in your courtroom?

Judge BRYANT. Absolutely.

Senator SESSIONS. Do you feel a responsibility to do that?

Judge BRYANT. Absolutely. A judge cannot make good decisions without having full information.

Senator SESSIONS. And are you telling this Committee that, if you are confirmed, that you will give litigants before you an opportunity to be heard, even if you rule against them, and that you would evaluate and consider the arguments that they make?

Judge BRYANT. Without any doubt.

Senator SESSIONS. The ABA rating raised some important issues. They say that you do not have good judicial temperament. That is a matter of importance. It is difficult to ascertain exactly what they mean when they say that.

Could you respond to that and share with us, briefly, how you think you handle cases?

Judge BRYANT. Senator, I wish I could answer that question. But unfortunately, like Mr. Wallace, I had one interview with the ABA. When I received their letter, I was surprised. Their letter was faxed to our clerk's office. It was brought to me by a Clerk of the Court. I was so stunned, that I called Mr. Tober, who informed me that I would learn of the reasons for their decision at my confirmation hearing.

So I do not know the context of any of those comments and I cannot respond to them, except I can tell you that in the State of Connecticut we have an anonymous evaluation system whereby all attorneys who appear before a judge for an hour or more are sent a confidential evaluation.

Senator SESSIONS. Well, I will bet Judge Cornyn was glad they did not have that in Texas.

[Laughter.]

He would have done well, I have no doubt.

Judge BRYANT. And Senator, my comportment ratings are in the 80th and 90th percentile.

Senator SESSIONS. That is interesting. I was not aware of that. So the lawyers in your district are encouraged to submit confiden-

tial, secret—they do not have their names on it—evaluations of you, and you have received high ratings.

Judge BRYANT. That is correct.

Senator SESSIONS. One more question. One of the criticisms was that you have a lack of professional expertise and knowledge of the law.

How would you respond to that?

Judge BRYANT. I have an extensive legal experience, which is outlined in my Senate questionnaire and in my resume, which I believe you have. I have been a partner in a Wall Street law firm. I have been a Chapter 13 bankruptcy trustee. I have been general counsel of a housing finance authority that had in excess of $300 million of bonds outstanding.

I have been a private placement and commercial real estate attorney, handling transactions in the millions, in the tens of millions, and the hundreds of millions of dollars. I have been described by the Chief Court Administrator of the State of Connecticut as a "super-star".

Senator SESSIONS. Well, that is good. Thank you for those comments. I would note that even though you did not receive a "Qualified" rating, that was not a unanimous vote of the committee.

Senator Cornyn?

Senator CORNYN. Thank you, Mr. Chairman. I just have a couple of things.

Judge BRYANT. Certainly.

Senator CORNYN. Judge Bryant, I just want to make sure that I understand what you just said a moment ago. Did you say you asked the Chairman of the Standing Committee at the ABA what the basis for the "Unqualified" rating was, and that he said, "You will find out at your hearing"?

Judge BRYANT. Yes.

Senator CORNYN. Mr. Chairman, I have various letters of support for Mr. Wallace and Judge Bryant's nominations for the record. I would ask unanimous consent that they be made part of the record.

Senator SESSIONS. They will be made a part of the record.

Senator CORNYN. Thank you very much.

Judge BRYANT. Thank you.

Senator SESSIONS. Thank you very much, Judge Bryant. We appreciate your coming. Is there anything else you would like to share about the process of evaluation that you have undergone? We give respect to the ABA ratings. I do, at least. I have always felt that they have an opportunity to bring us valuable information. But I also know that there are dangers in secret processes that receive information in that fashion. But do you have any other comments? I just want to give you an opportunity.

Judge BRYANT. No, sir. I do not care to comment further.

Senator SESSIONS. Well, thank you very much.

Judge BRYANT. Thank you.

Senator SESSIONS. We appreciate your testimony.

You should be congratulated for winning the support of two of our senior Democratic Senators and the Republican President of the United States for this important position. I think it is something that you can take pride in. I think it indicates that you have great support. Thank you very much.

Judge BRYANT. I certainly do. Thank you all very much.

Senator SESSIONS. Our next panel would be Panel IV, Roberta B. Liebenberg, Chair of the American Bar Association; Kim Askew, Fifth Circuit Representative, Standing Committee on the Federal Judiciary, American Bar Association; Thomas Z. Hayward, Former Chair, American Bar Association; Pamela Bresnahan, Former DC Circuit Representative, American Bar Association; and C. Timothy Hopkins, Former Ninth Circuit Representative, American Bar Association.

We have quite a panel. The hour is running a bit late, but I think you are entitled to, each of you, make a statement as you wish. Remember that we could make a fuller statement a part of the record if you choose.

I guess we will start in the order shown on the panel.

STATEMENT OF ROBERTA B. LIEBENBERG, CHAIR, AMERICAN BAR ASSOCIATION, STANDING COMMITTEE ON THE FEDERAL JUDICIARY, PHILADELPHIA, PENNSYLVANIA

Ms. LIEBENBERG. Good afternoon, Mr. Chairman and Senator Sessions. My name is Roberta Liebenberg. I practice in Philadelphia, Pennsylvania.

Senator SESSIONS. Ms. Liebenberg, would you pause? We would ask you to stand and take the oath. I am sorry I forgot. All of you, if you would. If you would raise your right hand.

[Whereupon, the witnesses were duly sworn.]

Senator SESSIONS. I think that is the Senate oath. Having been around courthouses a few times, maybe I am just remembering the familiar one from there.

Well, Ms. Liebenberg, thank you very much.

Ms. LIEBENBERG. Thank you. As I said, my name is Roberta Liebenberg. I practice in Philadelphia, Pennsylvania. Since August of 2006, I have had the honor of chairing the ABA's Standing Committee on the Federal Judiciary.

Present with me today are Kim Askew and Tom Hayward, who conducted the evaluations of Mr. Wallace in the spring of 2006. Also present are Pamela Bresnahan and Timothy Hopkins, who conducted the supplemental evaluation of Mr. Wallace this month. Ms. Askew and Ms. Bresnahan will testify concerning those evaluations.

Our Committee takes very seriously its responsibility to conduct a fair and impartial peer review of the professional qualifications of nominees to the Federal bench without regard to their ideology or philosophy. We focus on only three criteria: professional competence, integrity, and judicial temperament.

We examine the legal writings of the nominee, as well as decisions where the nominee has appeared as counsel. In addition, we conduct extensive interviews of numerous members of the legal community who are familiar with the professional qualifications of the nominee.

The evaluations of Mr. Wallace by our Committee over the years have been thorough and comprehensive. Over 120 judges and lawyers have been interviewed. Representatives of the Committee conducted a number of interviews of Mr. Wallace that totaled over 12 hours.

He was afforded the opportunity in each of those interviews to address and rebut adverse comments that had been made about him. As has been noted, there was widespread agreement among the persons who were interviewed about Mr. Wallace that he satisfied the committee's criteria of professional competence and integrity.

He has outstanding academic credentials as a former law clerk to Chief Justice Rehnquist and has been praised as a skilled and experienced trial and appellate attorney.

However, numerous concerns were raised about Mr. Wallace in connection with the criterion of judicial temperament. That criterion is defined by our Committee as compassion, decisiveness, open-mindedness, courtesy, patience, freedom from bias, and commitment to equal justice.

These concerns regarding judicial temperament were expressed not just by a particular segment of the bar, but instead by a broad cross-section of judges and lawyers with different backgrounds and viewpoints.

In accordance with the Standing Committee's established procedures, a supplemental evaluation was conducted of Mr. Wallace after his nomination was resubmitted by the President on September 5th.

This supplemental evaluation was conducted by Ms. Bresnahan and Mr. Hopkins, who were not members of the Committee when the May, 2006 evaluation was performed. Their supplemental evaluation raised the same concerns about judicial temperament that had been raised by Ms. Askew and Mr. Hayward in their prior evaluations of the nominee.

The Standing Committee is comprised of 14 lawyers from each of the judicial circuits. Half of the 14 voting members of the Committee are new and were appointed by the new ABA president, Karen Mathis, in August, 2006.

After careful consideration of the supplemental evaluations conducted this month, as well as the material pertaining to the prior evaluations of Mr. Wallace, the new Committee unanimously voted Mr. Wallace "Not Qualified" for a position on the U.S. Court of Appeals for the Fifth Circuit. This is the same rating previously given to him by unanimous vote in May of 2006.

Ms. Askew will testify concerning the evaluation she conducted in the spring of 2006. Ms. Bresnahan will then follow to discuss the supplemental evaluation that was conducted this month.

Thank you for your consideration.

[The prepared statement of Ms. Liebenberg appears as a submission for the record.]

STATEMENT OF KIM J. ASKEW, FIFTH CIRCUIT REPRESENTATIVE, STANDING COMMITTEE ON THE FEDERAL JUDICIARY, AMERICAN BAR ASSOCIATION, DALLAS, TEXAS; ACCOMPANIED BY THOMAS Z. HAYWARD, FORMER CHAIR, 2003–2005, AMERICAN BAR ASSOCIATION, STANDING COMMITTEE ON THE FEDERAL JURIDIARY, CHICAGO, ILLINOIS

Ms. ASKEW. Thank you, Mr. Chairman, members of the committee, my Senator. My name is Kim Askew. I have practiced in Dallas, Texas for 23 years.

As the Fifth Circuit representative to the Standing Committee, I conducted the investigation into the professional qualifications of Mr. Wallace when he was first nominated earlier this year.

My investigation focused only on Mr. Wallace's professional qualifications: his professional competence, his integrity, and judicial temperament. As the Committee is aware, the Standing Committee unanimously rated Mr. Wallace "Not Qualified" for service on the Fifth Circuit.

There has been a lot of testimony today regarding this investigation and I will briefly outline for you how this investigation was actually conducted and the serious issues raised regarding Mr. Wallace's temperament, which resulted in the "Not Qualified" rating.

I confidentially interviewed 69 lawyers and judges. The lawyers and judges interviewed were identified from the Personal Data Questionnaire that Mr. Wallace provided to the Justice Department and was subsequently obtained by this committee.

I also surveyed docket sheets to identify other cases that Mr. Wallace had litigated. Our purpose is to obtain as wide a range of cases as possible. During the course of my interviews, lawyers and judges identified other persons with knowledge of Mr. Wallace's professional qualifications.

To the extent those persons were available, I also interviewed those persons. Mr. Wallace himself identified a couple of lawyers that I had already interviewed as part of my process.

Our interviews covered a wide spectrum of the legal community. This is consistent with requirements of our Backgrounder. This included lawyers of all stripes, large- and small-firm lawyers, solo practitioners, opposing counsel of Mr. Wallace, his co-counsel, Federal and State judges throughout the Fifth Circuit, and certainly in the State of Mississippi where Mr. Wallace practices, Bar officials, law school deans.

Most of the persons that I interviewed had been involved in a variety of significant cases with Mr. Wallace, and this was a fact that I could independently verify from reported and unreported cases and from the docket sheets that I reviewed.

Some of the individuals that I talked to had known Mr. Wallace his entire life, others had known him throughout his professional career. Many who gave us comments considered themselves friends of the nominee. Those who gave adverse comments were frequently in that category. All of the comments were based on personal interactions that Mr. Wallace had with the persons identified. These were well-informed individuals with knowledge of this nominee.

My interviews were detailed and rather thorough. Some of these interviews lasted up to 45 minutes. In cases in which lawyers and judges provided adverse information, I often interviewed those lawyers and those judges on more than one occasion.

We sought corroborating information. We sought the identity of other individuals in the community who could further substantiate what we were told. We asked, or I asked, detailed questions because we wanted to ferret out the basis for the concerns raised regarding Mr. Wallace. I wanted to ensure that these comments were based on interactions and personal dealings with Mr. Wallace and not just based on rumor or bad feelings.

In late March, I interviewed Mr. Wallace in his office in Jackson for almost 3 hours. Almost half of our interview was spent discussing the adverse information I had learned regarding Mr. Wallace's temperament.

Consistent with this Committee's requirements for confidentiality, Mr. Wallace was given every opportunity to fully rebut or otherwise provide any information he wanted regarding the negative or adverse comments.

Every adverse comment that is raised in the testimony presented to this Committee was discussed with Mr. Wallace during that interview. Given the nature of the issues raised, I prepared a written checklist. I went down that checklist during the interview to ensure that everything I would raise was covered with him. He responded to these issues as he chose to. There were issues he chose not to respond to.

After these interviews I submitted my 83-page, single-spaced report to the committee, along with some 800 pages of background materials. This was certainly longer than any brief I had ever submitted to any court.

My investigation revealed, as stated earlier, that Mr. Wallace is a lawyer who possesses the highest professional competence. He possesses strong academic credentials and is in many respects a well-regarded and experienced trial and appellate lawyer.

Mr. Wallace also possessed the highest of integrity. Even those who questioned his lack of appropriate temperament to serve as a judge all agreed that he possessed professional competence and integrity.

The Committee rated Mr. Wallace "Not Qualified" because of the very serious issues raised regarding his judicial temperament. In evaluating temperament, the Committee consider a nominee's compassion, decisiveness, open-mindedness, courtesy, patience, freedom from bias, and commitment to equal justice. Over a third of the lawyers and judges that I spoke to raised issues regarding every element of temperament except decisiveness.

Mr. Wallace was said not to have demonstrated a commitment to equal justice. Concerns were raised regarding the positions he had taken in a number of State and Federal cases. Lawyers who had litigated these cases with Mr. Wallace, some for over three decades, believe that Mr. Wallace had taken positions that were meritless and not supported by the law.

He was said to have advanced his own personal views without regard for the ultimate resolution of the case. These issues were raised by a broad spectrum of lawyers and judges.

Serious issues regarding Mr. Wallace's open-mindedness were raised. He was said to be rigid, hostile to, and not always tolerant of, the views of others. As an advocate, he was said not to listen to, or respect the positions of, others. He sometimes summarily dismissed the views of others. He could be argumentative without advancing the resolution of a case.

Some questioned whether he could cease being an advocate and could become an effective judge. Given these concerns, many believe Mr. Wallace could not be a fair judge, lacked temperament, and so stated that.

Judges and lawyers who had interacted with Mr. Wallace concluded that he lacked the freedom from bias necessary to be an effective judge. They believed he would not follow the law, or would ignore it if he disagreed with it.

Senator SESSIONS. Ms. Askew, we do have a long panel and you are about 3 minutes over the time.

Ms. ASKEW. All right. I will finish up.

Senator SESSIONS. I have tried to be generous, but I do think we need to move along.

Ms. ASKEW. Some concerns were raised regarding his lack of courtesy, patience, and compassion in dealing with lawyers and litigants. There were minority lawyers who had had personal interaction with Mr. Wallace who believed that he did not treat them with courtesy and respect.

Given the nature of these concerns raised regarding Mr. Wallace's temperament and from such a broad cross-section of lawyers and judges in the legal community, after careful consideration the Committee unanimously concluded that Mr. Wallace was "Not Qualified."

Thank you for your courtesy.

[The prepared statement of Ms. Askew appears as a submission for the record.]

Senator SESSIONS. Senator Cornyn has to go to another important meeting, so I would yield to him at this time. I am glad you came. Some of our colleagues are not here, but I am glad you are here and participating. I think you have a lot to offer on all these subjects, based on your experience and background. So, I would yield to you at this time.

Senator CORNYN. Well, thank you, Mr. Chairman. I appreciate your letting me go out of order, and I apologize. But I did want to have a chance to have some discussion.

Ms. Askew, it is good to see you.

Ms. ASKEW. Good to see you, Senator.

Senator CORNYN. We have known and worked together a long time through the State Bar of Texas.

I have to confess, I am profoundly troubled by what I see here and I hope you can give me some comfort that it is not as bad as it looks.

Let me start, perhaps, with this question, the same one that I asked Ms. Liebenberg. Did I pronounce that correctly?

Ms. LIEBENBERG. Yes. Liebenberg.

Senator CORNYN. Liebenberg. I beg your pardon. With a name like Cornyn, I am used to—

Ms. LIEBENBERG. It is a hard one.

Senator CORNYN. I am used to having my name butchered. I apologize.

Ms. Liebenberg, can you explain to the Committee how you can be a person of the highest integrity with the kind of accolades used to describe Mr. Wallace, and at the same time be a person who ignores precedent, the rights of others, and all the other adverse comments that Ms. Askew and others collected during the course of their questions?

Ms. LIEBENBERG. Certainly, Senator Cornyn. If you look at our Backgrounder, the criteria of integrity and temperament are de-

fined differently. Integrity is the more narrow issue, which really looks at the industry, the diligence of the candidate, whereas judicial temperament looks at the issues that the evaluators have presented in their written testimony and the oral testimony today in terms of compassion, open-mindedness, and decisiveness.

Senator CORNYN. So it looks like about two-thirds of the individuals interviewed, or conversely stated, about one-third of the ones interviewed, made negative comments pertaining to his judicial temperament. Is that correct, Ms. Askew?

Ms. ASKEW. It was over a third of the individuals who were interviewed who raised those comments. But it was not just the number of comments raised. We look at the nature of the comments, the basis for the comments, the interaction that the nominee has had with the persons who raised those issues. I guess, as a judge, it would be a weight issue.

So it is not just a matter of how many, but these were very serious allegations of temperament raised regarding Mr. Wallace that this Committee simply could not ignore.

Senator CORNYN. Well, Ms. Askew, as an accomplished lawyer in your own right, familiar with the rules by which we try to get to the truth in a judicial context, are you not at least a little bit troubled by the fact that these are anonymous sources that are not provided to the nominee, when this man's career and reputation are on the line? How in the world can you justify using anonymous sources that cannot be confronted and there cannot be some opportunity to parse it and figure out, maybe there is some motive for providing that kind of critical comment. Maybe there is just a misunderstanding. Maybe someone does not really understand that it is a lawyer's responsibility to advocate vigorously on behalf of a client, even an unpopular client, in a losing cause.

Ms. ASKEW. Certainly, Senator, I can respond to that. First of all, these are not anonymous. The Committee is made fully aware of the identity of every individual who made such a statement. They are presented with the circumstances under which any negative comments were made.

These interviews were conducted just as we have conducted interviews as part of this peer review process for the entire time the ABA has been doing this process. This is the very process that we used in bringing you the recommendations that we did with respect to Justice Alito, with respect to Justice Roberts.

Senator CORNYN. You say they are not anonymous because you knew who they were.

Ms. ASKEW. And they were fully presented to the committee.

Senator CORNYN. But they are anonymous with regard to the nominee. The nominee does not know who they are.

Ms. ASKEW. Confidentiality is a very important part of this process. It always has been. It is explained to the nominee. When we talk to individuals who are providing this information to us, we obtain the kind of candid, frank information that we obtain from lawyers and judges in the community because we are for the confidentiality that they expect in this process.

Senator CORNYN. But you agree with me it is not the same standard that would be considered fair and reliable in a court of law with regard to the evidence that could be considered.

Ms. ASKEW. Of course, this is a peer review process. We make our recommendation to you. We certainly understand that ultimately the decision is the decision of the Senate and not this committee. This is a peer review. I could not analogize it to a court of a law. It is a 50-year old process that seeks to obtain information from the legal community about the reputation and the three factors that we vet related to a candidate.

Senator CORNYN. Ms. Askew, just to get to some of the specifics with regard to Mr. Wallace's work for Senator—I guess, then Congressman—Trent Lott. Would you agree with me that a lawyer for a client should not be penalized for representing an unpopular client?

Ms. ASKEW. I agree with that. Of course, our testimony does not in any way suggest that he is being penalized for advancing the cause of a client.

Senator CORNYN. One of the cases that he has been criticized for involves Bob Jones University. Is that not right?

Ms. ASKEW. That was not a part of the testimony that I presented, so I could not speak to that.

Senator CORNYN. Then there was a question involving the Voting Rights Act because he represented the Republican Party of Mississippi in redistricting litigation. Do you find any fault with his representing the Republican Party of Mississippi in redistricting litigation?

Ms. ASKEW. Under the ABA's ethical rules we fully understand that lawyers can zealously represent their clients. The lawyers and judges that I interviewed drew a very clear distinction between the zealous representation of a client and taking positions which they believe went beyond the point of zealous representation.

The issues on temperament concern the fact that these very experienced lawyers and judges who had personal knowledge of these cases believed that he crossed the line from zealous advocacy and raised issues of temperament.

Senator CORNYN. So these anonymous witnesses, or at least anonymous to Mr. Wallace, expressed an opinion and we just have to take their word for it because we do not know the basis for that opinion. You cannot reveal, under the ABA Committee rules, who they are even to this committee.

You would agree with me, would you not, Ms. Askew, that a lawyer has a professional responsibility to zealously advocate for their client and, within the rules of the American Bar Association, can properly argue for an extension, modification, or a reversal of existing law? Is that not right?

Ms. ASKEW. Absolutely, under the appropriate circumstances.

Senator CORNYN. Let me, finally, ask about the concerns that have been raised. I wish Mr Tober was here. I understand he is no longer the Chair of the Standing Committee. But Ms. Liebenberg, one more time.

Ms. LIEBENBERG. It is German: Liebenberg. Love Mountain.

Senator CORNYN. Can you explain to me what the circumstances are under which a member of the Standing Committee would recuse themselves for a conflict of interest or an appearance of partiality?

Ms. LIEBENBERG. As set forth in our Backgrounder, we do set forth a recusal standard that sets forth that if there is any appearance of impartiality or if the participation would be incompatible with the purposes and functions of the committee, then the member of the Committee should recuse him or herself.

In the case of Mr. Tober, I think it is important to emphasize that Mr. Tober did not participate in any way in the rating. The chair does not participate unless there is a tie vote, and of course there was not a tie vote, the vote here was unanimous.

In addition, Mr. Tober had no influence over any of the members of the committee. Each of the 14 members, as I said, represent different judicial districts. They have unique backgrounds. They exercise and take very seriously their obligation to evaluate all the materials and to vote independently, which is what they did. Mr. Tober, since he did not participate in either the evaluation or the rating, did not have to recuse himself under our standards as they existed.

Senator CORNYN. I understand, in 1989 while Mr. Wallace was Chairman of the Board of Legal Services Corporation, he was invited to appear in that capacity on a panel of a meeting of the ABA in Honolulu where the role of the Federal Government and providing legal services to the poor was one topic of discussion.

There erupted quite a disagreement, apparently, among the panel members. There is a letter, Mr. Chairman, from Mr. Fred M. Bush, Jr. of the Phelps Dunbar firm in Tupelo, Mississippi that describes what I am about to talk about, which I would ask to be made part of the record by unanimous consent.

Senator SESSIONS. It will be made a part of the record.

Senator CORNYN. Mr. Bush says that, "During this debate the ABA panelists were so vicious and personal in their attack on Mike, that many of us were offended and expressed our displeasure at the time.

One of the members of that panel is now the president of the American Bar Association," and that is Mr. Greco, "and I believe another is on the Standing Committee." That letter will be made part of record and is dated July 5, 2006.

Similarly, there is another letter from the Bar Leaders for the Preservation of Legal Services to the poor dated September 15, 1999. This is a letter signed by Gail Kinney, Coordinator. Mr. Chairman, I would ask that this be made part of the record by unanimous consent as well.

Senator SESSIONS. Without objection.

Senator CORNYN. This is a letter to Mr. Wallace. It says, "I understand you, or perhaps some of your Mississippi colleagues, may have come away from the presentation feeling insulted by a remark that Mike Greco made about your being a 'gentlemen from Mississippi' or something like that during the spirited opposition to the activities of the current Legal Services Board." That does not sound like too much of a nasty exchange there.

I guess my point is, though, that Mr. Greco, and to some extent Mr. Tober, were on opposite sides in an ongoing and very public and heated debate about the proper role of the Legal Services Corporation during Mr. Wallace's tenure there. Is that not right?

Ms. LIEBENBERG. I do not know the complete details of the disagreement. I will just reemphasize that neither Mr. Tober, nor Mr. Greco participated in the evaluation or the rating of Mr. Wallace.

I would just add one additional factor, is that just recently, as Chair of the committee, we conducted a new supplemental evaluation of Mr. Wallace. Ms. Bresnahan will be here to testify about that evaluation.

Senator CORNYN. That was a supplemental evaluation, was it not?

Ms. LIEBENBERG. Yes, it was.

Senator CORNYN. It did not go back and revisit the matters previously investigated or for possible taint, or bias.

Ms. LIEBENBERG. If I can just start, then Ms. Bresnahan will amplify. In general, what our procedures call for is that in a supplemental evaluation the investigator looks at any new information that might have developed between the last rating and evaluation and brings the evaluation forward.

Under our rules, however, an investigator can look at information prior to the time before the nomination to make sure that there has been a thorough and complete evaluation, and to make sure that the evaluation—and as I asked Mr. Hopkins and Ms. Bresnahan to make sure—was even-handed, complete and balanced.

As you will hear from Ms. Bresnahan, that is exactly what they did do, given the time. It was a very expedited basis that we had in which to conduct the supplemental evaluation.

Senator SESSIONS. Let us get a couple of things straight. First, I think obviously the writer of the letter from Legal Services that you offered felt that the tone and tenor of suggesting he was someone from Mississippi, probably—being from Alabama—was dismissive and perceived as not courteous, but the point of which is, that letter indicated that they believed he had been mistreated or had been disrespected in some way.

Second, who was participating in that panel where that occurred? I want to get this straight. The president of the American Bar Association at the time the Committee was appointed that evaluated Mr. Wallace?

Senator CORNYN. This was the immediate past president of the American Bar Association, Michael Greco, in his capacity as cofounder of Bar Leaders for the Preservation of Legal Services to the Poor. This was in 1989.

Senator SESSIONS. And was the lady member of that Committee that was participating in that panel, did she participate in this evaluation? Is that correct, Ms. Liebenberg?

Senator CORNYN. Mr. Tober was the chair of the Standing Committee, immediate past, that oversaw the evaluation process for Mr. Wallace. If I can just try to clarify my point.

Apparently, in opposing a proposed regulation to require that the board receiving Legal Services Corporation funds have bipartisan membership, as does the LSC itself, Mr. Tober was reported to flamboyantly accuse Wallace of attempting to fashion a political bias litmus test and of having a hidden agenda, and he vowed to disobey the regulation if it became law. Have any of you heard about that exchange?

Ms. LIEBENBERG. I would just, again, add that Mr. Tober did not participate in the evaluation. Ms. Askew is here. She can—

Senator SESSIONS. Mr. Tober was Chairman of the Committee that oversees these evaluations. Is that not correct?

Ms. LIEBENBERG. He was the chair of the committee, but he does not oversee the evaluations. Ms. Askew, as the investigator, and then Mr. Hayward as a second investigator, were charged with the responsibility of conducting the evaluation.

Senator SESSIONS. Who appoints these committees?

Ms. LIEBENBERG. The individuals appointed to the ABA Standing Committee are appointed by the ABA president.

Senator SESSIONS. So that would be Mr. Greco. So Mr. Greco would participate in this.

Ms. LIEBENBERG. Yes. As only a third of the individuals. Right.

Senator SESSIONS. We do not need to go into it too much further, I do not think. I would just say to you, I remember the bitterness of this fight. I remember what I believe was a very wrong position of the American Bar Association in opposing reform of the Legal Services Corporation. They opposed it aggressively, hostilely, and openly, and lost.

Now we have a man who participated in that reform, consistent with what the President of the United States desired and the Congress has ratified as a reorganization method for Legal Services Corporation, and they are now judging him.

If you are participating in a trial, Ms. Liebenberg, and you were being adjudicated by a judge, do you think a Motion to Recuse would be appropriate under these circumstances?

Ms. LIEBENBERG. In these circumstances, where Mr. Tober would not be acting as a judge, no, I do not think it would be appropriate.

Senator SESSIONS. He was in a position to vote if there were a tie, was he not?

Ms. LIEBENBERG. If there had been a tie. But the vote was unanimous.

Senator SESSIONS. But he was in a position. So you are saying he can be on a panel and have the opportunity to cast a vote, and you do not think that is improper? Now, remember, you are under oath.

Ms. LIEBENBERG. I understand that.

Senator SESSIONS. And my question was, if you were being tried, would you accept such a position?

Ms. LIEBENBERG. If I was tried—

Senator SESSIONS. Being tried for some offense.

Ms. LIEBENBERG. If I was being tried for some offense, there might be an issue with respect to an appearance of impropriety.

Senator SESSIONS. I would say there would be. Well spoken.

Ms. LIEBENBERG. But this is not an adjudicatory process.

Senator SESSIONS. I know.

Ms. LIEBENBERG. This is not a process where Mr. Tober had any role whatsoever in the evaluation or in the vote. This has been a very thorough and comprehensive evaluation. As I said, over 120 different judges and lawyers have been interviewed. Mr. Wallace has been interviewed for over 12 years. There have been 21 separate—

Senator SESSIONS. Interviewing him does not make any difference if the jury is stacked. That is the question we have here.

Ms. LIEBENBERG. Well, there have been 21 separate—

Senator SESSIONS. Let me ask Senator Cornyn. He wants to ask a question, and I will let you respond.

Ms. LIEBENBERG. All right.

Senator CORNYN. Actually, I am going to have to leave. But there is a letter, Mr. Chairman, that was written by Senator Specter to Michael S. Greco, president of the American Bar Association, and Steven L. Tober, then-chairman of the Standing Committee on the Federal Judiciary. This is dated August 7, 2006. I ask unanimous consent that it be made part of the record.

Senator SESSIONS. Without objection.

Senator CORNYN. Let me just ask to highlight just a couple of paragraphs, and the whole letter will be part of the record.

Senator Specter said, "I have had the opportunity to review the testimony with regard to both nominees." He is talking about Judge Bryant and Mr. Wallace. He said, "I am troubled by your submission. Your testimony raises serious charges, but only supports those allegations with anonymous quotations presented without context.

Testimony of this sort is impossible to verify or otherwise further investigate. Worse, it can give some the unfortunate impression of a smear campaign conducted against the nominees. The nominees were publicly branded "Not Qualified", and in your testimony, worse, do not have the opportunity to confront their accusers."

The letter goes on. But Senator Specter asked specifically that the American Bar Association promptly take the step of immediately revoking its "Not Qualified" rating of Mr. Wallace and begin a new review process.

Have you had a chance to look at the letter and make a decision one way or the other?

Ms. LIEBENBERG. We did have an opportunity to look at the letter, and obviously took Senator Specter's concerns very seriously. As a result, as I think has been mentioned by the Chairman, we retained Mr. Olson, who did help us respond to the concerns raised by the Chairman. As a result of that, we have clarified certain of our procedures.

Senator CORNYN. And you have changed your procedures?

Ms. LIEBENBERG. No. I said we clarified our procedures to make them—

Senator CORNYN. You clarified what you did, not clarified your procedures for prospective application.

Ms. LIEBENBERG. Both. We have clarified our procedures. As the ABA Committee has done over the years, we continuously refine and reexamine our procedures. In this instance—

Senator CORNYN. So you changed your procedures as a result of the concerns that were raised in this letter?

Ms. LIEBENBERG. I do not believe I said "changed". I am sorry, Senator Cornyn. I said we have clarified those procedures to make sure that our procedures are known and understood to the nominees and to the public.

Senator CORNYN. But you turned Senator Specter down.

Ms. LIEBENBERG. We conducted a new evaluation.

Senator CORNYN. You did not revoke the "Not Qualified" finding. Correct?

Ms. LIEBENBERG. We did not revoke. It has been superseded by the new rating that was done by a new committee, where 7 of the 14 members were appointed by a new ABA president, and as a result of the careful consideration of those materials, they have voted and they have voted unanimously that Mr. Wallace is "Not Qualified".

Senator CORNYN. Thank you, Mr. Chairman.

Senator SESSIONS. Thank you.

I guess we need to proceed along. Who is next?

Ms. LIEBENBERG. Ms. Bresnahan.

Senator SESSIONS. Ms. Bresnahan. All right.

STATEMENT OF PAMELA A. BRESNAHAN, FORMER D.C. CIRCUIT REPRESENTATIVE, 2002–2005, AMERICAN BAR ASSOCIATION, STANDING COMMITTEE ON THE FEDERAL JUDICIARY, WASHINGTON, D.C.; ACCOMPANIED BY C. TIMOTHY HOPKINS, FORMER NINTH CIRCUIT REPRESENTATIVE, AMERICAN BAR ASSOCIATION, STANDING COMMITTEE ON THE FEDERAL JUDICIARY, IDAHO FALLS, IDAHO

Ms. BRESNAHAN. Senator Sessions, at this late hour I am going to make my oral testimony part of the record.

[The prepared statement of Ms. Bresnahan appears as a submission for the record.]

Ms. BRESNAHAN. As you know, I am a lawyer that practices here in the District of Columbia, and I was a DC Circuit representative from 2002 to 2005, and I conducted a number of these investigations, including Chief Justice Roberts's investigation.

Senator SESSIONS. Who asked you to do the supplemental evaluation?

Ms. BRESNAHAN. Ms. Liebenberg. It was after Bobbi Liebenberg became the new chair in August, when the new president of the ABA, Karen Mathis, selected her to be the chair. It was only a 1-year appointment for Mr. Tober.

Senator SESSIONS. All right. And you did what review?

Ms. BRESNAHAN. I did a supplemental evaluation. I reviewed Ms. Askew's report, as did Mr. Hopkins, and we interviewed 11 new people. I reviewed the Personal Data Questionnaire and went through and chose to re-interview a cross-section of people to see if their opinions had changed. It was a way of cross-checking Ms. Askew's report and updating the report.

Then Mr. Hopkins and I interviewed Mr. Wallace last Monday morning for 2 hours and raised with him adverse comments which had been made to us, giving as much context as possible, consistent with preserving the interviewee's request for confidentiality.

I think, given Senator Cornyn's remarks, it is important to note that a number of these interviewees had great concerns about their remarks and confidentiality. As you know, we think through confidentiality we get a candid assessment of the candidate. Obviously this investigation was extraordinarily difficult.

There were laudatory comments, particularly regarding Mr. Wallace's integrity and competence. Although there were positive comments about his temperament, there were also serious issues

raised about Mr. Wallace's temperament in the supplemental evaluation.

The comments centered around recent concerns in the supplemental evaluation about Mr. Wallace's inability to listen, his lack of courtesy and patience, his freedom from bias, and his open-mindedness. We presented Mr. Wallace with these comments and gave him the opportunity to rebut those comments.

We had an extraordinarily detailed discussion about each component of the temperament criteria. Interviewees expressed that they thought Mr. Wallace was a terrific, effective, and zealous advocate, but many did not believe that he, because of his personality and background, would make a good judge.

Senator SESSIONS. Many? What can you say about "many"? Would that be 11 people?

Ms. BRESNAHAN. I can say, while preserving the concerns about confidentiality, that lawyers and judges, conservatively speaking, 40 percent, and another 20 or so percent expressed concern. So the concerns were raised in a full spectrum: some said they thought he could overcome his bias, some said they were not sure, some said they did not think so.

Senator SESSIONS. All right.

Ms. BRESNAHAN. I thought you were going to ask me a question. I am sorry. It is good that you are not. All right.

Mr. Hopkins and I joined in Ms. Askew's and Mr. Hayward's recommendation to the Standing Committee of "Not Qualified" with respect to this nominee. Thank you very much.

Senator SESSIONS. Mr. Hayward? I would just ask you, briefly, you were asked to do the second review by Mr. Tober, were you not?

Mr. HAYWARD. Yes, sir.

Senator SESSIONS. And when a Committee and the members do their reports, do they send them to Mr. Tober? Where are they sent?

Mr. HAYWARD. They are sent to the chair. In my case, it would have been sent to Mr. Tober.

Senator SESSIONS. And Mr. Greco was president of the Bar and appointed at least a certain number of the members of the committee. Is that correct?

Mr. HAYWARD. Yes. Some quick background, Senator. I chaired this committee, probably from 2003 to 2005. I served two presidents of the Bar Association. Each had an opportunity to appoint approximately a third of the members.

That was certainly the case in Mr. Greco's case, and is certainly now the case with Ms. Mathis with the appointment of Ms. Liebenberg. Usually, the chair serves for 1 year. I was, I guess, crazy enough to take it for 2 years.

Senator SESSIONS. It is a tough job, I have no doubt.

Mr. HAYWARD. But I think, so you understand the process, when we do the report, Ms. Askew does the report, I do a supplemental, and it goes to the chair. The chair then releases it to our entire Committee for their review. The chair only looks at it to make sure that it is complete, in the judgment of the chair, that it has a significant number of interviews of a broad spectrum of individuals that know the nominee.

Senator SESSIONS. I am sure you were aware, were you not, that Mr. Tober had had a run-in with Mr. Wallace.

Mr. HAYWARD. I did. Quite frankly, Senator—

Senator SESSIONS. Are you aware that other members of the Committee probably were aware that the chair of the Committee had had a personal run-in with the nominee, Mr. Wallace?

Mr. HAYWARD. I said I was aware. If you read the record, you are aware. However, I chose to disregard, as a supplemental reviewer. I gave Mr. Wallace the due respect, that he was a trial lawyer and an advocate representing a client. I was looking at it personally from my peer review. I confirmed that Ms. Askew had it right in terms of integrity, in terms of professional competency. You have heard this today.

I also confirmed, through my own interviews and reviews, and personally interviewing Mr. Wallace myself, that the concern that was raised by many lawyers and judges—that not every great advocate can make the transition to be a good judge—was something that we had to raise.

Senator SESSIONS. Well, I would just share this little bit of personal experience with you. I had some sympathy for the ABA over the years as a result of it, but I have understood the difficulties involved.

Having come before this very Committee for a judgeship, the ABA had rated me "Qualified", but there was a very aggressive ideological, political minority that wanted to have me rated "Unqualified".

So an additional review was done by some senior lawyer from Ohio, and they found I was still "Qualified". But in the course of the hearings, on the eve of a hearing in this body, it leaked that two people from the Department of Justice had said confidentially to the ABA that I had blocked a civil rights investigation.

They asked me about it and I fumbled around. I did not know what they were talking about. But I did not answer very clearly because I assumed the two lawyers from the Department of Justice knew what they were talking about, they must have had something in their minds.

So, they never intended this to become public. They intended and expected that the information that they gave would go to the ABA, and to the ABA alone. That, I assume, would impact their decision about whether or not I was qualified.

Well, when it blew up, they had to answer. They had a hearing to put them under oath and they fumbled around, and confusedly tried to answer what case it was. Eventually the next day they came forward and said, oh, they made a mistake. It was not U.S. Attorney Sessions, it was his predecessor in the office. He was not the one.

Now, that could have been a mistake that they made in confusing me with my predecessor. It would be an opportunity for someone with bad motive, however, if you understand what I mean, to say something they do not have to be held accountable for in hopes that they might impact a decision of the Bar Association which can be important in the deliberative process of the U.S. Congress as they go about deciding.

So I just wanted to tell you, you are litigators. You have challenged courts, and you have challenged judges, and you have filed to recuse them, and you insist that your client get absolute fairness. You would challenge anyone, I suspect. I hope you do, because you are zealous advocates for your client, as I think Mr. Wallace is.

But I would just say this: you are entitled to be challenged, too. You are not above reproach just because you are from a big law firm and have been appointed to the ABA. Just like judges are not above reproach, prosecutors are not above reproach and lawyers are not above reproach. So I am coming at this from that perspective. I just wanted to share with you those thoughts.

Let me ask you this. Has Mr. Wallace ever been found guilty of contempt? Has he been subject to discipline for misconduct in court, anything of that kind?

Ms. ASKEW. Because I interviewed the lawyers and judges who raised some of the comments regarding the over-zealous representations on some points, I specifically asked that question. I asked about Rule 11 in Federal court. I cannot remember the number of the comparable Mississippi State court.

I can remember saying, there are rules that take care of this. What these lawyers and judges came back to was, again, it was an issue of temperament. We, as lawyers, come to conclusions about our advocates based on how they interact in the court.

Senator SESSIONS. Well, I know that. But that is very subjective here.

Let me just tell you what I am getting around to, to get perspective. So I would say to you that I think the ABA process can be valuable. I think it gives us insight into the nominees and can be valuable, and should be evaluated by this body.

But I am troubled about this nominee. I mean, this is a sterling nominee. Ms. Askew, you said, "Mr. Wallace possesses the integrity to serve on the bench. His integrity was described by many as 'impeccable,' 'outstanding', 'the highest', 'absolute', and 'solid'".

Mr. Hayward, you said, "Mr. Wallace possesses the integrity to serve on the bench. He has the highest professional competence as a highly skilled and experienced trial and appellate lawyer." I would say he has argued cases at the Supreme Court level. He has clerked for the Chief Justice of the U.S. Supreme Court. He was at the Law Review at the University of Virginia. He is really one of the top lawyers in the State, obviously. Now we have this thing about temperament, which is vague.

Now, Justice Reuben Anderson, a pioneering civil rights attorney, the first African-American State Supreme Court Justice in Mississippi and current law partner of Mr. Wallace, stated, in nominating Mr. Wallace to the Fifth Circuit, "The President could not have picked a finer person or better lawyer." Justice Anderson said, "In both legal skill and character, Mr. Wallace is exactly the kind of person any one of us would want judging our cases." Did you all dismiss that? Did that not have any impact?

Ms. BRESNAHAN. Well, of course it has impact. I mean, what we are talking about is to have the ability to get a candid assessment and balance the credibility of the person you are speaking to. I

mean, throughout these investigations some people you give greater weight than others. Some people have more contact with others.

When you do 120-some odd interviews, you have the full range of lawyers and judges. We believed that there were serious enough concerns, and detailed concerns, some of which you could not disclose precisely what the case was because you would reveal who the lawyer or the judge was.

Senator SESSIONS. Let me ask you this. Ms. Askew, we have seen the redistricting cases and they are very, very intense.

Ms. ASKEW. They are very intense. Yes.

Senator SESSIONS. Texas is still recovering from their battle.

Ms. ASKEW. We are in the middle of one.

Senator SESSIONS. People make claims about the other side that are not justified, on both sides, probably. But it seems to me that his aggressive representation of a client that might be unpopular with this panel, but not unpopular with me, or the Republican Party—it is dubious that that turns out to be the pivotal case, it seems, and that litigation turns out to be decisive here. If lawyers on the other side were not happy and became intense over the years, perhaps their objectivity is not that trustworthy.

Ms. ASKEW. Just so it is clear, Mr. Sessions, these comments did not just come from the lawyers who were involved in the civil rights litigation or the Voting Rights Act cases. These comments came from lawyers who had been involved in litigation of various types with Mr. Wallace. I talked with lawyers who had been involved in personal injury, product liability, commercial cases.

What they were getting to here, we keep talking about Mr. Wallace's professional competence, his brilliance, his integrity. I was very taken by the fact that the people that I talked with talked about the fairness of a judge. When we talk about the Federal courts, brilliant lawyers do not always make fair judges. That was the point that I think this temperament issues were trying to raise.

Senator SESSIONS. Well, I notice you indicated that about a third of the people made negative comments.

Ms. ASKEW. That is correct.

Senator SESSIONS. So presumably about two-thirds did not.

Ms. ASKEW. Some did, some did not.

Senator SESSIONS. About two-thirds apparently did not or you would have said there were more. Mr. Swasey, immediate past president of the Mississippi Bar, stated, "I believe, as do my fellow former Bar presidents, that Mike possesses a demonstrated judicial temperament and will judge fairly without favor the matters that come before him."

He goes on to say Mike Wallace "is exceedingly well qualified by training, talent, experience to occupy a seat on this important appellate court."

Alec Austin, former president of the Mississippi Bar and Fellow of the American College of Trial Lawyers, plaintiff lawyers, stated, "I have found Mike to be extraordinarily professional and civil in all proceedings.

He is an exemplary lawyer and an American citizen who has involved himself deeply in the issues of his day." Mr. Austin also said Mr. Wallace "has earned the highest reputation among his peers for legal ability and integrity."

Mr. Hopkins, you have not had a chance to speak. Would that give you any pause if the Trial Lawyers Association and the president of the Bar support him?

Mr. HOPKINS. Senator, thank you for the opportunity to say a word. Let me say just at the outset that I join in the comments that you have heard from Kim Askew and Pam Bresnahan.

Senator SESSIONS. Do you know either of those two guys, Mr. Swasey or Mr. Austin?

Mr. HOPKINS. Pardon me?

Senator SESSIONS. Do you know Mr. Swasey, the Bar president, and Mr. Austin, the Bar president? Do you know those persons personally?

Mr. HOPKINS. I do not know them personally. Senator, just let me say, if I may, that I join in the comments that you have heard from my colleagues here. It is no question that Michael Wallace is a well-qualified lawyer, and particularly well-qualified trial lawyer and appellate lawyer. He belongs to some organizations I belong to.

And by the way, Mr. Sessions, I belong to a 12-man firm in a small Idaho community which is perhaps not typical of the ABA, or necessarily of this panel. I have represented, as well, the Republican Party in that State.

So there is a cross-section of those of us who are here on behalf of our professional association to share with this committee, in all of our greatest professional integrity, the opinion of those people with whom we have talked who are sworn to those same principles that you, Senator, and we, are sworn to uphold.

Senator SESSIONS. Mr. Hopkins, let me ask you, in the course of intense litigation, I have seen lawyers throw books. I have seen them do a lot of dramatic things.

When you have a person with no record of discipline, no record of complaints for unprofessionalism and he has all these accolades for the core abilities that I think you would want in a judge, I mean, it is hard for me to see how you can say a person has so much integrity if you do not think they are compassionate and just.

Did you know that he had been four times to Honduras, in partnership with an African-American church, to serve the poor?

Mr. HOPKINS. I was impressed with that, I must say.

Senator SESSIONS. Did you know his children, in Mississippi, attended integrated schools? That is not always done in Mississippi, trust me. A lot of people with money do not do that.

Mr. HOPKINS. We would be impressed with that. But, Senator, that is not what we were asked to investigate here. We were asked to inquire of his peers, in the State of Mississippi and in instances where he has been in litigation with persons outside Mississippi, what about his qualifications to be a judge.

There is no doubt about his qualification as a fine lawyer. All those things, all those accolades you make reference to are to his abilities as a fine trial and appellate lawyer. There is no question about that.

The question is whether he can make that transition, as Mr. Hayward said to you, from being an outstanding trial lawyer to being a good, open-minded judge. That is where the question of his peers—

Senator SESSIONS. And that is your evaluation. We will have to, I guess, evaluate whether or not the long-time head-knocking between the ABA leadership and Mr. Wallace over the Legal Services Corporation may have infected your evaluation.

Mr. HOPKINS. We hope it did not. It surely did not affect mine.

Senator SESSIONS. With regard to other comments, Mr. Scott Welch, one of eight former presidents of the Bar Association, said about him that the group that wrote shared no political party, judicial philosophy, or religious affiliation.

He writes, "My personal and professional experience with Mike Wallace convinces me, and I believe my fellow former Bar presidents, that Mike possesses demonstrated judicial temperament and that he would judge fairly and without favor the matters that come before him."

We do not have a real fair trial here. This is not a legitimate forum in the tradition of which each of you are used to operating. So I will give you all a chance briefly, then I would like to ask about Judge Bryant. We need to talk about that. I know the Wallace matter is most heated, but her nomination to a district judgeship is also important.

So would any of you like to respond to some of my comments?

Ms. LIEBENBERG. If I could, Senator Sessions. I would like to just emphasize again that the linchpin of our process is confidentiality. There have been some remarks about anonymous quotations. I think, again, it is important to understand that when we ask someone their candid assessment of a nominee, we ask them whether their name can be disclosed in our report, which is only distributed to members of the committee. If individuals say that they will not let us use their name, we do not consider their comments and they are not included in our report.

And while confidentiality is the linchpin of our evaluation process, we are very, very responsible in terms of making sure that we are fair to the nominee with respect to adverse comments. That is why we provide as much specificity and content as possible without compromising that confidentiality.

And with respect to the supplemental evaluation, we had one interviewee who did allow us to disclose his identity and his comments, and those were discussed with Mr. Wallace.

But in general, quite simply, people would not provide us with the candid and sensitive assessments that they give us if they knew that those comments would be disclosed and they would then have to later appear before the nominee, if he or she was confirmed, or have to serve with them on the bench.

Senator SESSIONS. Were there any specific instances cited in court that can be verified by somebody or court record where Mr. Wallace misbehaved? I am sure somebody could find one in my record. Mr. Olson back there. I know he never said anything in court that would cause a disturbance. But give me an example of something in court that can be verified.

Ms. LIEBENBERG. Well, I think with respect to judicial temperament, that how one conducts themselves in a meeting, in a deposition, or in court may not necessarily be found in the hard pages of a transcript. But if someone is arrogant, abrupt, or dismissive, that may leave an impression on the persons that interacted.

The concerns with respect to judicial temperament, as has been said by my colleagues, were pervasive. They were not isolated in a particular point of time. They were not isolated.

Senator SESSIONS. Well, you said "pervasive". She said less than about a third had some negative comments, so it did not appear that "pervasive" is the right word.

Ms. LIEBENBERG. Well, I think the types of comments that we have received, from 1992 through 2006, have been similar with respect to issues and concerns about Mr. Wallace's temperament.

Senator SESSIONS. Well, I will just say this. I have not been cited any deposition actions that would indicate impropriety. I have not been cited any action in the intensity of a courtroom that has shown that.

I have not even been cited any specific examples in private behavior—just a concern that is awfully vague, it seems to me, not attached to any specific acts. And I suspect if you looked at those lawyers you might find that there were differences in some of these high-profile cases.

So, I am not sure Mr. Wallace got a fair shake. But your opinion is received. It will be evaluated, and we will not treat it lightly. I think we probably lost some of our witnesses in the next panel who have airplanes to catch.

Ms. LIEBENBERG. Mr. Chairman, can we be excused if we are not involved?

Senator SESSIONS. Yes. Each of you are excused, if you would like. You are free to stay if you would like.

Let us do this next panel, if any of them are still here.

Ms. LIEBENBERG. Thank you very much for your time.

Senator SESSIONS. Oh. Would any of you like to comment on Judge Bryant and her nomination and the report?

STATEMENT OF DOREEN D. DODSON, FORMER EIGHTH CIRCUIT REPRESENTATIVE, 2001–2004, AMERICAN BAR ASSOCIATION' STANDING COMMITTEE ON THE FEDERAL JUDICIARY, ST. LOUIS, MISSOURI

Ms. DODSON. Yes, Senator. Thank you very much. My name is Doreen Dodson. I have practiced law in St. Louis, Missouri for over 30 years, and I was the committee's Eighth Circuit representative from August 2001 to August 2004.

During that time I conducted investigations in the Eighth and other Circuits, and participated in the evaluation of approximately 230 nominees to the Federal courts.

Our Committee has concluded that Judge Bryant is "Not Qualified" for appointment to the court. This conclusion was reached after a careful review of the written submissions of Judge Bryant, my personal interview with her, and confidential interviews of 65 judges and lawyers in Connecticut.

I solicited information from diverse members of the legal community, including, for example, lawyers in private and government service, Legal Service lawyers, public defenders, prosecutors, and representatives of professional organizations. I also made a particular effort to locate those who had trials or other significant interaction with her in her legal capacity.

In addition, I spent approximately two and a half hours with Judge Bryant and, during the course of that meeting, I do want you to know that I raised all the concerns that had been identified during my investigation, and Judge Bryant was given a full opportunity to rebut or provide context for these concerns, and to provide any additional information she wished to offer. I wanted to make that point, especially because she noted that she did not know of the reasons, and was told "until her hearing".

Most of those interviewed expressed concerns about the nominee's professional competence. According to the background, professional competence encompasses such qualities as intellectual capacity, judgment, writing, and analytical ability, knowledge of the law, and breadth of professional experience.

Judge Bryant was appointed to the Connecticut Superior Court in September, 1998. Prior to her appointment, her career was principally that of a bond attorney.

Her only experience in a courtroom consisted of handling three paternity cases as an associate, second-chairing as local counsel at a Boston firm in a contract case, and serving as the Chapter 13 trustee for two years. Substantial courtroom and trial experience is particularly important for nominees to the District Court, a trial court.

The Backgrounder states that the lack of experience can be compensated for by the presence of other experience similar to trial work, and in Judge Bryant's case that other experience arguably would have been her 8 years spent on the State trial bench. However, during those years she spent them principally in an administrative capacity.

In those roles, Judge Bryant chiefly has heard and ruled upon preliminary motions, held sentencings, presided over a drug court, and handled scheduling matters. She has had little opportunity to preside over jury trials. In the PDQ that she completed, she noted, for example, that she had no significant litigation experience.

Many of those interviews commented that most of the cases she did handle were relatively simple cases, requiring little skill, that she did little research, seemed overwhelmed by complex issues, and that her opinions were confusing or poorly done.

Judge Bryant provided us with 10 opinions. She has not had an opportunity to write a large volume of opinions and she has not done other legal writing. In general, most of the submitted opinions demonstrate adequate to good legal analysis in writing in very standard cases.

However, one of the 10 opinions which did involve complex issues was very confusing. Another was written by the nominee only after she was ordered to do so by the appellate court, and then after a subsequent Motion to Compel was filed by one of the parties.

Federal judges today face massive criminal dockets and Judge Bryant has little experience in criminal matters. Federal judges also face complicated and challenging legal and factual issues. A district court judge must make decisions in the courtroom during trial that require a solid grounding in substantive and procedural law and experience with juries.

As reported by the interviewees, the nominee, even after 8 years on the court, has little experience to prepare her for this task due

to her assignments as a presiding or administrative judge whose principal role has been to move cases. In addition, a majority of those interviewed raised concerns about her judicial temperament.

Most interviewees reported they found Judge Bryant formal, but pleasant and cordial outside the courtroom. But when engaged in court business, they said she was rigid, unbending, and unreasonable in her adherence to scheduling and other trial issues, was impatient with lawyers, and was sometimes rude and inconsiderate to lawyers and litigants.

I understand and took into account that trial lawyers like to control their docket and may not be fond of a judge who does not grant continuances. But our Committee could not discount the number of temperament complaints, ranging from arrogance, to rushing to judgment, and being intractable in some instances, or being unable to make up her mind in others.

It was particularly significant to the Committee that the temperament concerns were expressed about her consistently from her early days on the bench up until the present day.

A substantial majority of our committee, after reviewing my report on the nominee, and based upon the number of complaints, both of which are consistent through her years on the bench, found the nominee "Not Qualified".

Thank you, Senator, for inviting us to share our views with you.

[The prepared statement of Ms. Dodson appears as a submission for the record.]

Senator SESSIONS. Thank you very much, Ms. Dodson. I think those are valuable insights and I think it is a helpful role. I know it is not pleasant to have to reach that decision, but I assume you try to do that in an objective way. Some disagree. Obviously the Senators from the State disagree, and the President disagreed. But we value that report and I have no doubt that you did your best to be fair in that evaluation.

Ms. DODSON. Thank you. We did, Senator, try to do our very best to give a fair and impartial——

Senator SESSIONS. I am biased in favor of litigators, myself. If somebody has been in the courtroom and has not been placed in jail for contempt or something and they have won the respect of their colleagues, and they are a man of integrity, I think that is an asset. If you lack that, I think there is less ability to know. Thank you so much.

I would call the next panel. Mr. McDuff had to go catch a flight. We will make his testimony a part of the record.

[The prepared statement of Mr. McDuff appears as a submission for the record.]

Senator SESSIONS. If we could get started. Well, this is a good panel. It is good to see my former colleague, Mr. Blumenthal, as Attorney General. You are still Attorney General.

Mr. BLUMENTHAL. I am still Attorney General, Senator. Thank you.

Senator SESSIONS. Yes. If you would stand, we will administer the oath for each of you.

[Whereupon, the witnesses were duly sworn.]

Senator SESSIONS. Please be seated.

So we had an interesting panel. I apologize for having to put you through that. But it is a matter that continues to bubble up on these evaluations. Most of the time I think things go well. On this one, we have had some conflict.

Mr. Blumenthal, I know you have to leave right away. If the others do not mind, I would be pleased to have you speak first. You serve as the Attorney General. You are an Honors graduate from Harvard, Phi Beta Kappa. You got your law degree from Yale. You clerked for Justice Harry Blackmun.

I did not know all of this stuff about you. I am not surprised, but I did not know it. You are volunteer counsel for the NAACP Legal Defense Fund, and were elected in 1990 as Attorney General for Connecticut. We would be glad to hear from you.

STATEMENT OF HON. RICHARD BLUMENTHAL, ATTORNEY GENERAL, STATE OF CONNECTICUT, HARTFORD, CONNECTICUT

Mr. BLUMENTHAL. Thank you very much, Senator. I am honored to be with one of my former colleagues—in fact, two of my former colleagues, because the Senator from Texas also was one of our brethren.

I am honored to be before this Committee again, truly honored, as I always am, to be before the Judiciary Committee. I want to thank you and your staff for being so accommodating. I do apologize that I will be leaving, with the Chair's permission, when I finish my remarks. I thank my colleagues today for their indulgence as well.

Let me just say, I have found that this session has been enormously illuminating and enlightening, because I think that your questioning and the questioning that has occurred has really elicited some very insightful information, some very profoundly important information about the process and about the need for some checks and balances on the ABA rating system. In my testimony—and I hope the Committee may accept my testimony in full and make it part of the record.

Senator SESSIONS. We will make it a part of the record.

Mr. BLUMENTHAL. Thank you.

[The prepared statement of Mr. Blumenthal appears as a submission for the record.]

Mr. BLUMENTHAL. I make reference to the fallacies of using anonymous, unidentified, unnamed sources, the lack of accountability, the lack of transparency in that process. It applies with special force to Judge Bryant.

Let me just say, among those academic qualifications that you mentioned, I am most proud of having tried cases for 30 years as U.S. Attorney. As State Attorney General, I still try and argue cases. I have appeared before Judge Bryant, as have my staff, frequently, constantly, continuously.

Senator SESSIONS. You have personally appeared before her?

Mr. BLUMENTHAL. I have, indeed. I have, indeed.

So I am speaking here from personal experience, as well as the experience of my staff in saying that she is eminently qualified. She has superb qualifications of intellect and integrity and temperament.

Let me be very blunt. As Senator Lieberman told this Committee, she reduced the backlog in her court, one of the busiest in the State, by 25 percent. No judge accomplishes that task without setting deadlines, disciplining lawyers when they fail to meet those deadlines, insisting on timely briefs and preparation, being strong-minded and strong-willed, and imposing the kind of high standards that we all would expect of a State court judge and a Federal court judge.

I must disagree strongly, although I have great respect for the previous panel and for the work they do, and the immense amount of time and dedication that they haven given to this process. I disagree strongly that she lacks the experience.

In fact, on the contrary, she has precisely the experience that we would seek in a district court judge, which is to move cases with intellect, insight, faith to legal principle and to the interests of the litigants.

I say in my testimony at greater length why I feel she has many of the qualities that you and I—and I have deep respect for your own experience in the trenches, so to speak—would hope to have in a judge trying our case, which is not only scholarship, but also common sense, good humor, balance, patience, and a sense of what is important in life.

So I think she conducts herself, on and off the bench, with grace, dignity, and a sense of both compassion and conviction that are among the highest standards that this Committee would expect.

I thank you very much, Senator, for giving me this opportunity to be before you, and for your own dedication in spending the long hours you did today on this committee. Thank you.

Senator SESSIONS. Thank you. I did not exactly think I would be the only one here at this hour.

[Laughter.]

But it has been an important hearing. I know Senator Specter just could not stay. I think it was important to go forward.

Thank you for your insight. You are so well-respected among your colleagues. The fact that you and your assistants appear before her on a regular basis and that you have that opinion, I think, is very valuable to the committee, I really do. If you have to leave, we certainly understand and we thank you for your testimony.

Mr. BLUMENTHAL. Thank you, Senator. Thank you. I hope to be back. Thank you.

Senator SESSIONS. Let me see. We will try to go in the order that I believe was on the list here.

Justice Anderson presided over cases where Mr. Wallace litigated, sat as opposing counsel in other cases, and now has worked alongside him in a law firm for over a decade.

You received your undergraduate degree at Tugaloo College in 1964, your law degree from the Mississippi School of Law.

Justice ANDERSON. No, Ole Miss.

Senator SESSIONS. It is Ole Miss?

Justice ANDERSON. University of Mississippi.

Senator SESSIONS. All right. You were an advocate counsel for the NAACP Legal Defense and Education Fund from 1967 to 1975, and you began your judicial career in 1976. You were the first African-American to serve on the Mississippi Supreme Court.

After leaving the bench, you accepted a position at Phelps Dunbar. You are past Chairman of the Rhodes Scholarship Selection Committee, a member of the 100 Black Men of Jackson, the American Bar Association, and a former president of the Mississippi Bar Association.

So we would be delighted to hear from you at this time.

STATEMENT OF REUBEN ANDERSON, PARTNER, PHELPS DUNBAR LLP, JACKSON, MISSISSIPPI

Justice ANDERSON. You have got three lawyers here from Mississippi who have got an 8:00 flight, so I will not consume a whole lot of time here, Mr. Chairman.

Senator SESSIONS. You do not have much.

Justice ANDERSON. Let me say that I have sat here most of the afternoon and heard all of the testimony, and the conclusion of the ABA is that Mike Wallace is a brilliant lawyer, he is talented, he has much integrity, but they raise some questions about his judicial temperament.

The case that they talked about, the *Claiborne County* case, I was on the Mississippi Supreme Court when that case was argued. That was the first time I was ever exposed to Mr. Wallace. He is a brilliant and talented lawyer. That was one of the reasons I joined the Phelps Dunbar law firm, is because he was there. Instead of going to the library, I could go to him.

Senator SESSIONS. It is always good to have that kind of lawyer in the firm.

Justice ANDERSON. Yes. With that aside, I have observed him in every capacity since I have been with Phelps Dunbar for 15 years. I have tried cases with him. I have visited in his home, he has visited in mine. I know his family well.

There is no aspect of him that I have any problems with. Issues of bias and prejudice, that is not a part of Mike Wallace. Being concerned about the poor, he is. He is an honorable man. He will make an excellent judge. I can say this without any reservations.

I say that because I have spent the time with him. Very few weeks go by that he and I are not in contact with each other. We work on many cases, and over the years we have probably worked on 30 or 40 cases together.

I have spent as long as 6 weeks in the courtroom with him. I can say that I recommend him. I do not agree with a whole lot that our President does, but this is one smart thing that he has done, and that is recommending Mike Wallace to the Fifth Circuit Court of Appeals.

Thank you, Mr. Chairman.

[The prepared statement of Justice Anderson appears as a submission for the record.]

Senator SESSIONS. Thank you very much. I know those are valuable comments and perspective that you bring.

If you need to go, I will ask this one question. You were in Mississippi during the transition. It was driven by the Voting Rights Act and the civil rights movement. We have a new South today. It is not perfect, but it is in many ways, I guess remarkable.

But do you feel like Mr. Wallace in any way has opposed the fundamental racial progress that has been made, in your observation of his law practice and his association with you?

Justice ANDERSON. I joined Phelps Dunbar in 1991, and I was the first African-American lawyer there. We have more African-American lawyers at that law firm than any law firm in Mississippi. In fact, we have more African-Americans in our law firm proportionately than any law firm, that is, our regional law firm.

Mike has mentored our African-American lawyers. He has taken an interest in it. He knows how important it is to our law firm and to the State. There has been no occasion that anybody in our office has ever expressed any reservations with regards to race.

Senator SESSIONS. Justice Anderson, can you understand that maybe some lawyers who litigated against him in important civil rights cases, that they might have a misimpression of him because he aggressively advocated the Republican Party views in some of those cases?

Justice ANDERSON. Senator, if you saw him today, you can see he is abrasive, he is aggressive, but he never talks out of both sides of his mouth. You know where he stands at all times. That is the kind of individual that makes a good judge, you know where they stand. He would not be adverse to any segment of this society.

Senator SESSIONS. Thank you very much.

Mr. Welch. W. Scott Welch, III got his B.A. from the University of the South, with Honors, and his J.D. from the University of Mississippi, with distinction. He served as Assistant Staff Judge Advocate in the Air Force, and moved home to Jackson in 1967.

You have practiced law for 40 years. You are a partner and a shareholder with the firm of Baker, Donaldson, Bearman, Caldwell & Berkowitz. You concentrate in civil litigation.

You are the past president of the Mississippi Bar, president of the American Board of Trial Advocates, and former Mississippi delegate to the American Bar Association House of Delegates from 2001 until this year, and you currently serve on the ABA's Board of Governors.

Mr. Welch, we are glad to hear from you.

STATEMENT OF W. SCOTT WELCH, III, SHAREHOLDER, BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ, JACKSON, MISSISSIPPI

Mr. WELCH. Thank you, Senator. I appreciate the opportunity to be here. I will likely be even more brief than Justice Anderson.

You have my testimony, which I understand will be part of the record. I would like to say just about three things, very briefly, which may not be highlighted in my written testimony.

One, is a remark was made that there needs to be some checks and balances on this problem of anonymity in the ABA process and the opportunity of the nominee to refute that. I submit to you that the check and balance exists, it has just been ignored in this instance by the ABA.

The Backgrounder that has been referred to by the members of the Committee who have testified here today and in their written testimony specifically says, "If the nominee does not have the opportunity to rebut certain adverse comments because they cannot

be disclosed without breaching confidentiality, the investigator will not use those comments in writing the formal report and the Committee will not consider them in its evaluation."

That is diametrically opposed to what has been done in this case. They have not revealed the comments because they properly could not breach confidentiality, but they have ignored the part of the Backgrounder that says the investigator will not use those comments and the Committee will not rely on them. That is all that is before this Committee this afternoon.

The man has the task of trying to refute other people's opinions about him. Confidentiality does not play a role in that aspect of this process. Confidentiality is for when I tell the investigator, you may not know it anyplace else, but Mr. Wallace had a conviction for this, that, or the other.

You may not be able to find it anywhere else, but Mr. Wallace's grades at Harvard University were not obtained in a proper manner, he cheated on exams. Those are things that can be verified, as you have alluded to earlier.

The process that the ABA has had the checks and balances in it. They simply ignored it in this instance. I would urge this Committee that it not ignore it. I would urge this Committee that it not ignore the role of Mr. Tober in the Committee process. You have been asked about that, and it is mentioned in my testimony in a parenthetical reference where I am not comfortable leaving it.

Mr. Tober's role in the Committee process—not their deliberations, not voting on their recommendation to the committee—is that he served as chair of the Appointments Committee for the ABA president, then Michael Greco, in determining who would be appointed to the Standing Committee on the Federal Judiciary.

Mississippi asked for a seat on that Committee from the Fifth Circuit that we have not had for 34 years, and for some reason we were not given that seat this time even though it was time.

Senator SESSIONS. Wait a minute. Just to follow that up.

Mr. WELCH. I made application to be appointed to that Committee because, among other things, the State of Mississippi has not had the Fifth Circuit designated seat on that Committee since 1974, and we thought it was time.

Senator SESSIONS. So Mr. Tober, who has had a fairly aggressive run-in with Mr. Wallace years ago over the Legal Services Corporation, he is the person that made the recommendation to the President about who would serve on the committee.

Mr. WELCH. He was the chair of a Committee that made recommendations and reviewed all of the applications by members of the ABA to be appointed.

Now, I was not there. I do not know what was discussed. I am a supporter of ABA. I am proud to be a member of the ABA. I am proud of the role I have in the leadership of the ABA. I am proud to take the debate to the floor of the ABA on occasion. Generally I lose, but I am proud to take it there, nonetheless.

The final thing I would say, is I was interviewed by Mr. Hopkins and Mr. Hayward. I was asked by Mr. Hopkins, would you have any reluctance in representing a minority or a poor person in a hearing before the nominee? Would you be concerned you could not get a fair hearing?

My answer to Mr. Hopkins, which I did not ask for any confidentiality on and I am happy to share, is that I have enough confidence in Mike Wallace's abilities to be a judge of the Court of Appeals of the Fifth Circuit, my circuit, that I would represent Mr. Tober and Mr. Greco in a hearing before Mike Wallace and I would have every confidence that I would get a fair hearing, they would get a fair hearing, and they would have a case that would be decided in accordance with the law. That is all.

[The prepared statement of Mr. Welch appears as a submission for the record.]

Senator SESSIONS. Thank you very much, Mr. Welch.

Is it Judge Rhodes?

Mr. RHODES. Just Carroll.

Senator SESSIONS. You need to take that sign home that says "judge" on it. You surely may. Thank you very much. Sorry to keep you so late.

You got your undergraduate degree from Milsaps College, a fine school, and a J.D. from the University of Mississippi School of Law. You served in the Air Force and began practicing law with Central Mississippi Legal Services in Hazlehurst. You left Mississippi Legal Services in 1979 and established a solo practice.

You have served as a municipal court judge for Hazlehurst. Then from 1993 to 1994, you were a partner with Priester, Priester & Rhodes. In your current position, you practice civil and criminal law, with an emphasis on civil rights and personal injury law.

Mr. Rhodes, we are delighted to hear from you.

STATEMENT OF CARROLL RHODES, ATTORNEY AT LAW, HAZLEHURST, MISSISSIPPI

Mr. RHODES. Thank you, Mr. Chairman. I, too, have to catch a plane. I have submitted written testimony. May I ask that the written testimony be made a part of the record?

Senator SESSIONS. We will make that a part of the record.

[The prepared statement of Mr. Rhodes appears as a submission for the record.]

Mr. RHODES. Also, Mr. Rob McDuff, who was supposed to be here as well, he had to catch a plane. He had submitted written testimony.

Senator SESSIONS. Yes. And we will make his part of the record.

Mr. RHODES. Thank you. He had asked me if I would ask you to make it a part of the record.

I testify today on behalf of two organizations, primarily, the Mississippi State Conference of the NAACP and the Magnolia Bar Association. The Magnolia Bar Association is an association of primarily African-American lawyers in the State of Mississippi. Both the Mississippi Conference of the NAACP and the Magnolia Bar are opposed to Mr. Wallace's nomination.

As a threshold matter, they are opposed to the nomination because of diversity. There are 14 active and senior District Court judges in Mississippi. Of that 14, only one is black. There are two appellate court judges from the State of Mississippi to the Fifth Circuit Court of Appeals, neither one black.

President Bush has submitted eight nominations for the Federal bench in Mississippi, not one has been black. But Mississippi has

a black population, higher than any other State in the Nation, 36.5 percent. One of the reasons we oppose Mr. Wallace's nomination is because of a lack of diversity on the Federal bench.

Mr. Wallace's record is well known to the NAACP and to the Magnolia Bar Association. In 1983, the NAACP opposed Mr. Wallace's nomination to the board of Legal Services Corporation, and they cited his opposition to the Voting Rights Act and his support of tax-exemption for racially discriminatory schools.

Mr. Wallace's actions while serving on the Legal Services board warrant the Senate's serious review of his nomination to this Federal bench. The primary reason is that we believe that Mr. Wallace is insensitive to poor Americans. I am not talking about Hondurans, but we are talking about poor people in America, primarily, within the Fifth Circuit Court of Appeals.

Mr. Wallace advocated principles and practices directly contrary to the goals of the programs he was appointed to oversee while he was chair of the board. He had advocated that the board was unconstitutional and reduced the budgets of the board.

He advocated that Legal Services should not represent people in certain types of cases—fee-generating cases, supposedly—cases like voting rights cases and other civil rights cases.

However, once the Legal Services Corporation stopped representing people in so-called fee-generating cases, then poor people in Mississippi were left without lawyers. For black and white residents in Mississippi, many poor families paid usurious interest rates on consumer loans for household furniture until Legal Services lawyers successfully challenged the practice and forced creditors to comply with the Truth in Lending Act.

Black voters in small towns like Woodville, Centerville, and Wickerson County, Mississippi were unable to elect black representatives of their choice to city government and to county government until the Legal Services Corporation, Southwest Mississippi Legal Services, and blacks in North Mississippi, in Oxford, Greenwood, and other areas in the Mississippi North and Delta, were unable to elect blacks to governmental positions there until the North Mississippi Rural Legal Services stepped in and represented black plaintiffs, along with the NAACP, the Legal Defense and Educational Fund, and the Lawyers' Committee for Civil Rights Under Law, and lawyers in private practice such as Rob McDuff, Ellis Turnich, Debra MacDonald, Wilber Cologne, Victor Mateer, and myself.

So Legal Services did play an important role in providing representation to poor people in Mississippi on a variety of cases until Mr. Wallace's policies were implemented, cutting back the role that Legal Service would play. Because of his role, poor people did suffer. There was a void there. There were no lawyers who stepped up to fill the void.

There were a few lawyers who tried to do what we could, but our resources were limited. Once the Legal Services program stopped representing people in a lot of these areas, then many poor people were left without representation.

As far as the remainder of my testimony, since I have to catch a flight, I would rely on the remainder of the written testimony that I have submitted.

I would add that I have known Mr. Wallace for 20 years. He has been pleasant and cordial to me in the times I have encountered him, both in court and outside of court. But I also know that he has advocated positions that went beyond the bounds of zealous advocacy and zealous representation of clients.

I would be uncomfortable if Mr. Wallace was on the bench and having certain types of cases being decided by him. I have been involved in voting rights cases where Mr. Wallace has advocated that courts do not need to draw black majority districts for interim elections, instead, just draw square districts.

Start at the top of Mississippi and draw square districts all the way down the State and do not give any consideration to whether the district is majority black or majority white.

In doing that, you are talking about possibly turning the clock back to a time in Mississippi that we do not really want to go back to. Mr. Wallace has advocated at-large methods of elections and court, after court, after court has struck down those as being racially discriminatory in Mississippi.

I would just feel uncomfortable, on certain types of voting rights cases, of taking those in front of Mr. Wallace because I think his personal views would interfere more so than his advocacy as an attorney.

Thank you. If you have any questions, I will try to answer them.

Senator SESSIONS. Well, I will not keep you. The Voting Rights Act was an event that I think empowered African-Americans in the South. I do not deny that. But it does remain a fact today that a county that has no history of discrimination still has to get approval from the Department of Justice to move a voting place from the schoolhouse across the street. So, there are a lot of things that people have expressed concerns about.

The at-large districts and those issues have been litigated hard. I think the law is settling pretty clearly now, but I think you would agree that a number of African-Americans are concerned about super-minority districts, whether they might be better off having votes in two or three districts instead of putting all those in one.

So there are a lot of discussions about exactly what the right thing to do is in creating a colorblind society that I think we all favor. So we thank you for your comments. We thank you for coming up here. I hope you do not miss your flight.

We will keep this record open for 1 week for any further information that people would like to submit. If there is nothing else to come before us, we are adjourned.

[Whereupon, at 7:22 p.m. the hearing was adjourned.]

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

QUESTIONS AND ANSWERS

Responses
to
Questions for Kim Askew
Standing Committee on Federal Judiciary
American Bar Association

Submitted by Senator Patrick Leahy

Concerning
Nominations Hearing
September 26, 2006

1. **You testified that many of the judges and lawyers you interviewed in course of your review of Mr. Wallace's nomination expressed grave concerns regarding his judicial temperament. For example, many of those you interviewed made adverse comments regarding Mr. Wallace's lack of a commitment to equal justice, saying, if Mr. Wallace were confirmed, "[t]he poor may be in trouble," and "the civil rights laws might be trumped." Others you interviewed said Mr. Wallace would turn "back the clock in Mississippi on issues related to race relations," and "[i]t will be like 1965, not 2006."**

   You also testified that many of the lawyers and judges you interviewed described Mr. Wallace's inability to have an "open mind." For example, those interviewed described Mr. Wallace as "narrow-minded in his views," "lacking in tolerance," and "locked into a point of view – his," and not open to the position of others. You also testified that adverse comments were made about Mr. Wallace's potential for bias. For example, some of those interviewed stated that he "may not follow the law," he might not follow precedent or could "ignore the law if he disagreed with it," and that he had an agenda to "destroy the Voting Rights Act, [and] other civil rights laws," and "the law would not get in the way."

   From your testimony, I understand that the adverse comments I have just recounted relate to your assessment of a nominee's judicial temperament. In contrast, those interviewed by the ABA gave Mr. Wallace the highest marks for professional competence and integrity.

   Why did the concerns that were raised about Mr. Wallace's temperament lead you to recommend that the Committee find that he was not qualified, despite positive comments about his competence and integrity? How serious were these concerns about temperament?

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Answer to Question No. 1

As set forth in my written testimony, the concerns regarding Mr. Wallace's judicial temperament were pervasive and of such gravity that they ultimately led me to recommend that the Committee rate him "Not Qualified." My recommendation was based on several factors.

First, the concerns regarding judicial temperament were not isolated, infrequent, or expressed by only a few members of the legal community, nor were they confined to a particular time period. While many in the legal community believed Mr. Wallace possessed the appropriate temperament for the federal bench, over one-third of the 69 lawyers and judges whom I interviewed raised judicial temperament as an issue. It is highly significant that so many lawyers and judges raised this issue. To have one-third of the lawyers and judges interviewed raise serious concerns about judicial temperament is quite unusual, especially for a nominee to the federal appellate bench. I understand that a similarly large number of lawyers raised concerns in the supplemental evaluation that took place in September 2006. The Committee obtains adverse comments on a nominee's temperament from time to time, but rarely from one-third of the lawyers and judges whom we interview.

Second, the nature of the concerns raised regarding Mr. Wallace's judicial temperament was important to my evaluation. In Mr. Wallace's case, serious questions were raised regarding his judicial temperament, defined in our Backgrounder as "compassion, decisiveness, open-mindedness, courtesy, patience, freedom from bias and commitment to equal justice under the law." As I testified before your Committee, the only aspect of temperament that was not raised as an issue was decisiveness.

In addition to significant concerns on so many aspects of temperament, the adverse comments regarding Mr. Wallace's judicial temperament went to the very essence of what it means to be a fair and impartial judge in our system of justice. Concerns were raised regarding whether Mr. Wallace would follow the law or prejudge issues. Lawyers and judges expressed concern that Mr. Wallace might ignore precedents with which he disagreed. They noted that his advocacy in certain cases had crossed the line between zealous advocacy and espousing his personal beliefs. Some questioned whether he had an undisclosed agenda in seeking the bench. Many concluded that while

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Mr. Wallace was a fine advocate, he likely would not easily transition to being a judge, and many questioned whether he would ever be a fair and impartial judge. Issues were raised regarding his compassion and whether he would be open to all views.

Third, the concerns on temperament were expressed by members of the legal community who were well acquainted with Mr. Wallace. These were lawyers who had litigated cases with and against him. Judges who gave adverse comments had presided over cases or had personally followed Mr. Wallace's actions in particular cases. They knew him. They had specific examples from the cases they handled. They were not passing on rumor or hearsay, but concerns based upon their personal experiences with Mr. Wallace as a lawyer. As they talked about their experiences with Mr. Wallace and the positions he had taken in cases, it was very clear to me that these lawyers and judges raised legitimate concerns.

I carefully questioned the lawyers and judges who raised concerns on temperament. I asked detailed questions. I asked for corroborating information, such as published cases and the names of other lawyers or members of the legal community who could further address these concerns. In each instance, I followed up to ascertain whether the concerns raised could be corroborated. I took detailed notes on each of these interviews so that each Committee member would have as much information as possible in evaluating the temperament issue. I interviewed some lawyers and judges on more than one occasion because I endeavored to obtain as much information as possible concerning the underlying basis for their concerns.

Fourth, concerns with respect to Mr. Wallace's judicial temperament were raised by a cross-section of the legal community. As I discussed in my testimony, I talked to numerous lawyers and judges who knew Mr. Wallace from all over the State of Mississippi. They practiced in various settings and had engaged in many different types of interactions with Mr. Wallace over the years. I spoke with big- and small-firm lawyers, bar leaders, and judges on state and federal courts. The adverse comments did not just come from minority lawyers or lawyers engaged in civil rights practice, instead, the concerns came from lawyers and judges who represented a cross-section of the legal community.

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Importantly, many of the lawyers who provided adverse comments described themselves as friends or professional colleagues of Mr. Wallace. Some had known him all of his life. Some expressed remorse about having to share their concerns but believed their duty to the legal system required them to do so. Some lawyers and judges raised concerns on judicial temperament even though they stated that they shared the same political philosophy as Mr. Wallace. There was no question in my mind that the lawyers and judges who raised judicial temperament issues did so honestly, not to advance a particular agenda.

2. **Despite the fact that all four of the reviewers assessing Mr. Wallace's qualifications found that he possessed the "highest professional competence" and "solid" integrity to serve on the bench, not one of the 21 members of the ABA's standing committee has found him to be qualified. How typical is it for judges and lawyers you interview about a nominee to express the kinds of concerns about a nominee that have been raised about Mr. Wallace's temperament, ability to be free from bias, and attitude toward civil rights and legal services for the poor? Would you characterize the large number of significant concerns raised by those you interviewed as unusual for a judicial nomiuee?**

Answer to Question No. 2

Our Committee members have conducted numerous evaluations and have rated hundreds of nominees to the bench. Because of the significant concerns raised about Mr. Wallace's temperament, the Committee Chairs over the years appointed four very experienced former Committee members to conduct additional evaluations. Mr. Hayward, for example, who was the second evaluator in the May 2006 evaluation, formerly chaired the Committee and participated in the ratings of over 500 nominees to the federal bench. The evaluations of Mr. Wallace conducted by these members identified the same types of concerns about his judicial temperament that I had received during the interviews that I conducted.

Based on the collective experience of the Standing Committee, and as noted in the response to Question 1, it is extremely rare for a nominee to a federal appellate court to have so many adverse comments raised regarding his temperament.

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State of Connecticut

RICHARD BLUMENTHAL
ATTORNEY GENERAL

Hartford
October 26, 2006

The Honorable Arlen Specter, Chair
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D C. 20510

ATTN: Bart Huefner

Dear Senator Specter:

I am writing in response to your letter requesting a response to a written question submitted by United States Senator John Cornyn regarding the nomination hearing for Vanessa Bryant.

Question: Please amplify your opinion concerning the flaws in the ABA Standing Committee's investigation, evaluation and rating procedures. How should the Senate Judiciary Committee weigh anonymous criticisms?

I appreciate the role and expertise of the American Bar Association in reviewing candidates for federal judgeship Although the ABA process may be generally fair and impartial, I am troubled by the ABA's reliance on anonymous information. Such information places the nominee at a significant disadvantage because the nominee cannot -- to paraphrase the United States Constitutional guarantee -- confront his or her accusers.

A federal judge has enormous legal authority and serves a lifetime appointment. The ABA, and most importantly the Senate Judiciary Committee, must examine very closely each nominee's qualifications Typically, there exists sufficient, documented information about a nominee's experience and conduct that neither the ABA nor the Senate Judiciary Committee should have to rely on information from anonymous sources.

I have even greater concern with the credibility of anonymous sources when those sources are used as evidence for a subjective characteristic such as judicial temperament A nominee is placed in the extremely difficult position of proving a very amorphous negative, eg that the nominee has not conducted himself or herself in a manner that is inappropriate for a federal judge. It is also impossible for the nominee to prove that the unknown sources of the information are biased or wrong.

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The Honorable Arlen Specter, Chair
Senate Judiciary Committee
October 26, 2006
Page 2

I urge the Senate Judiciary Committee to only consider anonymous criticisms when such criticisms can be verified from other sources. If such criticisms cannot be independently verified, they should be accorded no weight.

Senator Specter, I appreciate the opportunity to testify at the nomination hearing of Vanessa Bryant. I hope this letter sufficiently answers Senator John Cornyn's question.

Please contact me if you need further information.

Very truly yours,

RICHARD BLUMENTHAL

RB/pas

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AMERICAN BAR ASSOCIATION

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November 14, 2006

The Honorable Arlen Specter, Chairman
Committee on the Judiciary
224 Dirksen Senate Office Building
United States Senate
Washington, DC 20510

Dear Chairman Specter:

Enclosed are the responses of the ABA Standing Committee on Federal Judiciary to the questions posed by you and certain other Senate Judiciary Committee Members following the September 26, 2006 hearing. We also have sent these responses to Barr Huefner in electronic format.

We very much appreciate the two-week extension that you afforded to us for this submission.

Respectfully,

Roberta D. Liebenberg

RDL/eb

cc: The Honorable Patrick J. Leahy
Barr Huefner, Hearing Clerk

Responses
to
Questions for Roberta B. Liebenberg
Standing Committee on Federal Judiciary
American Bar Association

Submitted by Senator Arlen Specter

Concerning
Nominations Hearing
September 26, 2006

As you know, I have expressed my concerns that the American Bar Association's methods for the evaluation of judicial nominees follow procedures that are both fair to the nominees and useful to the Senate. I expressed my concerns in two letters to your predecessor, Stephen Tober, and then-President of the ABA, Michael S. Greco. The letters, dated June 22, 2006 and August 7, 2006, both requested you provide the Committee with the materials on which your "not qualified" ratings of Mr. Wallace and Judge Bryant are based. My second letter assured you that the Committee would treat your reports in the same highly secure manner it presently treats FBI reports. The letter also raised questions about the appearance of conflict with respect to your review of Mr. Wallace. Both letters are appended to these questions.

1. **My first letter received little meaningful response. Theodore Olson replied to the second letter on your behalf. In a four page letter, Mr. Olson wrote that the ABA "has taken seriously the matters [raised in my letters] and has carefully reviewed its policies, procedures and practices for the evaluation of nominees for the federal judiciary. As a result, it has determined to make certain modifications that we believe are responsive to your concerns..." (Emphasis added.)**

   Ms. Liebenberg, in your testimony before the Committee, you had the following exchange with Senator Cornyn:

   > **Senator Cornyn. And you have changed your procedures?**
   > **Ms. Liebenberg. No. I said we clarified our procedures to make them --**
   > **Senator Cornyn. You clarified what you did, not clarified your procedures for prospective application.**
   > **Ms. Liebenberg. Both. We have clarified our procedures. As the ABA committee has done over the years, we continuously refine and reexamine our procedures. In this instance –**
   > **Senator Cornyn. So you changed your procedures as a result of the concerns that were raised in this letter?**
   > **Ms. Liebenberg. I do not believe I said "changed". I am sorry, Senator Cornyn. I said we have clarified those procedures to make**

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sure that our procedures are known and understood to the nominees and to the public.

Mr. Olson's letter represents that you have made "modifications" to your procedures, but you testified that you have merely "clarified" existing procedures. Can you please comment on this apparent inconsistency?

Answer to Question No. 1

As I explained during my testimony (pp. 125-26), over the years, the ABA Standing Committee on Federal Judiciary ("Standing Committee") has continuously re-examined and refined its procedures. As a result of the concerns expressed by Chairman Specter in his letters to the Committee over the summer, the Standing Committee once again re-examined its procedures. In my testimony, I explained that we had "clarified" our practices and procedures. Mr. Olson's September 14, 2006 letter concludes by stating that "I am grateful for Mr. O'Neill's assistance in discussing your concerns and formulating clarifications to the SCFJ's policies, processes and practices to respond to those concerns." (p. 4) Mr. Olson's letter used the terms "clarifications" and "modifications" interchangeably. (Id. at pp. 1, 4). Likewise, when I used the term "clarified," I was using that term synonymously with "modified" and meant that the Standing Committee had modified its policies and procedures to address the Chairman's concerns, and to ensure that these policies and procedures are known and understood by nominees and the public.

2. Up to this point, the ABA has refused to provide its reports to the Committee, despite my assurances that we will treat such reports in the same manner we treat FBI reports. Please explain the basis for this refusal.

Answer to Question No. 2

Maintaining the confidentiality of the identities of interviewees is essential to the Standing Committee's ability to perform meaningful peer-review-based evaluations of judicial nominees. If professional colleagues of the nominee could not be assured that their participation in the Standing Committee's peer review evaluation process will be kept strictly confidential, and not shared with anyone outside the Standing Committee, the potential interviewees would likely remain silent, rather than risk public exposure and

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possible professional and personal retaliation by the nominee and the nominee's supporters. Indeed, interviewees have repeatedly insisted on an assurance of confidentiality and explicitly stated that they would decline to be interviewed absent such an assurance. This chilling effect on participation in the peer review evaluation process would substantially impede the Standing Committee's ability to perform thorough and candid evaluations of nominees' professional qualifications.

Although the Standing Committee appreciates the Chairman's expressed willingness to afford the Standing Committee Reports the same treatment as FBI background reports, we are convinced that even a limited disclosure of our internal Reports to anyone outside our Committee would deter interviewees from being as forthright with us as they otherwise would be. They would not speak with the same candor to our Committee, thus depriving us of important information about the professional qualifications of nominees. In fact, a number of interviewees have advised Committee members that they were more forthcoming in interviews with our Committee than during their interviews with the FBI regarding a nominee because they were concerned about the possibility of leaks with respect to FBI reports.

3. **In your testimony, you mention asking those you interview whether their names may be used in your internal reports. You added that "If individuals say that they will not let us use their name, we do not consider their comments and they are not included in our report."**

    a. **Is it therefore correct that all members of the ABA committee know the sources of all adverse information in its internal reports?**

    b. **Why do you believe that it is important for the members of your committee to know the sources for the information on which they base their votes for a rating?**

    c. **Why do you believe that your committee members cannot simply trust the evaluating member's judgment as to trustworthiness of an unnamed source?**

    d. **Why do you believe that the members of your committee are entitled to the identity of those providing adverse information but the members of the Judiciary Committee are not?**

    e. **Your committee procedures allow almost as many people to see your internal reports (at least the 15 committee members) as the Judiciary**

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Committee would allow access (18 members and a handful of cleared staff). The Judiciary Committee would insist on a much higher level of security than presumably could be expected of your members, since we would keep only one copy and it would reside at all times in a secure room. Given all these restrictions, why do you believe individuals would be willing to have their comments duplicated and circulated to all your members, but chilled by the possibility that the Judiciary Committee members would – under the strictest procedures - review them?

Answer to Question No. 3

(a)-(c) The Report prepared by an evaluator sets forth the identities of all individuals who have provided comments regarding a nominee's professional qualifications. The Report also provides the explanatory context for the comments made by an individual, such as the degree of familiarity with the nominee and the particular case or other experiences that provide the underlying basis for the comments.
If an individual is unwilling to be identified in our Report, any comments by that individual regarding the nominee are not considered by the evaluator in making his or her recommendation, nor are such comments even included in the Report for consideration by other Committee members. It is important for members of the Standing Committee to know the identities of the sources of comments regarding nominees so that each member can independently decide, based on his or her own judgment, how much weight to ascribe to the particular comments and what rating to give to the nominee.

(d)-(e) For over 50 years, the Standing Committee has promised to maintain in strict confidence the identities of persons who provide information regarding the professional qualifications of nominees. It does not share this information with anyone other than the 15 members of the Standing Committee, not even ABA officers or staff members. That assurance of strict confidentiality is the cornerstone of the Committee's peer review evaluation process, and is essential to its ability to obtain candid and sensitive assessments of nominees from the judges, lawyers, and others whom it interviews. Absent such an assurance, the Committee will be unable to obtain this information and will therefore be unable to perform meaningful evaluations of the professional qualifications of nominees. Over the years, countless interviewees have told Committee members that they would be unwilling to provide information regarding a

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nominee's professional qualifications unless they were assured of strict confidentiality. The Standing Committee would not be able to offer such assurances of confidentiality if the Reports are no longer within the possession and control of the Standing Committee.

4. **Mr. Olson's letter promises that in the future, "the report by the [ABA] submitted to the Judiciary Committee for public disclosure will not contain unattributed quotations of adverse comments concerning the nominee. Instead, the substance of such adverse comments will be summarized, while providing as much specificity as possible. If requested by the Judiciary Committee, a non-public version of the report containing such quotations, but not including the identity of the source or information that would compromise the confidentiality promised to the interviewee, will be submitted to the Judiciary Committee Members and cleared staff, but will not be released publicly."**

   I gather that "report" in this letter refers to your written testimony, not the "informal report" and "formal report" referenced in your *Backgrounder*, which I requested in my letters to the ABA. Please confirm or explain.

Answer to Question No. 4

You are correct that the word "report" used by Mr. Olson in the third complete paragraph on page 3 of his September 14, 2006 letter to Chairman Specter refers to the Standing Committee's written testimony to the Judiciary Committee.

5. **Both your *Backgrounder* and Mr. Olson's letter continue to maintain that it is the practice of the ABA to give nominees sufficient context concerning adverse information so that they may meaningfully rebut charges against them.**

   a. **At the recent hearing, both Mr. Wallace and Judge Bryant testified that this had not been done in their evaluations. Please respond.**

   b. **Judge Bryant testified that when she learned of the ABA rating, "I was so stunned, that I called Mr. Tober, who informed me that I would learn of the reasons for their decision at my confirmation hearing." Do you consider Mr. Tober's response an appropriate one?**

   c. **Mr. Wallace testified that the ABA did not contact a number of individuals he suggested to the investigator, including at least one prominent judge. Please explain why the ABA did not contact these individuals.**

Answer to Question No. 5

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(a) As set forth in the Backgrounder and Mr. Olson's September 14, 2006 letter, the Committee members who conducted the interviews of Mr. Wallace and Judge Bryant provided them with as much context for the adverse comments as reasonably possible, consistent with the assurance of confidentiality previously given to the persons who had made the comments. Using this information, the nominees were able to address and rebut the adverse comments made about them.

In particular, during the interview of Judge Bryant, Ms. Dodson discussed with her the principal concerns that had been raised by interviewees during the evaluation, including: Judge Bryant's relationship with and treatment of lawyers, principally in two venues, Hartford and Litchfield; her relationship with referees and with her staff; and concerns about her unfamiliarity with various aspects of the law and concerns about her lack of litigation and trial experience. Judge Bryant was afforded the opportunity to address these concerns and provide any additional information she wished to offer. (Sept. 26, 2006 Hearing Tr., p. 147).

Similarly, Ms. Askew testified at the September 26, 2006 Hearing that every adverse comment about Mr. Wallace that was raised in her testimony "was discussed with Mr. Wallace during [his] interview." (p. 106). To ensure thoroughness, Ms. Askew prepared a written checklist for her reference so that she could provide Mr. Wallace with both the adverse comments and as much of the underlying bases for those comments as she could share with him, consistent with the Committee's promise of confidentiality to the interviewees who had provided such comments.

Likewise, during the two-hour interview of Mr. Wallace conducted by Ms. Bresnahan and Mr. Hopkins during their supplemental evaluation, they too "raised with him adverse comments which had been made to [them], giving as much context as possible, consistent with preserving the interviewee's request for confidentiality." (p. 128). Mr. Wallace was afforded the opportunity to rebut those comments. (p. 129). Indeed, since one of the interviewees had agreed to waive confidentiality, Ms. Bresnahan and Mr. Hopkins disclosed to Mr. Wallace the name of that person, his adverse comments and the specific bases for those comments so Mr. Wallace could address and rebut them. (p. 143).

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(b) Mr. Tober has advised me that when Judge Bryant called him, they had a very brief conversation in which he told her that, while he was sympathetic to her concerns, he was constrained to follow the procedures set forth in the Committee's Backgrounder. The Backgrounder states that an explanation for a "Not Qualified" rating is provided by the Committee Chair and the evaluator at the nominee's confirmation hearing. (Backgrounder, p. 8). Further, he told Judge Bryant that it was his understanding that Ms. Dodson had already reviewed with her during her interview the principal concerns expressed by interviewees during the evaluation process. In addition, Mr. Tober informed Judge Bryant that the Standing Committee would report its findings to the Senate Judiciary Committee and that the Standing Committee's written testimony would also be made available to her at that time.

(c) The Standing Committee evaluators contacted or attempted to contact each of the individuals whom Mr. Wallace had suggested be contacted. At the interview of Mr. Wallace conducted by Ms. Askew, he identified two persons who should be interviewed, and those individuals had already been interviewed by Ms. Askew. Their comments were included in the Report prepared by Ms. Askew. Mr. Wallace suggested to Ms. Bresnahan and Mr. Hopkins that they call Judge Michael McConnell, and Mr. Wallace acknowledged at the hearing that they did so. At Mr. Wallace's suggestion, a call also was placed to Robert Bauer, but Mr. Bauer did not return the phone call. The comments by Judge McConnell were included in the Report submitted to the members of the Standing Committee before they voted on the rating in October 2006.

6. In Mr. Olson's letter, it is reported that the ABA "has strengthened its recusal procedures... From this point forward, no [ABA committee] Member, *including the Chair*, will participate in the evaluation or vote on the rating of a nominee 'in any instance in which such member's impartiality might reasonably be questioned.'" (Emphasis original.)

a. In your testimony, you maintained that the Chair of the ABA committee does not meaningfully "participate in either the evaluation or the rating" of judicial nominees. Do you continue to maintain that the chair does not participate in the evaluation or vote? If so, what is the meaning of the recusal standard announced in the Olson letter?

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b. According to your *Backgrounder*, the informal reports prepared by your investigator are not finalized and circulated until "the Chair is satisfied with the quality and thoroughness of the investigation." Do you consider this meaningful participation in the evaluation?

c. I understand further that the Chair is often called upon to select who leads an investigation and who conducts supplemental evaluations. Do you consider this meaningful participation in the evaluation?

d. You stated that if you were in Mr. Wallace's shoes, and being tried by Mr. Tober, "there might be an issue with respect to impartiality." Under the standard announced by Mr. Olson's letter, do you agree that Mr. Tober should have recused himself from the evaluation of Mr. Wallace?

Answer to Question No. 6

(a) - (b) The Chair does not participate substantively in the evaluation of a nominee. In particular, the Chair does not make any recommendation as to a rating to be given to a nominee; does not vote on a rating for a nominee except in the rare circumstances of a tie among the other 14 members; and does not tell the evaluators what to ask or whom to interview. The Chair's review of an informal Report for "quality and thoroughness" before it is circulated to the rest of the Committee does not entail substantive revisions to the Report by the Chair. That review is to ensure that, among other things, the requisite number of interviews were conducted, all disciplinary agencies have been contacted, and a sufficient number of writing samples has been submitted by the nominee or reviewed by the evaluator.

The Standing Committee's recusal standard, as set forth in the Backgrounder, requires recusal of any member of the Committee if participation would give rise to the appearance of impropriety or would otherwise be incompatible with the purposes served and functions performed by the Standing Committee. The Standing Committee has strengthened its recusal policy to make it explicit that it applies to the Chair, and that no member, including the Chair, will participate in the work of the Committee in any instance in which such member's impartiality might reasonably be questioned.

(c) The initial evaluation of a nominee is generally conducted by a current or former Standing Committee member from the Circuit to which the nomination has been made. If that Circuit member is unavailable for any reason, the evaluation is performed by a

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current member from a different Circuit or a former member of the Committee. A supplemental evaluation is also generally conducted by the Standing Committee member from the Circuit to which the nomination has been made. However, in certain circumstances, another member of the Committee or a former member may be asked to perform a supplemental evaluation. The Chair's selection of the current or former Committee member to perform either an initial or supplemental evaluation does not constitute "meaningful participation" in the evaluation or rating of the nominee. As discussed above, the Chair does not make any recommendation as to a rating to be given to a nominee; does not vote on a rating for a nominee except in the rare circumstances of a tie among the other 14 members; and does not direct the evaluators as to what to ask or whom to interview.

(d) I was responding to a hypothetical question by Senator Sessions that was premised on standing trial for an offense with Mr. Tober serving as judge and making an adjudication of guilt or innocence. That hypothetical situation is not analogous to Mr. Tober's former role as Chair of the Committee. Mr. Wallace's rating was not determined by Mr. Tober. He did not vote on Mr. Wallace's rating; did not make a recommendation as to Mr. Wallace's rating; did not express his opinion of Mr. Wallace's professional qualifications to Ms. Askew, Mr. Hayward or to the Committee; and did not direct Ms. Askew or Mr. Hayward in their performance of their evaluations.

7. Mr. Olson's letter states that, in the future, you will require an appointment of a second investigator whenever the first investigator recommends a "not qualified" rating. He writes, "The second investigator *shall independently* evaluate the professional qualifications of the nominee *and make his or her own recommended rating.*" (Emphasis Mr. Olson's.)

a. Before the date of Mr. Olson's letter, how unusual was the appointment of a second investigator following an initial recommendation of "not qualified"?

b. Does the quoted statement above envision a *de novo* independent review or merely an independent review of materials and interviews already gathered and conducted by the first reviewer?

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Answer to Question No. 7

(a) Before the date of Mr. Olson's letter, a second evaluator was usually, but not always, appointed in situations where it became apparent during the evaluation process that the original evaluator was likely to recommend a "Not Qualified" rating. Going forward, it will be required that a second evaluator be appointed in every instance in which it becomes apparent that the initial evaluator will recommend a "Not Qualified" rating.

(b) The appointment of the second evaluator where the first evaluator recommends a "Not Qualified" rating serves a dual purpose. First, the second evaluator performs a cross-check of the thoroughness of the evaluation conducted by the first evaluator. In addition, after carefully reviewing independently the materials and information prepared by the first evaluator, as well as the nominee's responses to the public portion of the Senate Judiciary Committee Questionnaire and the nominee's legal writings, the second evaluator conducts whatever additional interviews or follow-up inquiries he or she deems to be warranted. Thereafter, exercising his or her own independent judgment, the second evaluator provides his or her own recommended rating to the Committee. After the second evaluator completes his or her Report, both that Report and the Report prepared by the first evaluator are sent together to the Committee members for their examination and review.

8. In my second letter I requested that you conduct a *de novo* review of Mr. Wallace. You merely conducted a supplemental review. Please state the basis for your decision to ignore this request.

Answer to Question No. 8

As set forth in the September 14, 2006 letter from Mr. Olson, a supplemental evaluation of Mr. Wallace's professional qualifications was performed in accordance with the Standing Committee's normal procedures, which provide for supplemental evaluations of individuals whose nominations have been returned or withdrawn, and then re-submitted by the President. The supplemental evaluation was conducted by two

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experienced former members of the Committee who had not served on the Standing Committee when the evaluation of Mr. Wallace was conducted in the spring of 2006. Given the timing of Mr. Wallace's hearing, the supplemental evaluation was conducted on an expedited basis. Ms. Bresnahan and Mr. Hopkins interviewed 12 judges and lawyers who had not been interviewed during the prior evaluation, and also re-interviewed 15 judges and lawyers who had been interviewed during the prior evaluation in the spring of 2006. In addition, they conducted their own lengthy interview of Mr. Wallace. Based on their own supplemental evaluation, as well as all of the prior evaluation materials pertaining to Mr. Wallace, Ms. Bresnahan and Mr. Hopkins made their own independent recommendation about Mr. Wallace's rating, and the Standing Committee, which had seven new members, likewise made its own new and independent determination of Mr. Wallace's rating in October 2006. Thus, the supplemental evaluation of Mr. Wallace's professional qualifications was as thorough and independent, and as responsive to your request, as possible under the circumstances and time-constraints.

9. Mr. Olson's letter suggests that you will make public your procedures for supplemental evaluations that occur when a candidate is renominated by the President. It further states that the Chair of the ABA Committee will determine what additional information might be "deem[ed] appropriate to ensure a thorough review of the nominee's professional qualifications."

a. Given that your written testimony to the Committee states that it is your "normal practice [] to conduct a supplemental evaluation of every nominee whose nomination has been withdrawn or returned and subsequently re-submitted by the President," does this portion of Mr. Olson's letter reflect any meaningful modification in the way the ABA evaluates renominations?

b. Do you consider the Chair's power to determine what additional information is deemed appropriate for review to constitute "meaningful participation" in the evaluation of nominees?

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Answer to Question No. 9

(a) Mr. Olson's September 14, 2006 letter sets forth the intent of the Committee to "make public" the procedures it has already been following with respect to supplemental evaluations of every nominee whose nomination has been withdrawn or returned and subsequently re-submitted by the President. (p. 3). Thus, nominees and the public will be apprised of the procedures that have been employed by the Standing Committee, but that had not previously been reduced to writing and circulated publicly in the Backgrounder.

(b) A supplemental evaluation occurs only after a nomination has been withdrawn or returned and re-submitted by the President. In that situation, the evaluator(s) focuses primarily on new information developed after the nominee's prior rating by the Committee. However, the Chair may ask the evaluator(s) to seek additional information relating to the time period before the new nomination, if necessary, to ensure that the Committee has a thorough and complete record of the nominee's professional qualifications. The Chair does not direct the evaluator as to whom to interview or what to ask; does not express an opinion as to what rating should be given to the nominee; and does not vote on the rating to be given to the nominee (unless necessary to break a tie).

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Responses
to
Written Questions for Roberta Liebenberg
Submitted by Senator Patrick Leahy
October 3, 2006

1. **For more than 50 years, the ABA has provided valuable nonpartisan professional peer review of judicial nominations by conducting confidential interviews with a diverse group of representatives from the legal profession and others who are in a position to evaluate the nominee's professional qualifications. The ABA is a private voluntary association, and its ratings are advisory ratings. Senators are free to rely or not rely on the ABA's rating. Your unanimous rating of Michael Wallace as "not qualified" – the first unanimous "not qualified" rating for a circuit court nominee since 1982 – reinforces concerns with this nominee's record shared by many others. Some have chosen to focus on the ABA's process rather than the serious concerns expressed about the nominee's record.**

   Please discuss the importance of using an objective peer review process to produce a fair, thorough, and objective evaluation of a judicial nominee. What kind of information are you able to provide to the Committee that we could not obtain in our own investigation?

Answer to Question No. 1

In 1953, President Dwight D. Eisenhower asked the ABA to provide an objective, nonpartisan review of the professional competence, integrity, and judicial temperament of those who were being considered for a lifetime appointment to our federal court system. While the Administration and the Senate might consider any factors that they, respectively, deem relevant, President Eisenhower recognized the value of the insight provided by those colleagues who had practiced law in the same community as prospective nominees, and thus knew from first-hand experience their professional qualifications.

Our peer-review evaluations are unique. The evaluation process entails interviews of a broad cross-section of lawyers and judges with knowledge of the nominee's professional qualifications. The Committee does not consider a nominee's philosophy or ideology. Interviews are conducted of persons identified in the nominee's responses to the public portion of the Senate Judiciary Committee Questionnaire; judges

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before whom the nominee has appeared; lawyers who have been co-counsel or opposing counsel in cases handled by the nominee; and, if the nominee is a sitting judge, other judges who have served with the nominee.

Another critically important aspect of our peer-review evaluation process is confidentiality. Lawyers and judges and others interviewed know that they can be frank and candid about their assessment of a nominee's professional qualifications because their identities will be held in strict confidence. Many of the lawyers who are interviewed by the Committee may appear before the nominee if he or she is confirmed, and judges who are interviewed may serve on the bench with the nominee or may be subject to appellate review by the nominee, if the nominee is subsequently confirmed. Therefore, the guarantee of confidentiality is critical to the willingness of interviewees to provide candid and frank comments. Quite simply, people would not be as forthcoming and candid in their assessments if they knew that their identities would be disclosed.

Comments that are considered by the Committee are not from anonymous sources. When we ask someone for a candid assessment of a nominee, we ask whether we can disclose his or her name in our Report, which is distributed only to members of the Standing Committee. If an individual refuses to authorize disclosure of his or her name, we do not consider that individual's comments, and those comments are not included in the Report distributed to Committee members.

While confidentiality is the linchpin of our evaluation process, we are equally committed to fairness to the nominee with respect to adverse comments. That is why, when we meet with the nominee, we provide as much specificity and context as possible about any adverse comments, consistent with the assurance of confidentiality to interviewees, thus providing the nominee an opportunity to fully respond and suggest appropriate further investigation or follow-up inquiries.

Significantly, Members of the Judiciary Committee, on both sides of the aisle, have recognized that because of the guarantee of strict confidentiality, the Standing Committee is able to obtain information from interviewees about the professional qualifications of nominees that otherwise would not be divulged. In fact, members of the Standing Committee have been repeatedly told by interviewees that they are more

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forthcoming with members of our Committee than in FBI interviews because of our promise of confidentiality.

2. Some have leveled criticisms that the ABA's evaluation of Mr. Wallace's nomination was tainted or biased, even though, as you have testified, the ABA followed the same process it used to arrive at the "well qualified" ratings given to now-Chief Justice Roberts and now-Justice Alito. Some have alleged bias even though none of the 21 members of the ABA's standing Committee – Republicans or Democrats – who have reviewed Mr. Wallace's nomination found him to be qualified. What safeguards does the ABA have in place to ensure that its process operates free of bias or conflicts of interest, and were such safeguards utilized in the ABA's investigatory process of Mr. Wallace?

Answer to Question No. 2

The Standing Committee takes very seriously its responsibility to provide an impartial evaluation of a nominee's professional qualifications. The Committee's practices and procedures are structured to achieve this goal, and do not permit consideration of political views or ideology. The Committee focuses on only three criteria: professional competence, integrity, and potential for judicial temperament.

The Standing Committee is comprised of a Chair and 14 voting members who represent each of the federal judicial Circuits (the Ninth Circuit has two members). The members, except for the Chair, are appointed to three-year staggered terms. Appointments are based on professional reputation and stature, and a member's political affiliations and activities play no role in the appointment.

The Committee conducts its evaluations and makes its ratings independently, without any input whatsoever from the ABA Board of Governors or the officers of the ABA. In voting on a rating to be given a nominee, each member exercises his or her own independent judgment.

The procedures used by the Committee in connection with the evaluations of Mr. Wallace were the exact same procedures that were utilized by the Committee with respect to other evaluations it has conducted over the years, including the evaluations of Chief Justice Roberts and Justice Alito.

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3. The ABA has overwhelmingly rated President Bush's judicial nominees to be qualified or well qualified. Last year and earlier this year, Republicans on the Committee touted the "well qualified" ratings given to now-Chief Justice Roberts and now-Justice Alito. In fact, it has been almost 25 years since the ABA unanimously rated a circuit court nominee to be "not qualified."

You have testified about the extensive peer review process used by the ABA in evaluating Mr. Wallace's nomination and told the Committee this is the same process the ABA always follows when evaluating a nominee. Can you provide some insight into why the outcome of Mr. Wallace's evaluation was so different from the 98% of President Bush's nominee the ABA has rated qualified or well-qualified?

Answer to Question No. 3

Since 1992, when Mr. Wallace was first considered for a position on the U.S. Court of Appeals for the Fifth Circuit, he has been thoroughly and comprehensively evaluated by our Committee. Over 120 judges and lawyers have been interviewed by various Committee members. There have been a number of in-person interviews with Mr. Wallace, totaling over 12 hours. In each of the interviews, he has been apprised of adverse comments that had been made about him and the underlying context of those comments, and afforded every opportunity to respond.

The concerns raised with our Committee about Mr. Wallace's nomination focused on the criterion of judicial temperament. That criterion is defined by our Committee as compassion, decisiveness, open-mindedness, courtesy, patience, freedom from bias, and commitment to equal justice. These concerns were expressed by a broad cross-section of judges and lawyers with different backgrounds and viewpoints. Many interviewees had known Mr. Wallace for a long time and considered themselves his friends. Indeed, during the September 26, 2006 hearing, one of the witnesses who testified in favor of the nomination, Justice Reuben Anderson, acknowledged that "if you saw him today, you can see he is abrasive, he is aggressive. . . ." (p. 160). A number of judges and lawyers who were interviewed based their comments on their interactions with Mr. Wallace in a wide variety of cases, including products liability, employment, commercial litigation, and voting rights cases.

Serious issues were raised by Mr. Wallace's peers with respect to his open-mindedness and commitment to equal justice. He was said to be rigid, arrogant, and not

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always tolerant of the views of others. A number of those interviewed expressed concerns over whether he could be a fair and impartial judge, free from bias. Because of concerns that arose out of the evaluation and to ensure fairness, Mr. Wallace's evaluations were very extensive and comprehensive. Significantly, in 2006, four separate evaluators and twenty-one different voting members of the Committee unanimously concluded that he was "Not Qualified" for a position on the United States Court of Appeals.

4. Despite the fact that all four of the ABA's reviewers who reviewed Mr. Wallace's qualifications found that he possessed the "highest professional competence" and "solid" integrity to serve on the bench, not one of the 21 members of the ABA's standing committee has found him to be qualified. How typical is it for judges and lawyers you interview about a nominee to express the kinds of concerns about a nominee that have been raised about Mr. Wallace's temperament, ability to be free from bias, and attitude towards civil rights and legal services for the poor? Would you characterize the large number of significant concerns raised by those you interviewed as unusual for a judicial nominee?

Answer to Question 4

Both the nature and the extent of the adverse comments about Mr. Wallace's judicial temperament were unusual. See also response by Ms. Askew to Question No. 2 by Senator Leahy.

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Responses
to
Questions for Roberta B. Liebenberg
Standing Committee on Federal Judiciary
American Bar Association

Submitted by Senator John Cornyn

Concerning
Nominations Hearing
September 26, 2006

Responding to Sen. Sessions' questions about Stephen Tober's role and possible conflict of interest in the ABA Standing Committee's evaluation of Michael Wallace, Ms. Liebenberg stated during last week's hearing that "[t]his is not a process where Mr. Tober had any role whatsoever in the evaluation or in the vote."

But in the testimony submitted by the Standing Committee on July 18, 2006, Mr. Tober explains that—pursuant to Standing Committee's rules—"both the formal report completed by Ms. Askew and the second report completed by Mr. Hayward were reviewed by the Chair for thoroughness...." ***(July 18 ABA Testimony, at 5)***

1. **Is it correct that, as Chair of the Standing Committee, Mr. Tober had the power to reject a report drafted by a Committee investigator as insufficient (or, to use the Committee's terms, lacked "thoroughness" or "quality") such that the report would not be circulated to the full Committee?**

2. **If, as Mr. Tober acknowledges, he possessed and exercised that power, would you agree that his role—as the Standing Committee's Chair—was to "oversee the evaluations"?**

Answers to Question Nos. 1-2

Mr. Tober informed me that he did not perform a substantive review of the informal Reports prepared by Committee members during his tenure as Chair. Instead, his review of informal Reports was procedural in nature, as he utilized a procedural checklist to ensure that, among other things, all disciplinary agencies had been contacted, the requisite number of interviews was conducted, and a sufficient number of writing samples had been submitted and reviewed. Mr. Tober did not edit, delete, modify or add

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any substantive information or opinions to the informal Reports on Mr. Wallace, or to any other informal Reports he processed during his tenure. His efforts to see that the informal Reports were of sufficient "quality and thoroughness" were limited to this procedural review. With respect to the informal Reports prepared by Ms. Askew and Mr. Hayward regarding Mr. Wallace, Mr. Tober did not make any modifications to the Reports, nor did he ask Ms. Askew and Mr. Hayward to take any further actions with respect to their informal Reports before circulating them to the rest of the Committee. Mr. Tober utilized the exact same procedures with those Reports that he had utilized with respect to all of the informal Reports submitted to him during his tenure as Chair, including those relating to Chief Justice Roberts and Justice Alito.

3. **Would you agree that the Chair functions, in essence, as a "gatekeeper" of the investigators' reports for the entire Standing Committee?**

4. **Would you agree that this responsibility of the Chair is roughly analogous to the gatekeeping function of a trial judge who must decide whether a jury is allowed to hear or view certain evidence**

Answers to Question Nos. 3-4

The role of the Chair with respect to the submission of Reports to the entire Committee is not analogous to the "gatekeeper" role performed by a judge in a trial with respect to the jury's consideration of expert and other evidence. Unlike in a trial context, where the judge makes a substantive review of the proffered evidence before allowing it to be presented to the jury and disallows certain evidence from being considered by the jury, the Chair leaves it up to the members of the Committee to weigh and evaluate for themselves all the information contained in a Report. As noted above, Mr. Tober simply verified compliance with a procedural checklist before asking the evaluator to circulate the Report to the Committee.

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One of the witnesses testifying in favor of Mr. Wallace's confirmation, W. Scott ("Scotty") Welch of Jackson, Mississippi, served as State Delegate to the American Bar Association House of Delegates from 2001 until the conclusion of the ABA's Annual Meeting in 2006, at which time he began a three-year term on the ABA's Board of Governors. In his prepared remarks, Mr. Welch states:

> **[I]t is clear that the prior ABA testimony to this Committee and consequently its recommendation are based on information that should not have been used by Ms. Askew in her report to the Standing Committee, nor by the Committee in reaching its conclusion; because not one person who was critical of the nominee—even to the extent that his appointment would undo progress in the important area of civil rights—would waive his or her right to anonymity. Curiously, the prior ABA testimony does not report any request to anyone to waive the right to remain anonymous. By its testimony, the ABA Standing Committee did not violate confidentiality of its sources, as was its obligation; however, it is beyond speculation that it relied upon those sources to reach and to attempt to justify its conclusions. It thereby failed to follow the ABA policy it detailed to this Committee. (Welch Prepared Testimony, at 5)**

5. Please respond to Mr. Welch's criticisms.

Answer to Question No. 5

Mr. Welch's criticisms reflect a fundamental misunderstanding of how the Standing Committee performs its peer review evaluations. The Committee does not consider or rely upon "anonymous" sources. Instead, the names of interviewees are included in the Reports provided to the Committee. However, consistent with the assurance of confidentiality given to interviewees to ensure that they provide candid and frank assessments of the nominee's professional qualifications, the names of interviewees are not disclosed to anyone other than the members of the Committee. If an individual is unwilling to be identified in the Report submitted to members of our Committee, any comment that he or she has made concerning the nominee is excluded from the Report and not considered by the evaluator or by the Committee in reaching its rating of the nominee. In certain circumstances, interviewees have consented to the disclosure of their identities and their comments to the nominee. In fact, in the supplemental evaluation of Mr. Wallace, one of the interviewees agreed that Ms. Bresnahan and Mr. Hopkins could disclose his name and his adverse comments to Mr. Wallace, and they did so. See September 26, 2006 written testimony of Ms. Bresnahan and Mr. Hopkins at p. 27.

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Last week, Ms. Askew testified that "[c]onsistent with this Committee's requirements for confidentiality, Mr. Wallace was given every opportunity to fully rebut or otherwise provide any information he wanted regarding the negative or adverse comments."

6. **Did Mr. Wallace make any requests to the Standing Committee investigators that they contact certain individuals that he was confident would rebut the negative or adverse comments? If yes, please document each request. Were all of these individuals contacted prior to the Standing Committee's September 2006 "supplemental" rating? If not, why not? And, if not, which of Mr. Wallace's references were not contacted? Finally, were all of these individuals' comments provided to Standing Committee members prior to the Standing Committee's September 2006 "supplemental" rating?**

Answer to Question No. 6

The Standing Committee evaluators contacted or attempted to contact each of the individuals whom Mr. Wallace had suggested be contacted. At the interview of Mr. Wallace conducted by Ms. Askew, he identified two persons who should be interviewed, and those individuals had already been interviewed by Ms. Askew. Their comments were included in the Report prepared by Ms. Askew. Mr. Wallace suggested to Ms. Bresnahan and Mr. Hopkins that they call Judge Michael McConnell, and Mr. Wallace acknowledged at the hearing that they did so. At Mr. Wallace's suggestion, a call also was placed to Robert Bauer, but Mr. Bauer did not return the phone call. The comments by Judge McConnell were included in the Report submitted to the members of the Standing Committee before they voted on the rating in October 2006.

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THE LAW OFFICE OF
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November 14, 2006

Barr Huefner
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Mr. Huefner:

Here are my responses to Senator Leahy's written questions regarding the nomination of Michael B. Wallace.

1 - A. Black citizens, who comprise 36% of the Mississippi's population, would have been in the minority in the electorate for each of Mississippi's members of Congress, meaning that they would have been unable to elect a candidate of choice and that Mississippi's congressional delegation would be all-white.

1 - B. As indicated in my written testimony, I have serious concerns that as a judge, Mr. Wallace would carry an unduly narrow view of the Voting Rights Act and of the power of Congress to enact remedial legislation such as the Voting Rights Act.

2 - A. As indicated in my written testimony, I have serious concerns that as a judge, Mr. Wallace would carry an unduly narrow view of the Voting Rights Act and of the power of Congress to enact remedial legislation such as the Voting Rights Act. His position in the *Jordan* case reinforces that view.

2 - B. As a voting rights lawyer in Mississippi, I am concerned that Mr. Wallace would interpret the Act and Congress's intent in an unduly narrow and restrictive way.

3. It is crucial for African-Americans to serve on the bench in Mississippi and the Fifth Circuit because it is important, as we recover from the legacy of slavery and racial discrimination in this country, to share power among the races in all branches of government.

4. His testimony did not allay my concerns. I want to mention one matter in particular. At one point, Mr. Wallace said he sends his children "to the most integrated school in the State" (p. 32) and I think he repeated that later in his testimony. As I understand it, his children have attended St. Andrews Episcopal School, a private school. It is not the most integrated school in Mississippi. The Private Schools Report shows that

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5.73% of the students there are African-American. There are many, many schools in Mississippi, perhaps hundreds, that are more integrated. They are public schools. On this important point, Mr. Wallace was careless in what he said, and when he referred to "school[s] in the state," he apparently did not consider the universe of public schools, where most Mississippians send their children. Even among private schools, it appears that St. Andrews is not the most integrated. For example, St. Richards Catholic Elementary reports a 13.37% African-American student body according to the Private Schools Report. This carelessness and misunderstanding of the facts added to my concerns, and nothing in Mr. Wallace's testimony allayed any of them.

Thank you for your consideration.

Sincerely,

Robert B. McDuff

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October 30, 2006

Honorable Arlen Specter, Chairman
Senate Judiciary Committee
ATTENTION: Mr. Barr Huefner
224 Dirksen Senate Office Building
Washington, D. C. 20510

Re: Written Responses to Questions regarding
"Judicial Nomination: Michael B. Wallace of Mississippi"

Dear Senator Specter:

This letter contains my written responses to the written questions submitted by Senator Patrick Leahy to me on October 3, 2006. The questions are restated in their entirety followed by the answers.

WRITTEN QUESTION 1(A)

1. You once served as Staff Attorney for Central Mississippi Legal Services. You testified about the harm done by Michael Wallace to programs providing legal services to the poor during his tenure as director and chairman of the board of the Legal Services Corporation ("LSC") from 1984 until 1990. As Director, he and his fellow board members hired lobbyists to urge Congress to reduce LSC's budget, presided over cuts in the agency's budget, and limited the types of legal actions in which LSC lawyers could participate. As you testified, Mr. Wallace even took the position that the independent agency he directed was unconstitutional and should be abolished. Mr. Wallace has justified budget cuts as "eliminating unnecessary or inefficient expenditures," Which "provide little if any direct delivery of legal services to the poor," and result in little more than just money "just going down the drain."

   A. Do you agree with Mr. Wallace's assessment of the effect of the budget cuts he sought and obtained on the provision of legal services for the poor in Mississippi?

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Honorable Arlen Specter
Re: Michael B. Wallace Nomination
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WRITTEN RESPONSE 1(A)

I strongly disagree with Mr. Wallace's assessment of the effect of the budget cuts he sought and obtained on the provision of legal services for the poor in Mississippi. Mississippi, during Mr. Wallace's tenure at LSC, had more people per capita living below the poverty level than any other State in the Union. The budget cuts had a direct and immediate impact on the ability of poor people in Mississippi to obtain attorneys and gain access to the courts. For instance, the budget of North Mississippi Rural Legal Services (NMRLS)[1] decreased from a height of over $3,000,000 in the late 1970's and early 1980's. North Mississippi Rural Legal Services employed a total staff of 118 employees, including 32 lawyers and 34 paralegals, and served 372,000 potential clients with this budget. However, because of cuts pushed by Mr. Wallace and others, NRMLS currently serves 276,362 potential clients, with a staff of 50 persons, including 15 attorneys and 10 paralegals.

The Mississippi Supreme Court has recognized that the State's poor residents, numbering 548,079 persons, do not have access to equal justice because they do not have access to attorneys. On June 29, 2006, the Mississippi Supreme Court created the Mississippi Access to Justice Commission in an effort "to make sure that every citizen of this state, regardless of economic status, has reasonable access to justice and that no one is excluded because they don't have the money to hire an attorney." As reported in the news media, "[e]xperts have told [the] commission studying legal aid for the poor that between a third and half of the people in Mississippi who apply for legal services are turned away."[2] Statewide, there are only about 30 Legal Services attorneys available to assist the State's 550,000 poor persons.[3]

One major factor contributing to Mississippi's dilemma of a lack of access to justice for poor people has been the severe LSC budget cuts orchestrated and initiated by Mr. Wallace and others during his tenure at LSC.

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[1]NRMLS serves the poor in De Soto, Tate, Marshall, Benton, Tippah, Alcorn, Tishomingo, Itawamba, Prentiss, Lee, Pontotoc, Lafayette, Panola, Tunica, Coahoma, Quitman, Bolivar, Sunflower, Leflore, Tallahatchie, Yalobusha, Grenada, Calhoun, Union, Chickasaw, Monrow, Clay, Lowndes, Oktibbeha, Webster, Choctaw, Winston, Attala, Montgomery, Carroll, Humphreys, and Washington Counties.

[2]See, the News from South Mississippi, WLOX, dated September 14, 2006 attached.

[3]Id.

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Honorable Arlen Specter
Re: Michael B. Wallace Nomination
Page 3

WRITTEN QUESTION 1(B)

B. Do Mr. Wallace's actions while at LSC affect your assessment of whether he could be a fair and impartial judge in cases involving the poor and powerless? What about Mr. Wallace's attempt as Director of LSC to establish that it was not constitutional? Why or why not?

WRITTEN RESPONSE 1(B)

Mr. Wallace's action at LSC does affect my assessment of his impartiality as a judge in cases involving the poor and powerless. It has been reported that a fellow board member stated that "Mr. Wallace showed genuine disregard for the need to fund legal services for the poor."[4] This report is consistent with Mr. Wallace's attempt to cut the budget for the agency, stop major impact litigation by the agency, and his public opposition to the agency he took an oath to uphold and protect. Since Mr. Wallace has been so dogmatic in his efforts to destroy the agency, I would question his impartiality as a judge involving the poor and powerless.

It is disingenuous to taka an oath to support an independent federal agency and then try to destroy that agency from the inside. It is even more disingenuous to attack the agency as being unconstitutional when court decisions handed down just before the attempts to dismantle the agency are made clearly indicate that independent federal agencies are not unconstitutional. Such agencies have become a part of the fabric of our government and their rules and enforcement actions have become embedded in our society. When a person seeks to dismantle one of the few federal agencies that was established to provide equal access to justice for the poor and powerless, it raises a concern about that person's ability to be fair and impartial to the poor and powerless.[5]

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[4]See, Save Our Courts, Advocacy Letter by civilrights.org, September 25, 2006 attached.

[5]As an aside, under current federal law, federal judges have to review and decide whether to give approval to indigent clients to file civil cases and prosecute appeals without paying the customary filing fee and court costs. A person so opposed to access to justice for the poor and powerless might abuse such power by summarily denying indigents access to the federal courts without paying the required fees.

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WRITTEN QUESTION 1(C)

C. What affect did Mr. Wallace's actions have on the ability of poor or low-income people to obtain relief from systemic problems via impact litigation, such as class actions suits? Why it is important for poor or low-income persons to have the ability to bring class actions?

WRITTEN RESPONSE 1(C)

Mr. Wallace's actions ultimately led to LSC banning LSC lawyers from bringing class action lawsuits in a number of areas of the law such as civil rights, voting rights, employment, consumer finance, housing, and police misconduct. In many of these areas of the law, the poor are often preyed upon by predatory lenders and landlords, abusive employers, recalcitrant governmental units, and overzealous police officers. Legal Services lawyers have been able to use class action, as a method to obtain relief for numerous poor and disenfranchised people when individual relief would have been cost prohibitive. In the areas of consumer finance, LSC lawyers had been able to change the playing field so that it became closer to being equal in the bargaining context until cutbacks in class action and fee generating litigation were implemented. Blacks and other minorities who were unrepresented by candidates of their choice on many governing boards and commissions in rural areas because of at-large districts, discriminatory redistricting, and racial bloc voting, were finally able to take part in their local governments as a results of voting rights lawsuits brought by LSC lawyers. However, once regulations were put in place preventing LSL lawyers from representing poor and powerless racial minorities in voting rights cases, the level of success has been stymied.

WRITTEN QUESTION 2

2. W. Scott Welch testified at Mr. Wallace's hearing about concerns raised by many lawyers and judges about Mr. Wallace's judicial temperament, stating, "[if] the minority – but admittedly significant- number reported by Ms. Askew is proven to be correct (which I doubt), the nominee will not be setting things back, reversing existing law, nor taking us back to a former time. He will be writing lone dissents and, in all probability, will be shunned by colleagues and publicly criticized by legal scholars."

   Do you share Mr. Welch's lack of concern with the consequences of confirming Mr. Wallace to a seat on the Fifth Circuit? What parts of Mr. Wallace's record give you concern about the impact he could have on the bench?

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WRITTEN RESPONSE 2

I do not share Mr. Welch's lack of concern with the consequences of confirming Mr. Wallace. I, like the minority Mr. Welch referred to, think Mr. Wallace would reverse existing law and take us back to a time many do not want to go. Mr. Wallace is very persuasive, although his arguments have not always persuaded the United States Supreme Court. However, he was successful in one case that I was involved in when he convinced a three-judge district court, one of the judges being an appellate judge from the Fifth Circuit, to hold interim legislative elections under apportionment plans that were grossly malapportioned.

The Fifth Circuit Court of Appeals is often faced with novel questions of constitutional and federal statutory construction where the Supreme Court and other circuits have not ruled on such matters. In those cases, Fifth Circuit panels often decide what the law should be, and the United States Supreme Court refuse to review the cases on writs of certiorari. In those cases, the decisions become final. In those untested areas of the law, Mr. Wallace's art of persuasion could influence one other judge on the panel,[6] and the full Fifth Circuit and United States Supreme Court are unlikely to review the decision.

Mr. Wallace's record in vehement opposition to the rights of poor and powerless people to have equal access to the courts, and his view s on the Voting Rights Act of 1965 give me concern about his impact on the Court if he was confirmed. Mr. Wallace's opposition to the Voting Rights Act is detailed in the Report on the Nomination of Michael B. Wallace to the U. S. Court of Appeals for the Fifth Circuit by the People for the American Way.

WRITTEN QUESTION 3

3. As the one undemocratic branch, the courts have a special responsibility to make sure they are available to those Americans most in need of the courts to protect their rights. Based on Mr. Wallace's record, are you assured that all litigants coming into his courtroom, were he to be confirmed, would be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?

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[6]In some cases, district court judges as well as judges from other circuits sit on Fifth Circuit cases. Mr. Wallace could convince a visiting judge to vote with him on some issues.

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Honorable Arlen Specter
Re: Michael B. Wallace Nomination
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WRITTEN RESPONSE 3

I am not assured, based on Mr. Wallace's record, that all litigants would be treated fairly in the deliberative process that all judges must undertake. I think Mr. Wallace would be cordial to all who come before the bar of justice. But, I do not think that everyone would receive the same fair and impartial consideration that each is entitled to under our system of justice. As stated before, I think voting rights plaintiffs who are disenfranchised will not receive impartial consideration. Some poor people will likewise face a decision maker who might not be even handed.

WRITTEN QUESTION 4

4. In a 1996 article entitled *Voting Rights Act and Judicial Elections in the State Judiciaries and Impartiality: Judging the Judges,* Mr. Wallace proclaimed that before Mississippi created voting subdistricts in order to comply with the Voting Rights Act, "business interests worked . . . to ensure the election of *good black judges*. However, he wrote, "the elimination of white voters from new subdistricts may be made their task somewhat harder." As a long time voting rights lawyer in Mississippi, do you agree with Mr. Wallace's assessment that business interests were sufficient to ensure the election of "good black judges?"

WRITTEN RESPONSE 4

I do not agree with Mr. Wallace's assessment that business interests worked to ensure the election of "*good black judges*" prior to two voting rights cases being filed in 1984 and 1985, and I do not agree with Mr. Wallace's assessment that any effort by the business interests were sufficient to ensure the election of "good black judges." Prior to *Kirksey v. Allain* and *Martin v. Allain* being filed, there were no black judges on the Mississippi Supreme Court. There were 79 circuit and chancery court judges, only one was black. His name is Reuben Anderson. He was a municipal court judge for the City of Jackson, Mississippi, who was appointed as a county court judge in Hinds County, Mississippi to fill an unexpired term, and then appointed as a circuit court judge for the 7th Circuit Court District comprised of Hinds and Yazoo Counties, to fill an unexpired term. Blacks in Mississippi encouraged the Governors at each stage of Justice Anderson's appointment, to appoint a black person to fill the vacancy. There had been hundreds of judicial vacancies prior to Justice Anderson's appointment, but none were black. After Mr. Anderson was appointed a circuit court judge, Fred Banks, Jr.,a black, was appointed to replace him as county court judge for Hinds County. When Mr. Anderson was appointed to the Mississippi Supreme Court, Judge Banks was elevated to circuit court judge to replace Mr. Anderson. Black voters and political leaders urged Mississippi Governors to elevate Justice Banks as well. When Justice Anderson retired from the Mississippi Supreme Court to join the Phelps Dunbar law firm, Judge Banks was appointed to take

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his place on the Mississippi Supreme Court. Justice Banks has since retired and become a partner in the Phelps Dunbar law firm.

The *Kirksey* and *Martin* cases increased the opportunity of black voters throughout Mississippi to elect judges of their choice. As a results of those cases, Barry Ford, a black male, was elected a circuit court judge in the 1st circuit court district (Alcorn, Tishomingo, Prentiss, Lee, Itawamba, Pontotoc, and Monroe Counties). He left the bench to become a partner at the Baker Donelson law firm. John Whitfield, a black male, was elected a judge in the 2nd circuit court district (Hancock, Harrison, and Stone Counties). He left the bench and became a partner at the Phelps Dunbar law firm. Robert L. Gibbs, a black male, was elected a circuit court judge in the 7th circuit court district replacing Judge Banks. He left the bench to become a partner in the Brunini Grantham Grower & Hewes law firm. Patricia Wise and Denise Sweet Owens, black females, were elected chancery court judges (chancellors) in 1989 in the 5th chancery court district (Hinds County), and they are still on the Bench. Isadore Patrick, a black male, was elected a circuit court judge in the 9th circuit court district (Warren, Sharkey & Isaquena Counties) in 1989, and he is still on the Bench. Dorothy Colom, a black female, was elected chancellor in the 14th chancery court district (Lowndes, Noxubee, Oktibbeha, Clay, Webster, and Chickasaw Counties) in 1994, and she is still on the Bench. Vickie Roach Barnes and Marie Wilson (9th chancery court district), Johnny L. Williams (10th chancery court district), Janace Harvey-Goree (11th chancery court district), and Kenneth E. Middleton (17th chancery court district), all African-Americans, have been elected and are still serving as chancellors. Margaret Carey-McCray and Betty W. Sanders (4th circuit court district), Lillie Blackmon Sanders (6th circuit court district), Winston Kidd and Tomie T. Green (7th circuit court district), Kenneth L. Thomas (11th circuit court district), and Janie M. Lewis (21st circuit court district), all African-Americans, have been elected and are still serving as circuit court judges. African-American voters, and not the business interests, worked to assure the election of black judges in Mississippi. If we had waited on the business interests, there still would be only one black trial (circuit or chancery) judge in the State of Mississippi.

WRITTEN QUESTION 5

5. You have testified about some of the concerns with the lack of diversity on the federal bench in Mississippi and the Fifth Circuit, even though African-Americans represent 36% of Mississippi's population, higher than any other State in the Union. Yet, there is only one African-American currently on the Fifth Circuit and no minority federal appellate judges from the State of Mississippi. Why is it crucial to have African-American judges on the federal bench in Mississippi and on the Fifth Circuit?

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WRITTEN RESPONSE 5

Judges bring their life and cultural experiences to the Bench with them. In any collegial court it is important to have a diverse court – diverse in opinions (conservative, moderate, liberal), political persuasion, gender, and color to aid the collegial body in understanding differing points of view. It is also important to have a court that is diverse so that children will have role models to look up to and mentors to help guide them on career paths. It is important to have a court that looks like America – not just for Americans to see, but for the world to see what a true democracy looks like in all branches of the government.

WRITTEN QUESTION 6

6. Did Mr. Wallace's testimony at his hearing allay your concerns about his nomination? Why or why not?

WRITTEN RESPONSE 6

Unfortunately, Mr. Wallace's testimony did not allay my concerns about his nomination. Particularly, I did not hear Mr. Wallace offer a plausible explanation for his long held opposition to parts of the Voting Rights Act even after the United States Supreme Court has rejected his arguments or arguments similar to his.

Also, I did not hear Mr. Wallace offer a clear explanation for his views on the constitutionality of the LSC board of directors and his efforts to dismantle the agency, and why he opposed impact litigation and class actions by LSC attorneys.

Thank you for this opportunity to respond.

Sincerely,

/s/ Carroll Rhodes
Carroll Rhodes

CR:lk
Attachments

Responses of Michael Brunson Wallace
Nominee to the U.S. Court of Appeals for the Fifth Circuit
to the Written Questions of Senator Patrick J. Leahy

1. **One of this Committee's principle accomplishments this Congress was the reauthorization of the expiring provisions of the Voting Rights Act. As we heard in nine hearings in our Committee and in thousands of pages of testimony and reports, the VRA remains a cornerstone of our inclusive Democracy, protecting the rights of all Americans to vote free from discrimination and to have their votes counted. The almost 500 members of Congress who voted to reauthorize the VRA and the President who signed it realized the continued importance of this landmark civil rights law. Yet, you have spent much of your career fighting to limit the scope of the Voting Rights Act and, indeed, arguing that it is beyond Congress' power to enact.**

   You opposed the 1982 reauthorization of the Voting Rights Act when working for then-Congressman Trent Lott. In your Senate confirmation hearings on your nomination to the Legal Services Corporation, you testified that you did not believe that Section 2, a key part of the VRA, should contain an "effect of discriminating" test. You argued that plaintiffs should have to meet the higher burden of proving discriminatory intent. You have spent your career taking positions in redistricting cases advocating a narrow view of the VRA and taking positions which would undermine gains made by African-Americans in obtaining fair representations. As Director of LSC, you spearheaded efforts to block the program's lawyers from participating in redistricting lawsuits.

   If you are confirmed to the Fifth Circuit, you may well be called upon to consider provisions of the newly reauthorized Voting Rights Act, as applied to specific situations and perhaps even for their constitutionality. Given your longstanding and consistent opposition to the Voting Rights Act, and your discredited interpretations of the Act when you litigated it in the past, how can you assure us that you will be able as a judge to interpret and apply the Voting Rights Act in accordance with its plain language and Congressional intent?

   Response: I appreciate this opportunity to reinforce my longstanding support of voting rights for all Americans and the beneficial role that the Voting Rights Act has played in the United States. I testified to that effect during my confirmation hearing for the Legal Services Corporation in 1983 and I continue to believe so.

   Throughout my legal career I have, consistent with my ethical responsibilities, tried to provide the best possible legal representation to my clients, regardless of their identity or position. For example, I represented African-American voters and elected officials in Burrell v. Allain, 482 U.S. 910 (1987), in a series of lawsuits challenging state efforts to transfer tax revenue from a plant located in that county to other counties throughout the state. I represented Jefferson Parish in securing permission from the United States Court of Appeals for the Fifth Circuit to present to the Attorney General for approval under § 5 of the Voting Rights Act a redistricting plan containing a district with a substantial

African-American voting age population majority. East Jefferson Coalition v. Parish of Jefferson, Nos. 91-3511 & 91-3655 (5th Cir. Aug. 8, 1991).

If I were to be confirmed, I would apply standard principles of statutory construction to any act of Congress, and I would follow precedents established by the Supreme Court and prior decisions of the Fifth Circuit.

2. **In your LSC confirmation hearing, you testified that plaintiffs bringing suit under Section 2 of the VRA should have to meet the high burden of proving discriminatory intent. I disagree with you now, and I disagreed with you in 1982, when I voted with the overwhelming majority of Congress to clarify that Section 2 did contain an "effect test" and not the more restrictive "intent test." But, even setting aside my differences with your political beliefs about what Section 2 should require, I have significant concerns about what you argued as a lawyer it did require after the 1982 reauthorization.**

In 1983 and 1984, you defended the Mississippi Republican Party against a challenge to Mississippi's congressional districting plan contending that it improperly diluted minority voting strength. You argued in federal court that the reauthorized Section 2 of the VRA still required proof of discriminatory intent. You argued this despite the fact that you had fought for an intent test—and lost—during the 1982 VRA reauthorization. A special three-judge panel of the district court for the Northern District of Mississippi rejected this argument out of hand, writing, "We find this argument to be meritless as it runs counter to the plain language of amended § 2, its legislative history, and judicial and scholarly interpretation." *Jordan v. Winter*, 604 F. Supp. 807, 810 n.5 (N.D. Miss. 1984).

A. **You seem to have acted as through the legal arena were a place to continue political fights you lost in the political arena. As a judge, what assurance can you provide that you would be able to set aside your own political agenda to interpret what the law is, as opposed to what you wish it to be? How can you assure us you will be able to separate the line between political questions and legal questions when you did not do so in *Jordan*?**

Response: I can assure the Committee that I have never allowed personal opinions to interfere with my representation of a client. The arguments that I made on behalf of clients in Jordan v. Winter were legal arguments, not political arguments, as is the case in all of my legal representation. I would note that, with respect to the question of the interpretation of § 2(b), the District Court in Jordan v. Winter applied the Fifth Circuit's decision in Jones v. City of Lubbock, which had been decided six days earlier. 727 F.2d 364 (5th Cir. 1984). The Fifth Circuit explicitly noted that the language incorporated into § 2(b) had been given several different interpretations before Congress wrote it into the statute. Compare id., at 375 n.7 with id., at 379 & n.10.

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I can assure the Committee that, if confirmed, I would rule based on the law and precedent

B. As a judge, how will you able to analyze cases involving the determination of Congressional intent if you were willing to throw out not only the plain meaning of language, but the plain meaning of language you had fought because of what it means?

Response: With respect, in the Jordan case, I made the best possible arguments on behalf of my client. I recognize that the role of a judge when interpreting a statute is much different than that of an advocate. A judge should look to the plain meaning of the statute and not seek ambiguities in the language. I respect that it is the role of the legislative and executive branches to make policy and, if confirmed, would not infringe on the policymaking role of the other branches.

3. In 2002, you represented the Mississippi Republican Executive Committee in a congressional redistricting case. You argued that an obscure 1941 statute required that all of Mississippi's members of the U.S. House of Representative should be elected at-large because the Mississippi legislature could not agree on a congressional redistricting plan. You advanced this argument even though your position was contradicted by both a 1967 federal statute and by the decision of every court since that time adopting a redistricting plan following the failure of the legislature to do so. Thankfully, your position was rejected by a three judge court in Mississippi and then again by the Supreme Court in an opinion by Justice Scalia, who held that the at-large election requirement was superseded by the later requirement requiring single member districts whenever possible.

A. One thing that disturbs me about your argument was your apparent disregard for both statutes and governing precedent. How can you assure us that, as a judge, you will not disregard those statutes and governing cases that do not accord with your policy preference?

Response: As I have noted, I have always endeavored to make the strongest reasonable arguments on behalf of my clients in order to advance their interests. The Mississippi Rules of Professional Conduct state that a lawyer may make an argument where "there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law." Rule 3.1. Before the decision in Branch v. Smith, 538 U.S. 254 (2003), the Supreme Court had never considered the effect of the adoption of 2 U.S.C. § 2c on the continued vitality of 2 U.S.C. § 2a(c)(5). The Mississippi Republican Party argued that § 2a(c)(5) should not be disregarded, but enforced. While the Court ultimately declined to apply the statute, a majority agreed that the statute had not been impliedly repealed.

I can assure the committee that I recognize that the roles of an advocate and judge are quite different. As I noted in response to question 2.B, I respect that it is the

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role of the legislative and executive branches to make policy and, if confirmed, would not infringe on the policymaking role of the other branches. Further, I would apply the precedent of the Supreme Court and Fifth Circuit.

B. If your at-large plan had been enacted, how would Mississippi's African-American voters have had meaningful representation as required by the Voting Rights Act and subsequent case law?

Response: At-large representation would have given African-American voters, like all Mississippi voters, four opportunities, as opposed to one, to obtain satisfactory representation from their delegation on any given issue. To have four Representatives competing to serve each constituent might well have brought more meaningful representation than ever before to all Mississippians, including African-American voters. None of the nine Justices accepted appellants' argument that enforcement of § 2a(c)(5) would violate any portion of the Voting Rights Act.

C. One of the central questions I have for any judicial nominee is whether he or she understanding the role of the courts and their responsibility to protect the constitutional rights of individuals, especially the less powerful and especially where the political system has not. The Supreme Court defined the special role for the courts in stepping in where the political process fails to police itself in the famous footnote 4 in *United States v. Carolene Products* (1938). In that footnote, the Supreme Court held that "legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation, is to be subjected to more exacting judicial scrutiny under the general prohibitions of the Fourteenth Amendment than are most other types of legislation." Can you discuss the importance of the courts' responsibility under the *Carolene Products* footnote to intervene to ensure that all citizens have fair and effective representation and the consequences that would result if it failed to do so?

Response: In Carolene Products, Justice Stone wrote that, in the case in question, the Court did not have to inquire "whether prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry." United States v. Carolene Products Co., 304 U.S. 144, 152-53 n.4 (1938). This footnote introduced the notion of heightened classes of review in Equal Protection cases. If confirmed, I would adhere to the numerous precedents of the Supreme Court and Fifth Circuit in determining the appropriate standard of review to apply in such cases.

4. At your hearing last week, when you were asked about your 1982 testimony before the Committee where you expressed general support for the Voting Rights Act, you

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confirmed your previous testimony that the VRA has "had a tremendous effect in my home State of Mississippi with regard to its primary goal of assuring people the right to vote." However, in an article you wrote in 1996, you criticized the VRA for encouraging redistricting in Mississippi that produced, as "[c]ompared to white members of the judiciary," African American judges with "much less legal experience," and you asserted that "the character of [their] experience hardly seems likely to render them sympathetic to business interests."

A. How is your article criticizing the effects of the VRA consistent with your professions of support for the VRA?

Response: As the question indicates, the article was not a criticism of the Act itself, but rather was meant to describe some of the particularized effects in Mississippi. In fact, the article was prepared under the editorial supervision of former Attorney General and Fifth Circuit Judge Griffin Bell. His introduction described the article as raising such "interesting issues" as whether judges ought "to be 'responsive' to any particular 'constituency.'"

B. Why do you believe that the "the character of the experience" of black judges renders them less sympathetic to business interests? Are you equally concerned that the "character of the experience" of white members of the judiciary in Mississippi makes them less sympathetic to race discrimination or minority voting rights claims?

Response: The factual basis of the observation was explained in detail in the article itself:

> [T]he major commercial and defense firms of Mississippi had no black partners until very recently. Only the new chancellor in Columbus has had any significant commercial experience, and she is unlikely to have much opportunity to use it in a court devoted primarily to domestic matters and property disputes. Most of the other black judges are drawn from the plaintiffs' bar; many of them also have experience in government service. Both of the black circuit judges in Hinds County formerly served on the staff of the state's attorney general, one of the new chancellors is a former mayor, and several new judges have worked for federally funded legal services programs – not a traditional training ground for conservative jurists.

The article expressly acknowledged that black citizens might be uncomfortable with having cases heard by judges elected from gerrymandered white districts. Similar concerns have led Congress to deprive federal courts outside of the District of Columbia of jurisdiction to approve changes to voting laws. However, most judges from all backgrounds are able to lay aside their sympathies and to apply the law fairly in particular cases.

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5. **When you worked as counsel for then-Congressman Lott, he wrote a series of letters urging the Reagan administration to reverse the government's policy, as enacted in regulations issued by the IRS, denying tax exemption to Bob Jones University and other religious institutions with racially discriminatory policies. When you were asked about one of these letters in your 1983 hearing for the Legal Services Corporation, you refused to confirm or deny that you had written the letter. However, you testified that you agreed with your former boss that Bob Jones University should have tax exempt status, dismissing the IRS's decision not to grant tax exempt status to segregated schools as based on "some sort of public policy idea." I am concerned that you so easily dismissed these protections against racial segregation as a "public policy idea."**

A. **Do you believe that the IRS regulations denying tax-exemptions to schools that racially discriminate, which were adopted by the Nixon Administration in 1970 following court decisions, were a mere "public policy idea," rather than an implementation of constitutional and legal rights against racial discrimination?**

Response: It is my understanding that the regulation referenced in the question and quoted in Justice Rehnquist's dissent, Bob Jones Univ. v. United States, 461 U.S. 574, 618-19 (1983) (Rehnquist, J., dissenting), quoting 26 C.F.R.§ 1.501(c)(3)-1(d)(3), did not deny tax exemptions to schools that discriminated on the basis of race. The majority opinion did not rely upon or interpret the regulation.

The majority opinion itself based its opinion on public policy, not on any constitutional command. For example, the majority states: "Whatever may be the rationale for such private schools' policies, and however sincere the rationale may be, racial discrimination in education is contrary to public policy." Bob Jones Univ. v. United States, 461 U.S. 574, 595 (1983). It continued:

> In view of our conclusion that racially discriminatory private schools violate fundamental public policy and cannot be deemed to confer a benefit on the public, we need not decide whether an organization providing public benefit and otherwise meeting the requirements of § 501(c)(3) could nevertheless be denied tax-exempt status if certain of its activities violated a law or public policy

Id. at 596 n.21.

B. **Did you believe that the IRS's regulations, which you dismissed as a "policy idea," were without legal force?**

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Response: My 1983 testimony did not refer to the regulation then in effect. I do not believe that any properly adopted regulation is without legal force.

C. **As a judge, would you feel free to dismiss such regulatory decisions as mere public policy without legal force?**

Response: A properly adopted regulation should be enforced by the courts. There is an extensive body of law that courts consult to determine whether any particular regulation has been properly adopted. If confirmed, I would adhere to applicable precedent in cases involving a challenge to a regulation.

6. **The Reagan Administration, which initially defended the IRS' actions and rules in the Bob Jones case, changed its position suddenly in January 1982. This was a drastic departure from the Justice Department's policy that had been in place since 1970 when the Nixon Administration, following court decisions, adopted Internal Revenue Service rules denying tax-exemptions to schools that racially discriminate. The Administration argued to the Supreme Court that Bob Jones should keep its tax-exempt status despite its official policy banning interracial dating, and denying admission to those who even advocated for interracial marriage or dating. The Supreme Court, in an 8-1 ruling, repudiated the position that you advocated even in 1983 and denied the schools tax-exempt status. Chief Justice Warren Burger, a known conservative jurist, wrote for the majority, "[a]n unbroken line of cases following *Brown v. Board of Education* establishes beyond doubt this Court's view that racial discrimination in education violates a most fundamental national public policy, as well as rights of individuals."**

A. **Yet, even given this strong opinion, in 1983 you took issue with the Supreme Court's decision in that case, saying that the Court should not have read the tax code to burden a religious institution without explicit congressional authority. Are your views of the legal issues the same today? Do you believe that the position you pushed for in 1983, even after the Supreme Court's decision, was incorrect as a matter of law? What about as a matter of public policy? If your position has changed, what made you change your mind?**

Response: To clarify, in 1983 I was merely responding to questions from the Committee during my confirmation hearing. I did not publicly advocate any position in the Bob Jones case while it was before the Court. Based on my great respect for the authority of Congress, I commented on the wisdom of the clear statement rule in the Catholic Bishop case. NLRB v. Catholic Bishop of Chicago, 440 U.S. 490 (1979). As a matter of law and public policy, it remains a good idea for executive agencies to have clear authority from Congress for the actions that they take. As Justice Powell observed, "The contours of public policy should be determined by Congress, not by judges or the IRS." Bob Jones, 461 U.S. at 612 (Powell, J., concurring). The legal issues resolved by the Supreme Court in Bob Jones remain the law today, and I support the law.

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B. What assurances can you provide this committee that, unlike in the Bob Jones case, if you are confirmed as a judge, politics and ideology would not matter more than the law and that you would uphold the country's protections against racial discrimination?

Response: I would reiterate that I took no position in the Bob Jones case. Rather, I merely responded to questions put to me by the Committee in 1983. I can assure the Committee that in 30 years of law practice, there is no instance in which I have disregarded my duty to the law because of politics, ideology, or any other reason.

7. Your record as Director and Chairman of the Board of the Legal Services Corporation ("LSC")—you served from your recess appointment in 1984 until 1990—leaves me concerned about your commitment to the goals of that agency of providing legal services to low-income people. As Director, you and your fellow board members hired lobbyists to urge Congress to reduce LSC's budget, presided over cuts in the agency's budget, and limited the types of legal actions in which LSC lawyers could participate. In fact, while you were Director, LSC board members paid a Washington law firm more than $77,000 to write up a study finding the LSC to be unconstitutional.

A. As Director of LSC, you were charged with the duty "to provide high quality legal assistance to those who would otherwise be unable to afford adequate legal counsel." How were your actions as Director consistent with a commitment to the provision of legal services to the poor?

Response: No one was paid to find that LSC was unconstitutional; LSC's president sought advice to determine the extent of LSC's authority over appropriated funds, and I, as Chairman, insisted that statutory restrictions be scrupulously followed. While serving on the board of the Legal Services Corporation, I advocated for more accountability and effectiveness within the organization so that there would be sufficient resources for legal-aid programs at the local level that provided legal services to the poor. Congress later codified many of the oversight and accountability programs that I worked to institute. The reforms our Board adopted persuaded President Reagan to drop his opposition to the continued existence of LSC. Those reforms and his support have ensured the continued provision of legal services to the poor to this day.

B. Why didn't you act as an advocate for the independent agency you were running and for the priorities of those who relied upon the LSC for critical legal services?

Response: My oath obligated me to enforce the laws enacted by Congress, including the priorities established by Congress. I discussed my views on those priorities in some detail in my 1985 confirmation hearings, and I adhered to those principles throughout my service.

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C. **In 1988, as Director of LSC, you pushed to cut LSC funding with a $55.5 million reduction from the previous year's budget. Please explain how seeking such a substantial financial reduction in LSC's budget was consistent with your oath.**

Response: When President Reagan abandoned his opposition to the continued existence of LSC and proposed a budget at roughly five-sixths of the level previously appropriated by Congress, I believed that cooperation with the President was the best way to ensure continued support for the program. That judgment has been supported by subsequent history, as Congress has enacted into law many of the reforms promoted by our Board, while continuing to fund LSC.

8. **According to a 1989 article in the Christian Science Monitor, in your role as Chairman of the Board of LSC, you spearheaded efforts to block the program's lawyers from participating in redistricting lawsuits. This was the first time that LSC declared that an entire area of civil litigation was completely off-limits to federally-funded legal aid lawyers rather than leaving it up to local legal aid boards to determine their own priorities. Several people involved with LSC at the time, Republicans and Democrats, believed this nationwide prohibition on providing legal assistance in redistricting cases to be a political judgment, in light of your long history of hostility to redistricting cases. You have defended this decision based on the need to prioritize in light of limited budgets.**

A. **You were supposed to be an advocate for LSC and the goals of the program. As Director of LSC, you spent thousands of dollars on lobbyists and lawyers to cut LSC's funding and argue that LSC was unconstitutional. Why did you target entire areas of litigation to ban instead of using your role as Director to secure additional enough funding for LSC to pursue all of its priorities?**

Response: The restriction on redistricting litigation was one of the reforms our Board adopted to ensure continued support for LSC. The United States Court of Appeals for the District of Columbia Circuit affirmed our authority to do so. Congress subsequently wrote the restriction into the statute.

B. **Why didn't you leave the decision about priorities to local legal aid boards, which are best able to assess local needs, as had always been done previously?**

Response: The ability to address local needs depends on the continuance of national support. I believe that the prohibition against redistricting litigation has helped to ensure continued national support.

C. **What effect did your actions have on the ability of poor or low-income people to obtain relief from systemic problems via impact litigation, such as class actions suits? Do you believe it is important for poor or low-income people to have the ability to bring class actions? Why or why not?**

Response: The redistricting regulation barred the use of taxpayers' money to engage in impact litigation regarding redistricting. I believe it is important for poor people to have the ability to bring class actions and other types of impact litigation; that is why I support through my firm local organizations that file such suits. However, our Board concluded that it was important to separate LSC from such suits so that public support for the provision of individual needs would not erode.

9. **In your 1985 confirmation hearing for Legal Services Corporation Director, you were asked about your opposition to LSC's minority recruitment program. You testified that you were "not interested in the minority recruiting goals of the program," agreed that "minority recruitment is not a legitimate goal," and said, "I am opposed to race-conscious government action, and I believe the law forbids it."**

A. **Why did you think it was appropriate to put your personal political goals ahead of the goals of the agency which you directed?**

Response: The questions put to me in 1985 did not refer to any goals established by LSC, but sought only my personal beliefs. I agreed that LSC should "recruit a competent work force that reflects and responds to the diversity of the clients to be served, many of whom are women, blacks, Hispanics and other minorities." I said that LSC should "recruit lawyers, of whatever race or sex, who can properly represent minorities and women," and added, "[n]ot all lawyers can adequately represent all clients, but good ones can, just as good Senators can represent all types of citizens."

B. **Do you still believe that the law would forbid the minority recruitment program? Do you believe that all affirmative action programs are illegal?**

Response: In Gratz v. Bollinger and Grutter v. Bollinger the Supreme Court established that, in the context of higher education, some affirmative action programs can be constitutional. If confirmed, and an issue regarding the constitutionality of an affirmative action program were to come before me, I would apply relevant Supreme Court and Fifth Circuit precedent.

C. **When you made this statement, in 1985, the Supreme Court had, in fact, ruled the opposite--holding in the 1978 *Bakke* case that affirmative action programs taking race into account were legal. Why did you testify that the law forbids it? How can we be assured now that, if confirmed to the Fifth Circuit, you would follow the relevant circuit precedent or Supreme Court precedent when determining what the law does or does not forbid?**

Response: In fact, the Supreme Court in Bakke invalidated the race-conscious admissions program established by the University of California. While various opinions in the case suggested that some race-conscious government action might be legal, it remained unclear what sort of action, if any, might ultimately be approved. Since my testimony in 1985, the Supreme Court has approved race-conscious government action in certain circumstances. If confirmed, and an issue regarding the constitutionality of an affirmative action program were to come before me, I would apply relevant Supreme Court and Fifth Circuit precedent.

10. **In a 1989 article entitled "Out of Control: Congress and the Legal Services Corporation," you charged that Presidential control over the LSC Board was necessary because elements of LSC had been "proven guilty of waste, fraud, and abuse." However, a 1987 article in NEWSDAY magazine reported that Thomas Smegal, another Republican on the LSC Board, stated that the corporation had not found evidence of fraud or abuse by LSC programs. Why did your conclusions about "waste, fraud, and abuse" at LSC programs differ from those even of other Republican board members?**

Response: In over five years on the Board, I do not remember any vote in which the eleven members divided along party lines. I am satisfied that all directors properly discharged their duties without regard to party affiliation. The quotation from my 1989 article referred to state and national support centers. The article described five specific instances in which misconduct had been established.

Responses Michael Brunson Wallace
Nominee to the U.S. Court of Appeals for the Fifth Circuit
To the Written Questions of Senator Edward M. Kennedy

Voting Rights

1. **During your September 26, 2006 hearing, Chairman Specter asked you about statements in the American Bar Association's testimony concerning your representation of the Mississippi Republican Party in Jordan v. Winter (N.D. Miss). Chairman Specter asked you to respond to statements that you advanced legal positions that were "not well founded" and appeared to be "advancing your own personal views [on] the Voting Rights Act without regard to the law or the . . . impact on African American citizens of Mississippi." You responded that "before we got involved, the federal court had already created the first black majority district in Mississippi and had created another district that had a substantial minority population. All we did on behalf of the Mississippi Republican Party was to seek to preserve the plan that the court had already put into place."**

   The plan ordered by the court before your involvement in Jordan v. Winter, included a district in which African Americans were a majority of the total population, but not a majority of the voting age population. As a result, the court held that the plan, which you supported on behalf of the Republican Party, violated Section 2 of the Voting Rights Act by diluting African American voting strength.

   a. **In responding to Chairman Specter, did you intend to suggest that African Americans would have had the same opportunity to elect their chosen representatives under the plan you supported as they did under the plan that the Jordan court ultimately adopted? If so, please explain your response in detail, and set forth any evidence you have supporting that view.**

      Response: I appreciate this opportunity to clarify my testimony. I did not suggest to Chairman Specter that African-Americans would have had the same opportunity to elect their chosen representative under the Court's 1982 plan as they would have under the Court's 1983 plan. The Court did not reveal its 1983 plan until after the trial was over.

   b. **In the Jordan case, you argued that Section 2 outlaws only intentional discrimination in voting. The Jordan court called this argument "meritless," and held that it "runs counter to the plain language of amended Section 2, its legislative history, and judicial and scholarly interpretation." Although you recently testified that you now understand that Section 2 does not require proof of discriminatory intent, I find it difficult to understand how you could ever have argued to the contrary. The record of the House and Senate debates on the 1982 amendment to Section 2 is replete with statements that Section 2 was intended to prohibit practices with discriminatory effects without requiring proof of discriminatory intent. The Senate Judiciary**

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Committee's 1982 report on the extension of the Voting Rights Act clearly states that the amendment to Section 2 "is designed to make clear that proof of discriminatory intent is not required to establish a violation of Section 2." Because you worked as a Congressional staff member when Section 2 was amended, you should have been aware of this legislative history. Please explain why you raised such an obviously incorrect argument in this litigation, and why you believe the position you took in Jordan v. Winter was "fair."

Response: Throughout my legal career I have, consistent with my ethical responsibilities, tried to provide the best possible legal representation to my clients, regardless of their identity or position. It was my ethical obligation to my client in Jordan v. Winter to make the strongest possible statutory argument on their behalf. I believed that the analysis of § 2(b) that I had given at my confirmation hearings in 1983 was the best possible statutory argument, and I included it in the briefs on behalf of my client. The Supreme Court later construed § 2 differently, and I can assure the Committee that, if confirmed, I would ruled based on the law and controlling precedent.

c. **You testified during the hearing on your nomination to the Legal Services Corporation Board in 1985 that you believed Section 2 prohibited only intentional discrimination. You stated with regard to Section 2 that "[t]he meaning of the language now used . . . is in fact an intent test . . . ." You also said "I think intent is the best result," and that you would be "very disturbed" if the Supreme Court interpreted Section 2 to prohibit discriminatory effects without proof of discriminatory intent.**

i. **Why did you believe that requiring discriminatory intent under Section 2 was the "best result"?**

Response: To clarify, the quoted testimony comes from my 1983 confirmation hearings. Before 1983, the intent test had been applied by the Supreme Court in litigation under both the Fourteenth Amendment and the Fifteenth Amendment. It was easily understood by the public officials who are subject to § 2, and both state and federal courts were fully familiar with its application.

ii. **Do you continue to believe it is "very disturb[ing]" that Section 2 has been interpreted not to require proof of intent? If not, please explain what led you to change your view.**

Response: What I actually said in my 1983 testimony was that "I would be very disturbed if the Supreme Court could not give better guidance." I did not believe that the statutory language defined the applicable test particularly well, and I was concerned that those attempting to comply with the law would find it difficult to do so without clearer explanation.

2. **In Jordan v. Winter, the court rejected "the contention of [your clients] the Republican Defendants that Section 2 [of the Voting Rights Act], if construed to reach discriminatory results, exceeds Congress's enforcement power under the Fifteenth Amendment." At your recent hearing, you stated that you believed this argument was "well within the bounds of argument that a lawyer is entitled to make on behalf of his client."**

   a. **Do you believe that this argument is within the bounds of arguments that a lawyer properly may make today? Please explain.**

      Response: To the best of my knowledge, the Supreme Court has never determined whether the 1982 amendments to § 2 of the Voting Rights Act are within the authority delegated to Congress by § 2 of the Fifteenth Amendment. So long as that question remains open, a lawyer may properly raise it. The Mississippi Rules of Professional Conduct state that a lawyer may make an argument where "there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law." Rule 3.1. However, the Fifth Circuit has rejected the argument in the question. Any panel of the Fifth Circuit considering such an argument would be bound by the prior determination of the Fifth Circuit.

   b. **Aside from any arguments you may have made on behalf of a client, under your own view of the Constitution, do you believe that Congress exceeded its power by amending Section 2 to prohibit practices having a discriminatory effect – regardless of whether discriminatory intent is proved? Please explain your response in detail.**

      Response: As I noted, the Fifth Circuit has rejected the argument that Congress exceeded its power by amending § 2. If confirmed, I would be bound by the prior determination of the Fifth Circuit.

3. **Regarding Branch v. Smith, you testified that you "told Justice Ginsberg when she asked me in oral argument, will this not dilute minority votes, and I said there are plenty of mechanisms that our courts have used in Mississippi to make sure that minorities can be elected, even from white majority multi-member districts."**

   a. **Please list the mechanisms to which you were referring that have successfully been used by courts in Mississippi to ensure that African Americans can be elected in districts with a white majority.**

      Response: Examples of such mechanisms are found in Martin v. Mabus, No. J84-0708(B) (S.D. Miss. Dec. 29, 1988), in which the three-judge district court ordered judicial elections to be held in several multi-judge judicial districts without the use of separate posts, anti-single-shot requirements, and majority vote requirements. On October 3, 2006, suit was filed to reinstate the provisions of the

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Martin v. Mabus injunction in several Mississippi judicial districts. Boyd v. Barbour, No. 3-06-cv-00548-HTW-LRA (S.D. Miss.).

b. **In Branch, did you ever provide specific evidence of these mechanisms to the court or otherwise rely on them in the litigation?**

Response: On behalf of my clients, I advised the district court and the Supreme Court that any at-large election held under 2 U.S.C. § 2a(c)(5) would have to comply with the requirements of the Voting Rights Act. Because neither Court chose to apply § 2a(c)(5) in the circumstances presented, there was no occasion for discussing the particular mechanisms to be employed in such an election.

c. **In Branch, you argued that, because Mississippi's legislature had failed to redistrict as required by the 2000 Census, the state was required to hold at-large elections for candidates for the U.S. House of Representatives. You testified that you told Justice Ginsburg at oral argument that, had your position prevailed, "there was no doubt that such an election under that statute would produce an African American Congressman." You also stated "[i]t was never our intention to take away that representation, and it would not have been the effect had the court decided the statute applied in that circumstance." Mississippi has not elected an African American to state-wide office since the nineteenth century. If you had prevailed in the Branch case, Mississippi's representatives to the House would have been elected at-large. Given the state's voting history, why do you believe it would have been possible for an African American to be elected at-large to the House of Representatives?**

Response: African-American lawyers have been elected to judgeships by majority-white constituencies in many different parts of Mississippi. Under Martin v. Mabus, African-Americans were elected in the Ninth Circuit Court District, the First Circuit Court District, and the Fourteenth Chancery Court District, and to a numbered post in the Second Circuit Court District. Moreover, three African-Americans have all been elected to the Supreme Court from the Central District. Although there is no precedent for statewide elections to multi-member offices, this recent history would suggest that it is possible that a minority could be elected.

4. **In Branch, you relied on a 1941 statute to argue for electing Mississippi's Congressional delegation in statewide elections. You testified that "six members of the court agreed with us that the 1941 statute is still valid." However, the main thrust of your argument was that the 1941 statute should apply in the particular circumstanees of the Branch litigation. Writing for the majority, Justice Scalia soundly rejected that position as "contradicted both by the historical context of Section 2's enactment and by the consistent understanding of all courts in the almost 40 years since that enactment." In your testimony before the Judiciary Committee,**

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did you mean to suggest that the Court did not reject the most important parts of your argument in the case? Please explain.

Response: In my testimony before the Committee, I did not mean to suggest which parts of the arguments made on behalf of the Mississippi Republican Party were most important.

5. **If confirmed, you would have enormous power to shape the law in the area of voting rights. What assurance can you provide the Committee that you will fairly apply the law in cases involving claims of minority vote dilution?**

Response: I do not believe that the role of a judge is to shape the law. A judge should interpret the law as written by Congress and not make any attempt to impose his or her personal views. If confirmed, I would apply the precedent of the Supreme Court and Fifth Circuit in this area.

6. **In 1989, the Legal Times wrote that you expressed resentment about Section 5, the landmark law requiring states with a history of discrimination to obtain federal pre-clearance for voting changes. You reportedly told the Legal Times, "[i]t bothers me that Mississippi is discriminated against," referring to Section 5's requirement that Mississippi pre-clear voting changes with the federal government. During your LSC hearing, in discussing the Voting Rights Act, you said "the changes in my State since 1965 have been substantial and beneficial, and I would question . . . whether we are still so different from the rest of the country as to require some differential treatment provided in the Act."**

More recently, during the oral argument in Branch, you stated, "I think that's because of the very strange system of divided jurisdiction that Congress consciously created [in the Voting Rights Act] back in 1965 when it said, we will let the District of Columbia deal with statutory questions. We will let the court back home deal with constitutional questions. That's been in the act from day one, and it's given this Court trouble from day one."

Please explain each of these criticisms of Section 5 of the Voting Rights Act, particularly your claim that Section 5 discriminates against covered states. In addition, please explain what "trouble" you believe the statute has given the Supreme Court.

Response: It is a simple statement of fact that jurisdictions covered under § 5 of the Voting Rights are treated differently from those jurisdictions that are not. Congress has reached the conclusion that such differential treatment among jurisdictions is still justified by the facts that presently exist. Any court considering the authority of Congress to make that decision would have to give careful consideration to those facts and to apply the principles laid down by the Supreme Court when it considered the facts existing in 1965. Congress created a system of divided jurisdiction in 1965. The U.S. District Court for the District of Columbia may consider whether a proposed change violates § 5 of the Voting Rights Act, but it may not consider whether that same change violates the Constitution. District courts

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in the covered jurisdictions may consider whether local voting requirements violate the Constitution, but they may not consider whether they violate § 5 of the Voting Rights Act. My prior statements noted that this division of jurisdiction has required litigants to contest cases simultaneously in two courts hundreds of miles apart, and it has complicated the ability of courts to fashion remedial orders without infringing on the jurisdiction of other courts. As the Fifth Circuit explained in an appeal that I litigated on behalf of Jefferson Parish:

> A root source of the difficulty (if not impossibility) of the Herculean task laid at the feet of the district court by the parties and the law are the dilemmas created by the statutes and the jurisprudence: Too many immutable requisites and not enough variables. Redistricting plans today are supposed to eschew proportional representation while preventing minority voter dilutions; are supposed to provide sufficient "safe districts" for minorities according to population and voting age population, while ensuring compactness in such "safe" districts – and avoiding gerrymandering if at all possible.

East Jefferson Coalition v. Parish of Jefferson, Nos. 91-3511 & 91-3655, slip op. at 4-5 (5th Cir. Aug. 8, 1991). None of these observations are criticisms; they are simply descriptions of the situation that has existed since 1965.

Prison Safety

7. **When you worked for Senator Lott while he was a member of the House of Representatives, Congressman Lott sent the Department of Justice a letter, which bears your initials, "MBW," objecting to the Department's investigation of county jails in Mississippi and asking the Department to allow the counties to meet lower safety standards in their jails. The letter also demanded to know why the Justice Department's investigating attorney had not been fired.**

   a. **Did you draft the attached letter opposing the Justice Department's investigation into county jails in Mississippi?**

      Response: I drafted the letter which was discussed at the hearing. I do not believe the question accurately characterizes its contents.

   b. **When you were asked about this matter during the hearing on your nomination to the Legal Services Corporation in 1985, you stated that you agreed with the letter. Is that still your position?**

      Response: I have reviewed my 1985 testimony, and it does not appear that I was questioned about the letter.

Bob Jones Litigation

8. **I'm troubled by your position on the Bob Jones University v. United States litigation. Given the significance of the issues in that case, you must have known that your position would help entrench shameful policies of discrimination. As the Supreme Court has recently said in another case involving racial justice, "context matters." Your support of Bob Jones University seemed to ignore that context. You were in a policy role at the time, so it was your job to consider the impact of supporting Bob Jones University. Did you take into consideration the fact that if Bob Jones University had prevailed, its position would essentially subsidize discrimination and make it more likely that the discrimination would continue?**

   Response: I did not publicly advocate any position in the Bob Jones case while it was before the Court. Then-Congressman Lott did file an amicus brief in that litigation. I did not draft the brief, but did review it prior to filing. At the time of my 1983 confirmation hearing for the Legal Services Corporation, I explained that I was not comfortable with the idea of the Internal Revenue Service setting public policy, which I believed was the role of Congress. Based on my great respect for the authority of Congress, I commented on the wisdom of the clear statement rule in the Catholic Bishop case. NLRB v. Catholic Bishop of Chicago, 440 U.S. 490 (1979). As a matter of law and public policy, it remains a good idea for executive agencies to have clear authority from Congress for the actions that they take. As Justice Powell observed, "The contours of public policy should be determined by Congress, not by judges or the IRS." Bob Jones, 461 U.S. at 612 (Powell, J., concurring). The legal issues resolved by the Supreme Court in Bob Jones remain the law today, and I support that law.

9. **Before the Supreme Court issued its decision in the Bob Jones case, the House Committee on Ways and Means held hearings on whether organizations that discriminate should be tax exempt. The record of those hearings contains several letters, which are attached for your review. They each bear your initials – "MBW." Each of those letters urges the Justice Department to change its position in the Bob Jones case, so that discriminatory institutions could receive special tax exempt status. The letters were sent by the office of Congressman Trent Lott while you were a counsel in his office. Did you draft these letters on his behalf?**

   Response: I have no recollection of the letters. Because my initials appear on the letters, it is likely that I drafted them on behalf of then-Congressman Lott.

10. **Did you draft, or review before it was filed, Senator Lott's brief in Bob Jones University v. United States?**

    Response: I did not draft Congressman Lott's brief. I did review it before he filed it.

11. **The brief filed by Congressman Lott in the Bob Jones University case states that "racial discrimination does not always violate public policy," in defending the University's discrimination against African Americans for religious reasons. Bob Jones University expelled students for inter-racial dating. The other school involved**

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in the case refused to admit African American students at all. Is it your view that the policies of these private institutions do not violate public policy?

Response: I did not write the brief filed by then-Congressman Lott. The brief did not defend discrimination against African-Americans by Bob Jones University. Rather, the brief expressed the view that, because the IRS conceded Bob Jones to be both religious and educational, it fell within the scope of the language adopted by Congress. As Justice Powell observed, "The contours of public policy should be determined by Congress, not by judges or the IRS." Bob Jones, 461 U.S. at 612 (Powell, J., concurring). Congress could have amended the Internal Revenue Code to exclude educational institutions that discriminated on the basis of race.

General

12. **Do you believe that African Americans in Mississippi continue to suffer discrimination in voting, housing, employment, education, and health care? Please elaborate with regard to each area of discrimination.**

Response: It has been widely reported that many studies show that African- Americans continue to suffer racial discrimination in Mississippi and elsewhere; I have no reason to disagree, although I have not reviewed such studies. It is the task of district courts in particular cases to determine whether admissible evidence establishes racial discrimination of the type prohibited by Congress. It is the task of the appellate courts to review those decisions for reversible error.

13. **Do you agree that African Americans on average earn lower salaries than white Americans and are less likely to graduate from high school and college, less likely to own their own homes than whites, and less likely to vote than whites? If so, how do you explain these disparities?**

Response: The premise of the question is widely reported to be the case, and I have no reason to disagree, although I have had no occasion to examine that data. A judge need not determine an explanation for these disparities unless the explanation is somehow relevant to a case or controversy before him; in such a case, he must derive the explanation from the admissible evidence in the record. It would be improper for any judge to bring any personal presumption to the consideration of the record in a particular case.

14. **In your career as an attorney, in voting rights and other civil rights cases, you have -- with rare exceptions -- represented interests opposing claims by African Americans. Obviously, lawyers are expected to represent the interests of their clients, but their clients typically come to them for a reason. Your clients clearly thought you would be the best attorney to oppose the interests of African Americans. Why is that?**

Response: No client has ever hired me to oppose the interests of African-Americans. The Mississippi Republican Party has hired me to protect the interests of the Mississippi Republican Party when it has been sued by others in voting rights cases. Presumably, my clients chose me because of my legal training. Throughout my legal career I have,

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consistent with my ethical responsibilities, tried to provide the best possible legal representation to my clients, regardless of their identify or position. For example, I represented African-American voters and elected officials in Burrell v. Allain, 482 U.S. 910 (1987), in a series of lawsuits challenging state efforts to transfer tax revenue from a plant located in that county to other counties throughout the state. I represented Jefferson Parish in securing permission from the United States Court of Appeals for the Fifth Circuit to present to the Attorney General for approval under § 5 of the Voting Rights Act a redistricting plan containing a district with a substantial African-American voting age population majority. East Jefferson Coalition v. Parish of Jefferson, Nos 91-3511 & 91-3655 (5th Cir. Aug. 8, 1991). It was that same training that presumably led Mississippi Attorney General Mike Moore, a Democrat, to ask me to assist in the representation of the State in the judicial redistricting litigation.

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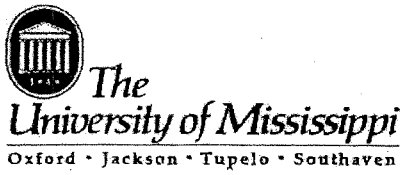
SUBMISSIONS FOR THE RECORD



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June 28, 2006

VIA FACSIMILE (202) 228-1698
The Honorable Arlen Specter
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Michael B. Wallace

Dear Senator Specter:

I write to urge that under your leadership that the Judiciary Committee of the United States Senate vote to confirm Michael B. Wallace as a judge on the United States Court of Appeals for the Fifth Circuit. I have known and had a professional relationship with Michael Wallace for over twenty years. I joined the University of Mississippi Law School faculty in 1970, and I served as President of the Mississippi Bar Association for the 1998-99 term.

I first met Mike Wallace over twenty years ago when he returned to Mississippi after clerking for the Mississippi Supreme Court and for the Supreme Court of the United States. I discussed with Mike the possibility of his joining our law faculty, as I knew that he would be an outstanding professor. As you know, Mike has an impeccable educational background. He attended Harvard University and then received his law degree at the University of Virginia. Even though Mike did not join our faculty, he has been a great friend to the law school through the years. Mike Wallace has worked with our students and made presentations to law school classes on numerous occasions. He has also given his time to serve as a judge at moot court competitions. All of my dealings with Mike show him to be a highly intelligent person of great integrity, and a person of great judgment and a temperament which will make him an asset to any court.

As you can tell from Mike Wallace's list of professional accomplishments, he is highly regarded by all members of the bench and bar in Mississippi.

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I was stunned when I read in the newspaper that the American Bar Association's Standing Committee on Federal Judiciary had reported that Mr. Wallace was "not qualified" to serve on the Fifth Circuit Court of Appeals. I strongly disagree with that finding, and I have found no professional colleagues who do agree with such a finding. Mike Wallace is a highly accomplished and well respected attorney. He is a great family man, and he is a leader in his church and community.

All of my experiences and contacts with Mike Wallace for almost a quarter of a century lead me to believe that he is fully qualified to serve on the Fifth Circuit Court of Appeals, and I urge your committee to give him a full and fair hearing.

Yours very truly,

Guthrie T. Abbott

Guthrie T. Abbott
Professor Emeritus of Law

cc: The Honorable Patrick J Leahy (via facsimile (202) 224-9516)
Ranking Member, Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510

GTA/cep

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June 14, 2006

Via Facsimile (202) 228-1698

The Honorable Arlen Specter
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Specter:

I am writing to urge confirmation of Michael B. Wallace as a judge on the United States Court of Appeals for the Fifth Circuit. I am a trial attorney and have had the opportunity to know Mike both professionally and socially over the last 23 years. Mike has been both aligned with me and adverse with me on legal cases in which we have been involved. I have found Mike to be extraordinarily professional and civil in all proceedings. He is an exemplary lawyer and American citizen who has involved himself deeply in the issues of his day. Mike is exceedingly well qualified, by training, talent and experience, to occupy a seat on this important appellate court. He has earned the highest reputation among his peers for legal ability and integrity.

As president of our Bar Association and also as president of the Charles Clark Inn of Court, I have had the opportunity to observe Mike and have been continually impressed with his remarkable ability. Mike and I are in the same church where he serves as an elder, a Sunday school teacher, and a participant in church mission trips to build houses for the poor in Central America. My personal and professional experience with Mike Wallace convinces me that Mike possesses demonstrated judicial temperament and that he would judge fairly and without favor the matters that come before him.

I urge your Committee to confirm Michael B. Wallace to a judgeship on the United States Court of Appeals for the Fifth Circuit.

Sincerely,

Alex A. Alston, Jr.

AAA/js

Reuben V. Anderson

Testimony before the
Judiciary Committee of the United States Senate September 26, 2006

My name is Reuben Anderson. My purpose today is to tell you why I believe Michael B. Wallace is qualified in every way to be a member of the United States Court of Appeals for the Fifth Circuit. If you look at the facts, you will agree with me completely.

First, I have been told that I need to introduce myself to this committee. I am a partner with the Phelps Dunbar LLP law firm and have practiced law with Mike Wallace there for the past 15 years. Before that I served by both appointment and election as a state court trial and appellate judge, with the last six of those years on the Mississippi Supreme Court. Previously, I had practiced civil rights law at a small firm in Jackson which served as local counsel for the NAACP Legal Defense Fund.

It might help you age me to know that Senator Trent Lott and I attended the University of Mississippi Law School at the same time. In 1967, I became the first African-American to graduate from that school. When I began my practice in Jackson, there were only seven black lawyers in the whole State of Mississippi. Today there are more than that in the Jackson office of our regional law firm.

Over the years, I have served as president of the Mississippi Bar as well as the Mississippi Economic Council, our state chamber of commerce. In 1996, I co-chaired President Bill Clinton's campaign in Mississippi. In recent years I have had the privilege of serving on the boards of Trustmark Corporation; Tougaloo College, my alma mater; the Kroger Company; BellSouth; and Burlington Resources as well.

I say all this simply to point out that in my 39 years as a lawyer I have had plenty of opportunities to judge the qualities of attorneys. I have been one, I have judged their cases, and I

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have, as a corporate board member, hired and fired them. In my judgment Mike Wallace is one of the best I've ever seen.

This is not a political judgment. Mike and I stand in different political parties. We disagree on many political issues. I am, I'm proud to say, a Democrat. But the question before this committee is not his politics but his intelligence, integrity and judicial temperament. In my opinion, he has all three.

My first encounter with Mike Wallace came in 1988. He appeared before the Mississippi Supreme Court on behalf of the victims of asbestos poisoning. He persuaded our court that residents of other states could sue in Mississippi to take advantage of the long limitations period our statutes then allowed.[1] I disagreed with him. But he carried the day with our court.

The next time Mike came to our court he appeared on behalf of Claiborne County, a majority black Mississippi county whose ad valorem tax revenue from a nuclear plant had been reduced by the state legislature.[2] Our court agreed with him that the county should have a chance to argue that racial discrimination was the reason the state had reduced the county's tax revenue.

When I left the bench in 1991 I had offers from several law firms. Mike Wallace is one of the reasons I chose to become a partner at Phelps Dunbar. He has never disappointed me. When clients have come to me, I have sent them to Mike. We have worked together on dozens of cases for all sorts of clients, including local businesses, both profit and non-profit, as well as individuals and national corporations. In the year 2000, we spent six weeks together in a trial courtroom in Jackson representing the company that is now Chevron Texaco in an oil-field

[1] *Shewbrooks v. A.C. and S, Inc.*, 529 So.2d 557 (Miss. 1988).
[2] *Burrell v. Mississippi State Tax Comm'n*, 536 So.2d 848 (Miss. 1988).

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clean-up case.[3] With appropriate conflict waivers, we have also been on different sides of legislative reapportionment disputes. I have been one of the advisors to the legislature's black caucus, while Mike has advised the Republican Party. Sometimes their positions have agreed. At others, they have not. But no one in those disputes has ever questioned Mike's integrity or his fairness.

The American Bar Association just did not know what it was talking about when it said Mike Wallace fails to respect African-American lawyers. If that were true, I would know it. It is not true. Mike Wallace is not only my partner, he is my friend. We visit in each others' homes. He has a fine family. He has helped the firm recruit black lawyers.

In the litigation group of our Jackson office, we have 26 lawyers, of whom six are African-American. Three of those are partners. The youngest of those was mentored primarily by Mike through her career at Phelps. If Mike had a problem with African-American lawyers, or if African-American lawyers had a problem with Mike, we would not be working together. But we are working together, because there are no such problems. In fact, when our firm as a whole won a diversity award from the Defense Research Institute in 2005, we asked Mike to join the team that went to San Francisco to accept it.

In addition, his highly successful career as a trial and appellate lawyer belies the ABA's claim that he is a lawyer who takes legal positions that are out of the mainstream. The advice he has given me and the clients I have brought to him has always been sound. In fact, the current Chambers USA survey ranks him as one of the top litigation lawyers in Mississippi. That shows how highly regarded he is in our state.

Finally, my motive for being here today is simply to tell the truth about a friend who has been unfairly disparaged. I intend to retire from the practice of law in the near future. If Mike

[3] On appeal, the case was *Chevron USA Inc v. Smith*, 844 So.2d 1145 (Miss. 2002).

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Wallace becomes a 5th Circuit judge, I will not have the opportunity to appear before him. But those who do will have a smart, fair and dedicated judge. That is why I urge you to vote to confirm the President's nomination of him to a position on the United States Court of Appeals for the Fifth Circuit.

If the committee has any questions, I will be glad to answer them.

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July 11, 2006

Senator Arlen Specter, Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Mike Wallace

Dear Senator Specter:

I write this letter in support of the nomination of Mike Wallace to be a member of the Fifth Circuit Court of Appeals. I have known Mike Wallace since 1988, when he argued his first case before the Mississippi Supreme Court, where I was a Justice at that time. As a young lawyer, Mike's argument to the Supreme Court was magnificent and his subsequent appearances before the Court while I was there were just as impressive.

In 1991 when I left the bench to join the law firm of Phelps Dunbar, LLP, Mike was a partner here. I have followed his career first hand since then. Mike and I have worked closely together in and out of the courtroom and I am convinced that Mike is one of the best legal talents in America. In addition to being a gifted lawyer, Mike is unfailingly honest and truthful with everyone he encounters.

I have also had the occasion to spend a lot of time with Mike and his family. He and his wife Barbara have four outstanding daughters, who I hope will return to Mississippi when they have finished their education. I have visited Mike in his home and he has likewise visited mine. I know that he is conservative, but I can assure you, from the fifteen years that I have spent seeing him at least weekly, that he will be fair and impartial to all that appear before him.

Just as our law firm has a commitment to racial diversity, Mike does likewise. He has been helpful in recruiting African-American lawyers to our firm and in fact our law firm has been recognized nationally for its accomplishments in the diversity arena. In 2005 Mike traveled to San Francisco to accept our National Diversity Award given by the DRI.

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Senator Arlen Specter, Chairman
July 11, 2006
Page 2

I could go on and on talking about Mike's abilities and skills as a lawyer and his character, but I can sum it up by saying that Mike would be a huge asset to the Fifth Circuit Court of Appeals and the President could not have picked a finer person or a better lawyer for this position.

I will be more than happy to come testify on Mike's behalf if it would be helpful to him.

Best regards,

PHELPS DUNBAR LLP

Reuben V. Anderson

RVA:fsw

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RICHARD BLUMENTHAL
ATTORNEY GENERAL

55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120

Office of The Attorney General
State of Connecticut

TESTIMONY OF
ATTORNEY GENERAL RICHARD BLUMENTHAL
BEFORE THE SENATE JUDICIARY COMMITTEE
SEPTEMBER 26, 2006

I have been privileged to try and argue cases before many federal judges while I have served as Attorney General for the State of Connecticut and earlier as United States Attorney for our state. I also worked as a law clerk for then United States District Judge Jon O. Newman, and United States Supreme Court Justice Harry A. Blackmun.

I now feel privileged -- and honored -- to appear before this committee in support of the nomination of Vanessa L. Bryant to the federal District Court.

Judge Bryant is eminently qualified -- a person of compelling distinction, strong legal insight, deep conviction and courage, and unchallengeable integrity. In addition, she has unshakeable balance, patience and common sense -- and good humor -- that are key to this incomparably significant role in our judicial system.

Educated at two highly esteemed institutions -- Howard University and the University of Connecticut School of Law -- Judge Bryant has a wealth of knowledge and experience. Her qualifications include 20 years of private legal practice and 8 years as a superior court judge, serving in some of our state's busiest trial courts in Hartford, Waterbury and New Britain.

I have personally appeared before Judge Bryant and found her to be a person of extraordinary ability -- consummate intellect and a combination of toughness and compassion necessary for a great jurist. She has all the qualities to be scrupulously fair and tireless in advancing the public interest.

I have great respect for our bar association, but strongly and emphatically disagree with its view of Judge Bryant's qualifications -- believing her to be highly, indeed superbly, qualified. The bar association conclusion is completely unspecific, unsupported by any factual evidence, and reliant on nameless, unidentified critics. These criticisms seem to reflect emotional or subjective reactions rather than objective results. Anonymity has uses and justifications, but not to attack a public nomination in a public forum for a position of grave public trust. Without names of critics, there is no way to assess their credibility and impartiality.

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The common theme of all comments -- even of critics -- is that Judge Bryant is demanding and disciplined but fair. She has expedited cases on her docket, helping the Judicial Department to reduce its overall civil backlog. Her work ethic and high ethical standards have made her a role model.

I urge the Senate's expeditious approval of Judge Bryant's nomination. The vacancy on the United States District Court in Connecticut is one of the oldest in the nation, dating back almost 2 years. Her service would also help diversify the federal bench by placing the first African-American woman on the federal bench in New England and providing only the 18th female African-American federal district court judge in the United States.

Ultimately, her clear professional merit and powerful personal qualifications should win her confirmation, regardless of any other factor.

I urge the committee's support for Judge Vanessa Bryant's nomination to the United States District Court.

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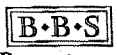

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Reply: Pascagoula

June 12, 2006

VIA FACSIMILE (202) 228-1698
The Honorable Arlen Specter
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Specter:

I write in support of the nomination of Michael B. Wallace of Jackson, Mississippi, for the Fifth Circuit Court of Appeals.

Like Mike, I was a law clerk for a justice of the United State Supreme Court, but we were years apart. He clerked for Justice William Rehnquist, and I clerked for Justice Tom Clark. I am also a past president of the Mississippi Bar, a Fellow and currently on the national Board of Regents of the American College of Trial Lawyers, and have been active in the ABA.

I have known Mike Wallace of years, have worked with him on legal matters, and have been around him at social and professional gatherings. He possesses the kind of ability, dedication and temperament I want to see on the federal bench.

I urge his confirmation for the Fifth Circuit Court of Appeals.

Sincerely,

Raymond L. Brown

Raymond L. Brown

RLB/tmr
cc: The Honorable Patrick J. Leahy (via facsimile - 202.224.9516)
Office of Legal Policy (via facsimile - 202.514.5715)
RLB/Misc/Specter061206tmr

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FRED M. BUSH, JR.
bushf@phelps.com

July 5, 2006

VIA U.S. MAIL

The Honorable Arlen Specter
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Specter:

It is with a great deal of pleasure that I join other past presidents of the Mississippi State Bar in urging the Senate to consent to the President's appointment of Michael B. Wallace to the United States Court of Appeals for the Fifth Circuit. I do not believe a more qualified person could be found. I also write to strongly protest the finding of him as "not qualified" by the Standing Committee on Federal Judiciary of the American Bar Association.

His academic performance at Harvard and the University of Virginia Law School was outstanding. Since graduating, he has served as a clerk in both the Mississippi and U.S. Supreme Courts, an aide to Senator Lott, and Chairman of the board of directors of Legal Service Corporation, a part-time, non-judicial job. In addition to service in all three branches of government, he has had an extensive and varied private practice for more than 20 years. No fair and unbiased evaluation could find him other than "well qualified" academically and professionally.

Mike Wallace is a man of high moral principles and absolute integrity. I have known Mike all of his life, and have been friends with his parents and grandparents for more than 60 years. The uncle for whom he was named was a classmate and one of my closest friends at the Naval Academy. From 1990 until my retirement, Mike and I were law partners in different offices of our firm. His moral character is absolutely above reproach. I understand that the ABA committee which rated him "not qualified" told him they found nothing about him that was adverse to his reputation for highest integrity.

The conclusion is inescapable that the NBA committee based its finding of "not qualified" on political or personal grounds, and I think I may be able to shed some light on that.

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The Honorable Arlen Specter
July 5, 2006
Page 2

In 1989, Mike was chairman of the board of Legal Services Corporation and in that capacity was invited to appear on a panel at a meeting of the ABA in Honolulu where the role of the federal government in providing legal services to the poor was one topic for discussion. I was present as a delegate to the ABA House of Delegates and attended the meeting. Opinion was sharply divided, and many of us took a more liberal view than Mike, but were prepared to hear a full and fair discussion. The ABA panelists were so vicious and personal in their attack on Mike that many of us were offended and expressed our displeasure at the time. One of the members of that panel is now President of the ABA and I believe another is on the Standing Committee.

It seems clear that the ABA committee, faced with the obvious fact that Mike is qualified academically, professionally, and ethically, found him "not qualified" for political or ideological reasons. With all deference, any findings by the ABA in such a situation should be disregarded by the Senate.

I most respectfully urge your Committee to confirm Michael B. Wallace to a seat on the United States Court of Appeals for the Fifth Circuit.

Sincerely,

Fred M. Bush, Jr.

FMBjr:slk
cc: The Honorable Patrick J. Leahy
Ranking Member, Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510

TO.218171.1

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July 25, 2006

Via Facsimile (202-228-1698)

The Honorable Arlen Specter
Chairman, Committee on the Judiciary
Unites States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Specter:

I am writing to disagree with the recent report of the American Bar Association's Standing Committee on Federal Judiciary that Mr. Mike Wallace is "not qualified" for the position to which he has been nominated.

Mike's formal educational and clerkship experience include: undergraduate education at Harvard, Editor of the Virginia Law Review, clerkships at the Supreme Court of Mississippi and the Supreme Court of the United States, the latter for then Associate Justice William H. Rehnquist.

In the private practice of law in Mississippi, Mike has earned the highest reputation among his peers for legal ability and integrity. Based on peer reviews, the respected legal publication Martindale Hubbell has given Mike its highest "AV" rating attesting to his superb reputation for integrity and legal ability. Two other prominent publications that base their ratings on peer reviews: "The Best Lawyers in America" and "Chambers USA" both list Mike as one of Mississippi's Top business litigators. He is a Fellow in the American Academy of Appellate Lawyers, an organization composed of America's foremost appellate advocates. Membership in the Academy is by invitation.

I doubt it seriously if many, or any, members of the ABA Standing Committee have these qualifications. It is inconceivable that anyone who has knowledge of Mike Wallace's intellectual and professional abilities, and is aware of his reputation for personal and professional integrity, could doubt that he possesses any of the qualities necessary for distinguished service on the federal bench.

In my short time in private practice, I have found Mike Wallace to be an excellent lawyer. I am convinced that Mike would judge fairly and without favor the matters that come before him. Therefore, I urge your Committee to confirm Michael B. Wallace to a judgeship on the United States Court of Appeals for the Fifth Circuit.

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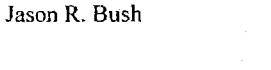
Very truly yours,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.



Jason R. Bush

JRB:jlw

cc: The Honorable Patrick J. Leahy (fax# 202-224-9516)
Ranking Member, Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510

Office of Legal Policy (fax# 202-514-5715)

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9600000-000100 07/25/2006

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July 7, 2006

Via Facsimile

Honorable Arlen Specter
Chairman, Committee on the Judiciary
of the United States Senate
224 Dirksen Senate Office Bldg
Washington, DC 20510

Honorable Patrick Leahy
Ranking Member of the Committee
on the Judiciary of the
United States Senate
152 Dirksen Senate Office Bldg
Washington, DC 20510

Re: Nomination of Michael B. Wallace of Jackson, Mississippi to be a Judge on the United States Court of Appeals for the Fifth Circuit

Dear Senators Specter and Leahy:

The purpose of my letter is to recommend that the Committee on the Judiciary advise and consent to the nomination by the President of Michael B. Wallace to serve as a Judge on the United States Court of Appeals for the Fifth Circuit.

The bases on which I presume to make this recommendation to you are as follows.

I have personally known Mike Wallace during the thirty years he has practiced law in Mississippi. From November 1969 until January 1992, during the time when I served as a Judge of the Fifth Circuit, which includes the period from October 1981 until January 1992, when I served as Chief Judge of that Court, I was familiar with Mike's work and reputation as an able appellate advocate before the Court.

Since retiring as Chief Judge, I have returned to the private practice of law in Jackson, Mississippi and have known Mike's excellent reputation in the Jackson legal community on an different, closer basis. Mike and I have represented the same clients, and have represented adverse clients in various legal matters over this period of time. He is a highly valued colleague and a worthy opponent.

Mike received outstanding legal training at Harvard College and the University of Virginia. He has implemented his training with diligent work, skill and insight to legal issues that have developed him into an outstanding lawyer.

Based upon my long personal knowledge of Mike's legal career, and of Mike as a person, both on and off the bench, I feel confident when I assure the Committee that he is an outstanding appellate lawyer and will make a superior judge of the United States Court of Appeals for the Fifth Circuit. I am fully confident that his confirmation will make this Committee, and my Court, proud of his service as a judge.

I was shocked (and disappointed) when the Standing Committee on the Federal Judiciary of the American Bar Association declared Mike Wallace unqualified to serve as a member of the United States Court of Appeals. I must think that they could not have known him as long, or as well as I do, to pronounce such a wrong judgment. I would hope that group will make the details on which they based their condemnation public so that it can be refuted.

If I may be of any further assistance in this matter, I would be obliged if you would let me know.

Respectfully,

Charles Clark

Charles Clark

CC/bj

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dclark@bradleyarant.com

July 11, 2006

VIA FACSIMILE (202-228-1698) and United States Mail

The Honorable Arlen Specter
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Michael B. Wallace

Dear Senator Spencer:

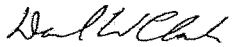
I am one of the Mississippi Bar delegates to the American Bar Association House of Delegates, having served from 1998 to 2006, and I have been active in the ABA's Section of Litigation. I also served from 1988 to 1997 as a member of the Board of Directors of Central Mississippi Legal Services, and earlier this year I was the local organizer of an ABA Section of Litigation "Critical Trial Skills" workshop for Legal Services lawyers in the Mid-South.

With regard to Mr. Wallace and his nomination, you have heard from other Mississippi lawyers who were shocked, as was I, that the ABA's Standing Committee on the Federal Judiciary found Mr. Wallace "not qualified" for a position on the Fifth Circuit Court of Appeals. I shall not repeat what they have told you about Mr. Wallace's excellent reputation for integrity, legal ability and professional service, except to note that I believe this high opinion is shared by all who have known or worked with him.

I write to ask you and your committee to give Mr. Wallace a full and fair hearing. Since the ABA's Standing Committee has not revealed the basis for its "not qualified" conclusion -- and apparently will not do so prior to the hearing -- your Committee should (1) require the Standing Committee to present its "evidence," (2) adjourn the hearing for one week, then (3) hear from Mr. Wallace or others who wish to respond to whatever the Standing Committee has presented.

Basic fairness requires that Mr. Wallace be given a full hearing, with the time and opportunity to respond, including to respond to any previously undisclosed information.

Sincerely,



David W. Clark

DWC/sdt
cc: The Honorable Patrick J. Leahey (via facsimile 202-224-9516)
Ranking Member, Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510

COMMUNITY RIGHTS COUNSEL
EARTHJUSTICE

September 25, 2006

The Honorable Arlen Specter
Chairman, Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Patrick J. Leahy
Ranking Member, Senate Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: **Nomination of Michael B. Wallace to a Lifetime Position on the U.S. Court of Appeals for the Fifth Circuit.**

Dear Chairman Specter and Ranking Member Leahy:

We are writing to express our serious concerns over the nomination of Michael B. Wallace to a lifetime position on the U.S. Court of Appeals for the Fifth Circuit. Mr. Wallace's record is troubling for at least three reasons.

First, as Chair of the Board of the Legal Services Corporation (LSC), Mr. Wallace argued that the Corporation itself was unconstitutional. This argument cannot be squared with Supreme Court precedent and it undermines the existence and functioning of a long list of federal government corporations, commissions, and boards, including the Nuclear Regulatory Commission, the Consumer Products Safety Commission, and the Marine Mammal Commission, which operate with some independence from the political wishes of the President.

Second, Mr. Wallace has testified to Congress that "no regulations of any agency should take effect until enacted pursuant to Article I." This is a truly radical position -- requiring that a law be passed every time a new or modified regulation is proposed -- that would make it virtually impossible for the Environmental Protection Agency, the National Labor Relations Board and a broad range of governmental agencies to accomplish their congressional mandates.

Third, Mr. Wallace's tenure as head of the LSC raises important questions about his commitment to securing access to courts, a critical environmental concern.

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MR. WALLACE'S TROUBLING TENURE ON THE BOARD OF THE LEGAL SERVICES CORPORATION

Attacking Independent Agencies

The Legal Services Corporation (LSC) was created in 1974[1] under President Richard Nixon to promote equal access to the nation's courts by providing legal assistance to poor individuals who otherwise could not afford representation.[2] Congress designed the LSC to be as free as possible from "political pressure" at the federal, state and local levels.[3] Since its inception the LSC has provided access to the courts for poor people on a range of issues,[4] including vital environmental claims[5] such as toxic torts (particularly exposure to lead paint and pesticides) and environmental justice.[6] The LSC's April 2006 *Performance Criteria* document states that:

> The program considers all civil legal problems and needs, broadly encompassing any matters susceptible to resolution through legal representation and other program activity, including all primary needs such as decent and affordable shelter, adequate nutrition, access to quality health care, income sufficient for a decent and secure life, physical and environmental safety and security protection of civil rights and fundamental dignity, education and employment necessary to earn adequate income and function as a member of society, and problems that affect the safety, security and stability of families.[7]

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[1] Legal Services Corporation Act, Pub. L. No. 93-55, 88 Stat. 378 (1974), as codified and amended at 42 U.S.C. § 2996 (2000).

[2] 42 U.S.C. § 2996b. *See also*, Larry R. Spain, *The Opportunities and Challenges of Providing Equal Access to Justice in Rural Communities*, 28 WM. MITCHELL L. REV. 367, 371 (2001).

[3] Richard L. Abel, *Law Without Politics: Legal Aid Under Advanced Capitalism*, 32 UCLA L. REV. 474, 532 (February 1985).

[4] The Legal Services Corporation Act, *supra* note 1, gives the LSC broad authority to fund representation for clients in civil cases, with limited enumerated exceptions (lobbying, etc.). *See*, 42 U.S.C. §§ 2996b(a), 2996e, 2996f.

[5] The LSC specifically instructs those charged with evaluating LSC programs for their responsiveness to "pressing" civil legal needs to consider, "physical and environmental safety and security." Legal Services Corporation, *Performance Criteria*, at 11, April 2006, available online at: http://www.lsc.gov/pdfs/LSCPerformanceCriteria.pdf

[6] Many examples exist of LSC funded projects on these issues. For a sampling, *see, e.g.*: Colorado Legal Services, Casillas Pesticide Action Project, information available online at: http://www.lri.lsc.gov/abstracts/abstract.asp?level1=SPA&level2=Migrant&abstractid=030100&ImageId=1; Legal Aid of North Carolina, information on statewide environmental program available online at: http://www.legalaidnc.org/programs/EPLP_Summary/default.htm; Legal Services in Puerto Rico, including environmental clinic (as reported in LSC's publication, Equal Justice Magazine, Vol. 4, No. 1, Spring 2005) available online at: http://ejm.lsc.gov/EJMIssue8/povertyinpuertorico.htm; Rhode Island Legal Services, discussing work on environmental justice at available online at; http://www.lri.lsc.gov/state_planning/slfevals/ri_slfeval_02. pdf; Articles about LSC pesticide and lead paint work in CA available online at: http://www.lsc.gov/press/updates_detail_T6_R56.php; and http://www.signonsandiego.com/news/state/20030806-0358-ca-landlords-award.html also reported by the Brennan Center at http://www.brennancenter.org/programs/lse/pages/view_elerts.php?elert_id=&s_date=&e_date=&category_id=5&end_date=&page=76&search_text=

[7] *Supra*, note 5 (*emphasis added*).

During the first term of his presidency, Ronald Reagan made three attempts to abolish the LSC.[8] When these attempts failed, Reagan made multiple recess appointments to the LSC's Board of Directors, including Mr. Wallace, in what many on both sides of the political aisle saw as an attempt to dismantle the organization from the inside out.[9]

Mr. Wallace worked diligently to accomplish this objective and, in doing so, he demonstrated hostility to the existence and functioning of independent agencies. Most prominently, as the Chairman of the Board of Directors of the LSC, Mr. Wallace testified before Congress and took the position that the organization he headed was unconstitutional.[10] Mr. Wallace argued LSC "violates the separation of powers doctrine" because the Corporation performed "executive branch functions" but was outside the firing control of the President.[11]

Mr. Wallace's argument (that the LSC was unconstitutional) was aggressive and wrong for three reasons. First, in 1988, the year before Mr. Wallace's testimony, the Supreme Court in *Morrison v. Olson*[12] rejected a similar argument about executive power by a vote of 7-1. Second, in contrast to cases like *Bowsher v. Synar,*[13] where the Supreme Court had limited Congress's flexibility in structuring administrative agencies, the establishment of the LSC did not involve any attempt by Congress to grab power from the President for itself. Rather, the LSC was designed to be independent of both Congress and the President. Finally, the argument that the President must be given control over the LSC is remarkably weak given that the LSC is a quintessential example of an agency that exercises *no* executive authority and functions best when operating independent of political branches.

Crippling Regulatory Agencies

In prior testimony before the Senate Appropriations Committee, Mr. Wallace took the even more remarkable position "that no regulations of any agency should take effect until enacted

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[8] *See e.g.,* Scott L. Cummings, *The Politics of Pro Bono*, 52 UCLA L. REV. 1, 21-22 (Oct. 2004); Michael S. Serrill, *An Organization at War with Itself: Legal Services rifles its files and ruffles some feathers*, Time Magazine, Oct. 3, 1983; Nina Totenberg, All Things Considered, National Public Radio (Oct. 13, 1983).

[9] *See e.g.,* Michael B. Wallace, *Out of Control: Congress and the Legal Services Corporation*, in L. Crovitz & J. Rabkin, *The Fettered Presidency: Legal Constraints on the Executive Branch* (1989); Scott L. Cummings, *supra note 8*;. Serrill, at *supra* note 8; Nina Totenberg, at *supra* note 8.; Ethan Bromer, *After surviving the Reagan ax*, Boston Globe (Nov. 27, 1989). President Reagan appointed 11 members of the Board of LSC, five Democrats and six Republicans, the maximum number of Republicans allowed by statute. One of the other Republicans chosen by Reagan to sit on the Board was Thomas F. Smegal, Jr. Mr. Smegal testified before the Appropriations Committee to comment on Wallace's testimony and to make clear to the Committee that Wallace's views did not represent his own.

[10] *Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations for Fiscal Year 1990: Hearings Before a S. Subcomm. of the Comm. on Appropriations,* 101st Cong. 1227, (1989).

[11] *Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations for Fiscal Year 1990: Hearings Before a S. Subcomm. of the Comm. on Appropriations,* 101st Cong. 1224 (1989). Mr. Wallace's argument was premised on what is commonly referred to as "unitary executive theory." For more information about this theory and an explanation of why absolutist notions of executive power are inconsistent with the text, structure, and history of the Constitution, *see* http://www.communityrights.org/CombatsJudicialActivism /JEP/Alito.asp

[12] 487 U.S. 654 (1988).

[13] 478 U.S. 714 (1986).

pursuant to Article I."[14] This is a radical proposal that would make it virtually impossible for agencies to function. Had Mr. Wallace's suggestion ever been given effect, the result would be that anytime an agency produced a regulation, that regulation would then have to be passed as legislation by the House and Senate and signed into law by the President. This process would virtually eliminate the ability of agencies to accomplish their congressional mandates. Agencies such as the Environmental Protection Agency, the National Labor Relations Board, the Federal Communications Commission, the Securities and Exchange Commission, the Consumer Product Safety Commission and many others would virtually cease to function.

Mr. Wallace's argument is aptly characterized as the non-delegation doctrine on steroids. For years, industry groups and anti-government activists have been arguing that the so-called non-delegation doctrine – which prevents Congress from delegating its legislative authority to others – radically limits the power of agencies to make and enforce federal rules and regulations. The Supreme Court unanimously rejected such arguments in *Whitman v. American Trucking Association*.[15]

While Mr. Wallace's arguments for both extraordinary legislative and executive powers may seem discordant, these positions are united by the ultimate goal of impeding agency action. Mr. Wallace would put government agencies under the control of both the President, who could hire and fire agency heads at will, and Congress, which would have to approve any new regulation pursuant to Article I (which requires that legislation be passed by majorities in both houses of Congress and signed by the President). The result would be to cripple the functioning of the federal government and put at risk a century of progress in many areas of law of critical importance to Americans including civil rights, labor relations, and the environment.

Limiting Access to Courts

During his tenure as Chair of the LSC Board, Mr. Wallace also worked tirelessly to reduce the LSC's annual appropriations. According to another member of the LSC Board who was also appointed by President Reagan, Mr. Wallace showed genuine disregard for the need to fund legal services for the poor.[16] This is a serious charge for a nominee to the federal appellate bench, one directly related to the federal court's highest mission: providing "justice for all." Access to the courts is critical to ensuring the enforcement of environmental, civil rights, labor and other laws. Limited access would significantly hinder the ability of individuals to be protected from toxic pollution and other harms.

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[14] *Departments of Commerce, Justice, and State, The Judiciary and Related Agencies Appropriations for Fiscal Year 1988, Hearing Before the S. Subcomm. of the S. Comm. on Appropriations,* 100st Cong. 257, HR 2763, pg. 638 (1987).
[15] 531 U.S. 457 (2001).
[16] Thomas Smegal, one of the LSC Board members, testified that Wallace advocated for the demise of LSC going as far as to hire "professional to lobby your committee for an 18 percent reduction in legal services funding." When that tactic did not work, Wallace "urged, through the conservative 700 club, that the voters call President Reagan and ask that he veto the whole appropriations bill. That doesn't sound like a board, a six-person majority, that supports the delivery of legal services to the poor." *Departments of Commerce, Justice, and State, The Judiciary and Related Agencies Appropriations for 1990, Hearing Before the S. Subcomm. of the S. Comm. On Appropriations*, 101st Cong. 456 (1989).

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Mr. Wallace's record at the helm of the LSC suggests he worked vigorously during his tenure to diminish the organization's role, variously asking Congress: (1) to abolish the LSC's Board and turn the corporation into a federal agency;[17] (2) to reduce the LSC's budget;[18] (3) to restrict the flow of *private* funds donated to the LSC in support of its work;[19] (4) to create a competitive bidding procedure among lawyers working for LSC;[20] and (5) to institute a number of measures to protect the interests of those defending *against* a party represented by the LSC.[21]

These activities, taken in the face of bipartisan support[22] for the LSC in Congress, led Republican Senator Warren Rudman to accuse Mr. Wallace and the rest of the Board of acting with "absolutely bad faith" explaining, "There is absolutely no trust in the present Board. They have adopted regulations that hinder legal services, they have held secret meetings, and they have done audits [of LSC grant recipients] that were actually harassment."[23]

This record raises questions about Mr. Wallace's ability to carry out a statutory mandate that is adverse to his personal views, and his commitment to providing access to the courts for indigent litigants.

Thank you for your consideration of our views on this important nomination.

Sincerely yours,

Doug Kendall
Executive Director
Community Rights Counsel

Glenn P. Sugameli
Senior Judicial Counsel
Earthjustice

cc: Members, Senate Committee on the Judiciary

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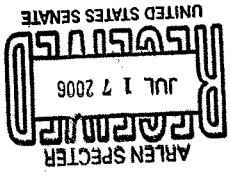
[17] *Supra* note 14, at pg. 660.
[18] *Departments of Commerce, Justice, and State, The Judiciary and Related Agencies Appropriations for 1990, Hearing Before the S. Subcomm. of the S. Comm. On Appropriations*, 101st Cong. 456 (1989).
[19] *Supra* note 14.
[20] *Legal Services Corporation Reauthorization, Hearing Before the S. Comm. on Administrative Law and Government Relations of the Comm. On the Judiciary House of Representatives,* 101st Cong. 30, pgs. 16-17, (1989).
[21] Mr. Wallace suggested: (1) mandating that the LSC pay opposing counsel's fees when the LSC does not prevail in court; (2) requiring LSC clients to contribute to the cost of their representation; and (3) requiring parties to negotiate prior to trial. *Supra* n. 20.
[22] *Testimony of Thomas F. Smegal, Jr., then Member of the LSC's Board, Supra* n. 14; Kenneth Jost, *Sabotaging Legal Aid*, The Christian Science Monitor, Jun. 2, 1989.
[23] Paul Barrett, *Under Bush, a Band of Reaganites Continues to Fight to Slash Funds for Legal Aid to the Poor*, Wall. St. J., Aug. 29, 1989.

State of Connecticut
DIVISION OF CRIMINAL JUSTICE

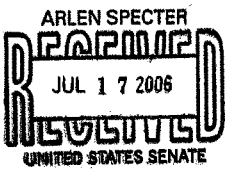
OFFICE OF
THE STATE'S ATTORNEY
JUDICIAL DISTRICT OF WATERBURY

400 Grand Street
WATERBURY, CT. 06702-1913
TELEPHONE (203) 236-8130
FAX(203) 236-8155

JOHN A. CONNELLY
STATE'S ATTORNEY



July 7, 2006



The Honorable Arlen Specter
Chairman, Committee on the Judiciary
United State Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Specter:

I am currently the State's Attorney for the Judicial District of Waterbury, a position that I've held for the past twenty-three years. Prior to becoming State's Attorney I was an Assistant United States Attorney for the District of Connecticut.

I am writing on behalf of the Honorable Vanessa Bryant, who has been nominated for a Federal District Court judgeship for the District of Connecticut. Judge Bryant served as a criminal judge in this Judicial District from 1998 to 2000. She was assigned to do criminal arraignments and trials. During her tenure she also presided over our Drug Court and handled the Domestic Violence docket. One of her initiatives in the Drug Court was a graduation ceremony for those who had successfully participated in the program. The ceremony which was witnessed by family and friends concluded with each successful candidate receiving a certificate attesting to their achievement. One of the graduates is now a Juvenile Court probation officer in our system.

Judge Bryant presided over several felony trials that afforded me the opportunity to observe her courtroom demeanor. I have found her to be a knowledgeable, well organized and efficient trial judge. In her contacts with members of this office, she dealt with everyone in an even handed fashion. She is well liked and respected by those who work in this courthouse, including judges, defense attorneys, public defenders, and courthouse staff.

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July 7, 2006
Page Two

I believe the traits which Judge Bryant possesses, and that would benefit our Federal Court system and the citizens of this State the most, are her compassion for people and her integrity. Although she is firm in her decisions, she also has demonstrated concern for defendants, victims of crime, and each of their particular needs.

As for integrity, as far as I am concerned, Judge Bryant is beyond reproach. While she served in this Judicial District, she was known for her honesty and her exemplary conduct both in and out of court.

I would highly recommend Judge Bryant for the Federal Bench. There is no doubt in my mind that she will prove to be an asset to our court system, and most of all will set a standard for which the citizens of this State and our Nation will be proud.

Very truly yours,

John A. Connelly
State's Attorney
Judicial District of Waterbury

JAC:nlb

AN EQUAL OPPORTUNITY EMPLOYER

39984.155

Day, Berry & Howard LLP
COUNSELLORS AT LAW

Dean M. Cordiano
Direct Dial: (860) 275-0179
E-mail: dmcordiano@dbh.com

06 JUL 21 PM 4:21

July 11, 2006

VIA FACSIMILE AND REGULAR MAIL

The Honorable Arlen Specter
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: The Honorable Vanessa L. Bryant

Dear Senator Specter:

I am writing to you in support of the nomination of Vanessa L. Bryant for United States District Court Judge for the District of Connecticut. I have been a trial lawyer for thirty years at the firm of Day, Berry & Howard LLP in Hartford, where I practice in the areas of complex commercial and environmental litigation. As a partner in one of New England's largest law firms, I have appeared before judges throughout New England and nationally, and I have appeared before every District Judge now sitting in Connecticut. I am a member of the American Board of Trial Advocates, an organization of the most experienced trial lawyers in the country, which includes both plaintiff and defense counsel. I also am a Barrister in the Oliver Ellsworth Inn of Court in Connecticut.

I have known Judge Bryant for many years. I first met her when she worked with me at Day, Berry & Howard in the late 1970s. Even as a young lawyer, her work was very promising and accurate. We have remained acquaintances through the years as she worked in-house at Aetna and after she became a partner at the firm of Hawkins Delafield & Wood LLP. Since she became a Connecticut Superior Court judge, I have appeared before her in several civil cases, including both contested hearings and settlement conferences. She is intelligent, insightful, and very practical. During settlement conferences, she quickly grasped the essential issues in the cases before her and was able to bring the cases to closure.

I am particularly puzzled by the comment I have read in the newspapers that Judge Bryant lacks a "judicial temperament." During all the times I have appeared before her, Judge Bryant was respectful, dignified, even-handed and never vindictive or mean-spirited to the

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Day, Berry & Howard LLP

The Honorable Arlen Specter
July 11, 2006
Page 2

lawyers or parties involved. She has an excellent judicial temperament, the equal of any state or federal judge sitting in Connecticut.

As a member of the Oliver Ellsworth Inn of Court, I meet monthly with local members of the Connecticut bar and bench. In my seven years with this organization, I have never heard any lawyer or judge make negative comments about Judge Bryant's intellectual abilities or her judicial temperament. I strongly recommend Judge Bryant as a federal judicial appointee, without reservation, and I add my name to those who believe she will make a fine addition to the federal bench in Connecticut. Should you have any questions, please do not hesitate to contact me.

Very truly yours,

Dean M. Cordiano

Dean M. Cordiano

DMC/mls

39984.157

July 11, 2006

Attn: The Honorable Arlen Specter
Chairman, Committee of the Judiciary U. S. Senate 224
Darken Senate Office Building
Washington, DC 20510

Dear Sir:

Greetings! I am writing in support of the nomination of Mr. Michael Wallace to the Federal Judgeship. As Senior Pastor of New Horizon Church I have had the pleasure of knowing and working on several projects with him. I have also watched his career and admired his success over the years as well as the name he has made for himself in this community.

In 1991 the church that I pastor, which is predominantly African American, and Trinity Presbyterian Church, which is predominantly white, were starting to discuss a relationship between the two churches which would cause us to perform a number of ministry tasks together. Although it was a great idea, and sad to say pioneering for churches in Mississippi; at the time the old guard at Trinity said no.

It was the hard work of Michael Wallace and other progressive, open-minded, Christ honoring leaders at Trinity Presbyterian Church who in a year's time turned an awful decision around into the premiere interracial church partnership in the State of Mississippi. Trinity and New Horizon's relationship pre-dates Mission Mississippi and is a working model for other churches.

I know that Michael Wallace was one of those at the center of that fight and I appreciate him for it. In the same way Michael Wallace has continued to fight the good fight of open access and progressive thinking over the years. I support Michael Wallace in his quest for this appointment and pray he is successful.

Counting It All Joy,

Bishop Ronnie Crudup

2650 Belvedere Drive Jackson MS 39212 (601) 371-1427

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BAKER
DONELSON
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July 3, 2006

The Honorable Arlen Specter
Chairman, Committee on the Judiciary
Unites States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Specter:

I am in support of the confirmation of Michael B. Wallace as a judge on the United States Court of Appeals for the Fifth Circuit. I disagree with the American Bar Association's Standing Committee report stating that Mr. Wallace is "not qualified" for the position to which he has been nominated.

I have witnessed Mike Wallace as a practitioner in the courtroom. There are few lawyers, maybe none, I have seen who I would rank above Mr. Wallace as an advocate. It is my observation that he is, likewise, a trustworthy officer of the Court.

The ABA's rating of Mr. Wallace is a shock to me and many of us in this venue who have had the privilege of working with and around Mr. Wallace. I would expect Mr. Wallace to be on the short list of judicial candidates in this area because of his exceptional reputation and intellect. I urge the Committee to vote to confirm Mr. Wallace's appointment to the federal bench.

Sincerely,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.

Michael T. Dawkins

Michael T. Dawkins

MTD:llt

JM MTD 372643 v1
9600000-000100 07/03/2006

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GEORGE Q. EVANS
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June 27, 2006

Senator Arlen Specter, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Building
Washington, D.C. 20510-6275

RE: Michael B. Wallace, Esq.
United States Court of Appeals for the Firth Circuit

Dear Senator Specter:

I write to you and the Senate Committee on the Judiciary as a Mississippi lawyer with 36 years plus experience, as past president and immediate past chairman of my law firm, as a longtime fellow of the American College of Trial Lawyers and member of ABOTA, as a practitioner in the Fifth Circuit Court of Appeals and as a person who at the end of August this year will retire from the active practice of law to become a full-time staff member in my local Parish. I also write as one of the dwindling body of democrats left in Mississippi.

I am astounded by the unanimous opinion of the ABA Standing Committee on Federal Judiciary that Michael B. Wallace, Esquire, is not qualified for appointment as Judge of the United States Court of Appeals for the Fifth Circuit. This cannot be a reasoned opinion. It violates all that applies to qualifications – education, training, experience, temperament, achievement. I need not tell you, as surely you know, that Mike Wallace has excelled in each of these. Qualifications, therefore must mean something completely different to the ABA Committee from what it means to me or what I truly believe it means in generally accepted parlance. I fear political philosophy has been mistaken for qualifications.

I disagree with Mike Wallace approximately 80 to 90 percent of the time concerning political philosophy which we discuss with some frequency. His wife practices law with me and we inevitably seem to sit with each other at our firm functions which Mike attends. My social work wife, who is even more of a Democrat than I am, has famous or infamous political discussions (disagreements) with Mike at such

39984.160

functions with Barbara Wallace and me frequently relegated to interested bystanders. I have opposed Mike on legal services having served on the Central Mississippi Legal Services Board for 10 years. I certainly do not agree with the Bob Jones politics, nor even with the impeachment attempt as carried out. Bill Clinton embarrassed me greatly and should have been ashamed of himself but so should have the opponents.

Having said all of that, Mike Wallace is imminently qualified to sit as a Fifth Circuit Judge. Furthermore, never in my long years of knowing him have I seen behavior which would raise any question about his judgment or temperament that would adversely impact judicial fairness or impartiality.

Unless some type of political litmus test is substituted for qualifications, the ABA Committee's opinion should be rejected and the Judiciary Committee should recommend his confirmation.

Thank you for allowing me to express myself on this subject.

Very truly yours

George Q. Evans

George Q. Evans

GQE/sr
F:\users\GQE\2006 Gen & Misc\Specter Ltr.wpd
cc: Senate Committee on the Judiciary
Harriet Miers, Esq.
Rachel Brand, Esq.
ABA Standing Committee on Federal Judiciary
Denise Cardman, Esq.
Senator Trent Lott
Senator Thad Cochran
Michael B. Wallace, Esq.

** TOTAL PAGE.03 **

July 17, 2006

The Honorable Arlen Specter
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of Michael B. Wallace to the
United States Court of Appeals for the Fifth Circuit

Dear Chairman Specter:

As former law clerks for the late Chief Justice William Rehnquist, we write to support the nomination of Michael B. Wallace of Mississippi to the United States Court of Appeals for the Fifth Circuit and to urge the Committee to report the nomination favorably to the full Senate.

Although only two of us served with Mike as co-clerks, all of us have gotten to know him to a greater or lesser degree over the years. Several of us have worked with him on cases in private practice, others are fellow members of the American Academy of Appellate Lawyers, and still others worked with him when he served as the chair of the Appellate Advocacy Committee of the Defense Research Institute, and/or as the chair of the Legal Services Corporation. We hold him in the highest regard, both professionally and personally.

Given Mike's extraordinary professional credentials, his long and impressive experience as a practicing litigator, his years of dedicated public service, and his impeccable reputation for integrity, we find it utterly inexplicable that the Standing Committee on the Federal Judiciary of the American Bar Association should have rated Mike not qualified to be a federal judge. Although the Standing Committee has not yet explained the basis of its judgment, we understand that no doubts have been expressed concerning Mike's outstanding professional qualifications and integrity. Those of us who have known Mike well for many years can vouch that he also possesses a fair-minded, balanced, and impartial temperament and that he is respectful of the views of others.

We are also concerned that the Standing Committee apparently did not attempt to interview any of Chief Justice Rehnquist's former clerks. At the very least, one would think that among the people in the strongest position to evaluate his fitness for the federal bench would be the two co-clerks with whom he had close and daily contact for a year. Mike's co-clerks, Barton H. Thompson and Michael K. Young, along with the rest of us, strongly believe that Mike is superbly well-qualified for service on the federal bench and that the Standing Committee's contrary rating is wholly unfounded.

39984.162

We urge the Committee to recommend the confirmation of Michael B. Wallace.

Michael K. Young
President
University of Utah*

Charles J. Cooper
Cooper & Kirk, PLLC

Mark W. Mosier

John C. Englander
Goodwin Procter

William F. Jung
Jung and Sisco, P.A.

Richard C. Pepperman, II
Sullivan & Cromwell

Luke A. Sobota

Sarah N. Jorgensen

Frederick W. Lambert
Professor of Law
University of California, Hastings

John P. Kelsh
Sidley Austin LLP

Brett L. Dunkelman
Osborn Maledon, P.A.

Jay T. Jorgensen
Sidley Austin LLP

Ryan Shores
Hunton & Williams LLP

William S. Eggeling
Ropes & Gray LLP

Randall D. Guynn
Davis, Polk & Wardwell

Barton H. Thompson, Jr.
Director, Woods Institute for the
Environment at Stanford University
Robert E. Paradise Professor of Natural
Resources Law

H. Bartow Farr, III
Farr & Taranto

Julius Ness Richardson
Kellogg, Huber, Hansen, Todd, Evans &
Figel, P.L.L.C.

Lindley J. Brenza
Bartlit, Beck, Herman, Palenchar & Scott

C. Michael Buxton
Vinson & Elkins LLP

James R. Asperger
O'Melveny & Myers

Robert B. Knauss
Munger, Tolles & Olson LLP

John M. Mason

Scott Knudson
Briggs & Morgan

Robert T. Haar
Haar & Woods

Gary B. Born
Wilmer Hale

Thomas W. McGough, Jr.
Reed Smith, LLP

James A. Strain
Sommer Barnard PC

Eric R. Claeys
Associate Professor of Law
Saint Louis University

David B. Jaffe
Guardian Industries Corp.

Courtney C. Gilligan
Baker, Botts

David G. Leitch
Senior Vice President and General Counsel
Ford Motor Company

Richard W. Garnett
Notre Dame Law School

Michael J. Meehan
Munger Chadwick PLC
Past President, American Academy of Appellate Lawyers

Donald B. Ayer
Jones Day

Maureen Mahoney
Latham & Watkins LLP

Michael K. Kellogg
Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C.

John O'Neill
Howrey Simon Arnold & White

Robert G. Schaffer
Lewis and Roca LLP

Aaron M. Streett
Baker, Botts

Robert J. Giuffra
Sullivan & Cromwell

Michael Q. Eagan
Law Offices of Michael Eagan

Joseph Hoffmann
Harry Pratter Professor of Law
Indiana University - Bloomington

Celestine Richards McConville
Professor of Law
Chapman University of Law

cc: The Honorable Patrick J. Leahy

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* Names of firms and institutions are included for identification purposes only. Former law clerks to Chief Justice Rehnquist who are now members of the Federal Judiciary were not asked to participate in this letter.

39984.164

Day, Berry & Howard LLP
COUNSELLORS AT LAW

06 JUL 21 PM 4:22

Thomas J. Groark, Jr.
Direct Dial: (860) 275-0216
E-mail: tjgroark@dbh.com

July 12, 2006

The Honorable Arlen Specter
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Honorable Vanessa Bryant

Dear Senator Specter:

I write in support of the Honorable Vanessa Bryant's nomination to the United States District Court.

Judge Bryant began her legal career as an associate at Day, Berry & Howard. As chair of the trial department, I worked with her on legal matters and had numerous other contacts with her while she was at the Firm. She was a fine lawyer who demanded much of herself and others. I found her to be personable and interested in the law and the community. After she left the Firm, she worked with our clients, Aetna Casualty & Surety and Shawmut Bank. Although I did not work with her during this time, I received favorable comments from the clients about her and her legal abilities.

In later years, I have seen her less frequently and have had only one matter before her as a judge. In that rather complicated injunction matter, she understood the issues and the law, controlled the hearing, clearly articulated her questions and observations, ruled promptly and in accordance with the law. She was in all respects a fine judge. Her difficult and challenging judicial assignments indicate my opinion of her as a judge is shared by the administrators of the judicial system.

From what I read in the paper, one of the criticisms of Judge Bryant is her judicial temperament that I translate in part to mean she demands that litigants follow the rules and, in particular, adhere to the agreed upon discovery and trial schedules. Judge Bryant has always been attentive to rules which in my view is a favorable judicial trait. Her demands on litigants is in part attributable to the recent significant decrease in the backlog of civil matters in the Hartford Superior Court. For many years, the requirement that schedules be met, was not the

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Day, Berry & Howard LLP

The Honorable Arlen Specter
July 12, 2006
Page 2

practice in this Court and matters remained on the docket for many years to the detriment of many litigants.

Judge Bryant is an excellent judge and I urge you to support her nomination to the Court.

Very truly yours,

Thomas J. Groark, Jr.

TJG/ar

39984.166

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www.butlersnow.com

JOHN C. HENEGAN
(601) 985-4530

July 10, 2006

VIA FACSIMILE (202) 228-1698

Honorable Arlen Specter
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

RE: ***Nomination of Michael B. Wallace to the United States Court of Appeals for the Fifth Circuit***

Dear Senator Specter:

This is written in support of the nomination of Michael B. Wallace to be a Circuit Judge on the United States Court of Appeals for the Fifth Circuit.

By now you and the members of your committee are doubtless fully acquainted with Mike's professional career and his qualifications for this position, and I will not go over that ground again. I have personally known Mike for 15 years, initially as counsel opposite in highly publicized, vigorously contested state constitutional litigation, and, more recently over the past 10 years, as a fellow church member and fellow elder at Covenant Presbyterian Church, (P.C.U.S.A.), where I have worked with him closely on church committees and in session meetings and I have seen him as a devoted husband to his wife, Barbara, and a loving father to his three daughters, and as co-defense counsel in several civil lawsuits.

Mike and I come from opposite ends of the political spectrum. From 1981-1984, I served as Executive Assistant and Chief of Staff to Honorable William F. Winter, Governor of Mississippi. Later, when President Reagan nominated Honorable Robert Bork to the United States Supreme Court, I wrote Senator Stennis a lengthy letter asking that he vote against Bork's nomination because I thought Bork would place his personal views above his obligations under the Federal Constitution. More recently, when the House of Representatives was reviewing the articles of impeachment against President Clinton, I wrote all the congressional members of the Mississippi delegation asking that they vote against each article approved by the House Judiciary Committee because the matters addressed were not a High Crime or a Misdemeanor as those terms are addressed and defined in *The Federalist Papers*. I am confident that Mike had opposite positions on both of these subjects. Indeed, Mike and I agree on little, if anything, about the political solutions to many of the issues that our Federal or state government address daily.

Nonetheless, based on my experience of having served in 1976-1977 as a law clerk to Honorable Charles Clark, Circuit Judge of the Fifth Circuit, and my experience as an attorney who has practiced for over 25 years in federal and state court, Mike is in my judgment unquestionably qualified to fill this judicial vacancy on the Fifth Circuit.

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Honorable Arlen Specter
Chairman, Committee on the Judiciary
United States Senate
Page 2 - July 10, 2006

Furthermore, as one who has seen and worked with him in a variety of different contexts, including matters over which we have had fundamental disagreements, he has in my judgment the requisite judicial temperament that is essential to fulfilling the duties of this office and faithfully upholding the laws and Constitution of the United States of America.

I am grateful for your lifetime of devoted service to our Nation, and I fervently hope that, under your leadership, the Senate Judiciary Committee and its members will be able to move beyond the rancor and partisanship that has surrounded many of our judicial nominees of the two prior administrations. To this end, I hope that you and your colleagues will vote to confirm Mike's nomination to the United States Court of Appeals for the Fifth Circuit.

Respectfully yours,

John Henegan

John C. Henegan

Copy to Hon. Patrick J. Leahy (via facsimile - 202-224-9516)
Office of Legal Policy (via facsimile - 202-514-5715)

Jackson 1488482v.1

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MEMBER: MERITAS LAW FIRMS WORLDWIDE

July 25, 2006

Gulfport, Mississippi
Jackson, Mississippi
New Orleans, Louisiana
Olive Branch, Mississippi

Kathryn H. Hester
Shareholder
Resident in Jackson
Direct Dial (601) 949-4747
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khester@watkinsludlam.com

Via Facsimile (202) 228-1698 and U.S. Mail

Honorable Arlen Specter, Chairman
Committee on the Judiciary
United States Senate
711 Hart Building
Washington, D.C. 20510

Re: Michael B. Wallace, Nominee for the United States Circuit Court of Appeals for the Fifth Circuit

Dear Chairman Specter:

I am currently the President of the Charles Clark Inn of Court and the former President of the Federal Bar Association, Mississippi Chapter. I write on behalf of my colleague, Michael B. Wallace, and his nomination to the Fifth Circuit Court of Appeals.

I have known Michael B. since the early 1980's when I defended a series of cases for a major national pipeline company in which Michael B. was the Plaintiffs' attorney. Mike and I spent many months in depositions and discovery, traveling around the country, and spending many hours on planes and in airports. In other words, we had hours of conversations which I might otherwise not have had were it not for the circumstances of that litigation.

As a result of those conversations, I can tell you that Michael B. and I might not agree on a lot of subjects, but I know him to be an honorable man, a good father and husband and a principled individual. The "Michael B." appellation is one of endearment following those and other hard fought litigation battles.

You already know Mike Wallace's outstanding education and work experience. I know that my colleagues in the Mississippi Bar of all political persuasions have written you to that effect. And last evening, at the meeting of the Charles Clark Inn of Court, our program was on the subject of judicial confirmations. Mike's confirmation was not the subject of the program but it did come up during the discussion. Members of the Inn are both conservative and liberal, plaintiffs' and defense counsel, and the discussion uniformly criticized the ABA recommendation which found Mike Wallace to be unqualified for the Circuit Court of Appeals.

There are a lot of adjectives that could describe Mike, but unqualified is not one of them. He is smart, funny, hard working, and passionate about the law, his family and his community. When I oppose an attorney at trial or on appeal, I want to beat the best. Michael B. has always been that "best," and I find it completely incomprehensible that someone would consider him otherwise.

39984.169

Honorable Arlen Specter, Chairman
July 25, 2006
Page 2

I therefore write in support of Michael B. Wallace's nomination to the Fifth Circuit Court of Appeals and ask that you not deprive our Court of this smart, hard working individual. His integrity, his temperament and his legal ability are exemplary.

Sincerely yours,

Kathryn H. Hester

Kathryn H. Hester

KHH/khh

Office of Legal Policy (via facsimile) (202) 514-5714

39984.170

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Dennis.Kerrigan@llgm.com

July 14, 2006

Via Facsimile: (202)224-9102
(202)228-1229
(202)224-3479

U.S. Senator Arlen Specter
Chairman, U.S. Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

United States Senator Patrick Leahy
Ranking Member, U.S. Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Judge Vanessa L. Bryant

Dear Senators Specter and Leahy:

I write to express my sincere and whole-hearted support of the nomination of The Honorable Vanessa L. Bryant as a United States District Judge for the District of Connecticut. I have been exposed to Judge Bryant in a variety of contexts over the past few years while she has served as Presiding Judge in Hartford Superior Court and I can say that on each occasion she comported herself as a cordial, professional and knowledgeable jurist. She has been particularly supportive of efforts to ensure the efficient and timely delivery of justice to civil litigants through the use of court-annexed mediation and the appointment of Attorney Trial Referees to mediate and adjudicate smaller cases. I serve as an Attorney Trial Referee in that Court and can personally attest to her commitment to innovative ways to deliver judicial services.

I recently completed a term as President of the 2,200 member Hartford County Bar Association, our nation's oldest bar association, and can also vouch for the Judge's support and respect for the organized bar. Judge Bryant has always cooperated with our efforts to improve bench-bar relations and has ensured that the lines of communications are always open.

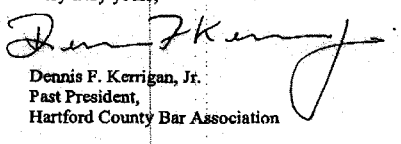
Moreover, I have never heard any of my Association's members criticize or question the Judge's qualifications, competence or behavior, on or off the bench.

Indeed, given Judge Bryant's unwavering support of the organized bar, it is sad and ironic that the American Bar Association has chosen to criticize her nomination in a vague and unnecessarily secret way. As you know, the words "American Bar Association" do not appear anywhere in our federal Constitution or its myriad of amendments, and for good reason: it's a voluntary association of lawyers from across the country, the vast majority of whom have never set foot in Connecticut, let alone appeared before Judge Bryant or any other Connecticut judge. Thus, the ABA's action should be given little if any weight because it was based purely on "confidential" interviews. Thus, the public (and the Judge for that matter) has no idea who these anonymous critics might be, or the personal biases or interests that might influence their unattributed opinions.

In 2001, the White House stopped the long-standing practice of sending judicial nominees to the ABA for consideration before such nominations were publicly announced. That decision makes sense because no private organization, no matter how large or influential, should be vested with the official power to evaluate nominees for important federal positions. Rather, our Constitution created a simple and open framework for such appointments: Nomination by the President, followed by consideration and/or confirmation by you and your colleagues in the United States Senate.

Thus, as Judge Bryant's nomination continues down its constitutionally mandated path, I hope that your Committee puts no more stock in the ABA's purported "rating" than it would in any other anonymous criticism of someone nominated for higher office. Personally, if there is further criticism of Judge Bryant's nomination in the future, I would hope that her alleged detractors shed their cloaks of anonymity and have the courage to identify themselves and their specific criticisms. Otherwise, their anonymous opinions add nothing to the confirmation process and should be ignored. Thank you.

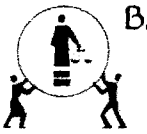
Very truly yours,



Dennis F. Kerrigan, Jr.
Past President,
Hartford County Bar Association

The views are my own.

cc: United States Senator Joseph I. Lieberman
(Via Facsimile: (202)224-9750)



Bar Leaders for the Preservation of
Legal Services for the Poor
20 West Street · Boston, MA 02111

Respond to: P.O. Box 801
Enfield, NH 03748
603-632-4538

September 15, 1989

Michael B. Wallace, Esquire
Phelps, Dunbar, Marks, Claverie & Sims
P.O. Box 55507
Jackson, MS 39296-5507

Dear Mike:

Greetings from an LSC friend and fan from the northeast! This is just a note to let you know that while I was not at last month's American Bar Association meeting in Hawaii, I understand that the National Conference of Bar Presidents had quite an interesting and intensive panel presentation on legal services issues. I also understand that you -- or perhaps some of your Mississippi colleagues -- may have come away from the presentation feeling insulted by a remark Mike Greco made about your being a "gentleman from Mississippi" (or something like that) during his spirited opposition to the activities of the current Legal Services Corporation Board.

Mike, because I was not present, I honestly do not know what actual words were spoken, and I am dealing only with hearsay. However, putting the actual words aside, please, please understand that, even while we disagree philosophically on the legal services issues and see things very differently than you do, we would never purposely do anything meant to be a personal affront to you or to any of your most distinguished colleagues within Mississippi's legal community and particularly in the Bar leadership.

Unfortunately, there is no getting away from the fact that we disagree vigorously on the issues (I wish that it were not so!). But, as you recall, we still delighted in "receiving" you (and your wife) in New Hampshire several years ago, in hosting an actual LSC Board meeting, and in inviting you and your colleagues into one of our homes for general conversation and camaraderie during your brief stay. This reflects our utmost commitment to cordiality, even during disagreement. Although Mike Greco is not a New Hampshire Bar leader, he was a part of these efforts and shares this commitment to cordiality. Actually, Mike, I think Mike Greco was simply trying to say, "You are a fine gentleman, but I disagree with everything you say." (I recall an LSC Board meeting where you spoke as strongly about our efforts!) However, the fact that you or anyone else received his words differently than intended is something I deeply regret.

Bar Leaders for the Preservation of Legal Services for the Poor is a national organization supported by bar associations and elected bar leaders from every state in the nation.

39984.239

Michael B. Wallace, Esquire
September 15, 1989
Page 2

To be sure, our philosophical differences are strongly felt and sometimes expressed in "passionate" terms, but I hope also that we will always be able be cordial to one another and respectful of our differences. In that regard, I look forward to our next meeting so that I can reaffirm in person the sentiments (and regrets) I have expressed here.

Thank you for your understanding.

Most sincerely,

Gail

Gail Kinney
Coordinator

39984.300

Leadership Conference on Civil Rights

1629 K Street, NW
10th Floor
Washington, D.C. 20006

Phone: 202-466-3311
Fax: 202-466-3435
www.civilrights.org

FOUNDERS
Arnold Aronson*
A. Philip Randolph*
Roy Wilkins*

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NAACP
Marcia Greenberger
National Women's Law Center
Andrew J. Imparato
American Association of People with Disabilities
Jacqueline Johnson
National Congress of American Indians
Kay Maxwell
League of Women Voters of the United States
Edward J. McElroy
American Federation of Teachers, AFL-CIO
Floyd Mori
Japanese American Citizens League
Marc H. Morial
National Urban League
Jesse Murguia
National Council of La Raza
Ralph G. Neas
People For the American Way
Debra Ness
National Partnership for Women and Families
Anthony D. Romero
American Civil Liberties Union
David Saperstein
Union for Reform Judaism
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American Association of University Women
Theodore M. Shaw
NAACP Legal Defense & Educational Fund, Inc.
Shanna L. Smith
National Fair Housing Alliance
Joe Solmonese
Human Rights Campaign
Andrew L. Stern
Service Employees International Union
John Trasviña
Mexican American Legal Defense and Educational Fund
Reg Weaver
National Education Association
Richard Womack
AFL-CIO
Patricia Wright
Disability Rights Education and Defense Fund, Inc.

COMPLIANCE/ENFORCEMENT COMMITTEE CHAIRPERSON
Karen K. Narasaki
Asian American Justice Center

EXECUTIVE DIRECTOR
Wade J. Henderson

September 26, 2006

The Honorable Arlen Specter, Chairman
The Honorable Patrick J. Leahy, Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Specter and Ranking Member Leahy:

On behalf of the Leadership Conference on Civil Rights (LCCR), the nation's oldest, largest, and most diverse civil and human rights coalition, we write to express our opposition to the nomination of Mr. Michael B. Wallace to the U.S. Court of Appeals for the Fifth Circuit. Mr. Wallace's professional record not only shows him to be well outside of the mainstream on fundamental issues of civil rights law, but also raises serious doubts about his overall commitment to dealing with minority and underserved populations in a fair and impartial manner.

Since Mr. Wallace has no prior judicial experience, LCCR's concerns are based upon the policy decisions he made in his own discretion and by extremist legal opinions he has adopted as his own. In particular, throughout his career, Mr. Wallace has shown a remarkably troubling opposition to enforcement of the Voting Rights Act of 1965, often hailed as the most effective and important civil rights law our nation has ever enacted. As a congressional staffer, he sought to weaken the law during its 1982 reauthorization so that alleged violations under Section 2 of the Act would require a showing of discriminatory intent, an often-impossible standard to meet. Congress decisively rejected this approach. But Mr. Wallace asserted, during his 1983 confirmation hearing to serve on the Board of the Legal Services Corporation, and contrary to both the plain language of the statute and its extensive legislative history, that the new language now included "an intent test . . . and I am very satisfied that the Supreme Court will so hold when the time comes."[1]

Subsequently, as a member and later Chairman of the Board of the Legal Services Corporation (LSC), Mr. Wallace sought to prevent LSC's local service providers from enforcing the law. In time, under his leadership, LSC ceased Voting Rights Act enforcement actions altogether. Later, Mr. Wallace stated that he resented the fact that states like Mississippi were required, under Section 5 of the law, to obtain prior approval from the Department of Justice for redistricting decisions,[2] and later protested that "the new black judges" elected in Mississippi "have much less legal experience" and were less likely to be "sympathetic to business interests."[3] Not only do Mr. Wallace's comments suggest a

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[1] Alliance for Justice and People For the American Way, *Report on the Nomination of Michael B. Wallace to the U.S. Court of Appeals for the Fifth Circuit* (Sept. 25, 2006), at 8.

[2] Anne Kornhauser, *Voting-Rights Cases Declared Off-Limits by LSC*, Legal Times, Apr. 24, 1989, at 9.

[3] Michael B. Wallace, *The Voting Rights Act and Judicial Election*, in *The State Judiciaries and Impartiality, Judging the Judges* (Roger Clegg and James D. Miller eds., 1996), at 112.

LCR

strong antipathy toward the Voting Rights Act, but they also seem to indicate a troubling belief that judges should be "sympathetic" to any side in a legal dispute.

These aspects of Mr. Wallace's record clearly go beyond what might be considered an attorney's duty to zealously represent a legal client or employer. His personal views on other important civil rights matters are equally troubling. For example, while discussing the case of Bob Jones University during his 1983 confirmation hearing, a case in which the Department of Justice argued that the school should retain tax-exempt status even though it barred students from interracial dating, Mr. Wallace stated that he personally agreed with the legal position: "I personally believe that the interpretation of the Internal Revenue Code advanced by the Department of Justice was correct."[4] The Supreme Court, of course, sharply rejected this view in an 8-1 decision.[5] When asked in another hearing why he opposed the Legal Service Corporation's minority recruiting goals at the Legal Services Corporation, Mr. Wallace told the Senate that "I am opposed to race-conscious government action, and I believe the law prohibits it"[6] – even though the Supreme Court had made clear both before and after his statement that race *could* in fact be used as a factor for the purpose of remedying past discrimination and in promoting diversity.[7]

LCCR's concerns with Mr. Wallace's record can perhaps best be summed up by his justification, during his tenure at Legal Services Corporation, for supporting reduced funding, discontinuing specific projects, and even calling for the outright abolition of the Corporation. In his 1985 testimony, Mr. Wallace suggested that civil rights matters such as voting rights and prison conditions cases should be addressed through "elections," on the ground that "poor people vote,"[8] too. . Such an assertion reveals not mere insensitivity toward civil rights plaintiffs but a callous misunderstanding of the role our constitutional system plays in protecting minority and individual rights against the "tyranny of the majority." Indeed, we are reluctant to imagine how little progress our nation would have made if civil rights matters were simply left to the mercy of "elections," as Mr. Wallace apparently suggests.

It is the role of a judge to approach cases with an open and unbiased mind, genuinely listen to the arguments of both sides, and only then, render decisions based upon existing law. When it comes to some of the most critical areas of civil rights law, however, it appears to us that Mr. Wallace's mind is already made up.

Finally, we note that the American Bar Association unanimously rated Mr. Wallace as "not qualified" to be confirmed to the Fifth Circuit, based primarily on its assessment of Mr. Wallace's judicial temperament. While our concerns with Mr. Wallace's nomination center largely on his legal philosophy, a factor not assessed by the ABA, this rating – the first such ABA rating of a federal appellate court nominee in 25 years – gives us additional reason to be concerned.

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[4] *Nominations: Hearing Before the Senate Subcommittee on Labor and Human Resources*, 98th Congress 109 (1983).
[5] *Bob Jones University v. United States*, 461 U.S. 574 (1983)
[6] *Nominations: Hearing Before the Senate Subcommittee on Labor and Human Resources, 99th Congress 32 (1985).*
[7] See, e.g. *United Steelworkers v. Weber*, 443 U.S. 193 (1979); *Regents of the Univ. of California v. Bakke*, 438 U.S. 265 (1978); *Grutter v. Bollinger*, 539 U.S. 306 (2003).
[8] *Nominations: Hearing Before the Senate Subcommittee on Labor and Human Resources, 99th Congress 32 (1985).*

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For these reasons, we urge you to oppose the confirmation of Michael B. Wallace. Thank you for your consideration. If you have any questions, please contact Rob Randhava, LCCR Counsel, at 202-466-6058, or Nancy Zirkin, LCCR Deputy Director, at 202-263-2880.

Sincerely,

Wade Henderson
Executive Director

Nancy Zirkin
Deputy Director

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U.S. SENATOR PATRICK LEAHY

CONTACT: David Carle, 202-224-3693 VERMONT

Statement of Senator Patrick Leahy,
Ranking Member, Judiciary Committee
On the Nomination of Michael Wallace to the 5th Circuit
September 26, 2006

The hearing today involves an important and controversial nomination. The Committee is attempting to hold this hearing during a very busy week. There is also a vast amount of unfinished business still before the Senate for action this week.

We have already held three other confirmation hearings this month, in which 12 nominees participated. This is a fourth hearing. This pace is one that I think is simply too fast for lifetime appointments. Nonetheless, Democratic staff and Senators have worked hard to clear a large number of nominations to go forward, leaving little time for a nominee as controversial as Michael Wallace.

With all of that going on, here we are very late in the day beginning a hearing with five panels that could go late into the evening. Either we will rush to get through this hearing too quickly, or we will lose to scheduling conflicts many of those Senators who have been able to make it here under these conditions. Either way, this is not an acceptable way to consider a nominee who presents as many serious problems as Mr. Wallace. If he is to be seriously considered at all, we will need to have another hearing for him at a later time when the Committee can focus on this nomination. Mr. Wallace received the first unanimous 'Not Qualified' rating from the American Bar Association for a circuit court nominee since at least the Reagan administration. In fact, this week, after a supplemental evaluation, the ABA again, with seven new members, found him to be unanimously "not qualified. Twenty one members of the ABA's standing committee on federal judiciary have now rated Mr. Wallace's qualifications. None have found him to be qualified. This is worth a careful look.

The Chairman has also taken the unprecedented step of holding a joint hearing on two nominees who received 'Not Qualified' ratings from the ABA. I cannot remember another time where more than one nominee rated 'Not Qualified' appeared at a single hearing. Mr. Wallace and Judge Bryant present very different issues, and it is not fair to either of them or to the Committee to throw them together in one hearing.

This year, the Senate has so far confirmed 31 judicial nominees. The Republican Senate confirmed only 17 of President Clinton's judicial nominees in the 1996 session. We have almost doubled that number. This is a far cry from the days when the Republican Congress pocket filibustered more than 60 of President Clinton's nominees, refusing even to bring them up for a vote in Committee.

senator_leahy@leahy.senate.gov
http://leahy.senate.gov/

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Of course, we could have moved much faster this year if the White House had sent over consensus nominees early in the year. Regrettably, the Administration concentrated on a few highly controversial nominees.

Even in September, the White House has undermined this process. Instead of focusing on consensus nominees, the President sent back to us five highly controversial nominees, including Mr. Wallace, who had been returned to the White House in the hope that the President would take the opportunity to move on to consensus choices.

This Committee should not be a rubber stamp for the President's nominations. We should be taking our constitutional responsibility to advise and consent seriously. That means taking a long, hard look before giving a lifetime appointment to one of our nation's highest courts to someone who raises as many concerns as Michael Wallace.

One of this Committee's—and this Congress'-- principle accomplishments this year was the bipartisan reauthorization of the expiring provisions of the Voting Rights Act. As we heard in nine hearings in our Committee and in thousands of pages of testimony, statistics, and reports, the Voting Rights Act remains a cornerstone of our inclusive democracy, protecting the rights of all Americans to vote free from discrimination and to have their vote counted. The President acknowledged the continued importance of this landmark civil rights law when he signed the reauthorization into law. Almost 500 members of Congress who voted to reauthorize the VRA recognized it.

Yet, already there are those mounting challenges to the reauthorization and to the gains we have made. Some of the few Members of Congress who opposed the reauthorization are urging the filing of lawsuits seeking to undermine the reauthorization in the courts. And just last week the Republican leadership in the House retreated from its commitment to protect voting rights for all Americans by passing H.R. 4844, the so-called "Federal Election Integrity Act of 2006." This is a bill which would re-enact the worst of the Jim Crow era by enacting a modern-day poll tax—it would require photo identification that would be difficult and expensive to procure, especially for minorities, the poor, the elderly, and many of the most vulnerable groups in our society. We should reject similar efforts in the Senate.

I am concerned that Mr. Wallace would be among those rolling back the gains we have made in securing the guarantees of the 15th Amendment by applying an extremely narrow view of the Voting Rights Act and congressional authority to enact these vital remedies. There is much in Mr. Wallace's long history with the Voting Rights Act to suggest it. As a congressional counsel, Mr. Wallace helped lead the effort to defeat the 1982 reauthorization of the Act and severely limit its protections. Soon after he lost that political fight, he tried to win in court what he could not in Congress, and he twisted the words of Congress to do so. He argued in a voting rights case in federal court that Congress did not mean what it said when it clarified that Section 2 of the Act requires only an "effects test" rather than the much more difficult to prove "intent to discriminate" test. One federal court described his argument that Section 2 required an "intent test" as

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a waste of court resources, holding: "We find this argument to be meritless as it runs counter to the plain language of amended § 2, its legislative history, and judicial and scholarly interpretations." The court also rejected Mr. Wallace's argument that the effects test required by Section 2 was beyond Congress' power to enforce the guarantees of the 15th Amendment. Mr. Wallace's inability to separate his policy preferences from the legal arguments he sought to advance raises serious concern that he would not fulfill the proper role of a judge-- to decide what the law is, rather than what he wishes it would be.

I am concerned that as a congressional counsel, Mr. Wallace apparently drafted letters urging the Regan Administration to allow Bob Jones University and other religious institutions with racially discriminatory policies to have tax exempt status. In his 1983 hearing for his nomination to the Legal Services Corporation, Mr. Wallace stated his own personal view that Bob Jones University should be tax exempt. The concerns about Mr. Wallace's civil rights record are considerable, and I hope to explore them today.

Mr. Wallace also served as a director and as chairman of the board of the Legal Services Corporation from 1984 to 1990. The Legal Services Corporation is a federal agency which coordinates provision of legal services to low-income people. Mr. Wallace, though, served on the LSC board as the point person in an effort to dismantle the Legal Services Corporation. His apparent hostility not only to a vital program that provides legal services to the poor, but also to the principle behind it, worries me deeply.

Those are just a few of the very significant concerns I have already identified with Mr. Wallace's nomination. His work as a litigator and throughout his career suggests a results-oriented and politically-motivated approach to the law, which gives me pause at the prospect of a lifetime appointment to an influential federal court. My concerns are echoed in the testimony of the American Bar Association, which gave Mr. Wallace a unanimous rating of 'Not Qualified.' The ABA did so after three reviews by a politically and ethnically diverse group of lawyers. They, too, expressed concern about Mr. Wallace's civil rights record and his attitude toward legal services for the poor. They also raised temperament concerns. I look forward to hearing more about those today.

I expect to hear a great deal of criticism of the ABA and its ratings from Republican Senators today. I recall, though, that the Republicans were recently touting the "well qualified" ratings of Justice Alito and Chief Justice Roberts during their confirmation process. A Republican Senator even touted the "well qualified" rating given to Peter Keisler at a recent hearing – after we had received the "Not Qualified" rating for Michael Wallace. I am surprised that Republican Senators are now attacking the same ABA ratings they have relied upon so heavily over the years when favorable. In my view, the ABA gave Judge Alito a pass on his ethics violations and has been exceedingly accommodating to this Administration as it has packed the courts. Its unanimous "Not Qualified" finding for Mr. Wallace should be taken seriously.

Republicans have done everything they could to tilt the rating, from intimidation to personal attacks to President Bush changing a process that had worked for more than 50

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years in order to try to suppress negative comment. We should hesitate before attacking the ABA's use of confidentiality and pushing changes that will further undermine their peer review process.

I was disappointed that the ABA's testimony, provided to the Committee in advance of a hearing that was then postponed, was leaked to right wing bloggers even though the Chairman had designated it Committee confidential. I can understand the ABA's unwillingness to violate the traditional assurances of confidentiality it gave to sources and its unwillingness to share confidential information when it is leaked to right wing bloggers for purposes of attacking the ABA.

I want to emphasize, though, that, while I respect the ABA's confidential process, I make my decisions independently based on my own review of a nominee's record. The ABA is a private voluntary association, and its ratings are advisory. Senators are free to rely or not rely on the ABA's rating. Sometimes I agree with them, sometimes I do not.

In Mr. Wallace's case, the ABA's exhaustive investigation led them to many of the same concerns my own review of his record has raised.

I want to thank the witnesses who have taken time out of their busy schedule to discuss this nomination with us today. Robert McDuff is a well respected civil rights, voting rights, and criminal defense attorney who has practiced law in Mississippi for nearly 25 years. He has argued four times before the Supreme Court, the most recent case involving a Mississippi redistricting plan in which Mr. Wallace was his opposing counsel. Carroll Rhodes, who testifies today on behalf of the Mississippi State Counsel of the NAACP, is a solo practitioner who has practiced law in Mississippi for 28 years and been instrumental in enforcing the Voting Rights Act. Mr. Rhodes has also served as a judge in the Municipal Court of Hazlehurst and worked as a Staff Attorney for the Central Mississippi Legal Services. Likewise, the Honorable Richard Blumenthal, who testifies today in support of Judge Bryant's nomination, is the Attorney General of the State of Connecticut and served as law clerk to U.S District Judge Jon O. Newman and U.S. Supreme Court Justice Harry Blackmun. I look forward to hearing from them and all the witnesses before us today.

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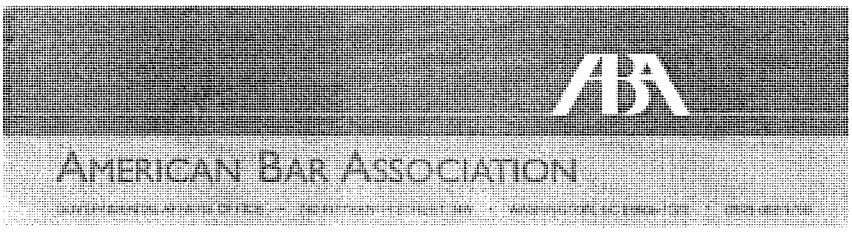

STATEMENT

of

ROBERTA D. LIEBENBERG, CHAIR

and

KIM J. ASKEW

THOMAS Z. HAYWARD, JR.

PAMELA A. BRESNAHAN

C. TIMOTHY HOPKINS

on the behalf of the

STANDING COMMITTEE ON FEDERAL JUDICIARY

of the

AMERICAN BAR ASSOCIATION

concerning the

NOMINATION OF MICHAEL BRUNSON WALLACE

TO BE JUDGE OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

before the

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

September 26, 2006

I. STATEMENT OF ROBERTA D. LIEBENBERG

Mr. Chairman and Members of the Committee:

My name is Roberta D. Liebenberg. I am a practicing lawyer in Philadelphia, Pennsylvania and my practice is concentrated in the area of complex commercial litigation in federal courts around the country. I am a graduate of the Catholic University Columbus School of Law, and prior to entering private practice I clerked on the United States Court of Appeals for the Fourth Circuit. Since August, 2006, I have had the honor of chairing the American Bar Association's Standing Committee on Federal Judiciary ("Standing Committee").

I am submitting this written statement for the hearing record to present the Standing Committee's peer review evaluation of the nomination of Michael B. Wallace to serve on the United States Court of Appeals for the Fifth Circuit. This statement is divided into three sections. First, I will summarize the Standing Committee's general evaluation procedures. Second, Kim J. Askew, the Fifth Circuit representative on the Standing Committee and primary investigator for the evaluation rendered in May 2006, and Thomas Z. Hayward, Jr., a former Chair of the Committee, who was asked to be the second investigator for that evaluation, will explain the reasons for the Committee's unanimous rating of the nominee as "Not Qualified" in May 2006. Finally, Pamela A. Bresnahan and C. Timothy Hopkins, both distinguished former members of the Committee who recently conducted a supplemental evaluation of Mr. Wallace's professional qualifications after he was re-nominated by the President on September 5, 2006, will explain the reasons for the Committee's unanimous rating of the nominee as "Not Qualified" on September 25, 2006.

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As a preliminary matter, I would like to review briefly the Standing Committee's procedures. A more detailed description of these 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),* which may also be accessed online at: http://www.abanet.org/scfedjud/.

The Standing Committee considers and evaluates only the professional qualifications of a nominee -- his or her professional competence, integrity and judicial temperament. A nominee's philosophy or ideology is not taken into account. Our processes and procedures have been carefully structured and modified over the years to produce a fair, thorough and objective peer evaluation of each nominee. A number of factors are evaluated, including intellectual capacity, judgment, writing and analytical ability, knowledge of the law, breadth of professional experience, courtroom experience, character, integrity, industry, diligence, open-mindedness, compassion, decisiveness, courtesy, patience, freedom from bias, commitment to equal justice under the law and general reputation in the legal community.

After Mr. Wallace was nominated by President Bush in February, 2006, Ms. Askew was assigned to conduct the evaluation of his professional qualifications. Ms. Askew was the Fifth Circuit representative on the 2005-06 Standing Committee and remains in that position on the current 2006-07 Committee. The evaluation of Mr. Wallace was conducted in accordance with the normal practices and procedures of the Standing Committee. The investigator starts his or her evaluation by reviewing the nominee's responses to the public portion of the Senate Judiciary Committee questionnaire. These responses provide the opportunity for the nominee to set forth his

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or her qualifications, including professional experience, important cases handled, significant legal writings and references. The investigator makes extensive use of the questionnaire responses during the course of the evaluation. In addition, the investigator conducts research about the nominee in both the print and electronic media, and identifies and examines the legal and non-legal publications, speeches and other writings by and about the nominee. The investigator also personally conducts extensive confidential interviews with individuals who have information regarding the integrity, professional competence and judicial temperament of the nominee, including federal and state judges, practicing lawyers in both private and government service, law school professors and deans, legal services and public interest lawyers, representatives of professional legal organizations, community leaders, and others who are in a position to evaluate the nominee's professional qualifications. This process provides a unique "peer review" aspect to our evaluation.

Interviews are conducted under an assurance of confidentiality. It bears emphasis that the Committee's ability to secure candid and complete assessments of a nominee's professional qualifications from the judges, lawyers, and others who are interviewed concerning the nominee is dependent upon the maintenance of strict confidentiality.

However, while confidentiality is the linchpin of our evaluation procedures, we are sensitive to the critical need to be fair to the nominee with respect to any adverse comments that are received during the course of the evaluation process. If adverse comments are made about the nominee, the investigator will disclose to the nominee during the personal interview as much of the underlying basis for the adverse comments as reasonably possible, consistent with the promise of confidentiality made to

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interviewees. During the personal interview, the nominee is afforded a full opportunity to rebut the adverse comments and provide any additional information relevant to them. The investigator will then follow up on any such information provided by the nominee. If the nominee does not have the opportunity to rebut certain adverse comments because they cannot be disclosed without breaching confidentiality, the investigator will not use those comments in writing the formal Report and the Committee will not consider them in its evaluation.

Ms. Askew conducted a three-hour interview of Mr. Wallace on March 28, 2006. During that interview, she discussed with him the adverse comments that had been made during her prior interviews of judges, attorneys and other individuals with knowledge of his professional qualifications, and she gave him the opportunity to address and refute those comments.

Under Standing Committee procedures, a second investigator may be appointed when it appears at any time during the evaluation process that a nominee may receive a "Not Qualified" rating, and that is what occurred here. Upon the completion of her informal report, and before it was circulated to members of the Standing Committee, Ms. Askew advised the then-Chair of the Committee that she would be recommending a "Not Qualified" rating for this nominee. As a result, Thomas Z. Hayward, Jr., of Chicago, a former Chair of the Standing Committee, was asked to conduct a second evaluation. He interviewed additional third parties, and re-interviewed the nominee on May 2, 2006. Thereafter, based upon his own evaluation, Mr. Hayward also recommended a "Not Qualified" rating for this nominee.

Once the second evaluation concluded, both the formal report completed by

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Ms. Askew and the second report completed by Mr. Hayward were forwarded simultaneously to all members of the Standing Committee. At the same time, members of the Standing Committee also received background materials relating to a 1992 pre-nomination evaluation by the Standing Committee of Mr. Wallace.

In May, 2006, after carefully considering the Reports prepared by Ms. Askew and Mr. Hayward, as well as the materials pertaining to the evaluation conducted in 1992, each of the fourteen voting members of the Standing Committee independently conveyed their votes to the then-Chair. Mr. Hayward, who was not a member of the Committee in May 2006, did not vote, nor did the then-Chair vote. The fourteen voting members of the Standing Committee voted unanimously that Mr. Wallace was "Not Qualified" for a position on the Fifth Circuit Court of Appeals.

The Standing Committee's normal practice is to conduct a supplemental evaluation of every nominee whose nomination has been withdrawn or returned and subsequently re-submitted by the President. Consistent with that standard procedure, the Committee has conducted a supplemental evaluation of Mr. Wallace, whose nomination was returned by the Senate on August 3, 2006, and re-submitted by the President on September 5, 2006. The supplemental evaluation was conducted by two highly experienced former Committee members, Pamela A. Bresnahan of Washington, D.C. and C. Timothy Hopkins of Idaho Falls, Idaho. Two investigators were appointed because of the need to conduct the supplemental evaluation on an expedited basis.

In general, a supplemental evaluation focuses on new information developed after a prior evaluation and rating. However, a supplemental evaluation may also entail further examination of any additional information that can be obtained regarding the nominee's

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professional qualifications, even if it relates to the period prior to the most recent nomination, in order to ensure a thorough review of the nominee's professional qualifications.. And that was what was done here. Ms. Bresnahan and Mr. Hopkins performed their own evaluations, conducted a two-hour interview with the nominee, and took into consideration all of the materials relating to the prior evaluations of Mr. Wallace by the Standing Committee.

Present today are Ms. Askew and Ms. Bresnahan, who will testify regarding the evaluations and the reasons for the Standing Committee's rating of the nominee as "Not Qualified." Mr. Hayward and Mr. Hopkins are also present if the Committee has any questions regarding the evaluations.

After careful review of the supplemental evaluation by Ms. Bresnahan and Mr. Hopkins, and consideration of all materials concerning the prior Standing Committee evaluations of Mr. Wallace's professional qualifications, it is the unanimous opinion of the Standing Committee that he is "Not Qualified" for a position on the United States Court of Appeals for the Fifth Circuit.

II. MAY 2006 EVALUATION

A. Statement of Kim J. Askew, Submitted on July 19, 2006

My name is Kim J. Askew. I am a trial lawyer from the State of Texas. I serve as the Fifth Circuit Representative to the Standing Committee on Federal Judiciary. I have practiced for 22 years, primarily in the areas of complex commercial and employment

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litigation. I am the Chair-Elect of the Section of Litigation of the American Bar Association, and formerly chaired the Board of Directors of the State Bar of Texas and its Section of Litigation. I am a graduate of Georgetown University Law Center and clerked for a federal district court judge before beginning my law practice.

1. The Investigation of Mr. Wallace

I conducted my investigation into the professional qualifications of Michael B. Wallace in March and early April of this year in the same manner all investigations of the Standing Committee are conducted. As outlined in the *Backgrounder*, the Standing Committee investigates only the professional competence, integrity, and judicial temperament of Mr. Wallace. Political considerations or personal ideology were not considered. My investigation began with a detailed analysis of Mr. Wallace's responses to the Personal Data Questionnaire in which he provided substantial information on his professional background and experience and writing samples. From this questionnaire, I identified attorneys and judges Mr. Wallace considered significant in his background.

In addition, I surveyed the docket sheets of state and federal courts in Mississippi, the state in which Mr. Wallace primarily practices, to identify other lawyers and judges with knowledge of Mr. Wallace's professional qualifications. I reviewed numerous published and unpublished opinions in which Mr. Wallace had appeared as counsel of record. I also asked Mr. Wallace to supplement his writing samples with any legal memoranda, briefs or writings that he considered significant and wished the Standing Committee to review. He did so and the Standing Committee reviewed these writings in reaching its recommendation.

As part of my preliminary investigation, I conducted confidential telephone

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interviews with 69 lawyers, including 26 judges. These interviews covered the depth and breadth of the legal community. I interviewed law professors and deans, government officials, lawyers who practiced in large and small firms, solo practitioners, representatives of various bar organizations, and representatives of the legal services and public interest communities. I interviewed judges on the Fifth Circuit Court of Appeals, federal district courts, federal magistrate judges, and judges on every state court in Mississippi in which Mr. Wallace had practiced.

Of course, the interviews included lawyers and judges listed as having been involved in significant litigation matters in which Mr. Wallace had appeared, as well as lawyers and judges identified from public court docket sheets. Lawyers and judges often provided the names of other persons with knowledge of Mr. Wallace's professional qualifications. Interviews were balanced. Lawyers of color were interviewed. I spoke with lawyers on both the defense and plaintiff side of cases and those who represented public and private entities. In those instances in which Mr. Wallace listed significant cases involving political issues, such as cases arising under the Voting Rights Acts, I interviewed lawyers representing all parties. If I interviewed lawyers who represented the Republicans, I also interviewed the lawyers representing Democrats.

During each interview, I asked detailed questions regarding the person's knowledge of Mr. Wallace's professional competence, judicial temperament, and integrity. Often, I asked open-ended questions, seeking any information that might bear on the professional qualifications of Mr. Wallace to serve on the court. If an interviewee raised concerns or provided adverse information regarding any of the three criteria vetted by the Standing Committee, I asked follow-up questions designed to elicit facts

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supporting the comments, including information on the names of cases, briefs or written materials, or the names of other persons who could corroborate any adverse concerns expressed.

Many of the interviews involving Mr. Wallace were quite lengthy; some lasting as long as 45 minutes. Some interviews were long because the *Backgrounder* requires that we fully explore any adverse comments so they can be discussed with the nominee. Interviews with persons who made favorable comments were sometimes lengthy because these individuals discussed unfavorable issues they had "read" or "heard" about regarding Mr. Wallace or they tried to anticipate issues they thought others might raise. If lawyers in a case gave conflicting views on Mr. Wallace's temperament, I conducted additional interviews in an attempt to reconcile, if possible, the differing points of view. During these interviews, lawyers and judges frequently asked for assurances of confidentiality and repeatedly requested that the Standing Committee not make any public statements that would reveal their identity. Some lawyers and judges were so concerned about confidentiality that often they would not talk with me during my initial call and spoke to me only after verifying that I was a member of the Standing Committee.

On March 28, 2006, I conducted a confidential interview for about three hours with Mr. Wallace at his office in Jackson, Mississippi. During this interview, I discussed with Mr. Wallace the adverse concerns that had been raised during the course of my many interviews, and gave him the opportunity to rebut or discuss the adverse information in any manner he wished. Of course, I did not, and could not, reveal the identities of persons making particular comments or discuss particular cases if revealing those matters who have led to the identity of the person making the adverse comments.

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All of these interviews were then compiled into an 83-page, single-spaced report, which included some 800 pages of background materials and writing samples.

The investigation revealed that Mr. Wallace has the highest professional competence. Mr. Wallace possesses outstanding academic credentials, having graduated from Harvard University in 1973 and the University of Virginia Law School in 1976. He was a law clerk to former Chief Justice William H. Rehnquist from 1977 to 1978. Mr. Wallace is often described as a "legal scholar" of "strong intellect;" a quality lawyer with a "quick legal mind." He is a highly skilled and experienced trial and appellate lawyer who is considered a "go-to lawyer" on certain litigation matters in Mississippi. As discussed below, even those persons with serious concerns regarding Mr. Wallace's judicial temperament describe him as a brilliant lawyer, one who would ably master legal issues before him as a judge.

The investigation also established that Mr. Wallace possesses the integrity to serve on the bench. His integrity was described by many as "impeccable," "outstanding," "the highest," "absolute," and "solid." Persons throughout the legal community stated that Mr. Wallace is a fine family man, an excellent husband and father.

2. Adverse Comments on Judicial Temperament

As discussed below, Mr. Wallace received substantial adverse comments on the issue of judicial temperament. Of the 69 lawyers and judges interviewed, over a third of them expressed grave concerns regarding Mr. Wallace's judicial temperament. People from a broad spectrum of the legal community expressed this concern, including judges who had presided over cases in which Mr. Wallace had appeared. While confidentiality prevents the Standing Committee from naming lawyers and judges who made negative

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comments, and none of them waived confidentiality, the Committee was presented with the fact that many of the persons who expressed these concerns had worked with Mr. Wallace for a long period of time, some spanning over two decades. Others who questioned his temperament stated that they had known Mr. Wallace since his childhood or from the earliest days of his practice in the District of Columbia and Mississippi. Indeed, many lawyers who believed Mr. Wallace "Well Qualified" on the criteria of professional competence and integrity nonetheless stated that he lacked the necessary temperament for judicial service.

This was a difficult investigation because of the conflicting and strongly held views of lawyers and judges on one aspect of the qualifications we review - Mr. Wallace's judicial temperament. On the one hand, many of those interviewed believe that Mr. Wallace possesses the professional competence and integrity that places him at the top of the profession. Many others, including some of those who believe him well qualified on the other criteria, are of the unwavering view that he lacks the temperament required for service on a federal court.

One of the unfortunate aspects of post-nomination review of the professional qualifications of judicial nominees by the Standing Committee is the need to report, in a public forum, adverse information that has been gathered in accordance with our long-established investigative practices. However, the interests of the American people can only be served by presenting our objective findings to the Senate Judiciary Committee. What is at stake is a lifetime appointment to the federal bench.

With this background, I independently reached the preliminary conclusion that Mr. Wallace should be rated "Not Qualified" and communicated this to the Committee

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Chair who then appointed Thomas Z. Hayward, the immediate past chair of this Committee, to conduct a supplemental investigation and to re-interview Mr. Wallace. I provided Mr. Hayward a copy of my unreleased preliminary report containing all interviews. Also, I wanted Mr. Hayward to be fully aware of the adverse comments regarding Mr. Wallace's judicial temperament so that, in accordance with the *Backgrounder*, he could independently investigate those issues and discuss them with Mr. Wallace. I understand that Mr. Hayward independently interviewed additional persons and Mr. Wallace. I did not participate in the interviews. Mr. Hayward then prepared a supplemental report in which he too independently reached the same conclusion: Mr. Wallace is "Not Qualified" for service on the Fifth Circuit Court of Appeals because he lacks the required judicial temperament.

Judicial temperament captures the important elements set forth in our *Backgrounder*. "In investigating judicial temperament, the Committee considers the nominee's compassion, decisiveness, open-mindedness, courtesy, patience, freedom from bias, and commitment to equal justice under the law." Importantly, lawyers who raised temperament concerns expressed familiarity with the *Backgrounder* and, without my explanation of the Committee's criteria, raised the very elements set forth in our temperament definition. Many noted that temperament went to the very essence of being a judge because it dealt with the issue of whether a judge would be fair to all litigants and follow the law. Lawyers and judges raised issues with Mr. Wallace's judicial temperament in the following respects:

a. Commitment to Equal Justice

One of the negative comments expressed over and over, and often with great

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emotion and concern for the system, was that Mr. Wallace had not shown a commitment to equal justice under the law. Lawyers and judges stated that Mr. Wallace did not understand or care about issues central to the lives of the poor, minorities, the marginalized, the have-nots, and those who do not share his view of the world. These concerns were most often discussed in the context of Voting Rights Act cases and other issues involving constitutional rights.

Many lawyers discussed the positions taken by Mr. Wallace related to the Voting Rights Act as evidence of his lack of commitment to equal justice. *Jordan v. Winter*, 604 F. Supp. 807 (N.D. Miss. 1984), was a Voting Rights Act case several lawyers felt comfortable discussing because of the specific public findings of the court that they believe demonstrated the manner in which Mr. Wallace litigated the case. In that case, Mr. Wallace, while representing the Mississippi Republican Party, defended a congressional redistricting plan challenged by African-American plaintiffs as diluting their voting strength. Lawyers questioning Mr. Wallace's temperament in that case raised two issues: (1) that his position was not well-founded and was contrary, they believed, to existing interpretations of the Voting Rights Act and cases which had expressly held that the African-American plaintiffs were not required to show discriminatory intent under Section 2 of the Voting Rights Act; (2) and, that while all lawyers advance positions as advocates for clients, the manner in which Mr. Wallace litigated this case made it most difficult to resolve the case. They felt that Mr. Wallace advanced his own personal views on the interpretation of the Voting Rights Act without regard to the law or the ultimate merits of the litigation and the impact on the African-American citizens of Mississippi.

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Various lawyers informed me that the court had rejected the position advanced by Mr. Wallace because his arguments were not in accordance with existing interpretations of the Voting Rights Act. I independently reviewed the language in the case to determine if the court had reached such a conclusion. There is language in the *Jordan* opinion in which the federal court stated that the position advanced by Mr. Wallace on the interpretation of the Voting Rights Act [Section 2] was "meritless." *Id.* at 810, n. 5. The court rejected "the contention of the Republican defendants that Section 2, if construed to reach discriminatory results, exceeds Congress' enforcement powers under the fifteenth amendment." *Id.* at 810-11. Lawyers noted the particularly "ferocious" manner in which Mr. Wallace sought to prevent the formation of a majority African-American district under the redistricting plan. They opined that his positions went beyond mere "zealous and forceful advocacy" and into the realm of personal belief.

As further evidence of the manner in which Mr. Wallace litigated the case and as a basis for their assertions that he lacks temperament, several lawyers made me aware of some of the additional findings made by the court in the subsequent opinion on attorneys' fees in *Jordan v. Allian,* 619 F. Supp. 98 (N.D. Miss 1985). There, the court expressly found that "these defendants, and particularly the Republican Party, [represented by Mr. Wallace] crossed the line separating hard fought litigation from needless multiplication of proceedings at great waste of both the courts and the parties' time and resources." *Id.* at 111.

Lawyers raised concerns regarding the positions advanced by Mr. Wallace in the redistricting area in the *Branch* cases, litigated in early 2000. Mr. Wallace argued for the creation of at-large districts for the election of Mississippi Congressional representatives,

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a position that lawyers said would have eliminated the only majority African-American single-member district in Mississippi. These lawyers also pointed out that many other states had already implemented single-member districts. Lawyers stated that the United States Supreme Court rejected the position advanced by Mr. Wallace in *Branch v. Smith*, 538 U.S. 254 (2003) and allowed single-member districts in Mississippi.

Lawyers had concerns regarding the manner in which Mr. Wallace litigated the cases believing that he took "partisan" positions that ignored existing precedent under the Voting Rights Act. They also believed that he acted not merely as an advocate, but advanced his own personal position and "agenda" without regard for the impact on African- American voters. These lawyers stated that they understood the role of lawyers as advocate, but believed that Mr. Wallace's positions went far beyond that of an advocate.

Lawyers other than those who involved in the civil rights litigation mentioned above based their concerns regarding Mr. Wallace's lack of commitment to equal justice on the overall dealings and interactions they have had with him over a period of years. Some had heard him give lectures on issues such as the Voting Rights Act and other constitutional issues and recounted follow-up personal conversations with him, which led them to question his commitment to equal justice. He is said to have a "blind-spot" with respect to certain issues as they relate to the certain issues affecting minorities. Several people commented that their concerns related to the "minority view" covered not just racial and ethnic minorities, but the manner in which Mr. Wallace reacted to any minority point of view.

The Standing Committee was concerned with the nature and number of

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statements about Mr. Wallace's lack of commitment to equal justice made by people who know the nominee, a sampling of which includes the following:

- He has "an instinctive contempt for the socially weak," including "the poor and minorities."
- "The poor may be in trouble; he is just not open to those issues."
- He does not "like poor people" or anyone "not just like him."
- "He can't see the plight of those who are socially advantaged."
- He would not only "not be open to issues involving minority rights," he would be "hostile" to them.
- He is "out of step with the modern world - he thinks this is the Mississippi of the past." He would turn "back the clock in Mississippi on issues related to race relations."
- "It will be like 1965, not 2006."
- "If it is big business v. the little man, business usually wins."
- I am not sure the "have nots" will always get justice; I am sure "the haves" always will.
- "The civil rights laws might be trumped."

These are the words used by lawyers and judges who know Mr. Wallace; they have been involved in cases with him, and are active in the bar and community in which Mr. Wallace lives and works. The statements came from a cross section of the legal community and not just minority lawyers or lawyers who had been involved in civil rights or other constitutional cases. As I noted earlier, judges raised some of these concerns. They repeatedly focused on the fact that the Fifth Circuit may have more poor, more marginalized, and more minority individuals than any other circuit in the country. They were convinced that Mr. Wallace did not understand the plight and issues of so many of the people he would have to serve as a judge.

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In responding to these issues, Mr. Wallace noted that he was acting as an advocate when he took positions related to the Voting Rights Act, and that he had advanced positions within the bounds of advocacy. He denied not having a commitment to equal justice or to the poor and noted that he had represented many poor people during the early years of his practice. He spoke extensively about his community work, including building Habitat Homes and the work he and his family had done in Honduras. People in the community were aware of that service and uniformly praised it, but noted that Mr. Wallace supported those communities while not demonstrating a similar understanding of issues related to the poor in his own community in Mississippi.

b. Open-Mindedness

Lawyers raised concerns regarding Mr. Wallace's open-mindedness and questioned whether he would be a fair judge. They emphasized the importance of fairness in the courts and the critical role of judges in maintaining fairness. Some lawyers believed Mr. Wallace would be fair as a judge and would "call it as he sees it." Other persons interviewed described the nominee as "narrow-minded in his views," "lacking in tolerance," "entrenched in his views," "intolerant," "insensitive," "high-handed – not willing to yield to logic or the facts," "rigid," "inflexible," "overly-opinionated," "one-dimensioned," "locked into a point of view – his," and not open to the positions of others.

Some lawyers stated that Mr. Wallace was so entrenched in his own personal views that they did not believe he could put them aside and fairly follow the law. There was said to be little "middle ground" with the nominee. He is said to be "argumentative" beyond the degree necessary for successful advocacy. An especially noted lawyer

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commented that Mr. Wallace's own views are "so intense," "so personal," and "so blinding to himself" that he may not understand that he is not being open or is closed to the views of others. These lawyers noted that Mr. Wallace's lack of personal awareness of these issues is particularly troublesome in one who will serve in a lifetime appointment to the bench.

Some expressed concerns over whether Mr. Wallace would be able to transition from being an advocate to being a judge. They noted that Mr. Wallace only sees his point of view, and summarily rejects the views of others in a manner that suggests he has not fully listened to them. He is said to exhibit "hostility" to the views of others, especially if he disagrees with them. He has taken "harsh and unnecessary positions" in litigation that "may have resulted in undue burdens to the courts." While I cannot reveal the details of the cases, lawyers gave me specific examples of this in several recent high profile cases handled by Mr. Wallace.

Others stated a belief that Mr. Wallace would prejudge the outcome of cases "based on personal beliefs and not the law." He would "get the results he wants in a case regardless of law or facts." Another expressed the belief that Mr. Wallace would, based on his fast-held views, (1) make his mind ahead of time or (2) be locked into a particular view and simply not hear the other side.

Other lawyers and judges that I interviewed did not share this view of Mr. Wallace and believed that he would be fair and open to all points of view. However, the number of persons who expressed concerns about his lack of open-mindedness and the nature of the concerns could not be ignored. These lawyers and judges who questioned this aspect of his temperament had been involved in many types of cases with Mr.

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Wallace, and while strongly criticizing this aspect of temperament, admired his legal acumen.

Mr. Wallace rejected these assertions during our interview. He believes that he understands what it is to judge and to be fair in decision-making. He stated that litigants deserve certainty. The interview did not assuage the serious concerns that interviewees had raised.

c. Freedom from Bias

A substantial number of lawyers and judges stated that Mr. Wallace has taken positions that suggest he "may not follow the law." They explicitly stated that he "simply" or "just won't follow the law. Some judges even suggested that Mr. Wallace might not follow precedent or could "ignore the law if he disagreed with it" or if it suited his "personal agenda." A long-time judge noted, "The law will not get in his way." Many said his positions are sometimes "extreme." "You either agree with him or capitulate." "Mr. Wallace's point of view prevails or else." Some raised concerns that Mr. Wallace would follow his own interpretation of "what the law should be" rather than "what the law is." Many were concerned that Mr. Wallace would use his considerable skills as a legal writer, thinker, researcher, and skillful advocate to change or modify the law to reflect his personal views rather than rely upon and apply existing precedent. Lawyers and judges noted cases in which Mr. Wallace had filed pleadings and taken positions that certainly did little or nothing to advance the merits of the case and suggested that he was deviating from existing precedent in some of his positions.

This latter point raises yet another significant concern: many lawyers expressed the view that Mr. Wallace had an "agenda" in seeking the bench. Statements were made,

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such as: he will judge through "partisan eyes" he is "undoubtedly a doctrinaire" who is on a "quest;" he is a lawyer "on a mission to destroy the Voting Rights Act, other civil rights laws;" "and his "agenda" would "destroy the fabric of the bench."

Lawyers assured me that their statements regarding an "agenda" or failure to follow precedent were not based on political considerations, rumor or hearsay. They made it clear that their statements were based on their direct, professional interactions with the nominee. In evaluating these statements, it is important to note that people who expressed these concerns were from divergent backgrounds, some of whom even volunteered that they were concerned even though they shared Mr. Wallace's political views, because they foremost wanted a judge on the court who would follow the law. Many of the lawyers who made these comments said they had reached this conclusion after being in a variety of cases with Mr. Wallace -- civil rights, commercial, and products liability--a fact that I independently verified through my review of docket sheets and reported cases.

Mr. Wallace rejects the assertions of those who believe he is not free from bias and will not follow the law. He stated that he understands what it means to be an appellate judge. During the interview, he wanted detailed examples of the cases and types of statements made as well as the identity of persons making such statements. Beyond the statements that I have expressed here, I could not provide Mr. Wallace with any further details on the identities of lawyers or the names of cases without violating the confidentiality requirements upon which the interviewees relied.

d. Courtesy

Lawyers also criticized Mr. Wallace for failing to show common courtesy and

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respect to other lawyers and litigants. Some of the comments arose in the context of his service on the national Legal Services Board in the late 1980s and early 1990s. Lawyers who had attended Board meetings and watched the interaction between Mr. Wallace and members of the public and the Legal Services staff described him as treating staff and lawyers "like they were dirt on the floor." Many who had attended these meetings said he was "nasty," "dismissive," "abusive," "mean," "rude," "extremely arrogant," "egotistical," "condescending" and "extraordinarily impolite" to those who appeared before the Legal Services Board.

Concerns regarding Mr. Wallace's lack of common courtesy and respect continue to today. Persons who have worked with him well after he ended his service on the Legal Services Board raise similar issues. Lawyers and judges described him as "loud," "aggressive," "discourteous," "abrasive," "arrogant" and "condescending." Some lawyers who have known him for a long period of time describe him presently as a man who has become "hardened in his convictions" rather than becoming "more open" to the issues of those around him. Lawyers stated that Mr. Wallace was not patient and often did not listen to the arguments of others, and that he could be "sarcastic" and "strident" in his approach to dealing with issues and in his conversations with fellow lawyers. They stated their belief that Mr. Wallace would engage in this same behavior as a judge. If he did so, they questioned whether litigants would obtain a fair hearing and resolution of their issues and whether the essential dignity of the court would be maintained.

A large number of minority lawyers stated that Mr. Wallace has on occasion been particularly disrespectful to them and often did not treat them as equals or peers in the profession. They stated that he acted with an air of "superiority" and in a manner that

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was "demeaning" and "condescending" to them while he did not display this behavior to other lawyers in the cases on which they worked. Some non-minority lawyers who questioned Mr. Wallace's temperament stated that he "seemed" to treat non-minority lawyers "as peers" while his "demeanor, reactions and interactions" with minority lawyers suggested he did not treat these lawyers as equals. And some minority lawyers, especially those who had been actively involved in litigating civil rights cases, stated that Mr. Wallace often did not respect their views, – it was as if the arguments of minority lawyers "were not as worthy of being in court" and did not "carry the same weight" as other lawyers. We are certainly aware of comments from other prominent minority attorneys who do not share this view, but on balance, the Committee could not discount the number of lawyers who raised this concern, the nature of their comments or the expressed intensity of beliefs of these lawyers concerning Mr., Wallace's interactions with them.

In the interview, Mr. Wallace stated that he believes he maintains a professional demeanor with all lawyers and was not aware of concerns raised by minority lawyers or others who felt that he was not courteous to them. He stated that he helped to recruit and worked with minority lawyers in his own firm. With respect to his service on the Legal Services Board, Mr. Wallace attributes such comments to those who disagreed with his work and is proud of the work accomplished while he served on the Board.

Mr. Wallace asked for further details regarding all adverse comments, including the identity of those who made the comments and the "facts" or "proof" given by persons in support of their statements. I provided Mr. Wallace with as much information as I could without violating the confidential nature of this process that precluded me from

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providing such information without the authorization of the lawyers.

B. Statement of Thomas Z. Hayward, Jr., Submitted on July 19, 2006

My name is Thomas Z. Hayward, Jr., and I am a lawyer from the State of Illinois. I served as the Seventh Circuit representative to the Standing Committee on Federal Judiciary from 1990 to 1994, and I served as Chair of the Committee from 2003 to 2005. I have practiced for 40 years, primarily in the areas of corporate and real estate law. I am a graduate of Northwestern University School of Law.

1. Investigation of Mr. Wallace

Because Kim Askew had reached the preliminary conclusion that Mr. Wallace should be rated "Not Qualified" by reason that he lacks the appropriate judicial temperament, the Chair appointed me to undertake a supplemental investigation. The purpose of the supplemental investigation was to assure fairness to Mr. Wallace in light of Ms. Askew's negative assessment based on her extensive investigation. The *Backgrounder* provided that the second investigator may re-interview the nominee and conduct whatever supplemental inquiries he or she feels appropriate.

I carefully reviewed Mr. Wallace's Personal Data Questionnaire and the preliminary and lengthy report prepared by Ms. Askew. Having read over 500 such reports during my tenure on the Committee, both as a member and as Chair, I was impressed by the number of interviews undertaken by Ms. Askew and the thoroughness and detail of the reported interviews which represented a cross section of federal and state judges, practicing lawyers, and law school professionals. I determined that I would not re-interview any of the individuals reported by Ms. Askew; her reports were detailed and

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thorough summaries of what the individuals interviewed said regarding Mr. Wallace's professional competence, integrity and temperament. Instead, I opted to interview Mr. Wallace and verify comments, both pro and con, with a number of individuals not interviewed by Ms. Askew or listed by Mr. Wallace in his Personal Data Questionnaire. Indeed, I met with Mr. Wallace in his Jackson office on May 2, 2006 for an interview that lasted approximately one and one-half hours. During that interview I reviewed with him the adverse information I had obtained during the supplemental investigation, and gave him the opportunity to respond.

I agree with Ms. Askew that Mr. Wallace possesses the integrity to serve on the bench and that he has the highest professional competence as a highly skilled and experienced trial and appellate lawyer.

However, like Ms. Askew, after personally interviewing Mr. Wallace and others who know him professionally and personally, I came to the same conclusion that Mr. Wallace fails to meet the standards of judicial temperament as set forth in our *Backgrounder*. Temperament encompasses more than just being polite, maintaining one's temper, or showing proper decorum in a courtroom. Rather, as defined in our *Backgrounder*, it encompasses "the nominee's compassion, decisiveness, open-mindedness, courtesy, patience, freedom from bias and commitment to equal justice under the law."

a. Open-Mindedness

One cannot overlook the many comments received by Ms. Askew and myself describing the nominee as narrow-minded in his views, rigid, hostile to, and not open to the position of others. One distinguished interviewee with whom I spoke commented that

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with Mr. Wallace, it will be his "way or the highway.

b. Freedom from Bias

After meeting with Mr. Wallace, I too share the concern that Mr. Wallace will interpret the law to meet his own interpretation rather than to follow precedent.

c. Courtesy

A broad cross section of the legal community interviewed by Ms. Askew and myself raised the concern that Mr. Wallace will not demonstrate the patience necessary to allow lawyers arguing cases before him to develop and set forth their argument. Many commented that Mr. Wallace would find it very difficult to make the transition from active trial and appellate lawyer to an appellate judge, to be a listener and not an advocate.

2. Conclusion

My supplemental investigation affirmed the findings reported by Ms. Askew. Her written statement accurately reflects the concerns of the legal community and the Committee and thoroughly explains the reasons that the Committee, after careful evaluation of the professional qualifications of Mr. Wallace, rated him "Not Qualified" for a lifetime appointment to the United States Court of Appeals for the Fifth Circuit.

C. The Standing Committee's May 2006 Rating

After considering the reports by Ms. Askew and Mr. Hayward, the 14 voting members of the Standing Committee unanimously rated Mr. Wallace "Not Qualified" for appointment to the United States Court of Appeals for the Fifth Circuit. The Standing Committee is comprised of highly accomplished attorneys of diverse backgrounds and

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practices. Each member takes very seriously his or her responsibility to conduct an objective evaluation of the professional qualifications of each judicial nominee. Each of the members of the Committee applied his or her independent judgment in voting on the rating to be given to the nominee.

III. SEPTEMBER 2006 EVALUATION

A. Statement of Pamela A. Bresnahan and C. Timothy Hopkins

In accordance with the Standing Committee's normal procedures, Mr. Hopkins and I conducted a supplemental evaluation of the nominee because this nomination was returned by the Senate on August 3, 2006, and was re-submitted by the President on September 5, 2006.

In conducting this supplemental evaluation, we reviewed the responses by Mr. Wallace to the public portions of the Senate Judiciary Committee Personal Data Questionnaire ("PDQ"). In addition, we reviewed the extensive materials pertaining to the prior evaluations of Mr. Wallace's professional qualifications by the Standing Committee in the Spring of 2006 and 1992. We also read several of the reported decisions cited by Mr. Wallace in his PDQ, and other decisions where he was listed as counsel.

Although the supplemental evaluation was conducted on an expedited basis, we sought to interview as many people as possible. We contacted judges and lawyers from a broad cross-section of the legal community. We re-interviewed 15 people who were

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previously interviewed by Ms. Askew or Mr. Hayward in Spring 2006 and interviewed 11 additional people who had not been previously interviewed. Some of the people we interviewed had been mentioned to us during one or more of our interviews, (including our interview with the nominee), as possible sources of information regarding Mr. Wallace's professional qualifications. On September 18, 2006, we interviewed Mr. Wallace for two hours at his office in Jackson, Mississippi.

During our interview with Mr. Wallace, we presented him with an opportunity to rebut or discuss adverse comments we had received during the course of our interviews. We provided him with as much context and specificity as we could without breaching our promise of confidentiality to the interviewees. We told Mr. Wallace that, consistent with the process of obtaining information for a Report, we would not reveal the identities of the individuals who provided us with the adverse information if they wished for their remarks to remain confidential. In one instance, an individual who had made adverse comments regarding Mr. Wallace's potential for judicial temperament, consented to the disclosure of his identity and his comments to Mr. Wallace. These comments and the source of them were disclosed to Mr. Wallace so he could address them. These comments referred to a particular meeting he chaired. In response, Mr. Wallace stated there was a record of the meeting which he subsequently forwarded to us. We responded that, in many instances, a record does not disclose tone, demeanor or manner of speaking and not everything is always on the record. After some debate, the nominee, somewhat grudgingly acknowledged this was sometimes the case. Similar concerns with respect to the nominee's arrogance, rudeness and tone were raised by other individuals that we interviewed.

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It should be noted that we refrained from including in our Report to the Standing Committee certain of the adverse comments we had received about Mr. Wallace, because disclosure of the underlying basis of these comments to Mr. Wallace would have necessarily compromised the confidentiality demanded by that interviewee. We did not rely on those comments in making our "Not Qualified" recommendation to the Standing Committee, nor were these comments referenced in our Report.

We found this evaluation to be a very difficult one. There were a number of very laudatory comments about Mr. Wallace's integrity, legal ability and skill in representing his clients. However, consistent with the concerns and issues that were raised in the prior evaluations of Mr. Wallace, approximately 40 per cent of the interviewees raised issues involving Mr. Wallace's temperament or suitability to sit on the bench.

The range of opinion was notable. At one end of the spectrum, several of our interviewees concluded that Mr. Wallace would be fair and open-minded and had the requisite judicial temperament for an appointment to the federal bench. In the middle, other interviewees were concerned whether he would be able to listen to both sides of a case and be open-minded, and those interviewees, from their observations of him as an advocate, were not sure if he had that ability, given his personality. At the other end of the spectrum – comprising approximately 40 per cent of the people to whom we spoke had issues or concerns with some aspect of Mr. Wallace's temperament. Individuals that were interviewed commented that his manner is often brusque and dismissive and expressed concerns that he would not be patient and courteous or respectful towards litigants, or that he would be open to the views of both sides of a case. Several lawyers

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and judges observed to us that they believed that he would not put his advocacy role aside if he were a judge.

The Standing Committee has provided extremely thorough evaluations of Mr. Wallace over the years. In total, over 120 judges and lawyers have been interviewed. Judges and lawyers from widely-differing background and experiences who raised concerns and issues about Mr. Wallace's temperament could not be overlooked or discounted.

Notwithstanding Mr. Wallace's integrity and legal ability, the concerns about his temperament and suitability for the bench caused us to submit a recommendation of "Not Qualified" to the Standing Committee. The possession of judicial temperament is of critical importance to ensuring that litigants, their attorney's and the public have confidence in the fairness of the justice system.

B. The Standing Committee's September 2006 Rating

After careful consideration of the supplemental report of Pamela A. Bresnahan and C. Timothy Hopkins, as well as the materials pertaining to the previous evaluations of the nominee, the fourteen voting members of the Standing Committee unanimously rated Mr. Wallace "Not Qualified" for appointment to the United States Court of Appeals for the Fifth Circuit.

The Standing Committee greatly appreciates the Senate Judiciary Committee's consideration of this written statement.

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Jul-05-06 10:03am From- T-117 P.001/002 F-119

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& BERKOWITZ, PC

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C. LEE LOTT III, ASSOCIATE
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July 3, 2006

Via Facsimile (202-228-1698)

The Honorable Arlen Specter
Chairman, Committee on the Judiciary
Unites States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Specter:

I am writing to recommend Michael B. Wallace as a judge on the United States Court of Appeals for the Fifth Circuit. I am also writing to disagree with the recent report of the American Bar Association's Standing Committee on Federal Judiciary that Mr. Wallace is "not qualified" for the position to which he has been nominated.

As an active member of the Mississippi Bar, I am well familiar with the outstanding reputation enjoyed by Mike Wallace. Mike is widely considered an exemplary lawyer who is well qualified to occupy a seat on this important appellate court.

Mike obtained his undergraduate degree at Harvard and his law degree at Virginia. He served clerkships at the Supreme Court of Mississippi and the Supreme Court of the United States, the latter for then Associate Justice William H. Rehnquist. Mike has been engaged in the private practice of law in Mississippi for more than 23 years. He has earned the highest reputation among his peers for legal ability and integrity. Two prominent publications that base their ratings on peer reviews - "The Best Lawyers in America" and "Chambers USA" - both list Mike as one of Mississippi's top business litigators. Also, he is a Fellow in the American Academy of Appellate Lawyers, an organization composed of America's foremost appellate advocates. Most importantly, Mike has developed a long track record of dealing honestly with people and serving as an officer of the court with the utmost in professionalism. Mike Wallace would be an outstanding judge on the United States Court of Appeals for the Fifth Circuit.

As for the ABA report, it is difficult to understand how anyone armed with knowledge of Mike Wallace's intellectual and professional training and abilities, and aware of his reputation for personal and professional integrity, could doubt that he possesses any of the qualities necessary for distinguished service on the federal bench.

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39984.210

Sincerely,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.

C. Lee Lott III

CLL:llt
cc: The Honorable Patrick J. Leahey (fax# 202-224-9516)
Ranking Member, Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510

Office of Legal Policy (fax# 202-514-5715)

JM CLL 372613 v1
9600000-000100 07/03/2006

Statement of Introduction for Michael Wallace
Judicial Nomination Hearing
Senator Trent Lott
Tuesday, September 26, 2006

Mr. Chairman, it is my pleasure to introduce Mike Wallace to this committee. I am delighted that the President has seen fit to nominate Mike to the United States Court of Appeals for the Fifth Circuit.

I have known Mike for roughly two and half decades, and have worked with him in several different capacities. Through these encounters, I formed my opinion that he is one of the most impressive legal professionals I have ever know, and that he is supremely qualified to serve on the Federal Judiciary.

[Senator Cochran will almost certainly cover all of the following biographical information.]

Mr. Wallace received graduated *cum laude*, from Harvard University in 1973 and received his J.D. from the University of Virginia Law School in 1976. While at Virginia, he served on the Law Review and was elected Order of the Coif. After graduation, he clerked for Justice Harry G. Walker of the Mississippi Supreme Court and for then-Associate Justice William H. Rehnquist on the United States Supreme Court.

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Following his Supreme Court clerkship, he returned to Mississippi and took his father's place in a small Biloxi legal partnership. During his two years with Sekul, Hornsby, Wallace & Teel, Mike had a diverse general practice. From 1980 to 1983, he worked in Washington DC for me, first as a research assistant for the Republican Research Committee and then, following my election as Republican Whip, as counsel in the Whip's office.

In 1983, he became an associate with the Mississippi firm of Jones, Mockbee & Bass, in Jackson, MS, and became a partner after the firm merged with Phelps Dunbar, where he remains a partner today. His practice focuses on complex commercial and constitutional litigation and includes a significant amount of appellate work.

Though he was embarking on what would become a widely respected and successful private practice, Mike continued his commitment to public service through the end of the 80's. He served as a Director of the Legal Services Corporation, a presidential appointed and Senate confirmed position, from 1984 to 1990.

[End of general biographical information]

Mike has never ducked the tough cases or the difficult issues, and in more cases than not, he's been successful in the courtroom. One of Mike's partners

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estimates that he has prevailed in about 80 percent of the appellate cases that he has handled.

He has been criticized for unapologetically and vigorously asserted the arguments of his clients, which is ridiculous given that this is the obligation of every attorney.

He has handled cases at every possible level in both the State and Federal judicial systems. Including in 2002, when he argued and won a case before the United States Supreme Court.

Unfortunately – as a byproduct of his extraordinarily successful professional career – he is now faced with nameless, faceless detractors who question his fitness to be a judge. These critics could not be more wrong. They should not confuse effective, decisive, and tireless advocacy with bias or closed-mindedness.

Even these detractors have no choice but to acknowledge his outstanding academic credentials, impeccable character, and absolute integrity. They make broad, unspecific assertions based on non-existent evidence in an attempt to smear a good man.

The Mike Wallace that I know is a considerate, personable, courteous, kind, and thoughtful family man. He is active in his church – Trinity Presbyterian – where he is responsible for teaching their most popular adult Sunday School class. This

39984.214

past July, he traveled with his church and a predominantly African-American Baptist church to Honduras to build houses for the poor. Bishop Ronnie Crudup of the New Horizon Church in Jackson, in his letter to the Judiciary Committee, had this to say of Mike after he helped form a partnership between New Horizon and Trinity Presbyterian:

> *It was the hard work of Michael Wallace and other progressive, open-minded, Christ honoring leaders at Trinity Presbyterian Church who in a year's time turned an awful decision (not to enter a partnership) into the premier interracial church partnership in the State of Mississippi.*

Throughout his adult life, Mike has shown a calling to public service. He has had the unique experience of working in all three branches of the federal government: in the Judiciary as a Supreme Court clerk, in the Executive as chairman of the national Legal Services Corporation Board, and in the Legislative while working with me on several occasions.

In 1999, when I was faced with a multitude of Constitutional questions surrounding the impeachment of President Bill Clinton, I turned to the best legal mind I know. I asked Mike to serve as my Special Impeachment Counsel and he helped me navigate those uncharted waters.

I have no doubt that once on the bench, Mike will be open-minded, fair, and understanding; and without question, he will be true to the rule of law.

39984.215

I have tremendous respect and admiration for Mike Wallace as both a lawyer and a man. In my mind, his education, history of public service, reputation, and temperament are beyond reproach. This Committee should review his extremely large body of professional work – virtually all of which is in the public record – and ignore any anonymous, unreliable, and biased hearsay evidence.

I put my full support behind the nomination of Mike Wallace. I look forward to the committee's approval of this fine nominee, and to confirmation by the full Senate.

39984.216

TRENT LOTT
5TH DISTRICT, MISSISSIPPI
REPUBLICAN WHIP
RULES COMMITTEE
ADMINISTRATIVE ASSISTANT
TOM M. ANDERSON, JR.

81-17016

2442 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
202-225-5772

Congress of the United States
House of Representatives
Washington, D.C. 20515

October 30, 1981

The Honorable Donald Regan
Secretary of the Treasury
United States Department of
the Treasury
Washington, D.C. 20220

Dear Mr. Secretary:

Enclosed please find copies of my correspondence with the Commissioner of Internal Revenue and the Solicitor General. As these letters indicate, I am deeply concerned about the Government's position in this litigation. It is a position which is both legally and politically indefensible. Furthermore, it disregards the Congress by ignoring the statute and Congressional intent as expressed in the Ashbrook Amendment.

I would appreciate your working with the Service to reconsider its position.

With kind regards and best wishes, I am

418938

Sincerely yours,

Trent Lott

Trent Lott

TL/mbw

Enclosures

TRENT LOTT
[illegible] DISTRICT, MISSISSIPPI
[illegible]
REPUBLICAN WHIP
RULES COMMITTEE
[illegible]

Congress of the United States
House of Representatives
Washington, D.C. 20515

[illegible]
WASHINGTON, D.C. [illegible]
202-225-[illegible]

October 30, 1981

The Honorable Roscoe Egger, Jr.
Commissioner of Internal Revenue
1111 Constitution Avenue NW
Washington, D. C. 20224

Dear Mr. Commissioner:

I enclose herewith a copy of my letter of today's date to Solicitor General Rex Lee regarding the position taken by the Service before the Supreme Court in Bob Jones University v. United States. I am delighted that the Service has persuaded the Court to hear the case, but I am deeply disturbed that the Service is urging a resolution completely contrary to the repeated declarations of the Congress.

I understand the difficult position in which you found yourself in Green v. Regan when you took office. The court had ordered the Service to perform certain acts contrary to the law, and the time for appeal had expired. I appreciated your efforts in securing intervention by interested parties to assert the positions which you felt the Service was barred from adopting.

Nevertheless, I cannot understand the Service's position in this case, the outcome of which will clearly control the result in the Green case. No court has ordered the Service to do anything, and you are free to urge your own construction of Section 501 (c) (3) before the Court. The Service is bound neither by the courts nor by the advice of its own lawyers, but you have nevertheless chosen a position clearly contrary to Congressional intent.

I do not wish to rehearse the legal arguments laid out in my letter to General Lee. Rather, I wish to point out the practical result of a Court decision in line with the Service's wishes. Your efforts in the future to enforce your interpretation will run squarely into the bar of the Ashbrook Amendment. The House and the Senate Committee have responded to your contention that the present language does not include court orders by adding that restriction to the Amendment. The seeds of a major confrontation among all three branches of government are plainly present in the Service's position.

It may be that you feel that you are somehow bound by the existing regulations. I should point out to you that the Ashbrook Amendment in no way binds you to the existing regulations. You are perfectly free to enforce any regulations antedating August 22, 1978, including those superseded as a result of the original Green ruling. If it is necessary to use the provisions of the Administrative Procedure Act to reinstate those former regulations which do comport with Congressional intent, then please do so immediately.

If the Supreme Court accepts the reading of the law which has been applied by your immediate predecessors, then the only possible cure is through legislation. Until that happens, you are certainly not bound by the lower courts or by your predecessors. If you do not intend to act to change the present practice, then I would appreciate your explanation in detail of your own reasons so that I can prepare the proper legislative remedies.

With kind regards and best wishes, I am

Sincerely yours,

Trent Lott

TL/mbw

cc: Hon. Ronald Reagan
Hon. Donald Regan
Hon. William French Smith

TRENT LOTT
5TH DISTRICT, MISSISSIPPI
REPUBLICAN WHIP
RULES COMMITTEE
ADMINISTRATIVE ASSISTANT
TOM M. ANDERSON, JR.

Congress of the United States
House of Representatives
Washington, D.C. 20515

2441 RAYBURN BUILDING
WASHINGTON, D.C. 20515
202-225-5772

October 30, 1981

The Honorable Rex Lee
Solicitor General
United States Department of Justice
Washington, D.C. 20530

Dear Mr. Solicitor General:

I am sure you are familiar with my correspondence earlier this year with the Attorney General and the Deputy Attorney General regarding the many pending cases concerning the tax exempt status of church schools. I was disappointed to learn that you will not be involved in Bob Jones University v. United States and, indeed, that no Reagan appointee will play a major role. Please pass my concerns along to whoever is handling these consolidated cases.

I am delighted that the Administration encouraged the Supreme Court to resolve these issues. However, I am more than a little disturbed that the United States has taken a position on the merits which plainly conflicts with Congressional intent and with a specific pledge of the President's platform. I strongly encourage your office to reconsider your position.

The Government's position ignores Congressional intent. Section 501(c)(3) of the Code plainly defines exempt organizations to include bodies "organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes." "Charitable" is merely one of those purposes, as are "religious" and "educational." Nowhere does the statute require a religious or educational organization to be "charitable" in order to qualify for a tax exemption. If the statute is read this way, then organizations must also be "scientific" and test for public safety. Since the plain language of the statute foreclosed the construction urged by the Government, ordinary rules of construction preclude looking behind the language to the legislative history.

The Government does not even bother to look at the history of this particular section as it was adopted in 1938. Rather, the United States derives its construction from subsequent unrelated Congressional actions against racial discrimination. Ordinarily, committee reports and floor remarks made long after the fact are completely irrelevant in determining the intent of a previous Congress. Furthermore, these later Congressional actions were responsive to other problems and there is absolutely no

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indication that Congress intended these relatively recent actions to be read into an unrelated statute passed in 1938.

If subsequent actions are relevant, then the Government should focus upon expressions of Congressional intent on this very issue. The Ashbrook Amendment to successive Treasury appropriations prohibits absolutely the use of federal funds to "cause the loss of tax-exempt status to private, religious, or church-operated schools under section 501(c)(3) of the Internal Revenue Code of 1954." Congressional intent could not be clearer. Therefore, if the Government insists on defining Congressional intent by later actions, then certainly that intent is most clearly reflected by the Ashbrook amendment.

The Internal Revenue Service's action in revoking the tax exempt status of these schools is peculiarly reminiscent of the federal bureaucracy's activism and usurption of power during the previous Administration. Mississippians and many of their fellow citizens supported President Reagan simply to end this kind of unwarranted interference.

The last time I read the Constitution, it provided that the Congress is to make the laws--not appointed officials. The people across the country whose lives are directly affected are entitled to have the decision of their elected Representatives respected and followed by the Government. Congress has spoken, and its message is clear. It is up to the Government to enforce what Congress has done. I expect your office to reconsider its position and to report its decision to me.

With kind regards and best wishes, I am

Sincerely yours,

Trent Lott

Trent Lott

TL/mbw

cc: Hon. Ronald Reagan
Hon. Donald Regan
Hon. Roscoe Egger, Jr.
Hon. William French Smith

81-18368

TRENT LOTT
5TH DISTRICT, MISSISSIPPI
REPUBLICAN WHIP
RULES COMMITTEE
ADMINISTRATIVE ASSISTANT
TOM H. ANDERSON, JR.

Congress of the United States
House of Representatives
Washington, D.C. 20515

2440 RAYBURN BUILDING
WASHINGTON, D.C. 20515
202-225-4772

November 30, 1981

The Honorable Donald T. Regan
Secretary
United States Department of the Treasury
Washington, D. C. 20220

Dear Mr. Secretary:

Thank you for your Assistant's letter of November 9, 1981, in reply to my letter of October 30, 1981, concerning the tax-exempt status of Bob Jones University. I am sorry not to have responded earlier, but I know you have been as involved as I have been in the process of securing continuing funding for the government.

I am glad to know that the Service is in the process of preparing an answer. However, it has been my experience that events in this area sometimes develop a momentum of their own. I believe, therefore, that it is essential for the two of us to meet after the Service has had an opportunity to study my complaint, but before they have reached a decision.

I would propose that you and I meet early during the week of December 7, 1981. The University's brief has already been filed with the Supreme Court, and your lawyers are undoubtedly already in the process of preparing their reply. We need to resolve this matter before they get too far along.

Thank you for your cooperation, and I look forward to hearing from you at your earliest convenience.

With kind regards and best wishes, I am

Sincerely yours,

Trent Lott

Trent Lott

TL/mbw

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Lott, T.

TRENT LOTT
LEG COMMITTEE

Congress of the United States
House of Representatives
Washington, D.C. 20515

DGC

December 21, 1981

The Honorable Donald T. Regan
Secretary
United States Department of the Treasury
Washington, D. C. 20220

Dear Mr. Secretary:

I am delighted to learn that you are home from the hospital. I was of course disappointed that we were unable to speak last week, but the news of your recovery is especially gratifying.

In anticipation of our forthcoming conversation on the taxation of church schools, I thought you might be interested in the enclosed copy of the page from the President's log on which he responds to my letter to him on the subject. He appears to agree with me that the Administration should be helping these schools, which, of course, is not the position presently held by your Department.

This development makes it especially important that you review this matter before the brief is filed at the Supreme Court in the next few days. The President's platform promise and his apparent intention to stand by that pledge make it imperative that this matter be carefully considered before any position is expressed in public. In fact, I would think you might wish to discuss this matter personally with the President before the brief is filed.

Thank you for your continued attention, and I look forward to speaking with you soon.

With kind regards and best wishes, I am

Sincerely yours,

Trent

Trent Lott

TL/mbw

Encl.

39984.307

TRENT LOTT, MISSISSIPPI
REPUBLICAN WHIP
RULES COMMITTEE
ADMINISTRATIVE ASSISTANT
DON M. ANDERSON, JR.

Congress of the United States
House of Representatives
Washington, D.C. 20515

WASHINGTON, D.C. 20515
202-225-1772

December 21, 1981

The Honorable Edward C. Schmults
Deputy Attorney General
United States Department of Justice
Washington, D. C. 20530

Dear General Schmults:

Thank you for your letter of December 15, 1981, in response to my letter of October 30, 1981. I am still concerned that the position you report may well be out of line with the President's policy.

As you may know, I also wrote the President regarding my concern over the continuing taxation of church schools. I enclose herewith a copy of the page of the President's log on which his response is recorded. While it might be argued that his response is ambiguous, it seems to me that he is clearly agreeing that the Administration should intervene on behalf of the church schools.

I believe that it is of the highest importance to resolve this apparent conflict before any brief is filed. I am sure that the regular process of reviewing litigation does not necessarily include the President, but I believe that you should do so in this case. Given the explicit promise of his platform and his apparent intention to stand by that pledge, I do not believe that any brief should be filed which undercuts his position until he has had an opportunity to review the matter.

Thank you for your careful attention to my concerns, and I look forward to your further thoughts.

With kind regards and best wishes, I am

Sincerely yours,

Trent Lott

TL/mbw

Encl.

cc: The Honorable William French Smith

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When Bradford Reynolds was nominated to take charge of the Civil Rights Division, several Members of Congress expressed the concern that the Division was uncontrollable and that lawyers hired by earlier Administrations would have to replaced on a vast scale. We were assured by you and by the Attorney General that Mr. Reynolds with your help would be able to render the Division subservient to Departmental policy. Apparently you are satisfied that you are having no difficulty in honoring your commitment to us, as I understand that the Department's first action on being able to hire new lawyers was to place onto the public payroll another hundred lawyers hired by the preceding Administration. I can only conclude that you have decided that you have all the personnel necessary to carry out your commitment to us and that henceforth all actions by Departmental lawyers may fairly be attributed to the President's appointees.

With this in mind, I wish to know whether or not Mary McClymont is acting according to your wishes in the Mississippi prison case. If she is, I want to know why Administration policy has changed. If she is not, I want to know why she is being permitted to pursue her own policies at taxpayer expense. These are not rhetorical inquiries. I want to know, with reference to chapter and verse of the civil service statutes, why she has not been fired. There are too many lawyers ready and eager to carry out Ronald Reagan's policies to permit those policies to be subverted by mere civil servants.

I look forward to your reply at your very earliest convenience.

With kind regards and best wishes, I am

Sincerely yours,

Trent Lott

TL/mlw

cc: The Honorable William French Smith
The Honorable William Bradford Reynolds
The Honorable Bill Allain

Magnolia Bar Association, Inc.

Post Office Box 648 Jackson, MS 39205-0648 Office: (601) 353-2540 Fax: (601) 352-0208
magnoliabar@bellsouth.net

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Jaribu Hill President
Attorney at Law
213 Main Street
Greenville, MS 38702
662-334-1122
662-334-1274 (Fax)
rightsms@bellsouth.net

August 1, 2006

VIA FEDERAL EXPRESS

Honorable Arlen Specter
711 Hart Senate Office Building
Washington, DC 20510

Honorable Patrick Leahy
433 Russell Senate Office Building
Washington, DC 20510

Re: Nomination of Michael B. Wallace

Dear Senators Specter and Leahy:

In 1955 a group of eight African-American men organized the Magnolia Bar Association. At that time, these eight men practically constituted the entire number of African American lawyers in the State of Mississippi. It was no coincidence that the organization was established following the *Brown v. Board of Education* decision and at a time when African-Americans were barred from participating in the Mississippi Bar Association. Although the barriers of segregation have been lifted and the Mississippi Bar is open to all members of the legal profession, the Magnolia Bar continues to be a viable and critical organization. While its membership of several hundred lawyers from across the state and other parts of the country, is predominantly African-American, the organization also has Caucasian lawyers who are among its members. In addition, the Magnolia Bar Association is an affiliate of the National Bar Association.

At its recent annual membership meeting held on May 6, 2006, during the Twenty-Fourth Annual Mississippi Black Professional Association Convention, the membership of the Magnolia Bar spoke with one voice and expressed its profound objection to President Bush's recent nomination of Michael B. Wallace to the Fifth Circuit Court of Appeals. Since the Magnolia Bar's denouncement of this nomination, the fifteen (15) member Judicial Screening Committee of the

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American Bar Association found Wallace unfit to sit on the Fifth Circuit bench. That unanimous "unqualified" rating was the first such vote in nearly twenty-five years.

As an organization which fights to ensure equal justice under the law and fights vigorously for the rights of those who continue to be under-represented in the judicial and legal process, the Magnolia Bar profoundly opposes the Wallace nomination. With this nomination, President Bush continues to display his absolute disdain for appointing African-Americans to the federal judiciary. This pattern of suggesting that "No African-Americans are Qualified" is even more evident in the Fifth Circuit and especially here in the state of Mississippi. President Bush has had the opportunity to nominate five persons to the Fifth Circuit Court of Appeals, which includes Mississippi, a state with an African-American population of nearly forty percent. Those nominees include: Michael Wallace, Charles Pickering, Edith Brown Clement, Edward Prado and Priscilla Owen. Absent from this list is one African-American. Judge Carl Stewart, who was appointed by former President Clinton, is the lone African-American on the Court. Indeed, it is tragic that Judge Stewart is only the second African-American to ever have been appointed to the Fifth Circuit Court, which was created by the Judiciary Act of 1869.

When faced with the opportunity to nominate persons to the federal district court in Mississippi, President Bush nominated all white males: Michael Mills, Louis Guirola, Keith Starrett, Daniel Jordan and Leslie Southwick. Consequently, Chief Judge Henry T. Wingate remains the only presidentially appointed African-American judge in Mississippi since this state joined the Union. According to Alliance for Justice's website, (http://www.afj.org/judicial/judicial_selection_resources/selection_database/byPresident.asp), of Mr. Bush's thirty-two nominations to the federal judiciary within the Fifth Circuit, he has nominated zero African-Americans. This is beyond appalling. It is disgraceful.

Aside from Mr. Bush's utter contempt for the principles of diversity, Wallace is the wrong person to sit on the Fifth Circuit court. In the 1980's, as an aide to then Congressman Trent Lott, Wallace fought to protect the tax-exempt status of Bob Jones University, a segregationist institution where interracial dating was banned until 2000. Wallace served as counsel to Senator Trent Lott in 1981 when Lott filed his own amicus brief in the United States Supreme Court urging the court to reverse the Fourth Circuit's ruling in *Bob Jones University v. United States*, 461 U.S. 574 (1983). During his confirmation hearing on his nomination to the Legal Services Board, Wallace made public his views that he thought that Bob Jones University should have been permitted to maintain its tax exempt status. In addition, while serving as a member of the board of the Legal Services Corporation, which was established to provide legal services for the poor, Wallace voted to hire outside attorneys to lobby Congress to dismantle the agency.

It is Wallace's view of the Voting Rights Act (the Act), described by the United States Department of Justice as "the most successful piece of civil rights legislation ever adopted by the United States Congress," which causes the Magnolia Bar Association the most concern and discomfort. Since the Act's passage, the Magnolia Bar Association and its members have

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vigorously fought for proper enforcement. *See, e.g.*, *Jordan v. Winter*, 541 F.Supp. 1135 (N.D. Miss. 1982), *rev'd*, 461 U.S. 921 (1983); *Martin v. Allain*, 658 F.Supp. 1183 (S.D.Miss. 1987); *Mississippi Republican Executive Committee v. Brooks*, 469 U.S. 1002 (1984); *Magnolia Bar Association, Inc. v. Lee*, 793 F.Supp. 1386 (S.D. Miss. 1992); *Watkins v. Fordice*, 807 F.Supp. 406 (S.D. Miss. 1992); and *Branch v. Smith*, 538 U.S. 254 (2003). Vigorous enforcement of the Voting Rights Act has resulted in Mississippi leading the nation in the number of black elected officials. Included within this number are Congressmen, mayors, members of the state legislature, several trial judges throughout the state, and two judges on the state court of appeals, one of whom is the Chief Judge of that court. In addition, three African-Americans have been elected to the Mississippi Supreme Court.

While the Magnolia Bar consistently has advocated for the enforcement of the Voting Rights Act, Mr. Wallace has promoted a cramped and narrow view of the Act. At his confirmation hearing for his appointment to the Legal Services Board, Wallace testified that he disagreed with various provisions set forth in the Voting Rights Act. As a lawyer, he argued in court that Section 2 violations could only be proven by showing discriminatory intent, a position which was flatly rejected by the court. See, *Jordan v. Winter*, 604 F.Supp. 807, 810 n.5 (N.D. Miss. 1984). Mr. Wallace led the charge against creating Mississippi's only majority African-American Congressional district. And, during Mississippi's most recent round of Congressional redistricting, Wallace argued in the United States Supreme Court that Mississippi's only African-American majority congressional district should be eliminated and that Mississippians should elect their congressional members state-wide. Such a scheme would ensure that Mississippi's delegation would be all white. It is worth noting that the Supreme Court, in an opinion by Justice Scalia, rejected Wallace's position. *Branch v. Smith*, 538 U.S. 254 (2003).

Wallace's strong views against the Voting Rights Act and the principle of one-man, one-vote have not been limited to litigation. According to Bill Minor, a longtime columnist, who, in 1986, participated with Wallace on a panel co-sponsored by the Mississippi Humanities Council and the Mississippi State Bar:

> At one point in the discussion, Wallace made clear he was not in favor of the 'one-person, one vote' doctrine which the Supreme Court had declared in a landmark 1962 Tennessee reapportionment case.
>
> Wallace specifically declared he opposed the principle of single-member legislative districts which Mississippi black citizens for years had fought to win through the federal courts, finally succeeding in 1979. Wallace said he favored restoring the former at-large, multi-member election districts.
>
> Creation of single-member districts in the Mississippi Legislature has vastly increased the number of black people elected to the

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Legislature.

See, "Jackson Attorney May Get Court of Appeals Nomination," *Clarion Ledger*, March 29, 1992. Moreover, in his own op-ed entitled "The Constitutional Question," Wallace complained that:

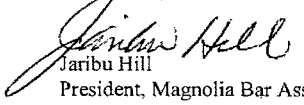
> [t]he Fifth Circuit has never satisfactorily explained either the source of its authority to restructure city governments [from at-large commission systems] or the advantages minorities obtain from the Court's favored system[, mayor–council systems]. . . .The great virtue of the at-large system is that it fosters the democratic ideal that elected officials represent all the people, not narrow segments of the population. . . As in so many other areas, the federal courts' efforts to remedy racial discrimination may succeed only in increasing race consciousness.

Biloxi Sun-Herald, Oct. 7, 1978.

Wallace's views on the Voting Rights Act clearly are at odds with those of forward thinking advocates and members of the judiciary who paved the way for the enormous progress Mississippi has made since 1965. Michael Wallace, who time and time again has demonstrated his opposition to this most precious piece of legislation which safeguards the rights of so many, must be rejected in favor of a more objective fair-minded nominee. His views may be, in part, what the President considers important for consideration of yet another white male nominee to the Fifth Circuit Court of Appeals, but the Magnolia Bar Association believes that these views offer sufficient justification for the Judiciary Committee to reject this nomination. Furthermore, when Mr. Wallace's views are combined with President Bush's absolute refusal to appoint African-American judges and the ABA determination that Wallace is "unqualified", short of a withdrawal of the nomination, rejection is the only option. Michael Wallace's record speaks for itself. It is one that has demonstrated a profound indifference to civil rights, legal services for the poor and equal access to the democratic process for all. For all of the above reasons, Michael Wallace is simply the wrong choice.

We welcome the opportunity to provide testimony on the record and look forward to learning more about future proceedings.

Respectfully Submitted,



Jaribu Hill
President, Magnolia Bar Association

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Day, Berry & Howard LLP
COUNSELLORS AT LAW

Ernest J. Mattei
Direct Dial: (860) 275-0201
E-mail: ejmattei@dbh.com

May 12, 2006

U.S. Senator Chris Dodd
100 Great Meadow Rd.
Wethersfield, CT 06109

Re: Judge Vanessa Bryant

Dear Senator Dodd:

As you know, the ABA Standing Committee on the Federal Judiciary (the "Committee") recently gave Judge Vanessa Bryant a "non-qualified" rating with respect to her nomination for a federal judicial appointment in Connecticut. I wanted to write to you to express my feelings regarding Judge Bryant as well as the undeserved rating given by the Committee.

I have known Judge Bryant since 1979 when she was a colleague at Day, Berry & Howard. I have had the opportunity to work with her on matters when she was an attorney at Day, Berry & Howard, as a judge, and through the Oliver Ellsworth Inn of Court, where she is the head of one of the tutelage groups. In every circumstance, I have found her to be a person of integrity, civility, and professionalism. Many of the attorneys at Day, Berry & Howard, including Tom Groark, Jay Nolan, and Dean Cordiano, have had matters in front of Judge Bryant. We unanimously agree that she has always been prepared, fair to the litigants, and decisive in her rulings. While in Hartford Superior Court, she has managed to reduce the number of cases on the docket and has pushed hard to ensure expeditious resolution of litigant's matters.

Through the Oliver Ellsworth Inn of Court, she has taken upon herself to be a mentor to young attorneys as well as a role model for women and minority attorneys. She attends our monthly meetings, is actively involved, and is one of a handful of judges who are willing to impart what they have learned through their experiences as attorneys. She has managed to combine her professional life with a personal life, including the raising of her son who is a student at Bowdoin College. In my mind, she represents all that is positive about a lawyer and a judge.

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Day, Berry & Howard LLP

U.S. Senator Chris Dodd
May 12, 2006
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I hope that you will consider this point of view in supporting Judge Bryant. If you would like to discuss this with me further, or any of the attorneys in our office who have worked with Judge Bryant as a colleague or have been in front of her as judge, we would be happy to talk to you or any member of your staff.

Thank you for your attention to this matter.

Verytruly yours,

Ernest J. Mattei

EJM/cl

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COUNSELLORS AT LAW

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July 31, 2006

Senator Arlen Specter
711 Hart Building
Washington, DC 20510

Re: Judge Vanessa Bryant

Dear Senator Specter:

I am an ardent supporter of Judge Vanessa Bryant. I have written to Senators Lieberman and Dodd, copies of which letters are enclosed.

I have known Judge Bryant both personally and professionally. Based on her accomplishments, her activities in the community, her conduct and behavior as a Connecticut superior court judge, she deserves to be a federal court judge in Connecticut. Both litigants and the Bar will benefit dramatically from her presence on the federal bench. If you or your staff have any specific questions, I would be happy to spend the time responding to those questions and discussing Judge Bryant's qualifications.

Appointment of Judge Bryant to the federal bench will not only be a credit to you and your committee but will be a benefit to the federal court litigants in Connecticut. Thank you for your consideration.

Very truly yours,

Ernest J. Mattei

EJM/cl
Enclosure

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STATEMENT OF ROBERT B. MCDUFF
FOR THE SENATE JUDICIARY COMMITTEE
HEARING TO BE HELD SEPTEMBER 26, 2006

My name is Robert McDuff and I am a lawyer in Jackson, Mississippi. I am a native of Mississippi and I have practiced law for nearly 25 years, most of it in Mississippi. Much of my practice involved the representation of African-American voters in voting rights cases. I participated in at least three major cases in which Michael Wallace and I were on opposite sides. Two of these were voting rights cases — the congressional redistricting case after the 1980 census and the congressional redistricting litigation twenty years later after the 2000 census.

I join the Magnolia Bar Assocation, the Mississippi NAACP, the NAACP Legal Defense Fund, Congressman Bennie Thompson, and others in opposing this particular nomination to the United States Court of Appeals for the Fifth Circuit. My primary concerns are two-fold: First, this nomination to this very important judgeship continues an unfortunate trend in recent years of almost totally excluding African-Americans from the federal judiciary in Mississippi and from the Fifth Circuit. Second, I believe Mr. Wallace has a very narrow view of the scope of the Voting Rights Act and of the power of Congress to enact broad remedial legislation like the Voting Rights Act to protect people against discrimination.

African-Americans are 36% of the population in Mississippi, higher than any of the 50 states. Louisiana, also in the Fifth Circuit, is the state with the second highest African-American population. But only one of the seventeen active seats for judges on the Fifth Circuit is filled by an African-American. That judge is from Louisiana and was appointed

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twelve years ago by President Clinton. President George W. Bush has made five nominations to the Fifth Circuit, none of them African-American. In Mississippi, the only African-American federal judge is a district judge appointed by President Reagan over twenty years ago. President Bush has made eight nominations to federal judgeships from Mississippi, none of them African-American.

The recommendations that apparently have been made by Senator Lott and Senator Cochran in recent years, and the nominations by President Bush, harken back to an unfortunate period in our past when African-Americans were not considered for the judiciary or other positions in government. We are now at a time in our history when it is vitally important to share power and responsibility and to overcome the legacy of racial discrimination. It is a scandal that these Senators and this President are making no effort to integrate the federal judiciary from Mississippi beyond the one African-American judge who was appointed to the district court bench twenty years ago, and no effort to integrate the Fifth Circuit beyond the one African-American judge appointed to that court twelve years ago.

It does not have to continue this way. Congressman Bennie Thompson, a Democrat, and Congressman Chip Pickering, a Republican, have both called for greater diversity in the federal judiciary from Mississippi. The existing vacancy on the Fifth Circuit is a good place to start. There are many qualified people, including African-American judges who should be politically acceptable to Republican senators and a Republican president. For example, Chief Judge Henry Wingate of the U.S. District Court, appointed to the trial bench by a Republican president over twenty years ago, would be an excellent appellate judge. So would Judge

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Dorothy Colom of Columbus, a distinguished state court judge who has served in the judiciary for many years. She is married to a longtime Republican lawyer who has served on the Mississippi Republican Executive Committee, Senator Cochran's first campaign committee, and President Reagan's transition team, and who was a delegate for President Bush at the most recent Republican convention. Both Judge Wingate and Judge Colom would be outstanding nominees for the Fifth Circuit. If Judge Wingate were nominated, there are other qualified African-American judges and lawyers who could be appointed to his district court seat. Now is the time to move forward and go beyond the one African-American judge among the seventeen active positions on the Fifth Circuit, and to break the unfortunate pattern of exclusion of African-Americans from recent appointments to Mississippi's federal judiciary.

Michael Wallace is a talented lawyer blessed with a keen intellect. He has always been very civil with me and straightforward in the cases where we have opposed each other. I see from the ABA report that others have had different experiences, and I cannot speak to those. My concern is with something more important, and that is the negative impact that I believe he will have as a judge because of his views on the law.

While appellate judges are bound by decisions of the Supreme Court, they nevertheless have a great deal of discretion in deciding individual cases and also power to move the law in particular directions. Theirs is not a ministerial job, automatically applying existing precedents to reach predictable outcomes. Inevitably, their views about the law come into play.

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Mr. Wallacc is, I believe, a person of strongly held views. My first involvement with him in a casc was when I was the junior member of a three-lawyer tcam representing one of the groups of African-American plaintiffs in thc Mississippi congressional rcdistricting litigation of the 1980s. He representcd the Mississippi Republican Executive Committee and tried vigorously to prevent the drawing of Mississippi's first majority African-American voting age population (VAP) congressional district. Mississippi's congressional delegation had been all-white throughout the twentieth century, and with the advent of the civil rights movemcnt, the Mississippi legislature had drawn the districts so that none had an African-American majority that would allow newly enfranchised black voters to elect a candidate of their choice. Those of us representing African-American voters in the post-1980 case argued that a plan where all five congressional districts were majority white VAP in a state that was 35% African-American led to a discriminatory result in violation of the bipartisan amendment to Section 2 of the Voting Rights Act passed two years earlier by Congress and signed by President Reagan. Mr. Wallace, on the other hand, contended in the face of totally contrary legislative history that Congress did not intend to outlaw districting plans simply on the basis of a discriminatory result. He also argued that if Congress had done so, it would have exceeded its power under the Constitution.

This was a startling claim under thc law. Fortunately, it was rejected out of hand by the three-judge federal district court in Mississippi in 1984, which held that the results test of Section 2 required to an end to the all-white majority VAP districting plan. The Court

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ordered created a plan with one majority African-American district of the five.[1] (The court also said that in pursuit of these arguments, Mr. Wallace "crossed the line separating hard-fought litigation from needless multiplication of proceedings, at great waste of both the court's and the parties' time and resources.").[2] Mr. Wallace's Section 2 appeal was summarily rejected later that year by the United States Supreme Court, thus affirming the results test of the 1982 amendment and affirming Congress's power to prohibit that sort of discrimination in voting.[3] Two years later, the state's first black member of Congress in the twentieth century was elected from this district, and ever since that time, the Mississippi congressional delegation has been integrated.

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[1] *Jordan v. Winter*, 604 F. Supp. 807, 810-811 and n. 5 (N.D. Miss. 1984) (three-judge court).

[2] *Jordan v. Allain*, 619 F. Supp. 98, 111 (N.D. Miss. 1985).

[3] *Mississippi Republican Executive Committee v. Brooks*, 469 U.S. 1002 (1984).

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But that would have changed in 2002 if Mr. Wallace's views in a more recent congressional redistricting case had prevailed. The Mississippi legislature failed to agree on a congressional redistricting plan after the 2000 census. In the ensuing litigation, Mr. Wallace represented the Mississippi Republican Executive Committee and argued that an obscure 1941 federal statute required that all of Mississippi's members of the U.S. House of Representatives should be elected at large as a remedy for the legislative default. This position was contradicted by the language of a later 1967 federal statute and by every court since then that had been required to adopt a congressional plan in the wake of a legislative default. Mr. Wallace's argument, if accepted, would have turned the clock in Mississippi back to the time when every one of its congressmen was elected by a white majority and, in the context of the racial bloc voting that still exists there, back to a segregated congressional delegation. Fortunately, this effort once again was rejected by a three-judge court in Mississippi and on appeal by the United States Supreme Court in an opinion by Justice Scalia.[4]

If Mr. Wallace's position had prevailed in these cases, Mississippi would be a different place than it is. One of the awful legacies of the slavery and the vicious racial discrimination and separation that followed in its wake for over a hundred years is the presence of racial bloc voting, where whites rarely vote for blacks and blacks rarely vote for

[4] *Smith v. Clark*, 189 F. Supp. 2d 529 (S.D. Miss. 2002); *Branch v. Smith*, 538 U.S. 254 (2003).

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whites in black-white contests. This is a condition that exists in Mississippi and many other places. One way in which a disproportionate amount of political power remained in white hands after the Voting Rights Act was passed in 1965 was through the use of at-large elections, multi-member districts, and other districting plans where an unfairly high number of the elected officials were chosen by majority white electorates. The only way this could be broken down was through litigation. Congress concluded in 1982 that this remained a problem in Mississippi and other places in the country and amended Section 2 of the Act to clearly outlaw those systems that resulted in discrimination without placing on African-American voters to onerous burden of proving discriminatory intent.

If Mr. Wallace's contrary position had prevailed, Mississippi would not have made the progress it has made in dismantling unfair election systems for Congress, the state legislature, county boards of supervisors, city councils, and school boards. It is quite conceivable that we would still have an all-white congressional delegation as we did in 1984, a state senate that is only 4% African-American as we did in 1984, a state house of representatives that is only 13% African-American as we did in 1984, and vast under-representation of African-Americans in local governments as we did in 1984, all in a state that is 36% African-American. Mississippi has the highest number of African-American elected officials in the country, but most of those were elected in majority African-American election districts created as the result of the Voting Rights Act. The number would be far smaller if Mr. Wallace's view had carried the day.

Of course, Mr. Wallace was representing a client in those cases. But this does not

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seem to be a situation where the lawyer argued something for a client that was contrary to the lawyer's own view. Nor does it appear that the client designed the strategy and the lawyer simply implemented it. When Mr. Wallace represented the Mississippi Republican Executive Committee in both 1984 and 2002, he knew more about the Voting Rights Act than anyone on that committee. In fact, in 1981-82, when working for then-Representative Lott, he had been one of the most active legislative staffers in the Congress on the 1982 renewal. He worked not only on the House side, but also worked in the Senate on loan as an adviser to Senator Hatch, then Chair of the Judiciary Committee, and sat through the lengthy hearings. In his role as a key staffer, he is reported to have worked strenuously against the effort to renew Section 5 and amend Section 2 of the Act.[5] One year after the renewal, in 1983, during a hearing on his nomination to join the legal services board, Mr. Wallace testified that he believed the intent test was the proper test for Section 2.[6] In light of all of this, it is pretty clear that these were Mr. Wallace's own views, and that he was the architect of the Mississippi Republican Committee's challenge to the results test of the amendment to Section 2 and to the power of Congress to adopt the results test in passing that legislation.

In 2001-2002, he was (if I remember correctly) not only the lawyer for the Mississippi Republican Executive Committee, but a member of it. Again, in light of his legal experience and knowledge, it is obvious that he was the author of the argument that Mississippi should

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[5] *Battle Seen on Legal Services Nominees*, WASH. POST, Oct. 17, 1983; Nina Totenberg, *All Things Considered,* Oct. 13 and Oct. 14, 1983.

[6] Nominations, Hearing Before the Labor and Human Resources Committee, United

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elect all of its members of Congress at-large in the wake of the legislature's failure to adopt a plan.

States Senate (98th Cong. 1st Sess.) (Nov. 2, 1983) at 110.

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These positions are consistent with what appears to be Mr. Wallace's hostility over the years to court-ordered redistrictings that increase the number of majority African-American districts. In a 1978 op-ed article, he stated that these court decisions resulted from "[t]he notion that citizens can only be properly represented by persons of their own race" and that this is "poor law and poorer philosophy." He also suggested that minorities were as well off politically being able to elect none of the members of a city's governing board as they would be if they could elect a third of them — in other words, minorities achieved no political gain by integrating an elected body unless they could control a majority of the seats.[7] This reflected a fundamental misunderstanding of the minority vote dilution argument, which is not that African-American citizens can only be represented by African-Americans. Instead, the point is that African-Americans have a right (assuming sufficient numbers in a sufficiently compact geographic area) to some districts where they constitute a majority and the right to elect African-American representatives from those districts if they so choose rather than living in an area where all of the elected officials are chosen by the white majority.

[7] Wallace, *The Constitutional Question*, BILOXI SUN-HERALD, Oct. 7, 1978. Mr. Wallace said in the article that "[m]inority voting strength is equally 'diluted' whether the governing body votes against them 3-0 or 6-3."

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In an article published in 1996, Mr. Wallace stated that the "[t]he fundamental problem is the premise of dilution cases that elected officials have, and ought to be responsive to, racially defined constituencies."[8] Again, this is a misunderstanding of the dilution cases, which focus on the right of minorities to be able to elect some candidates of choice, even in a place afflicted with racially polarized, so that they can racially integrate public bodies if they so choose and be represented by who they choose.

Vote dilution cases are successful only where whites have disproportionate electoral power and are over-represented. Mr. Wallace's writings express no concern about that sort of over-representation in the number of majority white electoral constituencies, but instead challenge efforts at corrective action, saying these efforts necessarily lead to the "premise . . . that elected officials have, and ought to be responsive to, racially defined constituencies." And in none of his writings does he seem to acknowledge the importance of applying the Act as amended by Congress to integrate elected government in Mississippi and elsewhere and to break down the unfair racial barriers that gave whites far more power than their numbers and African-Americans far less.

I also share many of the concerns expressed by the NAACP Legal Defense Fund in its report, including those stemming from the letters he wrote for then-Representative Lott about

[8] Wallace, *The Voting Rights Act and Judicial Elections,* STATE JUDICIARIES AND IMPARTIALITY: JUDGING THE JUDGES (National Legal Center for the Public Interest, 1996) at 118.

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the Bob Jones controversy and the Justice Department's monitoring of conditions in Mississippi jails, as well as his efforts to reduce the effectiveness of the Legal Services Corporation. These concerns, combined with Mr. Wallace's narrow view of the Voting Rights Act and the scope of congressional power, as well as the importance of further integrating the federal judiciary in Mississippi and in the Fifth Circuit, lead me to believe that someone else should be confirmed for this seat. If this nomination does not go forward, I hope that Senators Cochran and Lott will recommend, and President Bush will nominate, one of the many distinguished African-American lawyers or judges in Mississippi to fill the vacancy on the Fifth Circuit Court of Appeals.

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June 20, 2006

Via Facsimile and U.S. Mail

The Honorable Arlen Specter
United States Senate
711 Hart Building
Washington, DC 20510

Re: Nomination of Michael B. Wallace to the United States Court of Appeals for the Fifth Circuit

Dear Senator Specter:

I write to lend my strongest personal and professional support to the President's nomination of Michael B. Wallace to serve on the United States Court of Appeals for the Fifth Circuit and to express my shock and concern that the American Bar Association could suggest that he was somehow "unqualified" to serve on that court.

I have known Mike Wallace since we were both law students at the University of Virginia School of Law, he in the Class of 1976 and I in the Class of 1978. He was, in fact, one of the first members of the then-third-year class I met when I arrived there as a first-year student. It was a fortunate meeting, at least from my standpoint, because Mike became a close friend, a mentor, and a major reason why my first-year experience in law school was both enjoyable and reasonably successful.

After Mike graduated from law school, we stayed in close touch as we pursued careers that were parallel in many respects. Mike and I both had the privilege of clerking, two years apart, for the Honorable William H. Rehnquist of the Supreme Court of the United States. Both of us returned to our geographic roots to practice law (he to Jackson, Mississippi, and I to Pittsburgh, Pennsylvania). Both of us became partners at large firms (Phelps Dunbar and Reed Smith). Both of us concentrated our practices in general litigation, with particular emphasis on appellate work. Both of us also have detoured on occasion from our principal occupations to serve the Congress of the United States, he as counsel to then-Representative Lott from 1980 to 1983 and later as counsel to Senator Lott during the impeachment proceedings in 1999, and I as Associate Counsel to the Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition in 1987.

Over our thirty-one years of intersection and interaction, I have come to know Mike well as a lawyer and as a person. His legal skills are extraordinary. His judgment is profound. His sense of fairness is impeccable. His integrity is unquestioned. My wife and I have spent a great deal of time with Mike and his wife, Barbara, and have come to know his four children as well. Indeed, he and I recently shared the pleasure of watching his daughter and my son graduate from the University of Virginia as members of the Class of 2006. At every level and in every way, Mike is the kind of lawyer

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and person we should be pressing into public service, and in particular into service as a federal appellate judge.

For all these reasons, I find the ABA's rating of Mike unfathomable. I have been a member of the ABA for more than 20 years, and have generally been supportive of its efforts to insure the quality of the federal judiciary. But something has gone badly wrong when a nominee of Mike's intellect, character, and experience can be labeled unqualified.

I have seen in the media suggestions that the ABA's rating may have been affected by his involvement with the reform of the Legal Services Corporation from 1984 to 1990. I can only hope that is not the case. I am myself a strong supporter of LSC, and most particularly of the mission of one of its principal beneficiaries, Neighborhood Legal Services Association of Western Pennsylvania. I have, for example, very recently served as co-chair of NLSA's Equal Justice Campaign, which raised more than $250,000 over the last year to help fund that organization's provision of legal services to our region's most needy residents. Whatever one thinks as a political matter about the proper scope of LSC's activities, now or in the 1980s, there is to my knowledge absolutely nothing about Mike's service on the LSC board that could possibly render him unqualified to serve on a federal appellate court.

I understand that the ABA will not explain the basis for its rating unless the Judiciary Committee holds a hearing on Mike's nomination. That is reason enough, in my opinion, to hold such a hearing as soon as possible. Should you or the Committee deem it appropriate, I would be more than willing to appear and testify as to the clear qualifications of Mike Wallace to serve on the United States Court of Appeals for the Fifth Circuit.

Very truly yours,

W. Thomas McGough, Jr.

WTMcG,Jr:cag

cc: The Honorable Trent Lott (Via U.S. Mail)
The Honorable Thad Cochran (Via U.S. Mail)
The Honorable Alberto R. Gonzales (Via U.S. Mail)
The Honorable Harriet Miers (Via U.S. Mail)

July 10, 2006

Federal Express
Senator Arlen Specter
Chairman, Committee on the Judiciary
United States Senate
Washington D.C. 20510

Senator Patrick J. Leahy
Ranking Member, Committee on the Judiciary
United State Senate
Washington D.C. 20510

Re: Nomination of Michael Wallace

Dear Senators Specter and Leahy:

I am writing to you concerning the nomination of Michael Wallace to the United State Court of Appeals for the Fifth Circuit, and in particular with respect to the report of the American Bar Association Committee on Judicial Nominations that found him to be Not Qualified.

At the outset, I wish to make clear that the views expressed herein are my own and not that of Stanford Law School. In addition, I am not offering an opinion on whether, based on Mr. Wallace's views on legal issues, he should not be confirmed as a circuit court judge. My comments are directly solely to the proposition, advanced by the ABA, that he is not qualified to sit on the Fifth Circuit.

I have known Mr. Wallace for more than 25 years, having met him when a forme student of mine was clerking with him. I also knew him professionally through the Administrative Conference of the United States and other positions in which he served when I lived and worked in Washington. In recent years, after he was elected to the American Academy of Appellate Lawyers (a highly selective organization whose criteria and careful screening process would never enable an unqualified attorney to become a member), I saw him regularly at its meetings and at others that we both attended. I have also seen his work product from time to time, although we have never been involved in the same case together, to my knowledge.

Based on these and other contacts that I have had with him, I am convinced that Mr. Wallace is a very able lawyer and is an experienced appellate practitioner, who adheres to the highest ethical standards. He definitely has views on many issues, as do

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most seasoned lawyers, but I have always found him open to reasoned discussion and willing to listen to the arguments of others. He has a well-developed sense of humor and does not take himself too seriously. I feel certain that I would get a full and fair hearing if I were to have a case before him. I have that confidence in Mr. Wallace's basic fairness despite the fact that we have very different political views. As you may know, for 32 years I was first the director and then a senior attorney with the Public Citizen Litigation Group, which I co-founded with Ralph Nader. Thus, Mr. Wallace and I are likely to disagree on many issues of both law and policy, but I nonetheless believe that he would be a fair judge, which is all any litigant can expect.

To date, the ABA has chosen only to make public its conclusion about Mr. Wallace's qualifications, but not its reasons. This makes it very hard for me to know how to respond. Hopefully, the ABA will elaborate before the hearing on Mr. Wallace or at least have a witness who is willing to answer specific questions as it did in the hearings for Justice Samuel Alito. If it does so, I may submit additional comments, time permitting.

In the past, I have generally declined to take a public position with respect to judicial nominees, either for or against them, especially when I might be likely to appear before them if they are confirmed. I think it highly unlikely that I will have any cases in the Fifth Circuit, but that is always a possibility. Moreover, in the past, I have privately agreed to support nominees before whom I might appear where there was a possibility that statements might be made opposing them that I knew not to be accurate. Fortunately, I was never called on to offer support in such a situation. And, as I noted above, the views I am expressing here are with respect to Mr. Wallace's professional qualifications to be a circuit judge, and not whether, were I a Senator, I would vote to confirm him. I trust that the ABA is adhering to that standard also, but since it has chosen not to make its reasons public, we cannot know that for sure, at least not yet.

If there is other information that you need, please do not hesitate to contact me.

Respectfully yours,

/s/

Alan B. Morrison

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NCJW

National Council of Jewish Women

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Fax 212 645 7466
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Web www.ncjw.org

September 26, 2006

The Honorable Arlen Specter
Chairman, Senate Judiciary Committee
711 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Specter:

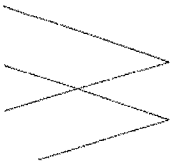
I am writing on behalf of the 90,000 members and supporters of the National Council of Jewish Women (NCJW) to urge you to oppose the nomination of Michael B. Wallace to the 5th Circuit Court of Appeals. His hostility toward reproductive rights, extreme views on the enforcement of civil rights laws, and unqualified rating by the American Bar Association (ABA) make him an unfit candidate for a lifetime seat on the federal court.

Mr. Wallace is an advocate for an extreme ideological perspective on the law, persisting in attempts to implement his views despite their rejection by Congress and the courts. In a very rare rebuke, the ABA rated him as unqualified as a result of considerable documented evidence that he lacks the judicial temperament and objectivity essential to a judge, despite his obvious intellectual capacity.

The ABA report contained the reservations of many in the Mississippi legal community that Mr. Wallace could make the transition from ardent advocate to dispassionate jurist. According to the report:

> "One of the negative comments expressed over and over, and often with great emotion and concern for the system, was that Mr. Wallace had not shown a commitment to equal justice under the law. Lawyers and judges stated that Mr. Wallace did not understand or care about issues central to the lives of the poor, minorities, the marginalized, the have-nots, and those who do not share his view of the world. These concerns were most often discussed in the context of Voting Rights Act cases and other issues involving constitutional rights."

Wallace has also demonstrated his hostility toward women's reproductive rights. His history is one of repeatedly ignoring or mischaracterizing law and precedent in a manner beyond the usual advocate role.



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Representing the state of Mississippi in a successful defense of the state's parental notification law, Wallace argued not only that the law did not impose an undue burden on women, but that the Mississippi Constitution did not protect the right to abortion at all. While upholding the restrictions, the Mississippi Supreme Court rejected the rest of Wallace's argument, stating flatly that "the state constitutional right to privacy includes an implied right to choose whether or not to have an abortion." Despite this forthright statement by the court, Wallace later characterized the decision as "establish[ing] the existence of a *very limited right to abortion* under the Mississippi Constitution."

Wallace has also consistently opposed meaningful enforcement of the nation's civil rights laws. When Congress sought successfully to strengthen voting rights law in 1982, Wallace worked to prevent passage of any version of the bill. Even after the revisions were enacted, he actually maintained they did not exist. And, when representing the Mississippi Republican Party in a redistricting case shortly after the law changed, he pushed this view on the trial court so doggedly that the presiding federal judge chastised the defendants for causing a "great waste of both the court's and the parties' time and resources."

Earlier in his career, Wallace supported the Reagan Justice Department's position allowing tax-exempt schools to discriminate on the basis of race. Further, he has opposed affirmative action as a matter of policy and believes it to be unlawful, despite numerous Supreme Court decisions to the contrary.

And, as a member of the board of the federally funded Legal Services Corporation, Wallace attempted to gut the agency by voting to hire outside attorneys to lobby Congress to reduce its appropriation, an action barred by law. He also worked to stop legal services providers from bringing cases under the Voting Rights Act. He supported a federal ban on legal aid services to women seeking abortions for non-medical reasons and favored an investigation of legal aid lawyers suspected of assisting women in violation of the ban.

Mr. Wallace has been nominated to the 5th Circuit Court of Appeals, covering Mississippi, Louisiana and Texas – states with strong anti-choice state legislatures and high minority populations. NCJW believes that Mr. Wallace is particularly unsuited by temperament and extreme ideology to serve on this court, where matters of women's reproductive rights and civil rights generally frequently arise. We strongly urge you to reject his nomination.

Sincerely,

Phyllis Snyder

Phyllis Snyder
NCJW President

CC: Members of the Senate Judiciary Committee

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September 26, 2006

Michael S. Greco
President
American Bar Association
321 North Clark Street
Chicago, IL 60610

Dear Mr. Greco,

Since 1948 the American Bar Association ("ABA") has been granted a singular honor by the Senate Judiciary Committee. It has reviewed the nominees to the bench selected by the President and provided its findings on their qualifications to the Judiciary Committee. The ABA's strong reputation in 1948 for non-partisanship and fairness was key to the Committee's grant of this privilege. We, past and present members of the ABA, fear that recent developments have undermined that reputation and may result in the loss of this privilege and reduce the voice of the ABA to simply another partisan special pleader. In order to forestall this possibility and retain the benefits of such review and participation by the ABA, the following unprecedented and troubling incidents must be investigated, addressed, and where found improper, corrected immediately.

For example, it has been reported that the ABA Standing Committee on Federal Judiciary (the "Standing Committee") violated its own rules when it inexplicably re-rated Brett Kavanaugh, a nominee to the D.C. Circuit, and did not allow him to respond, as required by the Standing Committee's own rules, to the new "evidence" that resulted in his rating being changed from "well qualified" to "qualified." We are troubled by reports that this re-rating took place in consultation with a United States Senator who had been investigated by Judge Kavanaugh when he was serving as an assistant to Independent Counsel Kenneth Starr.

The unexpected rating of Michael B. Wallace, a nominee to the Fifth Circuit, also troubles us. Nominees with his outstanding credentials and experience have never received this type of treatment. Mr. Wallace graduated cum laude from Harvard University, and received his J.D. degree from the University of Virginia, where he was a member of the Law Review and the Order of the Coif. He clerked for the Mississippi Supreme Court and the U.S. Supreme Court. He is a member of the American Academy of Appellate Lawyers, an invitation-only organization, and has successfully argued cases before the U.S. Supreme Court, the U.S. Court of Appeals for the Fifth Circuit and the Mississippi Supreme Court. It would be unfortunate if the Standing Committee's process subjectively produces a lower evaluation for a person like Mr. Wallace merely for his advocacy of positions with which members of the Standing Committee do not agree.

Should a member of the Standing Committee recuse himself or herself when there is evidence of bias for or against the nominee? Was the question of the recusal of Standing Committee Chair Stephen Tober addressed given that Mr. Tober had passionately opposed Mr. Wallace's efforts as a director of the Legal Service Corporation? Should there be a higher recusal standard for the Chair given his opportunity to influence and pressure other members of the Committee?

We all agree that partisan politics or special interests should play no role in the evaluation and selection of qualified judicial nominees. To guarantee that all nominees are fairly evaluated,

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what efforts are you and the ABA making to ensure that members of the Standing Committee represent the full spectrum of judicial philosophies of the members of the ABA and legal community at large?

We are sure you agree that even an appearance of partiality is problematic. The ABA could easily remedy this problem by allowing for more transparency in the review process (while respecting nominees' privacy), establishing a clear recusal policy for conflicts of interest, and selecting members for the Standing Committee who reflect the broad judicial philosophies of the entire legal community. If the ABA is to continue to play its important role in reviewing the credentials of presidential nominees to the federal bench, the ABA judicial review process needs to be free from even the appearance of a conflict, and the ABA needs to focus exclusively on assisting both Democrat and Republican Presidents with getting the best possible nominees confirmed.

We look forward to your response.

Sincerely,

Charles Cooper, former Assistant Attorney General for the Office of Legal Counsel, Department of Justice

David Norcross
Former member

Frank B. Strickland, former Member, House of Delegates, ABA

Patricia J. Paoletta, former Co-Chair of the International Communications Committee, ABA

Robert Barker, Committee on Foreign Investment, International Law Section, ABA

Thomas W Brooke, Council Member, Section of Intellectual Property Law, ABA

David Busby, former Chair of the Judicial Selection Committee of the Federal Circuit Bar Association; former Chair, Standing Committee on Customs Law, ABA

Jim Bushee, past Vice-Chair, Environmental Quality Committee of the Section of Natural Resources, ABA

Heather S. Heidelbaugh, former Chair, Pro Bono Committee, Young Lawyers Division, ABA; former Chair, Allegheny County Bar Association, YLD of ABA

Professor John S. Baker, Jr., ABA Task Force on Federalization of Criminal Law

Clark D. Gross, former Member, Committee on PTO Affairs, ABA

Stephen J. Gobbo, Former Council Member, Section of Criminal Justice, ABA

Randolph J. May, Past Chair, Section of Administrative Law and Regulatory Practice, ABA

Michael J. Meehan, Past President of the American Academy of Appellate Lawyers

John H. Musser, V, Membership Coordinator, Admiralty and Maritime Law Com. of the Tort Trial & Ins. Practice Section, ABA

Hon. Lawrence C. Waddington, retired Judge, Los Angeles Superior Court

Robert J. Horn, Co-chair, Subcommittee on Free Trade Areas of the Americas, Section on Dispute Resolution, ABA

Professor Ronald D. Rotunda, Professor of Law, George Mason University School of Law

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...Additional Signatures Continued

J. Christian Adams
James J. Ammeen, Jr.
Carol A. Anderson
Thomas C. Anderson
Mel Aranoff
Edward J. Ashton
D. L. Bach
Robert R Bair
H. Lee Barfield II
Jason A. Barickman
Lynn M. Bartlett
Patrick R. Bergin
J. Caleb Boggs III
R. Lance Boldrey
Marc Bond
Stephen A. Bonfa
James W. Bowen
David K. Bowsher
George F. Braun
Professor Marshall Breger
Peter E. Broadbent
Bryan J. Brown
E. Terry Brown
Gregory C. Brown
JonMarc P. Buffa
David Burge
Michael I Burstein
Patricia Cafferata
F. Patricia Callahan, former delegate from FBA to Young Lawyers Division
Larry G. Canada
Robert N. Capobianco
Durward D. Casteel
Kevin L Chapple
Joseph A. Cisneros
Nathan E. Clukey
Carville Collins
Scott A. Conwell
Joesph G. Cosby
Jeff W. Courter
Stanley Brian Cox
David C Craig
Susan Creighton
William Duncan Crosby, Jr.
Bruce E. Cryder
Kevin M. Cunnane
Paul J Curran
Donald A. Daugherty, Jr.
Joseph J. DeFelice
Valerie C Dickerson

39984.244

...Additional Signatures Continued

Thomas M. Dunlap
Michael M. Dutton
Brian T. Egan, former Member, Litigation Section of the ABA
Nan Roberts Eitel
E Tazewell Ellett
Christian Fabian
Kenneth Falkenstein
Kimball Ferris
Robert P. Floyd, III
John Fogarty
Litza S. Forshaw
Pamela Forster
Mark T. Garsombke
John J. Garvey, III
G. Michael German
Eric Goldie
Cecelia Grace
Michael K. Grace
Jonas Grant
Elizabeth Eddy Griffin
Bilenda Harris-Ritter
Michael L. Hart
Jeffrey Hartwick
Benjamin P. Hayek
Sharmili Hazra
Teresa W. Helmick
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Matthew E. Hess
"Dean A. Heyl
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Tim Inemer
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Ralph W. Johnson, III
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Dennis Dean Kirk
James J. Knicely
Jefferson Knight
Amelia Williams Koch
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Lorraine J. Koeper
Norman Lampton

39984.245

...Additional Signatures Continued

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Livia F. Langton
Lionel M. Lavenue
Alicemary O. Leach
Marcus J. Lemon
Thomas O. Lind,
Wilson M. N. Loo
Glen Scott Love
David Eric Lycan
Brendan Maher
Joel C. Mandelman
Rod D. Martin, J.D.
Nancie Marzulla
David C. McAlpine
R. Dennis McArver
Scott C. McCandless, former Emory Univeristy School of Law's Representative to the ABA
Kevin McDermott
Lydia H. McEvoy
Thomas W. McGough
Joseph P. McHugh
George F. Meierhofer
Craig H. Metz
Jane Wallace Meynardie
Daniel H Miller
Charles G. Mills IV
Kenneth W. Minesinger
Rhea Daniels Moore
Steve Morain
Andrew Taylor Morgan
Steven Morgan
Timothy J Morgan
Andrew J. Morris
Joseph M. Moschella
David M. Murphy
Frank Neuner, ABA House of Delegates
Douglas C. Noble
Kevin O'Bryon
Michael J. O'Donoghue
Kevin O'Scannlain
Patrick O'keefe
D. Joseph Olson
Eric Opiela
Brian J Page
Makia L. Pai
Michael A. Pancier
Carl B. Pearlston
Melissa J. Pegram
Jacki L. Pick

39984.246

...Additional Signatures Continued

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Shannon D. Powers
Ted Price
Mark A. Pruner
Fazle Rab G.D. Quadri, Government and Public Sector Lawyers Division, ABA
A.A. Reynolds
Richard C Rife
Stephen W. Roberts
L. Lane Roy
Joseph M. Saburn
Susan D. Salisbury
Marc Scheineson
R. Culver Schmid
Pamella A. Seay
Timothy R. Sendak
Francis Serbaroli
Ilya Shapiro
Larry D. Sharp, former officer in the Antitrust Section, ABA
Wevley William Shea
John Lee Shepherd
William J. "Bill" Skinner
Carol Kelly Skrabak
Christopher Andrew Smith
Michael M. Smith
John B. Sochacki
Matthew N. Sorenson
William J Spangler
Thomas R. Spencer
Mark O. Stern
R. Paul Stimers
Jonathan D. Strong
Stephen R. Summerville
Joseph T. Svete
John Parker Sweeney
Ralph W. Tarr
Harvey M. Tettlebaum
Scott A Thomas
David M. Thorguson
William M. Todd
Oliver M. Transue
Suzanne Israel Tufts
Steven Richards Valentine
Brian A. Vandiver
Carl E. Ver Beek, Section Council of the Labor and Employment Section of the ABA
David A. Vicinanzo
Frank Vlossak
Joseph W. Voiland
John L. Warden

39984.247

...Additional Signatures Continued

Charles Watts
Terrance J. Wear
Thomas E. Wheeler
Larry D Wines
Joshua Wolson
Pat Woodward
Tara Woodward
Lorraine G. Woodwark
Charles Wunsch
Stephen T. Yelverton
Gerard T. York
John Zaccone
Michael W Zelenty

cc: Senator Arlen Specter, Senate Judiciary Committee Chairman
Senator Patrick J. Leahy, Senate Judiciary Committee Ranking Member

For more information please contact Michael Thielen at 703-719-6335 or thielen@republicanlawyer.net.

39984.248

JOY LAMBERT PHILLIPS
Senior Vice President
General Counsel

July 13, 2006

Via Facsimile (202) 228-1698
The Honorable Arlen Specter
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Specter:

I am writing as one of several past presidents of The Mississippi Bar, which is our State's mandatory, unified bar association. We have been asked to write separately to you and Senator Leahey, even though our message is the same or very similar. We write to urge confirmation of Michael B. Wallace as a judge on the United States Court of Appeals for the Fifth Circuit. We also write to disagree with the recent report of the American Bar Association's Standing Committee on Federal Judiciary that Mr. Wallace is "not qualified" for the position to which he has been nominated.

The various past presidents who write to you share no political party, judicial philosophy or religious affiliation. The one thing we have in common is that we all live and practice law in Mississippi and have done so for many years. We have found Mike Wallace to be an exemplary lawyer. He is exceedingly well qualified, by training, talent and experience, to occupy a seat on this important appellate court.

Mike's formal education and clerkship experience are well known: undergraduate education at Harvard, a member of the law review at Virginia, clerkships at the Supreme Court of Mississippi and the Supreme Court of the United States, the latter for then Associate Justice William H. Rehnquist.

Since those days, Mike has been engaged in the private practice of law in Mississippi for more than 23 years. Based on peer review, the respected legal publication Martindale Hubbell has given Mike its highest "av" rating attesting to his superb reputation for integrity and legal ability. Two other prominent publications that base their ratings on Peer reviews: "The Best Lawyers in America" and "Chambers USA", both list Mike as one of Mississippi's top business litigators. He is a Fellow in the American Academy of Appellate Lawyers, an organization composed of America's foremost appellate advocates. Membership in the Academy is by invitation.

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228-868-4445 • Fax 228-868-4496 • 1-800-522-6542

It is inconceivable that anyone armed with knowledge of Mike Wallace's intellectual and professional abilities, and aware of his reputation for personal and professional integrity, could doubt that he possesses any of the qualities necessary for distinguished service on the federal bench.

The ABA Standing Committee's recent, shocking rating of Mike could not have been based on any concern that he lacks professional competence or integrity. It was an expression of a stated belief that Mike lacks judicial temperament.

Because the Committee gives no statement of reasons to support its ratings, we cannot know what evidence the Committee may have considered in reaching its decision. But we believe that this unfair rating can be traced squarely to a part-time, non-judicial public office that Mike occupied almost 20 years ago, as a member and later chairman of the board of directors of the Legal Services Corporation, positions to which he was nominated by President Reagan.

Based on his service on that board, and the positions he advocated while on it, it is safe to say that Mike Wallace's view of the proper role of government in providing legal services for the poor is inconsistent with the view of the chair of the ABA's Standing Committee on Federal Judiciary. Mike's view is also inconsistent with the views of many of his colleagues in Mississippi, including myself. But that is not a fair basis to find him "not qualified" for the judicial position to which he has been nominated.

It is unfair to characterize those who differ on such policy matters as lacking in judicial temperament, when the real objection is to the substance of the opinion, and not to whether the person who held it could judge fairly in matters that come before him.

The ABA Standing Committee assures us that "[t]he Committee's goal is to support and encourage the selection of the best-qualified persons for the federal judiciary. It restricts its evaluation to issues bearing on professional qualifications and does not consider a nominee's philosophy or ideology." With all respect to the Committee, its evaluation of Mike Wallace could not have been based on Mike's professional qualifications. This evaluation was obviously based solely on Mike's perceived philosophy and ideology, and it does not deserve serious consideration by this Committee.

While my personal experience with Mike Wallace is very limited, based on his reputation in our legal community, I believe he possesses the necessary judicial temperament to judge fairly and without favor the matters that come before him.

I am the immediate past president of the Mississippi Bar, having just completed my term days ago. It is for this reason that I am just now writing. Since the Mississippi Bar is a unified, mandatory Bar, it does not take positions on particular judicial elections or nominations and therefore as its official representative, I did not think it was appropriate to write until my term ended. This letter is not written in any official or

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unofficial capacity as a representative of the Mississippi Bar; it is written in my capacity as a concerned attorney. In order to emphasize the ideological difference between Mike Wallace and me, I would point out that I have served on the State Planning Body for Legal Services, was recently appointed by our Supreme Court to co-chair the newly created Access to Justice Commission and have been on the board of the Mississippi Volunteer Lawyers Project, a joint program between the Bar and Legal Services, and lobbied for funding for Legal Services on both the state and federal level. I might not agree with all of Mike Wallace's political stances, but that should not bear on his qualification as a judge. I urge your Committee to confirm Michael B. Wallace to a judgeship on the United States Court of Appeals for the Fifth Circuit and to take politics out of this process.

Sincerely yours,

Joy Lambert Phillips

Joy Lambert Phillips
General Counsel

Cc: The Honorable Patrick J. Leahey (via facsimile, (202) 224-9516)
Ranking Member, Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510

Office of Legal Policy (via facsimile, (202) 514-5715)

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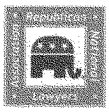

REPUBLICAN NATIONAL LAWYERS ASSOCIATION
•PO Box 18965, Washington, DC 20036 • (703)719-6335 tel • www.rnla.org

For Immediate Release
Tuesday, September 26, 2006

Contact: Michael Thielen
703-719-6335

Today's Hearing For Michael Wallace for Fifth Circuit

Bi-Partisan Letter of Current and Former ABA Members Questions ABA's Role in Judicial Rating Process

Washington, DC: Today the Senate Judiciary Committee is scheduled to hold a hearing, which in theory is for Michael B. Wallace of Mississippi to be a judge for the Fifth Circuit Court of Appeals. Unfortunately, the issue at today's hearing will not be Michael Wallace, whom all impartial observers agree is well qualified, but rather about the American Bar Association (ABA). It appears the ABA has begun to rate nominees based not on their qualifications but rather for whom they once worked.

As detailed in the accompanying letter signed by 228 current and former members of the American Bar Association from both political parties, the ABA's recent ratings of now DC Circuit Judge Brett Kavanaugh and Michael Wallace raise serious questions about the objectiveness of the current ABA Committee that is charged with reviewing nominees.

Republican National Lawyers Association (RNLA) Vice President for Communications and former Co-Chair of an ABA Committee Tricia Paoletta stated:

> It appears as if Judge Kavanaugh's and Michael Wallace's ABA ratings (or re-ratings) are based not on their outstanding qualifications and careers as lawyers, but rather on the work they did as political appointees within Republican Administrations. Is this political payback by liberal leaders within the ABA who opposed the work of Kavanaugh's and Wallace's bosses?
>
> As the letter to the ABA states regarding Kavanaugh: "We are troubled by reports that this re-rating took place in consultation with a United States Senator who had been investigated by Judge Kavanaugh when he was serving as an assistant to Independent Counsel Kenneth Starr." On Wallace: "Was the question of the recusal of Standing Committee Chair Stephen Tober addressed given that Mr. Tober had passionately opposed Mr. Wallace's efforts as a director of the Legal Service Corporation? Should there be a higher recusal standard for the Chair given his opportunity to influence and pressure other members of the Committee?"
>
> Fortunately for the ABA there is an easy solution. As the letter states: "The ABA could easily remedy this problem by allowing for more transparency in the review process, establishing a clear recusal policy for conflicts of interest, and selecting members for the Standing Committee who reflect the broad judicial philosophies of the entire legal community." Hopefully the ABA will heed the call for reform.

The RNLA is made up of over 3,000 lawyers and law students nationwide who are dedicated to the principle that lawyers need an independent and fair judiciary free to perform their jobs. The RNLA also has established a National Judicial Advocacy Panel comprised of lawyers who are available for media interviews throughout the country. More information on this panel, including biographies and contact details, can be found at www.rnla.org/Speakers.asp or visit www.rnla.org for general information about the RNLA.

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Testimony of Carroll Rhodes

United States Senate
Committee on the Judiciary

Hearing on the Nomination of
Michael B. Wallace to the
U.S. Court of Appeals for the Fifth Circuit

Dirksen Senate Office Building
Room 226

September 26, 2006
3:30 p.m.

39984.253

My name is Carroll Rhodes. I am a lifelong resident of Mississippi, except for the time I served in the United States Air Force. I have practiced law in Mississippi for 28 years. I began practicing law in my hometown of Hazlehurst with Central Mississippi Legal Services in 1978, and I have represented poor and disenfranchised people ever since. I have a general practice in both civil and criminal law, with an emphasis in the areas of civil rights, especially voting rights, and personal injury. I have also served as a Municipal Court Judge for the City of Hazlehurst.

I testify today on behalf of the Mississippi State Conference of the NAACP, with which I work closely, in opposition to the nomination of Michael Wallace to the Fifth Circuit Court of Appeals.

A threshold point is that the Wallace nomination fails to promote racial diversity on the federal bench, and it is the most divisive nomination that President Bush has sent to the Senate from Mississippi. While the percentage of African Americans in our State is the highest in the nation – (36.5%), only one African American has ever been appointed a federal judge in Mississippi. The State has 14 active and senior status district court judges – 13 of whom are white, and two (2) active appeals court judges – both white. President Bush has not included one (1) African American out of the

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eight (8) names he has sent to the United States Senate for appointment to the federal bench in Mississippi.

Mr. Wallace's record is well known to the Mississippi NAACP. In 1983, we opposed his nomination to the Board of the Legal Service Corporation. Citing his opposition to the Voting Rights Act and his support of tax-exemptions for racially discriminatory schools, the NAACP found the "conduct and activities of nominee Michael B. Wallace to be repugnant and insensitive to the needs, plight and conditions of the poor and minorities of this country, and specifically the State of Mississippi."

Mr. Wallace's actions once confirmed to the Legal Services Board warrant serious review by the Senate. As a former attorney for Central Mississippi Legal Services, I can attest to the harm caused to the program during Mr. Wallace's tenure. Mr. Wallace advocated principles and practices directly contrary to the goals of the program he was appointed to oversee. He even took the position that the independent agency was unconstitutional and therefore should be abolished. He sought substantial decreases in funding by Congress. He tried to eliminate the national support centers that challenged systemic problems and provided essential expertise and advice to lawyers around the country. He sought to prioritize the kinds

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of cases filed and sponsored the widely criticized move to prohibit lawyers from bringing voting rights cases.

The Legal Services program for years was the primary means by which those unable to afford legal counsel were provided at least some access to justice. For black and white residents in a poor State like Mississippi, the program made *the* difference in obtaining housing, health care, basic subsistence, education, fair credit, and basic rights of citizenship. More people live below the federal poverty level in Mississippi than in any other State – (21.3%). Many poor families, black and white, paid usurious interest rates on consumer loans for household furniture until Legal Services lawyers successfully challenged the practice and forced creditors to comply with the Truth-In-Lending Act. Black voters in Centerville, Woodville, Greenwood, Oxford, Wilkinson County, and other small towns and counties in Mississippi were unable to elect blacks to public office until Willie Rose, Deborah McDonald, Willie Perkins, Alvin Chambliss, Leonard McClellan, Southwest Mississippi Legal Services, North Mississippi Rural Legal Services, the Lawyers Committee for Civil Rights Under Law, the NAACP Legal Defense and Educational Fund, along with private attorneys Ellis Turnage, Rob McDuff, Victor McTeer, Wilbur Colom, and I brought voting rights cases striking down at-large elections and discriminatory redistricting

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schemes. If it had not been for North Mississippi Rural Legal Services, Jake Ayers would not have been able to successfully challenge Mississippi's racially discriminatory higher education system. Policies implemented by Mr. Wallace at the Legal Services Corporation now prevent Legal Services programs from representing the poor and seeking redress in such cases.

Unfortunately, Mr. Wallace's record raises other concerns. As a voting rights lawyer, I am deeply troubled by Mr. Wallace's advocacy against black majority single-member voting districts, which are often the only means by which African Americans can elect candidates of choice. I have litigated voting rights cases against Mr. Wallace, and have witnessed first-hand his particular dislike of these districts. It is my view that the strenuousness of his objections far exceeds that of an advocate in a particular case. His writings and public comments on the issue support this conclusion.

Twenty-two years ago, the NAACP's opposition to Mr. Wallace's confirmation referred to his work against establishing the majority minority district now represented by Congressman Bennie Thompson. Mr. Wallace's efforts against such districts in the ensuing years only intensify our concern.

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The NAACP believes that all Mississippians are entitled to have federal judges who are committed to equal access to the courts and to equal justice under law. Sadly, we believe those qualities are not reflected in the Wallace nomination. We respectfully ask the Senate to vote against Mr. Wallace's confirmation.

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June 5, 2006

Hon. Arlen Specter, Chairman
Committee on the Judiciary
United States Senate
711 Hart Building
Washington, DC 20510

Hon. Patrick Leahy, Ranking Member
Committee on the Judiciary
United States Senate
433 Russell Senate Office Building
Washington, DC 20510

Re: **Michael B. Wallace, Esq.**
Nominee as U. S. Circuit Judge,
U. S. Court of Appeals for the Fifth Circuit

Dear Senator Specter, Senator Leahy, and Members of the Committee on the Judiciary:

I urge that the Senate confirm Michael B. Wallace to the office of U. S. Circuit Judge, U. S. Court of Appeals for the Fifth Circuit.

My Disclosures

I write to say why I support Mike Wallace, because I was among those called by a representative of the Standing Committee on Federal Judiciary of the American Bar Association,[1]

---

[1] I have been an ABA member continuously since 1965. The ABA performs many, many valuable services to the legal profession and to the country. Among those services, the ABA provides non-partisan screening for judicial nominees through the Standing Committee on Federal Judiciary that is as insulated from ABA political influences as the judicial branch of the government of the United States is insulated from the President and the Congress. The present Administration has mistakenly denigrated the role the Committee has for more than half a

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and because that Committee's recommendation fails to reflect any hint of the views it solicited from me, and from several other lawyers — each a Democrat on most days — with whom I have spoken.

I favor this nomination, though I have supported every Democratic nominee for President since 1964. I do not see how an informed and reasonable person can credibly quarrel with the idea of a "living Constitution" memorably articulated by Chief Justice Charles Evans Hughes in *Home Building & Loan v. Blaisdell*, 290 U.S. 398, 442-43 (1934), and by countless others before and since 1934. The Supreme Court has appropriately found an implied right of privacy within the Constitution, the same as it has found an implied right to travel.

One more disclosure and I will be on with it. Barbara Childs Wallace and I are members of the same law firm and have been since 1993. We have worked together from time to time. I have known Mike Wallace since 1982, when he was interviewed for a position on the faculty at the University of Mississippi School of Law. I taught there at the time. In the 1990s Mike associated me in a law suit and several times has invited me to help moot court his appellate arguments. And we are each full citizens in Red Sox Nation.

Mike Wallace's Ability, Experience And Professional Integrity Are Beyond Dispute

You do not need me to tell you about Mike's outstanding academic credentials, the breadth of his experience in the law, or the high regard in which he is held by his peers. No one disputes that Mike is a brilliant lawyer. His reputation for personal integrity is exemplary, though I am not surprised that like most lawyers who have done anything he once had a disgruntled adversary (a man whose ex-wife Mike had represented in their divorce) file a bar complaint, which the disciplinary authorities properly dispatched as frivolous.

Mike Wallace Understands And Respects The Judicial Role

Complaint is made of the causes of some of Mike's clients. He has represented lots of Republicans, and in some hot button cases. In 1999 he counseled the Senate Majority Leader Trent Lott in the Clinton impeachment proceedings. Many like me thought the cause wrong headed, though I have never heard it suggested that Mike gave Senator Lott anything other than

---

century played well — albeit not perfectly — in the judicial selection process. That said, the Committee was wide of the mark on my friend Mike Wallace. I have personally expressed my opinion to ABA President Michael S. Greco, who promptly and correctly advised me that he had no involvement in the Committee's proceedings, deliberations or recommendation.

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insightful professional advice and counsel. Mike's participation in reapportionment litigation leaves no doubt he knows his way around the courthouse, the Constitution and the Voting Rights Act. He was dead right in his legal arguments advanced on behalf of Republican Governor Kirk Fordice in the Mississippi tobacco litigation in the 1990s.

What is less well known is that Mike Wallace has not shied away from clients whose causes seldom find favor in conservative Republican circles. He represented African American citizens in Claiborne County in opposing a bizarre effort to strip the county of ad valorem tax revenues from the Grand Gulf Nuclear Plant. He represented asbestos plaintiffs in state court actions against manufacturer defendants in the mid-1980s. In 1993-94, Mike helped a partner successfully cheat Louisiana's hangman. He has strongly supported the pro bono activities of his firm, which range from post-conviction proceedings on behalf of more than a dozen condemned murderers to post-Katrina relief.

Mike Wallace has shown that he understands the public responsibilities of a lawyer in our society. This strongly suggests to a fair minded observer that Mike understands and will adhere to the limited role of an intermediate court of appeals within our government. He will respect the principles embodied in the interpretive precedents emanating from the Supreme Court.

I know whereof I speak. I served almost ten years on the Supreme Court of Mississippi. I had the personal experience of encountering cases where, had I had my personal druthers, the decision would have gone one way, but, because the controlling legal principles suggested otherwise, I wrote against my druthers.

The ultimate "look at yourself in the mirror" test for any appellate judge is the case where, coming out of post-argument conference, the judge is charged to write along certain principles agreed upon by the panel, only to find that such an opinion "just won't write," so that you have to go back to the panel and say "We've missed this one."

Writing opinions that respect the process of reasoned elaboration of the law is crucial to the integrity of the judicial process for many reasons. Most important, it minimizes mistakes. Any appellate judge who has served for any length of time and does not have a folder of draft opinions that "just wouldn't write" is not as much of a judge as he or she ought to be. That folder is a powerful reminder that the judge should not succumb to caseload pressures and acquiesce in decisions without full published opinions, except in the clearest of cases.

As smart as Mike Wallace is, I know that after a few years on the Fifth Circuit he will have his folder of draft opinions that "just wouldn't write." And in his "writes" and "re-writes,"

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Mike has the intellectual integrity and personal backbone to respect the process of reasoned elaboration of the law, even when it cuts against views strongly held on other grounds.

We Must Stop Proposing — and Opposing — Judicial Candidates Because Of How We Expect The Candidate May Rule In This Case Or That

I have more global concerns. Andy Jackson nominated Roger B. Taney as Chief Justice to undo the perceived mischief of John Marshall. Franklin Roosevelt had something similar in mind with his court packing plan in 1937, as did Ronald Reagan in the 1980s. The cynic who says it has been ever thus confuses the familiar with the necessary. I find it the lesson of history that the Nation has been best served when political agendas and the passions of the moment have played a lesser role in the judicial nomination and confirmation process. We simply must stop proposing — and opposing — otherwise qualified persons who respect the constraints of the judicial role because of perceptions of how they may be expected to rule in specific cases.

The legal process is not about a judge doing his sums. There is no mechanical jurisprudence. "General propositions do not decide concrete cases." *Lochner v. New York*, 198 U. S. 45, 76 (1905). Mike Wallace knows this, and he has been in the trenches long enough, and in a sufficient variety of legal contexts, to understand Holmes' insight in practice. So it is the attitude and experience that one brings to the enterprise of legal interpretation that is important, even if it is not dispositive.

In the end, the reasons I support the President's nomination are simple. Michael B. Wallace understands the role of Article III judges. Given his ability, experience, temperament and intellectual integrity, I have no doubt that Mike is committed to the faithful and competent discharge of the duties of the office for which he has been nominated.

I Know Mike Wallace

I confess I am influenced by knowing Mike the man. Importantly, there is not a hint of racism in Mike Wallace's being. The African American lawyers that he works with every day will be the first to tell you this. By example, he has helped many of us to see that a genuine political conservative is not necessarily a racist.

There are many Republicans who argue "let the private sector do it" as a ruse for making sure nothing will be done. Mike Wallace is not that kind of Republican. He and his wife Barbara are extraordinarily active in private charitable efforts, not only in supporting colleges like Stanford that their daughters have attended. Barbara makes a difference through her work

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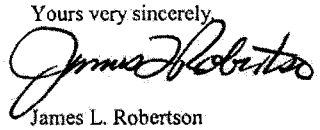
with the Mississippi Children's Home. On several occasions, Mike has built houses for the poor in Central America on church missions.

The voice he was born with still booms. Yet, Mike Wallace has mellowed through the years. It is not just through his citizenship in Red Sox Nation, or that his home town was ravaged by both Camille ***and*** Katrina, that Mike has come to that understanding most imperative for a judge: a genuine empathy with the plight of the underdog and the less fortunate and those who have had just plain bad luck.

Yours very sincerely,



James L. Robertson

JLR:wmf
cc: Senator Thad Cochran
Senator Trent Lott
Stephen L. Tober, Esq., Portsmouth, N. H.
Members of U. S. Senate Committee on the Judiciary
Members of the Standing Committee on Federal Judiciary, American Bar Association

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May 9, 2006

Honorable Christopher Dodd
United States Senator
448 Russell Building
Washington, DC 20510

Dear Chris:

I was surprised and disappointed at the recent report regarding the ABA's view of Vanessa Bryant as a federal judge. As both my former partner and colleague at my firm and my client where she was Vice-President and General Counsel of the Connecticut Housing Finance Authority, I can personally attest to her professional credentials, her integrity and her capacity for dedication, perseverance and growth in every activity in which she engages. While both the FBI and the Justice Department in the course of vetting her candidacy talked with me, I have yet to hear from the ABA, although I am a life-long member of that organization and understood I am listed as a reference. I believe, once again, as happened with Judge Meskill, the ABA has made a blatant mistake. In my view, having known both Bryant and Meskill before either ascended the bench, I believe Judge Bryant has the same sense of fairness, work ethic and mental capacity to synthesize complex concepts of law that Judge Meskill has displayed during his judicial tenure.

In her critical role at CHFA in the early 1990s, she carefully reviewed financing documentation, asked important questions regarding several legal issues about which I am an expert and displayed an independence of thinking that produced important improvements in the legal structure.

I recruited her to carry first the "of counsel" role in our Connecticut office and then the firm welcomed her into our partnership to manage our Hartford office. She supervised and managed the office professionally and with enthusiasm. Foremost were her legal contributions to our legal finance practice; she was my co-partner in developing the financing structure in our Hartford office for UConn 2000 authorizing legislation, the billion dollar program credited with allowing the flagship State University to join the elite ranks of public educational institutions in the nation. She personally researched and drafted key sections of that legislation. In addition, she served as a trustee on the UConn Foundation for several years, which was a significant component of fund raising amongst its alumni to match State contributions.

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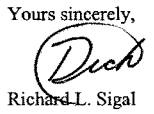
Please do everything you can to carry this candidate through the confirmation process. She will make you and Connecticut proud as a federal judge.

During the course of her judiciary career, I have heard from other judges that she is tough and thorough, and has a judicial temperament and intellect that suggests she will be a respected federal judge.

Her integrity as a person and professional cannot be impugned based on my personal knowledge over the past two decades. I did not understand the Meskill recommendation by the ABA when it happened, but then I only knew him as a Governor with whom I had professional meetings. With Judge Bryant, I worked side-by-side with her as my client and then as my partner and find the ABA view simply absurd. I strongly suggest selective interviewing has led that organization astray.

Yours sincerely,



Richard L. Sigal

RLS:ffn

cc: Kevin Rasch, Esq., Counsel to Governor Jodi Rell

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July 10, 2006

The Honorable Arlen Specter
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Patrick J. Leahy
Ranking Member, Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510

Re: Committee hearing on the nomination of Judge Vanessa C. Bryant to the Federal bench

Gentlemen:

Enclosed please find a copy of each letter that I have sent to the two Senators from Connecticut regarding the candidacy of Judge Vanessa Bryant for the Federal judgeship. She is eminently qualified and I believe that both the ABA and the Connecticut Bar Association engaged in selective interviewing.

I personally know, and have talked to senior judges in the State Court system that agree that she does a solid job of judging; perhaps she is too tough on lawyers who do not meet schedules or seek inordinate delays.

May I ask that this letter and the attached two letters be made part of the record in support of the candidate.

With best regards, I remain

Sincerely yours,

Richard L. Sigal

Richard L. Sigal

RLS:ffn
Encs.

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United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

August 7, 2006

Mr. Michael S. Greco
President
American Bar Association

Mr. Stephen L. Tober
Chairman, Standing Committee on the Federal Judiciary
American Bar Association

Dear Sirs:

This is the second time I have had occasion to write you in connection with the nominations of Michael Wallace of Mississippi and Vanessa Bryant of Connecticut. Both nominees have distinguished resumes. Both, however, have been rated "Not Qualified" by the American Bar Association ("ABA"). In the first letter, you were asked to provide the Committee with your testimony on these nominations as soon as possible. You were also asked to share with the Committee the reports on which these ratings are based. Furthermore, you were assured that the Committee would treat such reports on a confidential basis, as we currently handle reports we receive from the Federal Bureau of Investigation ("FBI").

Your reply letter did not address the request that you provide the Committee with your reports. You did, however, provide assurances that your testimony would be provided as quickly as practicable, and hoped you could deliver the testimony at least 48 hours before the hearing scheduled on the Wallace and Bryant nominations. On the afternoon of July 18, some 24 hours before the scheduled hearing, the Committee received your testimony. I have since postponed that hearing.

I have had the opportunity to review the testimony with regard to both nominees, and I am troubled by your submission. Your testimony raises serious charges, but only supports those allegations with anonymous quotations, presented without context. Testimony of this sort is impossible to verify or to otherwise further investigate. Worse, it can give some the unfortunate impression of a smear campaign conducted against the nominees. The nominees, publicly branded "Not Qualified" and - in your testimony - worse, do not have the opportunity to confront their accusers.

There also exist concerns with respect to the appearance of bias in the ratings process with regard to the Wallace nomination. During the 1980s, Mr. Wallace was appointed by President Ronald Reagan to serve as Director and Chairman of the Legal

Services Corporation ("LSC"). At that time, the ABA took strong and vocal positions against President Reagan's agenda for the LSC and took issue with Mr. Wallace's leadership of its board. There is nothing wrong with the ABA taking such positions, but when an institution has strongly held views on a policy question and when it has a history of passionately opposing a nominee's work on that question, some may reasonably question the capacity of that institution to provide an objective review of that nominee.

Compounding the concerns about institutional bias, some have raised issues of personal bias on the part of individuals directly involved in this process. I understand that Mr. Tober had a heated public exchange with Mr. Wallace at a December 1987 LSC meeting. The Committee has also been informed that Mr. Greco had a similar public exchange with Mr. Wallace at a panel discussion on legal services at the ABA's annual meeting in 1989. Furthermore, Ms. Marna Tucker, now the D.C. Circuit representative on the Federal Judiciary, served as organizer of that contentious panel discussion. While ours is an adversarial profession, and we expect advocates to argue vigorously on behalf of the issues they represent, it becomes problematic when those advocates are then placed in a role passing judgment on their opponents.

On page 12 of your "Backgrounder," formally titled "Standing Committee on the Federal Judiciary – What it is and How it Works," it is stated that "No member of the Committee shall participate in the work of the Committee if such participation would give rise to the appearance of impropriety or would otherwise be incompatible with the purposes served and functions performed by the Committee." During this Congress alone, members of the ABA's Standing Committee have recused themselves from the ratings of no fewer than six nominees. It would appear that Mr. Tober would have been well advised to consider recusing himself from the rating of Mr. Wallace, given their personal history. As Chairman, Mr. Tober has an opportunity to influence members of the ABA's Standing Committee, to filter the information that is available to it, and to shape its final report. I understand that in the case of a tie vote, Mr. Tober would also be in the position of casting the deciding ballot. As a consequence, it would seem that he would have an even higher duty to recuse himself. I nevertheless appreciate Mr. Tober's excellent work on behalf of the Standing Committee and am aware that his is not an easy job, nor are these easy calls to make.

Given these concerns, however, I would request that the ABA promptly take the following steps:

First, the ABA should immediately revoke its "Not Qualified" rating of Mr. Wallace and begin a new review process. Although there is little that can be done about the appearance of institutional bias, the ABA can certainly take steps to alleviate the concerns of personal bias. Mr. Tober should recuse himself, as should anyone else who has a personal history with this nominee or whose impartiality may reasonably be questioned on any other ground. Ideally, the ABA should convene an entirely new, "special" committee for this purpose. Mr. Greco, given his history with the nominee, should recuse himself from the selection of the committee's members.

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Second, I request that the ABA provide the Senate Judiciary Committee with the reports upon which its ratings of Mr. Wallace and Judge Bryant are based – this includes both the "informal report" and "formal written report" discussed on page 7 of the "Backgrounder." The Committee will treat these reports in the same manner in which we treat FBI background investigation reports. Under the protocols adopted for use with FBI reports, your reports would be kept in a safe located in a secure room. There would be no duplicate copies made. Only Senators and specified staff with security clearances (approximately three majority and three minority staffers) would have access to the reports.

When the FBI uncovers adverse information about a nominee, it provides considerable context, even in the case of anonymous sources. For example, in the circumstances in which an anonymous source is included in the background report, the FBI provides us with a detailed description of the interview, explaining the nature and substance of the allegations against the nominee. Even without a specific name, this allows Committee staff to investigate further and fully brief the Committee. Moreover, unlike the ABA's practice, anonymous sources in FBI reports are the exception, not the rule. If a specific source of yours requests that his or her name be redacted from the reports you make available to the Committee, as with the FBI reports, we would consider making such an accommodation. It must be remembered, however, that the FBI report is not made public, so only Committee Members have access to the information, while the ABA provides a written public statement accompanying the testimony it makes available to the Committee. Oftentimes, these statements may include the comments of anonymous sources. I am not asking that the ABA provide anything that the FBI does not. Committee staff have worked together to conduct investigations in a bipartisan and discrete manner. I can assure you that if they can do so with materials assembled by the FBI, they can do the same with materials assembled by the ABA.

In fact, it is the Committee's Constitutional duty, and a matter of fundamental fairness to the nominees, that we discern the basis for the public rebukes the ABA lodges against individuals who have been nominated to the bench. Without giving either the nominees or the members of this Committee the opportunity to review the materials supporting the rating, a full and fair hearing is not possible.

Thank you for your prompt attention to this letter and for your continued service to the profession.

Sincerely,

Arlen Specter

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WILL M. WHITTINGTON (1878-1962)
W. M. WHITTINGTON, JR. (1914-2002)
H. DONALD BROCK
CHARLES J. SWAYZE, JR.
H. DONALD BROCK, JR.

P. O. BOX 941
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TELEPHONE: 662-453-7325
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June 12, 2006

VIA FACSIMILE (202) 228-1698
The Honorable Arlen Specter
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Specter:

As immediate past president of The Mississippi Bar, which is our State's unified bar association; as an elected member of the American Bar Association House of Delegates from the State of Mississippi; and as a grandson of the first Mississippian appointed to the Fifth Circuit Court of Appeals, I strongly urge the confirmation of Michael B. Wallace as a judge on the United States Court of Appeals for the Fifth Circuit. Obviously, I disagree with the recent report of the American Bar Association's Standing Committee on Federal Judiciary.

I am a life long resident of Mississippi, except for four (4) years in the Army, and have practiced law in Mississippi for over thirty years. Mike Wallace is an exemplary lawyer, who has involved himself deeply in the issues of his day. He is exceedingly well qualified, by training, talent and experience, to occupy a seat on this important appellate court.

Mike's formal educational and clerkship experience are well known: undergraduate education at Harvard, a member of the law review at Virginia, clerkships at the Supreme Court of Mississippi and the Supreme Court of the United States, the latter for then Associate Justice William H. Rehnquist.

Since those days, Mike has been engaged in the private practice of law in Mississippi for more than 23 years. He has earned the highest reputation among his peers for legal ability and integrity. Based on peer reviews, the respected legal publication Martindale Hubbell has given Mike its highest "av" rating attesting to his superb reputation for integrity and legal ability. Two other prominent publications that base their ratings on peer reviews: The Best

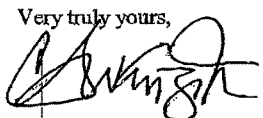
Lawyers in America and Chambers USA list Mike as one of Mississippi's top business litigators. He is a Fellow in the American Academy of Appellate Lawyers, an organization composed of America's foremost appellate advocates. Membership in the Academy is by invitation. Fellows of the Academy include, among others, Chief Justice John Roberts, Floyd Abrams, Robert Fiske, Philip Lacovara, Ted Olson and Seth Waxman.

The ABA Standing Committee assures us that "[t]he Committee's goal is to support and encourage the selection of the best-qualified persons for the federal judiciary. It restricts its evaluation to issues bearing on professional qualifications and does not consider a nominee's philosophy or ideology." With all due respect to the Committee, its evaluation is erroneous.

I believe, as do my fellow former bar presidents, that Mike possesses a demonstrated judicial temperament, and will judge fairly, without favor, the matters that come before him.

I urge your Committee to confirm Michael B. Wallace to a judgeship on the United States Court of Appeals for the Fifth Circuit.

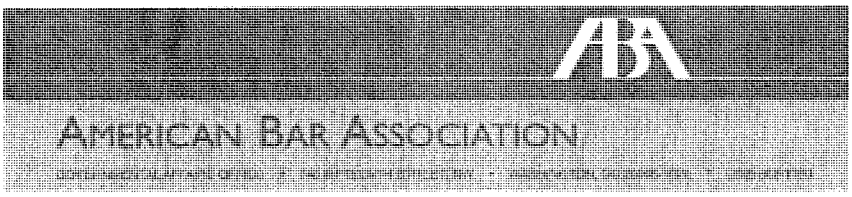
Very truly yours,



Charles J. Swayze, Jr.

cc: The Honorable Patrick J. Leahy (via facsimile, (202) 224-9516)
Ranking Member, Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, D.C. 20510

Office of Legal Policy (via facsimile, (202) 514-5715)



STATEMENT

of

STEPHEN L. TOBER

and

DOREEN D. DODSON

on the behalf of the

STANDING COMMITTEE ON FEDERAL JUDICIARY

of the

AMERICAN BAR ASSOCIATION

concerning the

NOMINATION OF THE HONORABLE VANESSA L. BRYANT

to be

JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

before the

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

July 19, 2006
(Resubmitted for the Hearing on September 26, 2006)

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 Judge Vanessa L. Bryant to be a United States District Court Judge for the District of Connecticut. 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, Doreen D. Dodson, a former member of the Committee who conducted this investigation, explains the basis for our rating of Judge Bryant.

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

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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, open-mindedness, courtesy, patience, 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, Ms. Dodson, in her capacity as a former member, was kind enough to undertake this investigation because the current Committee member from the Second Circuit was unavailable to do so.

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,

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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 strict 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

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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 does not vote, and the Chair votes only in case of a tie.

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

Judge Bryant was nominated on January 25, 2006. Ms. Dodson, whom I assigned to the investigation, began her effort on March 9, 2006, six days after receiving the

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nominee's responses to the public portion of the Senate Judiciary Committee questionnaire.

On April 26, 2006, Ms. Dodson submitted her informal report to me, reflecting the results of her investigation, including summaries of all of her confidential interviews and a description of her interview with the nominee. I carefully reviewed the report with Ms. Dodson and was satisfied with the quality and thoroughness of the investigation and the report. On April 27, 2006, Ms. Dodson's formal report was transmitted to all of the members of the Committee. Those who had questions were encouraged to contact Ms. Dodson 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 substantial majority of the Committee found the nominee "Not Qualified" and a minority found her "Qualified." This vote was reported to you in a timely manner on May 4, 2006.

STATEMENT OF DOREEN D. DODSON

My name is Doreen Dodson. I have practiced law in St. Louis, Missouri for over thirty years and was the Eighth Circuit representative to our Committee from August, 2001 to August, 2004. During that time I conducted many investigations in the Eighth and other Circuits and participated in the evaluation of approximately 230 nominees to the U.S. Courts of Appeal and the U.S. District Courts. As an alumna of the Committee, I was asked to conduct the investigation of the qualifications of Judge Vanessa Lynne

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Bryant for appointment to the United States District Court, District of Connecticut.

Our Committee has concluded that Judge Bryant is Not Qualified for appointment to the Federal District Court. This conclusion was reached after a careful review of the written submissions of Judge Bryant, my personal interview with her, and confidential interviews of 35 Federal and State court judges, both trial and appellate, and over 30 practicing lawyers in Connecticut. I also initiated contact with another 11 judges and lawyers who either did not return my detailed messages after several attempts or who told me that they preferred not to comment. Another 29 judges and lawyers who were contacted told me that they did not know Judge Bryant well enough to comment. In total, I contacted over 100 lawyers and judges and interviewed 65 of them.

During my conversations with those who consented to an interview, I inquired about the context in which the person knew the nominee and what the person knew about the nominee's integrity, judicial temperament and professional competence that would impact her qualifications to serve on the Federal court. I also inquired if they knew any reason the nominee was not qualified to serve. I solicited information from diverse members of the legal community, including lawyers in private and government service, legal services lawyers and public defenders, prosecutors and representatives of professional organizations, including specialty bar associations. I also made a particular effort to locate judges and lawyers who had had trials before the nominee or other significant interaction with her in her legal capacity. Of the 65 persons I interviewed, over 50 were in that category. I also reviewed other pertinent materials, including opinions the nominee selected and various articles and publications in the public domain.

In addition to those interviews I spent approximately 2 ½ hours with Judge Bryant

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in her chambers. During the course of our meeting I raised the principal concerns that had been identified during my investigation and Judge Bryant was given an opportunity to rebut or provide context for these concerns and to provide any additional information that she desired to offer.

None of the interviewees had any concern about her integrity. A majority (but not all) of those interviewed, both lawyers and judges, raised concerns about Judge Bryant's judicial temperament and many raised additional concerns about her professional competence.

On the issue of judicial temperament, the Committee's "Backgrounder" states that "in investigating judicial temperament, the Committee considers the nominee's compassion, decisiveness, open-mindedness, courtesy, patience, freedom from bias and commitment to equal justice under the law."

During Judge Bryant's years on the bench she principally has held administrative positions, as either presiding judge or administrative judge. Lawyers in all areas of practice, both civil and criminal, reported that they found Judge Bryant formal but pleasant and cordial outside the court. But, when she was engaged in court business, they said she was rigid, unbending and unreasonable in her adherence to scheduling and other trial issues, was impatient with lawyers and was sometimes rude and inconsiderate to lawyers and litigants. Some interviewees said this attitude extended to court personnel. While I understand, and took into account, that trial lawyers like to control their docket, often feel that continuances should always be granted and may not be fond of a judge who does not grant them, our Committee could not discount the number of complaints from judges and from lawyers in all areas of practice about the nominee's temperament.

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Comments from judges and lawyers included statements such as: "very rigid, tough, formalistic"; "immovable and intractable"; "very hard on staff"; "curt, difficult and unreasonable"; "impatient"; "ill-tempered and short with those appearing before her"; "domineering and exasperated with lawyers"; "arrogant and unreasonable"; "contentious and short-tempered"; "tough and stern"; "makes up her mind quickly, won't change her opinion, brusque"; "erratic"; "rushes to judgment and difficult to change her mind"; "arbitrary"; "impatient and short"; "can be spitting angry"; "pretty unpleasant and imperial"; "condescending to lawyers and litigants".

A small minority of attorneys who have appeared before the nominee did not report having any problems with her and several reported having had positive experiences. However, a substantial majority of the Committee felt these comments did not make up for the large number of adverse comments concerning her judicial temperament. It was particularly significant to the Committee that temperament concerns were expressed about her from her early days on the bench up to the present day.

A judge who is trying to run an efficient courtroom and who is appropriately concerned with moving cases will almost certainly irritate some lawyers or litigants at some point. Even the most gracious judge can become impatient or irritated occasionally, perhaps particularly when they hold an administrative position and are hearing motions for continuances. However, the negative comments concerning the nominee's judicial temperament were so widespread and were from so many judges and lawyers in every practice area, that our Committee could not discount them.

In addition, many lawyers and judges interviewed, including lawyers who have appeared before the nominee as well as some of her colleagues on the bench, expressed

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concerns about the nominee's professional competence. According to the Backgrounder, "professional competence encompasses such qualities as intellectual capacity, judgment, writing and analytical ability, knowledge of the law and health of professional experience." Many of those interviewed expressed substantial concern about these factors.

Judge Bryant was appointed to the Connecticut Superior Court in September, 1998, a little less than eight years ago. Prior to her appointment, her career was principally that of a bond attorney. Her only experience in a courtroom, prior to her appointment to the bench, consisted of handling three paternity cases as an associate at her first law firm; second chairing, as local counsel with no courtroom responsibilities, a Boston firm in a contract case; and serving as a Chapter 13 Trustee for two years. The Committee rightfully believes that substantial courtroom and trial experience are particularly important for nominees to the District Court, a trial court. A District Court judge must apply the Federal Rules of Civil and Criminal Procedure and the Rules of Evidence, an understanding of which is developed over time. Judge Bryant had almost no trial experience before she was appointed to the state court bench.

The Backgrounder states that the lack of substantial courtroom and trial experience can be compensated for by the presence of other experience that is similar to trial work (or by significant evidence of distinguished accomplishments in the field of law). In her case, that other experience arguably could have been her years of experience on the state trial court. However, Judge Bryant has served on the bench principally in an administrative capacity, having been either a presiding judge in a specialty court or a presiding or administrative judge in several civil divisions. In those roles, she chiefly has

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heard and ruled upon preliminary motions, held sentencings, presided over a drug court and handled scheduling matters for the efficient operation of the courts. She has not had much opportunity to preside over jury trials, civil or criminal.

Many of those interviewed made comments regarding her professional competence such as: "opinions poorly done, confused"; "overwhelmed by complex issues"; "written opinions difficult to decipher"; "cases she handled did not require much skill"; "makes up her mind quickly and difficult to change"; "may not bother to do legal research, gets a take and that's how she goes"; "little in the way of a significant body of work"; "very serious concerns... about her judgment, quality of work"; "lacks significant trial experience"; "criminal law is not her strong suit, very unfamiliar with the field"; "serious concerns about the way she handled criminal evidentiary matters"; "unfamiliar with family law"; "nervous, uncertain in certain areas"; "inexperience and inability to make up her mind in some evidentiary issues"; "lack of confidence"; "not a heavyweight"; "significant delays in writing opinions", "made snap judgments (at trial) without thinking about implications"; "hard time getting her to submit... questions to a jury even though law was clear"; "problem with her ability to grasp certain legal concepts"; "because of her lack of trial experience as a lawyer, she doesn't read situations very well with attorneys". Comments such as these were common in the over 65 interviews I conducted. Judge Bryant did provide ten opinions, some of which were the basis for certain of the comments listed above, from lawyers and/or judges involved in those cases. As presiding or administrative judge, she has not had an opportunity to write a large volume of opinions and has not done other legal writing. In general, most of the submitted opinions demonstrate adequate to good legal analysis and writing in fairly

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standard cases. One of the opinions, which did involve complex issues, was confusing. Another was written by the nominee only after she was ordered to do so by the Appellate Court and after a subsequent Motion to Compel was filed.

Federal judges today face massive criminal dockets and Judge Bryant has almost no experience in criminal matters, either on or off the bench. Federal judges also often face complicated and challenging legal and factual issues. A district court judge must make instant decisions in the courtroom, during trial, that require a solid grounding in substantive and procedural law and experience with juries. As reported by the interviewees, the nominee, even after nearly eight years on the Court, has little experience to prepare her for this task, due to her assignments as a presiding or administrative judge whose principal role is to move cases.

I note that it was not necessarily the same interviewees who had concerns about the nominee's temperament and competence. In the majority of interviews conducted, the interviewee expressed concerns about competence or judicial temperament but not both. I was careful to probe the specific bases for their concerns and many had experienced one, but not the other, problem.

Our Committee, after reviewing my report on the nominee, could not discount the number of complaints about the nominee's temperament or the number of complaints about the nominee's professional competence, both of which appeared consistently through her years on the bench. As a result, after careful consideration, a substantial majority of the Committee found the nominee "Not Qualified" for appointment to the United States District Court for the District of Connecticut.

I note in closing that many interviewees stated they knew many other lawyers or

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judges with negative opinions who refused to have their names given to me by those who did consent to be interviewed. This resulted in a longer than usual investigation to assure myself that I was hearing from all diverse facets of the bench and bar, and that the interviewees were, as discussed above, representatives of plaintiffs and defendants, prosecutors and public defenders, large and small firms, minority groups, persons of color, those with current and past experience with the nominee and from all the areas in Connecticut where she has presided. Our Committee takes most seriously its responsibility to conduct an independent examination of the professional qualifications of judicial nominees. There is no bright-line test as to whether a specific nominee is qualified or is not. We do not weigh the comments, positive and negative on a scale for 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 the investigation and our independent judgment. We apply our standards and criteria impartially to each nominee.

Thank you for inviting us to share our views with you.

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570 Lexington Avenue, 17th Floor
New York, N. Y. 10022

July 18, 2006

The Honorable Arlen Specter
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of Michael B. Wallace to the
United States Court of Appeals for the Fifth Circuit

Dear Chairman Specter:

A former law clerk to the late Chief Justice William H. Rehnquist, and now a partner with Boies, Schiller & Flexner LLP, I write to join in the letter sent to you yesterday by many other of his former law clerks in support the nomination of Michael B. Wallace of Mississippi to the United States Court of Appeals for the Fifth Circuit and to urge the Committee to report the nomination favorably to the full Senate.

Respectfully yours,

Alan B. Vickery

cc: The Honorable Patrick J. Leahy

A14 THE WALL STREET JOURNAL. OPINION WEDNESDAY, JULY 26, 2006

An ABA Hit Job

In March 2001, barely two months after taking office and two months before announcing his first judicial nominees, President Bush told the American Bar Association to buzz off. Specifically, Mr. Bush ended the tradition of providing the ABA's Committee on the Federal Judiciary with the names of nominees before they were made public. The ABA would still evaluate candidates for the federal bench, but it would do so from a status more consistent with the role it plays—that of a political interest group.

Political payback against a judicial nominee.

Too bad Mr. Bush didn't go all the way and cut out the ABA entirely. Instead, the lawyers' lobby retains a special role as the only national organization authorized by the Administration to interview judicial nominees. And when it has given a favorable rating to a Bush nominee, the Administration has been only too happy to shout it from the rooftops.

Enter Michael Wallace. Anyone who still clings to the fiction that the ABA can be counted on to provide professional evaluations of judicial nominees without regard to politics should take a look at the current squabble over Mr. Wallace, whom Mr. Bush has nominated for the New Orleans-based Fifth Circuit Court of Appeals. In May the ABA panel rated Mr. Wallace as "unanimously not qualified" for the federal bench.

Mr. Wallace is a highly regarded attorney in private practice in Mississippi, where his nomination has bipartisan support. He clerked for the late Chief Justice William Rehnquist and in the early 1980s served as counsel to then-Congressman Trent Lott. In 1999, Mr. Lott hired him back as special counsel during President Clinton's impeachment trial.

That's not a professional background likely to endear the nominee to liberals. But here's the real disqualifier: During the Reagan and George H.W. Bush Administrations, Mr. Wallace served on the board and then was chairman of the federally funded Legal Services Corporation, whose ostensible mission was to provide legal help for the poor but which was a haven for liberal legal activism.

Mr. Wallace's efforts to reform the LSC had many critics, among them an attorney by the name of Michael Greco. Another opponent was the then-president of the New Hampshire bar, Stephen Tober, who accused him of having a "political agenda" at one particularly contentious hearing. Mr. Greco is now president of the ABA, and Mr. Tober is chairman of the ABA committee that nixed Mr. Wallace. Mr. Wallace's reforms were adopted, and now it's apparently payback time.

In any case, the ABA selection panel's deliberations are secret and it hasn't said why it considers Mr. Wallace unfit for the federal bench. In an exchange of letters last month with Mr. Tober, Senator Arlen Specter, chairman of the Judiciary Committee, said he would call the ABA to testify on its "Not Qualified" rating. He requested materials supporting the rating "as soon as possible."

Mr. Tober replied that "we will do our best" to submit the materials 48 hours in advance of the hearing—a schedule that would make it difficult and perhaps impossible for Republicans on Judiciary to evaluate the ABA's charges and prepare for the questioning. Senator Specter threatened a subpoena and the ABA supplied an advance copy of its testimony but not the supporting documents. The immediate effect of the ABA's delaying tactics has been to push Mr. Wallace's hearing date into September, when election-year politics make confirmation unlikely this year.

The ABA judicial screening panel has a long history of such ideological sandbagging, going back to its sabotage of Robert Bork and Clarence Thomas. We'd have thought Republicans had learned their lesson. Given the political revenge that seems to be at work in the Wallace hit, it is past time to cut the ABA out of the vetting process altogether.

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TESTIMONY

Of

W. SCOTT WELCH, III

Of

Jackson, Mississippi

On behalf of

THE NOMINATION OF MICHAEL B. WALLACE

TO BE A JUDGE OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Before the

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

September 25, 2006

Mr. Chairman and Members of the Committee:

My name is W. Scott Welch, III, though most call me "Scotty." I am a practicing lawyer engaged almost exclusively in civil litigation at the trial and appellate levels in state and federal courts throughout the State of Mississippi and, on occasion, in other states. I maintain my office in Jackson, Mississippi, and have since April 1, 1967. Prior to that I was an Assistant Staff Judge Advocate in the United States Air Force at Vandenberg AFB, California, prior to which I practiced briefly in Laurel, Mississippi, while awaiting orders to report to active duty in the Air Force.

I am honored to have been invited by the Chairman to testify on behalf of the nomination of Mr. Wallace, although I freely admit that others have known him longer and have had more cases with him than I. However, I have known Mr. Wallace since he came to Jackson to practice with the firm of Jones, Mockbee, Bass and Hodge in late 1983. Mr. Hodge is a former law partner of mine, and Mr. Jones is presently a partner of mine. Mr. Hodge and another of his present partners at Phelps Dunbar are former partners of mine in the practice of law. I have been actively engaged with Mr. Wallace, representing separate defendants in significant litigation arising out of Hurricane Katrina, since mid-September, 2005.

I am not a close personal friend of Mr. Wallace, but we have a long-time professional relationship. I see him socially only infrequently. I am more likely to see and be with him at meetings of The Mississippi Bar or some other professional organization. However, I have personally observed his legal ability, intellect, integrity, professionalism and demeanor on many occasions for almost twenty years. I offer this testimony, because I am convinced that the rating of Mr. Wallace as "Not Qualified" for this appointment by the ABA Standing Committee on the

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Federal Judiciary, because about a third of the lawyers interviewed expressed "concerns" about his judicial temperament, is not justified. That, as this Committee is well aware, is the sole basis upon which the ABA Committee has found Mr. Wallace "Not Qualified." The ABA's Standing Committee, without exception, had the highest praise for his competence and integrity, so the only issue in dispute – at least from this individual's perspective - is whether the ABA's finding that Mr. Wallace lacks the appropriate judicial temperament is a sound basis for its finding of "Not Qualified." I respectfully submit that it is not.

While I have only known Mr. Wallace for just shy of twenty years, I knew and litigated against his first law firm in Biloxi, MS – Sekul, Hornsby, Wallace and Teel. Although his father was name partner in that firm, it is my opinion, based upon my practice against others in that firm, that those lawyers simply would not have tolerated a young lawyer with the sort of temperament and nature ascribed to Mr. Wallace by the anonymous reporters to the interviewers from the ABA Standing Committee. The same can be said for my present and former partners, who have practiced with Mr. Wallace.

Some comments are in order about my relationship with the ABA and with this Standing Committee, in particular. First, I do not offer this testimony from any official capacity whatever with the ABA, nor as an opponent of the ABA, the Standing Committee or any ABA policy. Second, I am an active member of the ABA, having served in the House of Delegates since about 1992. I am a current member of the ABA Board of Governors. Third, I have not served on the ABA Standing Committee on Federal Judiciary, and Mississippi has not had an individual to occupy the "5th Circuit" seat on that Committee since 1974, although former ABA President Michael Greco and his Committee Appointments Chair, Stephen Tober [Chair of the ABA Standing Committee which first reported that Mr. Wallace was "Not Qualified"] were implored

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by this witness and others in Mississippi to appoint me or another Mississippian to this seat. But, this testimony in support of Mr. Wallace is not about resentment about that failure to appoint, nor am I critical, in general, of the Association, its Standing Committee nor Committee members, though I seriously disagree with its conclusion. I believe that ordinarily the Committee serves an important role, and I have provided interviews about a number of Mississippi lawyers, who were candidates for judicial nominations. Finally, my comments about the testimony of the ABA Standing Committee are limited to the Statements previously provided to this Committee in July, 2006; because I am aware of recent interviews by other ABA Standing Committee members which I presume will yield additional ABA testimony. I have no knowledge what that testimony might be.

It is, however, my sincere belief – based on more than forty-two years of law practice, mostly in and throughout Mississippi, and numerous relationships with other lawyers throughout the United States – that the ABA Committee has simply not provided a sound basis for finding that Mr. Wallace is "Not Qualified," because he lacks appropriate judicial temperament.

Three things, in particular, concern me about the recommendation of the ABA standing Committee that Mr. Wallace is "Not Qualified" on the sole basis of his perceived lack of judicial temperament[1].

First: The prior Statement of Mr. Tober to this Committee recited ABA policy from the "*Backgrounder*" [Tober Statement, July 19, 2006, p.4] with regard to the nominee's opportunity to rebut adverse information, stating that: "If the nominee does not have the opportunity to rebut

[1] I do not attempt to "drill down" into the details of Mr. Wallace's specific cases discussed in the ABA testimony or his service as a member of the Board of Legal Services Corporation. I have not attempted to go behind the work of Mr. Wallace and others as to what specific courts, papers or other public sources have said. Those sources are identified and are capable of more meaningful comment by Mr. Wallace and others who are willing to be identified.

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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."* (Emphasis added.)

It is, I believe, impossible to read the prior testimony of the ABA Standing Committee as anything other than as being directly contrary to the stated policy of the ABA. There is no asterisk in the ABA policy as to the obviously subjective criterion of "judicial temperament," so the ABA Standing Committee is obliged to follow its policy directive in that area as well as others.

With the exception of citation to specific court opinions [Askew Statement pp. 12-15, July 19, 2006], it is clear that the prior ABA testimony to this Committee and consequently its recommendation are based on information that should not have been used by Ms. Askew in her report to the Standing Committee, nor by the Committee in reaching its conclusion; because not one person who was critical of the nominee – even to the extent of concern that his appointment would undo progress in the important area of civil rights [Askew, pp. 15-16] – would waive his or her right to anonymity. Curiously, the prior ABA testimony does not report any request to anyone to waive the right to remain anonymous. By its testimony, the ABA Standing Committee did not violate confidentiality of its sources, as was its obligation; however, it is beyond speculation that it relied upon those sources to reach and to attempt to justify its conclusions. It thereby failed to follow the ABA policy it detailed to this Committee.

Second: If the ABA Standing Committee gave credence –as it seems it clearly did – to those anonymous sources, it is unreasonable to expect that Mr. Wallace or any of us could realistically refute another's *opinion* or characterization of attitude, demeanor, manner, etc. Had he known the identity of ABA interviewees, Mr. Wallace might have been able to offer an

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explanation why those person held such an opinion; however, that would not change the person's opinion. By the prior testimony of the Standing Committee, he was denied the opportunity to do more than say, in essence, "I am not" in rebuttal of anonymous characterizations and opinions of him. Without knowledge of the ABA Committee's sources of which he was deprived – as was the right of the ABA – he faced, as any of us would, an impossible task of refuting the proverbial "they" who said things about him. Since that time a number of distinguished lawyers, judges and former judges have written contrary opinions in favor of Mr. Wallace, but it is not possible in this setting to do an opinion poll or survey and then count votes.

Moreover, if concern existed to the extent reported by Ms. Askew and Mr. Hayward, how - I ask myself and this Committee may ask as well - could the ABA standing Committee possibly have found without dissent or apparent debate that Mr. Wallace is unquestionably qualified in the vital area of integrity? In this writer's humble opinion, it just does not follow that Mr. Wallace can be unanimously characterized as having the requisite integrity to be a judge on the important Court of Appeals and at the same time have the *nature* to ignore precedent, the rights of others and all of the other adverse comments with which the ABA testimony was laced. The strong finding of integrity seems to belie the finding upon which the recommendation is based.

Third: Even if the ABA were entitled to have relied upon the anonymous comments and even allowing that some interviewees held those opinions, they are opinions - even if opinions formed, as this witness's have been, after years of exposure to Mr. Wallace. So much of the prior Testimony by Members of the Standing Committee is devoted to a detailed discussion of what those with negative views had to say that it is easy to lose sight of the fact that ". . . over a third. . . " of the 69 lawyers and judges interviewed ". . . expressed grave *concerns* regarding Mr. Wallace's judicial temperament." [Askew p. 10].

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While this is neither an election nor a popularity contest, the unavoidable corollary to the stated result is that *almost two-thirds* of those interviewed did not express any such concerns, and given the absolute anonymity, there is no reason to expect that they would have with refrained from expressing a "concern" if they held one. Ms. Askew and I are from different states, but expressing a "concern" is not the same as a steadfast conviction that another will or will not act in a particular manner in a given circumstance.

Therefore, we have a nominee, who is found without dissent – indeed beyond question - to possess the competence and integrity to be appointed to the position for which he has been nominated, faced with the recommendation that he be denied the appointment as "Not Qualified" based upon the stated *concerns* of 24 or so[2] lawyers and judges out of 69 interviewed. Such a result simply cannot be justified, especially when it is remembered that Mr. Wallace is not being considered for a judicial position in which he alone will make final decisions that will not be reviewable by his own court and by the Supreme Court of the United States.

If the minority – but admittedly significant – number reported by Ms. Askew is proven to be correct (which I doubt), the nominee will not be setting things back, reversing existing law, nor taking us back to a former time. He will be writing lone dissents and, in all probability, will be shunned by colleagues and publicly criticized by legal scholars.

It has been said that Mr. Wallace is proud. He is certainly too proud to want to endure that, although he has shown that he is not afraid to tackle unpopular or difficult representation – a trait we all admire in any attorney. This witness is convinced that if approved by this Committee and by the Senate, Mr. Wallace's intellect, ability and integrity assure that he will follow established precedent and carry out his sworn duties in a manner of which we will be proud –

[2] Plus some proportion of those interviewed by Mr. Hayward and the unknown results of the more recent interviewers.

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whatever his personal views or preferences may be in a given instance. I urge the approval of his nomination. Thank you for permitting me this opportunity.

W. Scott Welch, III

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Jun-12-2006 10:44am From- T-152 P.002/004 F-565

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June 12, 2006

VIA FACSIMILE (202) 228-1698
The Honorable Arlen Specter
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Specter:

I am writing as one of several former presidents of The Mississippi Bar which is our State's unified bar association. Each Past President has been asked to write separately to you and Senator Leahey, rather that sending a joint letter that might resemble a petition. We write to urge confirmation of Michael B. Wallace as a judge on the United States Court of Appeals for the Fifth Circuit. We also write to disagree with the recent report of the American Bar Association's Standing Committee on Federal Judiciary that Mr. Wallace is "not qualified" for the position to which he has been nominated.

We former presidents are Republicans, Democrats and Independents. We share no political party, judicial philosophy or religious affiliation. We have lived and practiced law in Mississippi for many years. We know Mike Wallace well, as lawyer and citizen. Our views are based on our longstanding personal experience. We have seen Mike at work and play, relaxed and under pressures that only a busy and responsible law practice can create. We have seen him under fire. We do not base our views on telephone interviews with persons we have never met.

We have found Mike Wallace to be an exemplary lawyer and American citizen, who has involved himself deeply in the issues of his day. He is exceedingly well qualified, by training, talent and experience, to occupy a seat on this important appellate court.

Mike's formal educational and clerkship experience are well known: undergraduate education at Harvard, a member of the law review at Virginia, clerkships at the Supreme Court of Mississippi and the Supreme Court of the United States, the latter for then Associate Justice William H. Rehnquist.

Since those days, Mike has been engaged in the private practice of law in Mississippi for more than 23 years. He has earned the highest reputation among his peers for legal ability and integrity. Based on peer reviews, the respected legal publication Martindale Hubbell has given Mike its highest

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"av" rating attesting to his superb reputation for integrity and legal ability. Two other prominent publications that base their ratings on peer reviews: "The Best Lawyers in America" and "Chambers USA" both list Mike as one of Mississippi's top business litigators. He is a Fellow in the American Academy of Appellate Lawyers, an organization composed of America's foremost appellate advocates. Membership in the Academy is by invitation. Fellows of the Academy include, among others, Chief Justice John Roberts, Floyd Abrams, Robert Fiske, Philip Lacovara, Ted Olson and Seth Waxman.

Outside the law, Mike's qualities find further reflection in his position as an elder in his church, a Sunday school teacher, and a participant in church mission trips to build houses for the poor in Central America.

It is inconceivable that anyone armed with knowledge of Mike Wallace's intellectual and professional abilities, and aware of his reputation for personal and professional integrity, could doubt that he possesses any of the qualities necessary for distinguished service on the federal bench.

But surely it is no secret that the ABA Standing Committee's recent, shocking rating of Mike was not based on any concern that he lacks professional competence. It was not based on a suspected lack of integrity. It was an expression of a stated belief that Mike lacks judicial temperament.

Because the Committee gives no statement of reasons to support its ratings, we cannot know what evidence the Committee may have considered in reaching its decision. But we believe that this unfair rating can be traced squarely to a part-time, non-judicial public office that Mike occupied almost 20 years ago, as a member and later chairman of the board of directors of the Legal Service Corporation, positions to which he was nominated by President Reagan.

Based on his service on that board, and the positions he advocated while on it, it is safe to say that Mike Wallace's view of the proper role of government in providing legal services for the poor is inconsistent with the view of the chair of the ABA's Standing Committee on Federal Judiciary. Mike's view is also inconsistent with the views of many of his colleagues in Mississippi some of whom are signatories of a letter like this. But that is not a fair basis to find him "not qualified" for the judicial position to which he has been nominated.

These are matters about which reasonable persons of good faith can disagree. Mike's views were shared, at least in large part, by a two-term President of the United States and by members of Congress. It is unfair to characterize those who differ on such policy matters as lacking in judicial temperament, when the real objection is to the substance of the opinion, and not to whether the person who held it could judge fairly in matters that come before him.

The ABA Standing Committee assures us that "[t]he Committee's goal is to support and encourage the selection of the best-qualified persons for the federal judiciary. It restricts its evaluation to issues bearing on professional qualifications and does not consider a nominee's philosophy or ideology." With all respect to the Committee, its evaluation of Mike Wallace could not have been based on Mike's professional qualifications. This evaluation was obviously based solely on Mike's perceived philosophy and ideology, and it does not deserve serious consideration by this Committee.

My personal and professional experience with Mike Wallace convinces me and, I believe, my fellow former bar presidents that Mike possesses demonstrated judicial temperament, and that he would judge fairly and without favor the matters that come before him.

In addition to writing against the back drop of a Past President of The Mississippi Bar, I am also a Past President of the American Board of Trial Advocates (ABOTA) – a "by invitation" organization that is composed of plaintiff and defense lawyers in civil practice who come from both major political parties, and I am the current State Delegate to the ABA House of Delegates from Mississippi. I urge your Committe to confirm Michael B. Wallace to a judgeship on the United States Court of Appeals for the Fifth Circuit.

Very truly yours,

W. Scott Welch, III

cc: The Honorable Patrick J. Leahey (via facsimile, (202) 224-9516)
Ranking Member, Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, D.C. 20510

Office of Legal Policy (via facsimile, (202) 514-5715)

STATE OF CONNECTICUT
SUPERIOR COURT

HON. GARY J. WHITE
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July 14, 2006

The Honorable Alan Specter
Chairman - Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: The Honorable Vanessa Bryant

Dear Chairman Specter:

I am writing to you in support of my friend and colleague, Vanessa Bryant, who is a candidate for a seat on the Federal District Court for the District of Connecticut. I have known Judge Bryant for more than eight years both personally and in her professional career. I can say without hesitation that she is intelligent, industrious and well organized. She is experienced both as an attorney and as a judge in a wide range of substantive law areas and has earned respect within the legal profession and the community at large.

In her tenure as a Judge of the Superior Court in Connecticut, Judge Bryant has served as the Administrative Judge for the Judicial District of Litchfield as well as the Presiding Judge for Civil Matters in the Judicial District of Hartford. These are not easy jobs. Each of these positions carries with it supervisory authority over other judges, administrative responsibilities and requires solid knowledge of a wide range of legal issues. It is no accident that Judge Bryant has served as a leader within the judiciary. She is a very capable person who inspires confidence in others.

Judge Bryant is also person of strong character. She is not intimidated by what other people say and does her best to ensure that in her courtroom all litigants receive equal justice based on the facts and the law. Judge Bryant is firm, flexible and compassionate in rendering her judgments.

I strongly recommend that the Judiciary Committee approve Judge Bryant's candidacy. If she is approved, she will be a valuable asset to the Federal Judiciary and will serve with distinction for many years to come.

Very truly yours,

Gary White

Hon. Gary J. White
Judge, Superior Court

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