AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

S. Hrg. 111–1037

NOMINATIONS OF HON. DANA KATHERINE BILYEU, MICHAEL D. KENNEDY, HON. DENNIS P. WALSH, MILTON C. LEE, JR., JUDITH ANNE SMITH, AND TODD E. EDELMAN

HEARING

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

APRIL 20, 2010

NOMINATIONS OF HON. DANA KATHERINE BILYEU AND MICHAEL D. KENNEDY TO BE MEMBERS, FEDERAL RETIREMENT THRIFT INVESTMENT BOARD; HON. DENNIS P. WALSH TO BE CHAIRMAN, SPECIAL PANEL ON APPEALS; MILTON C. LEE, JR., JUDITH ANNE SMITH, AND TODD E. EDELMAN TO BE ASSOCIATE JUDGES, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Available via the World Wide Web: http://www.fdsys.gov/

Printed for the use of the Committee on Homeland Security and Governmental Affairs

U.S. GOVERNMENT PRINTING OFFICE

57–326 PDF WASHINGTON : 2011

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

JOSEPH I. LIEBERMAN, Connecticut, *Chairman*

CARL LEVIN, Michigan
DANIEL K. AKAKA, Hawaii
THOMAS R. CARPER, Delaware
MARK L. PRYOR, Arkansas
MARY L. LANDRIEU, Louisiana
CLAIRE McCASKILL, Missouri
JON TESTER, Montana
ROLAND W. BURRIS, Illinois
EDWARD E. KAUFMAN, Delaware

SUSAN M. COLLINS, Maine
TOM COBURN, Oklahoma
SCOTT P. BROWN, Massachusetts
JOHN McCAIN, Arizona
GEORGE V. VOINOVICH, Ohio
JOHN ENSIGN, Nevada
LINDSEY GRAHAM, South Carolina

MICHAEL L. ALEXANDER, *Staff Director*
KRISTINE V. LAM, *Professional Staff Member*
LISA M. POWELL, *Staff Director, Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia*
BRANDON L. MILHORN, *Minority Staff Director and Chief Counsel*
JENNIFER L. TARR, *Minority Counsel*
JENNIFER A. HEMINGWAY, *Minority Staff Director, Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia*
TRINA DRIESSNACK TYRER, *Chief Clerk*
PATRICIA R. HOGAN, *Publications Clerk and GPO Detailee*
LAURA W. KILBRIDE, *Hearing Clerk*

VerDate Nov 24 2008 09:48 Aug 03, 2011 Jkt 057326 PO 00000 Frm 00002 Fmt 5904 Sfmt 5904 P:\DOCS\57326.TXT SAFFAIRS PsN: PAT

CONTENTS

	Page
Opening statements:	
Senator Akaka	1
Senator Voinovich	2
Prepared statements:	
Senator Akaka	29
Senator Voinovich	30

WITNESSES

TUESDAY, APRIL 20, 2010

Hon. Dana Katherine Bilyeu to be a Member, Federal Retirement Thrift Investment Board:	
Testimony	3
Prepared statement	39
Biographical and financial information	42
Letter from the Office of Government Ethics	55
Responses to pre-hearing questions	56
Michael D. Kennedy to be a Member, Federal Retirement Thrift Investment Board:	
Testimony	5
Prepared statement	63
Biographical and financial information	65
Letter from the Office of Government Ethics	75
Responses to pre-hearing questions	76
Hon. Dennis P. Walsh, to be Chairman, Special Panel on Appeals:	
Testimony	7
Prepared statement	84
Biographical and financial information	87
Letter from the Office of Government Ethics	99
Responses to pre-hearing questions	101
Responses to post-hearing questions for the Record	108
Hon. Eleanor Holmes Norton, a Delegate in Congress from the District of Columbia:	
Testimony	16
Milton C. Lee, Jr., to be an Associate Judge, Superior Court of the District of Columbia:	
Testimony	18
Prepared statement	110
Biographical and financial information	112
Responses to post-hearing questions for the Record	136
Judith Anne Smith to be an Associate Judge, Superior Court of the District of Columbia:	
Testimony	19
Prepared statement	137
Biographical and financial information	138
Responses to post-hearing questions for the Record	152

VerDate Nov 24 2008 09:48 Aug 03, 2011 Jkt 057326 PO 00000 Frm 00003 Fmt 5904 Sfmt 5904 P:\DOCS\57326.TXT SAFFAIRS PsN: PAT

Page

Todd E. Edelman to be an Associate Judge, Superior Court of the District of Columbia:
Testimony 21
Prepared statement 153
Biographical and financial information 154
Responses to post-hearing questions for the Record 174

APPENDIX

Hon. Harry Reid, a U.S. Senator from the State of Nevada, prepared statement 33
Paul Strauss, U.S. Shadow Senator for the District of Columbia, prepared statement 34

NOMINATIONS OF HON. DANA KATHERINE BILYEU, MICHAEL D. KENNEDY, HON. DENNIS P. WALSH, MILTON C. LEE, JR., JUDITH ANNE SMITH, AND TODD E. EDELMAN

TUESDAY, APRIL 20, 2010

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:07 p.m., in room SD–342, Dirksen Senate Office Building, Hon. Daniel K. Akaka, presiding.

Present: Senators Akaka and Voinovich.

OPENING STATEMENT OF SENATOR AKAKA

Senator AKAKA. This hearing will come to order.

Good afternoon and welcome to all of you. Today, the Committee on Homeland Security and Governmental Affairs meets to consider the nominations of Dana Bilyeu and Michael Kennedy to be Members of the Federal Retirement Thrift Investment Board (FRTIB) and Dennis Walsh to be Chairman of the Special Panel on Appeals. On the second panel, we will consider nominations for the District of Columbia Superior Court.

My friend, Senator Reid of Nevada, is unable to join us today, but he submitted a statement of introduction and support for Ms. Bilyeu that will be placed, without objection, at the appropriate place in the record.[1]

The Federal Retirement Thrift Investment Board was established in 1986 by legislation modernizing the Federal retirement system and creating the Thrift Savings Plan (TSP). The Board administers the TSP, which is a retirement savings plan similar to a 401(k) plan for Federal employees as well as military service members.

Ms. Bilyeu is well qualified to join this Board. She has decades of experience with retirement funds and currently is Executive Officer of the Public Employees Retirement System of Nevada. In that role, she is responsible for fund management, including investment oversight.

Mr. Kennedy also has strong credentials. He is Trustee for the Employees Retirement System of Georgia pension fund, a position he has held for over a decade already. He also has spent many

[1] The prepared statement of Senator Reid appears in the Appendix on page 33.

VerDate Nov 24 2008 09:48 Aug 03, 2011 Jkt 057326 PO 00000 Frm 00005 Fmt 6633 Sfmt 6633 P:\DOCS\57326.TXT SAFFAIRS PsN: PAT

years in the private sector and currently is a senior client partner at an executive recruiting firm in Atlanta.

The Special Panel on Appeals resolves disagreements between the Merit Systems Protection Board (MSPB) and the Equal Employment Opportunity Commission (EEOC). These disagreements arise on occasion in mixed cases where an employee appeals a personnel action to the MSPB and also petitions the EEOC, alleging that the action was based on discrimination.

Mr. Walsh is a distinguished attorney who currently serves as the Associate General Counsel of the Federal Labor Relations Authority. Prior to that, he spent 20 years working at the National Labor Relations Board and served both as a member and as Deputy Assistant General Counsel.

I am impressed with the qualifications of the nominees before us and am confident that, if confirmed, they will have much to offer the Federal Government.

I want to congratulate all three of you on your nominations and welcome you and your loved ones to the Committee today. I understand that you have some family and friends in the audience, and I can hear them, too. [Laughter.]

I want to give you the opportunity to introduce them to the Committee. Ms. Bilyeu, I would like to start with you and your introductions.

Ms. BILYEU. Senator Akaka, my mother, Laurel Sammons, and my sister, Brooke Nielsen, are with me today in the audience.

Senator AKAKA. Thank you. Mr. Walsh.

Mr. WALSH. Thank you, Senator Akaka. With me today is my wife, Barbara A. O'Neill, who is a prominent labor attorney and long-time public servant with the National Labor Relations Board, sitting behind me.

Senator AKAKA. Welcome. Mr. Kennedy.

Mr. KENNEDY. Senator Akaka, I do not have anyone with me today, so I am flying solo.

Senator AKAKA. Thank you. Aloha again to you and your families and your supporters, and welcome. You must be very proud of your loved ones and what they have accomplished.

Now let me call on my good friend and partner here. We have worked so well together over the years. Senator Voinovich and I have sat on the Committee for many of those years. Senator Voinovich is a true leader in Federal workforce issues and has demonstrated his commitment during his time on this Committee to improving all aspects of our Federal workforce.

Senator Voinovich, would you like to make an opening statement at this time?

OPENING STATEMENT OF SENATOR VOINOVICH

Senator VOINOVICH. Thank you, Senator Akaka. The two of us have spent a lot of time together over 10 years working on human capital and trying to create an opportunity where we can keep the best and brightest and attract those that we would like to see come into government.

Senator Akaka has really done a wonderful job of introducing all of you. To our TSP nominees, you are coming at a challenging time, but both of you have excellent credentials for that job, and I appre-

ciate your willingness to serve, and I appreciate your families and the sacrifice they are going to make so you can serve.

Mr. Walsh, I would like to recognize the fact that you are willing to take on this job, in spite of the fact that you are not going to get paid—because under the rules, you cannot receive pay for two jobs—because you think it is going to make a difference for our country, so I thank you very much for your service.

Senator Akaka, thank you.

Senator AKAKA. Thank you, Senator Voinovich.

Our nominees have filed responses to biographical and financial questionnaires and answered prehearing questions submitted by the Committee. Without objection, this information will be made a part of the hearing record, with the exception of the financial information, which is on file and available for public inspection at the Committee offices.

Our Committee rules require that all witnesses at nomination hearings give their testimony under oath. Therefore, I ask all of the witnesses to please stand and raise your right hand.

Do you swear that the testimony you are about to give this Committee is the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. BILYEU. I do.

Mr. KENNEDY. I do.

Mr. WALSH. I do.

Senator AKAKA. Thank you. Let it be noted in the record that the witnesses answered in the affirmative.

Ms. Bilyeu, will you please proceed with your statement.

TESTIMONY OF HON. DANA KATHERINE BILYEU[1] TO BE A MEMBER, FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Ms. BILYEU. Good afternoon and thank you, Senator Akaka, Ranking Member, and Committee Members for holding the hearing today. My name is Dana Bilyeu, and I am honored to appear before you as a nominee to the Federal Retirement Thrift Investment Board.

I am deeply grateful to President Obama for his confidence in me for this position. I also want to express my thanks and gratitude to Majority Leader Reid for his trust and support in recommending me to the President for nomination to this important post.

Before I start, I do want to thank my husband, Lindsay, and my son, Mateo, for their continuing support both in our family life and for my professional pursuits. Due to scheduling conflicts, namely they are both in school full time, they were unable to attend today's hearing. As I indicated previously, both my sister and my mother are with me today. They both inspire me to work to my greatest capacity, a trait that I learned through keen observation of both of them as they made their way through their personal and professional careers. My father, Daniel Sammons, died in February of this year, and it is in his honor that I speak today.

Should I be confirmed, I look forward to working with the other members of the Federal Retirement Thrift Investment Board and

[1] The prepared statement of Ms. Bilyeu appears in the Appendix on page 39.

with the dedicated staff of the agency to further the policy goals for the Thrift Savings Plan, as it is a critical component of the retirement security for Federal employees. If confirmed, I will draw on my 20 years of experience in the retirement industry to fulfill my obligation to the members of Thrift Savings Plan as a good steward of the investment policy of the plan, providing low-cost, high-quality, broadly based investment options for the members.

My experience as a retirement professional managing pension assets for members and beneficiaries of the Nevada pension fund will provide a complementary perspective on retirement financing and investment vehicles for the Board. I began my career in the retirement sector as General Counsel, moving on to manage operations, outreach, education, and benefits for a diverse population of employees. In my current capacity as the Executive Officer, I am responsible for investment policy development, asset allocation recommendations, and risk management. I spend the lion's share of my average day focused on the same issues that face individuals participating in the Federal Thrift Savings Plan.

I have had an opportunity since my nomination to learn more about the Thrift Investment Board, including the statutory mission, activities, and current investment policy framework within which the various investment vehicles for Federal employees have been crafted. If confirmed, I will work hard to continue the positive leadership already in place for this program.

I have a great deal of experience working with a variety of professionals responsible for managing retirement assets for others as well as in the education sector within our industry. Now, more than ever, given the volatility our Nation has seen within the investment markets in the most recent market cycle, it is imperative that the financial literacy efforts of the agency be continued. Financial literacy allows participants in the plan to evaluate their own risk tolerance and to make informed investment choices that match that personal risk tolerance.

I understand that the Office of Personnel Management is primarily responsible for educating the Federal workforce as to the nature of the benefits available to Federal employees, but the efforts of the Thrift Investment Board and staff in providing tools for employees to better understand the fund options available to them focus employees on the need to set aside funds today to help finance their futures in a manner that best suits the employees' own goals.

Because the Thrift Savings Plan is a defined contribution plan, the most important challenge facing the agency today is the need to increase participation in the program in all employment sectors, but particularly for our military. Congress has provided a significant tool to aid this effort in allowing an immediate agency match as an incentive to employees to encourage participation, as well as automatic enrollment. If confirmed, I will continue to emphasize the efforts of the Board to educate the non-participating workforce and to provide appropriate tools for the participating population to make informed investment choices based on their individual goals.

I believe my background and experience have prepared me to become a valuable and positive member of the Thrift Investment Board, and I would like to thank the Committee for considering my

nomination. If confirmed, I look forward to working with the Members of this Committee, the Committee staff, and Congress as a whole.

I would be happy to answer any questions that the Committee may have.

Senator AKAKA. Thank you. Thank you very much for your statement, Ms. Bilyeu.

Mr. Kennedy, will you please proceed with your statement.

TESTIMONY OF MICHAEL D. KENNEDY[1] TO BE A MEMBER, FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Mr. KENNEDY. Mr. Chairman and distinguished Members of the Committee, I am honored to appear before you today as a nominee to the Federal Retirement Thrift Investment Board. I am deeply humbled by the confidence that President Obama has shown in me with this nomination.

As you know, the FRTIB was established to provide guidance and oversight for the Thrift Savings Plan, the primary pension fund for Federal employees. If confirmed, I look forward to working with the staff and participants in continuing to fulfill the mission of FRTIB while strengthening the organization.

I believe I was nominated for this position due to my extensive financial services background and pension fund experience. For the past 10 years, I have had the honor to represent the citizens of the State of Georgia as a Trustee for the Employees Retirement System (ERS) of Georgia. With assets of approximately $14 billion, ERS has administered benefits to over 130,000 active employees and 52,000 retirees. During my tenure on the Board, I have served as a member of the Investment Committee. For 5 years, I served as Board Chairman.

Over this past 10 years, we have worked closely with our staff in enhancing our communications with participants in the plan. This has been done through the implementation of an effective call center as well as a revised and more interactive Web site. We have provided greater access to participants regarding retirement planning and education. Furthermore, we have upgraded our technology, which has allowed ERS to operate in a more efficient manner. Finally, we have attracted stronger and more experienced talent to the organization, which will benefit ERS long-term.

As an ERS Trustee, I have had the opportunity to become involved in several national pension fund organizations such as the National Association of State Retirement Administrators (NASRA) and the National Association of Securities Professionals (NASP). My involvement in these organizations has allowed me to interact with trustees across the country and learn about industry trends. This involvement has also allowed me to develop best practices, which we have implemented back in the Georgia system. All of these experiences will be beneficial in my involvement with FRTIB, if confirmed.

In the first part of my professional career, I developed a broad background in the financial services industry. I started my career as an investment analyst at J.P. Morgan in New York, where I

[1] The prepared statement of Mr. Kennedy appears in the Appendix on page 63.

analyzed bank and savings and loan stocks for portfolio managers. In this role, I developed a foundation for understanding equity capital markets.

After completing my MBA at Harvard, I worked as a banker at Wachovia. In this role, I learned about the various financing options for corporations. Finally, at GE Capital, I focused on areas such as private equity and mezzanine debt. In addition to the traditional equities and fixed income asset classes, I have developed extensive knowledge of alternative investments. If confirmed, these financial experiences should allow me to bring a broad perspective to my position as a Board member at FRTIB.

Currently, I am a Senior Client Partner at Korn/Ferry International in Atlanta. In my position, I conduct senior-level searches for top talent in the financial services industry. Over the past several years, I have conducted senior searches for large pension fund organizations such as the California Public Employees Retirement System (CalPERS), the California State Teachers Retirement System (CalSTRS), and the Teacher Retirement System of Texas (Texas Teachers). These searches have allowed me to gain some insight into these complex organizations while understanding the need to recruit top investment talent. If I am confirmed, my recruiting background will be helpful in my new role at the FRTIB as the organization continues to recruit and retain top-level talent.

Should I be confirmed, I will focus my efforts in three key areas: One, investment oversight; two, communications and education; and three, recruitment and retention of top talent.

Although the current investment options appear to be adequate, it is always prudent to continually review these options in light of changing financial markets. It is also prudent to analyze and review additional options in order to remain current.

Although the FRTIB does a good job in its current communications and education efforts, these areas need to be continually enhanced in order to capture new participants.

Finally, it is important to make sure that the staff at the FRTIB remains top-notch. This can be done through strategic recruiting as well as providing constructive feedback to current employees. It is important to create a welcoming culture for employees and a team-oriented environment.

I believe that my pension fund experience and financial services background have equipped me to make a positive contribution to the Federal Retirement Thrift Investment Board. If confirmed, I look forward to working with Members of this Committee and the entire Congress in helping to strengthen the FRTIB and maintain its important mission.

I would be happy to respond to any questions you may have.

Senator AKAKA. Thank you very much for your statement, Mr. Kennedy.

And now, Mr. Walsh, will you please proceed with your statement.

TESTIMONY OF HON. DENNIS P. WALSH[1] TO BE CHAIRMAN, SPECIAL PANEL ON APPEALS

Mr. WALSH. Thank you. I am honored to be appearing before this Committee as the President's nominee for the position of Chairman of the Special Panel on Appeals. I would like to thank you, Senator Akaka and Senator Voinovich, and the other Members of the Committee for this opportunity to appear before you and to be considered for this very important position. I would also like to thank my wife, who I have already introduced, Barbara O'Neill, who has supported me throughout my career in the Federal Government, and our two children, Steven, who is a sophomore in college, and Rose, a freshman in high school, and as educational as this experience would have been for them, we preferred for them to be in class, as well, today.

As you know and as you have described very aptly, the Chairman of the Special Panel on Appeals is a position established by the Civil Service Reform Act of 1978 to address certain mixed cases that involve issues concerning both merit systems principles and anti-discrimination principles as applied to Federal employees. If a Federal employee appeals such a case to the Merit Systems Protection Board and the MSPB decides the case, the employee can subsequently appeal the decision regarding the discrimination claim to the Equal Employment Opportunity Commission. If the EEOC issues a decision that differs from the MSPB's decision as to the discrimination claim, it refers the case back to the MSPB. The MSPB can concur in the EEOC's decision at that point, which makes it a final decision subject to judicial review.

But if the MSPB determines that the EEOC's decision conflicts with merit systems rules or laws, or that it did not have sufficient evidence in the record in applying those rules, it must certify the case to the Special Panel on Appeals. That somewhat complex procedure is where this position comes into play.

The Chairman of the Special Panel, a presidential appointee under the Civil Service Reform Act, convenes a Special Panel, consisting of himself or herself, a member of the MSPB, and a Member of the EEOC. The Special Panel has 45 days to consider the case and must decide within that time period if indeed the EEOC's decision is in violation of merit systems rules or did not apply them correctly to the record. In making such a decision, the Special Panel must give due deference to the MSPB on issues involving merit systems principles and to the EEOC on anti-discrimination principles.

In a nutshell, Senators, that is the position which the President has asked me to assume. I believe I am well positioned to undertake this responsibility because of my extensive experience as an adjudicator of labor cases at the National Labor Relations Board (NLRB), my experience as a Federal manager at the NLRB, and my present position as the Deputy General Counsel at the Federal Labor Relations Authority (FLRA).

As a member of the NLRB, I was called upon to decide cases involving labor law issues under the National Labor Relations Act as part of a politically divided yet collegial body. Our job was to meld

[1] The prepared statement of Mr. Walsh appears in the Appendix on page 84.

our various views together and decide cases as expeditiously as possible. The job of the Chairman of the Special Panel on Appeals, likewise, is to work together with panel members who may have disparate points of view and to issue a decision within a very tight time frame.

My priority as a decisionmaker at the NLRB was always to decide cases quickly, while at the same time addressing all of the issues thoroughly and fairly. Those skills should serve me well if I am confirmed as Chairman of the Special Panel. As both a Chief Counsel and a Member of the NLRB, I was often confronted with issues involving both merit systems and anti-discrimination principles since I was responsible for managing my own Federal staff and also had co-responsibility with the other Board Members and the General Counsel for overall management at the NLRB.

And finally, in my current position as Deputy General Counsel at the FLRA, I am responsible for the overall management of a nationwide field staff of Federal employees. In this position, therefore, I am becoming even more familiar with the merit systems and anti-discrimination principles that the Chairman of the Special Panel on Appeals is charged with addressing.

The main priority of the Special Panel on Appeals is to decide cases presented to it fairly and expeditiously within a tight time frame. The statutory procedures that result in cases being presented to the Special Panel are complex. That is because those procedures are the product of a congressional compromise that was designed to maintain a delicate balance between merit systems and anti-discrimination principles by providing a third-party administrative tribunal that can reconcile those principles in a way that preserves the authority of both the MSPB and the EEOC over the areas in which each has the greatest expertise.

It is, therefore, important to have fair and impartial decisionmakers on the Panel who understand the need both for careful legal rationales and expeditious decisions. I believe I have demonstrated my ability to accomplish both of those objectives in my career as an adjudicator of labor cases.

I thank this Committee for its consideration of my nomination, and I, of course, will be pleased to answer any questions that you may have.

Senator AKAKA. Thank you very much, Mr. Walsh, for your statement.

I will begin with the standard questions this Committee asks of all nominees and ask you to answer these questions verbally.

Is there anything you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. WALSH. No, sir.

Ms. BILYEU. No, sir.

Mr. KENNEDY. No, sir.

Senator AKAKA. Do you know of anything, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Mr. WALSH. No, sir.

Ms. BILYEU. No, sir.

Mr. KENNEDY. No, sir.

Senator AKAKA. Finally, do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted Committee of Congress if you are confirmed?

Mr. WALSH. Yes, sir.

Ms. BILYEU. Yes, sir.

Mr. KENNEDY. Yes, sir.

Senator AKAKA. Thank you very much for your responses.

I have some questions here for you. This question is for both Ms. Bilyeu and Mr. Kennedy. You both have distinguished careers and serve on State pension boards that make investment and policy decisions to provide for public worker retirement. As you know, the Federal Retirement Thrift Investment Board makes similar decisions that affect millions of Federal employees. Please discuss how your experience has prepared you to serve on this Board. Ms. Bilyeu.

Ms. BILYEU. Thank you, Senator Akaka. My experience in the managing of the Public Employees Retirement System in Nevada has prepared me, I think, to be a major contributor to the Thrift Savings Plan for the Federal workers in that we make investment decisions all the time. We manage investment professionals. We monitor return numbers. We monitor fees, all of the very same things that this Board will be doing on behalf of those that are participating in the various funds approved by Congress. From that perspective, being able to lend that expertise to this Board, I think, will allow us to provide a greater depth of experience to the Board over time.

Senator AKAKA. Mr. Kennedy.

Mr. KENNEDY. Yes, Senator Akaka, I think there are several areas, and I may have mentioned some in my opening statement, but I think from a communications standpoint, I certainly have been involved in that area as a Trustee of the State of Georgia. In addition, education, coming up with creative ways to educate some of the participants in the plan about investments and also just about retirement planning in a general sense. And then third, as Ms. Bilyeu pointed out, the oversight of investments. We certainly have a great deal of experience in that regard.

The other factor is that she and I have both been involved in several national public pension fund organizations, so therefore, we have been able to develop a network of other people leading to best practices and things of that nature.

So I think those are some of the things that we would be able to bring to the FRTIB from our State perspectives.

Senator AKAKA. Thank you very much.

Mr. Walsh, you have a long record of service at the NLRB which administers the National Labor Relations Act, the law governing relations between unions and private sector employers. You already touched on this, but I would like you to discuss how your experience has prepared you for the Special Panel on Appeals and what you will do to further develop your expertise in Federal employment and discrimination law.

Mr. WALSH. Thank you, Senator. Yes, in terms of my experience, I think that in some ways I am uniquely positioned for the Chairman of the Special Panel position in the sense that it was my role

on the National Labor Relations Board to work with other decision-makers to carefully craft decisions on labor law issues in an expeditious way, which is, in general, of course, the job of the Chairman of the Special Panel.

In terms of expertise in Federal merit systems and anti-discrimination law, as I said, I have had experience with it as a manager in a Federal agency, and I am now, as a manager in an advisory capacity at the Federal Labor Relations Authority, learning more and more about Federal service law and the principles that apply to Federal employees. There is also staff assistance available to the Chairman of the Special Panel at both the EEOC and the MSPB, and that will be my first priority, to draw upon the vast experience at those two agencies to educate myself even more thoroughly on civil service principles as well as anti-discrimination principles so that I will be ready whenever a case comes before the Special Panel.

Senator AKAKA. Thank you, Mr. Walsh. Ms. Bilyeu and Mr. Kennedy, as you both know, I am a strong advocate for improving financial literacy. Will you please give specific examples of the steps you will take as a Board member to increase participants' education about their investment options?

Ms. BILYEU. Senator Akaka, the first step, if we are confirmed in these positions, that I would want to do is to take a very in-depth look at what is the financial literacy education program that is currently in place at the TSP, and I know that there have been some broad steps taken there, as well as making some of their tools a little bit more interactive for individuals.

I think the first step that I would want to look at implementing is broadening how we address those that are non-participants in the program, particularly those in the military. As I indicated in my opening statement, those that are at the beginning of their careers, those that are very early on, 18, 19, and 20-year-olds, often are those that have the hardest time deciding to participate in these programs, and they are actually the group that needs to start participating early, and our military, I think, is a great example of that. We have a very young military, and those that need that participation, we will be focusing on that.

Financial literacy is very difficult to strike the right balance between how much information you give them and how careful you are not to lead them to make particular choices. For me, financial literacy means being able to have the individual be able to assess what their own risk tolerance is and to learn about the various risks of the funds as they go forward. So introducing a risk component to the education process is something that I would want to see happen.

Senator AKAKA. Thank you. Mr. Kennedy.

Mr. KENNEDY. And just to build on Ms. Bilyeu's comments, which I agree with wholeheartedly, I think there are several things that the FRTIB has already started to implement that will help in terms of communications within the financial literacy area. Specifically, they have been working to enhance the Web site to make it more interactive as a way to get the message out to more and more people, and I think that will be something that we will continue to work with the staff to continue to develop going forward.

Second is in the area of the call centers because they have actually set those up, and it is another mechanism specifically they have in order to communicate with current participants and hopefully with new participants. As Ms. Bilyeu pointed out, I think one of the challenges that the FRTIB and TSP will be confronted with is continuing to bring new plan participants into the plan. So that is something that will be a goal of mine as well as, I think, of hers going forward.

Senator AKAKA. Thank you very much.

Ms. Bilyeu, in your answer to this Committee's prehearing questionnaire, you identified investment performance oversight as an area you plan to focus on, if confirmed. Please explain why performance oversight is important to the Thrift fund and its participants. I just want to warn Mr. Kennedy that I am going to ask you for a comment on that, too. Ms. Bilyeu.

Ms. BILYEU. Senator Akaka, from the experience that I have seen, both in my current professional career and after review of the funds that are available in the Thrift Savings Plan, you want to make sure when you are using even index funds, which is what is used primarily at the TSP, that your investment managers are following all the terms and conditions that have been set for them. There are a lot of layers to that in the investment world, and from my perspective, as fiduciaries to the fund, it is our obligation to ensure that those that are actually doing the investments on behalf of the individuals have very clear responsibilities to report to us how they are doing. Any of their potential issues that may come up, we should know about those ahead of time.

So it is about ensuring that those that have been charged with the obligation to actually invest the funds on behalf of the individual members are doing what they are supposed to do, and as a fiduciary, I think that is one of my major goals.

Senator AKAKA. Mr. Kennedy.

Mr. KENNEDY. Just to build on that comment, I would continue to work and sort of monitor and oversee not only the performance of the investment management options that are in the program, but the stability of the investment management firms providing the mutual funds or whatever the various options are. We live in a very rapidly changing financial environment. There is a great deal of consolidation within the financial services industry. Many of the firms, as you know, continue to merge and things of that nature. So we really need to have an understanding and feel comfortable that the investment management firms that we do employ to provide the options remain strong, as well as some of the comments that Ms. Bilyeu made.

Senator AKAKA. Thank you very much. Senator Voinovich.

Senator VOINOVICH. Mr. Walsh, I think you are in great shape. Senator Akaka asked some good questions. I am going to concentrate on Ms. Bilyeu and Mr. Kennedy, so you can breathe easy.

Mr. WALSH. Thank you. [Laughter.]

Senator VOINOVICH. First of all, Ms. Bilyeu, you have a husband and a son named Mateo?

Ms. BILYEU. Mateo is my son.

Senator VOINOVICH. Bilyeu, it is an interesting name. What derivation is that, do you know?

Ms. BILYEU. That is a good question, Senator Voinovich. I would be happy to get back to you—— [Laughter.]

Senator VOINOVICH. It is going to have a lot to do with this job. [Laughter.]

Ms. BILYEU. I believe that it is Cajun derivation. It is a French derivation that has been misspelled over time, and so we believe the background is Cajun.

Senator VOINOVICH. Well, you will have to excuse me because my parents were first generation, and the first question that was always asked at the table was, what is their ethnic background? So I play games guessing people's background.

You both have a tough job. We do not know where the markets are going. Can you share with me who the managers are for the respective funds, and what qualifications do you have and how would you monitor their performance? In other words, I think many believe that we have a bunch of people at the Thrift Board that are looking at various stocks and deciding on how the TSP should be invested, when actually what the TSP does is hire some firms for this function and then they kind of oversee what they are doing. I would like your opinion on how do you judge the performance of those people and how do you make sure that the TSP is not going down the wrong track.

Ms. BILYEU. Senator Voinovich, Senator Akaka, from my perspective, when you are looking at investment management firms of any type, those that are currently hired by the TSP or, for instance, my own pension fund, there are various types of management. When you have index managers, which are passive managers managing against indexes themselves, the first thing you want to do is make sure that they are tracking the index appropriately, that they are following the mandate that has been given to them, and that is a significant issue for us because tracking error always means performance changes.

You want to make sure that the team that is involved in the oversight of the account is maintained; it stays in place; it is not one in which there are a lot of changes. And as Mr. Kennedy indicated, you want to make sure that there is stability in those firms——

Senator VOINOVICH. I think there are two managing firms now for them.

Ms. BILYEU. I believe one of them is Barclays Global Investors (BGI), which is the most significant money manager in the country at this point. We actually refer to them sometimes as the 800-pound gorilla in the investment management world because they are such a very significant firm. It is a very strong firm, with very strong performance, particularly in the index world, which is where the lion's share of these funds are.

Senator VOINOVICH. Mr. Kennedy, please go ahead and comment.

Mr. KENNEDY. Yes. And just to pick up on that, I really do think we need to underscore the stability factor, as well, because certainly we will work with the staff at the FRTIB in reviewing the investment returns for the various funds and making sure there is not a drift from being the passive style that they selected. So tracking the mandates is going to be vitally important. But I do think it is going to be equally as important to make sure that we have

a great deal of stability for the individuals who are working with the FRTIB on the specific choices so there is not a lot of turnover, because typically when there is turnover in these firms, then that could lead to some performance issues. So I think from that standpoint, it will be important for us to make sure that there is a remaining stability there.

Senator VOINOVICH. Have you had an opportunity to review their performance in the last 2 or 3 years, and is there anything that causes you to have some concern about what we are doing?

Ms. BILYEU. Senator Voinovich, from the perspective of the passive mandates that they have, my personal impression of them is that they have tracked their indexes very well. Now, obviously, the indexes themselves have suffered as everything has suffered in the financial downturns. But being able to capture those returns on the way down and then again on the way back up, I believe that they have been capable of doing that, and there has not been, other than mergers, as Mr. Kennedy spoke of, really not a lot of turnover within those firms.

Particularly BGI—it is actually called BGI BlackRock, or I cannot remember the merged name at this point—it is a very significant firm, and so from my perspective, I would want to make sure that the index team that is in place handling these funds on behalf of the members of the Federal Thrift Savings Plan has them first and foremost in their minds as they move forward with their mandates.

Senator VOINOVICH. Great. So basically, from your perspective, our funds have come back pretty much like some of the other similar funds? They have done a pretty good job?

Ms. BILYEU. I would say, yes, they have tracked exactly basically what the market has done. The market itself is, of course, extremely volatile, and so from my perspective, I would want to look even a little bit closer at that to see how well the individuals who participate in those funds have actually done because what you see happening with a lot of individual investors is the funds may do very well, but the individuals themselves within them, because they become concerned about what is going on in the markets, may pull out at the wrong times, get back in at the wrong times. So there is probably a difference between how your individual investors are doing versus how the index funds themselves are doing.

Senator VOINOVICH. That gets into the whole issue of the Office of Personnel Management's (OPM) responsibility for education. Both of you would probably agree that OPM needs to do much more work in that area so people are a little more sophisticated in terms of what they are doing, particularly given our current climate.

Ms. BILYEU. Everyone needs to do a lot more work in education. All of us do.

Senator VOINOVICH. One of the things that you are going to find is you are going to be pestered by various people in terms of adding to the options that are available. Senator Akaka and I faced real pressure to add Real Estate Investment Trusts (REITs) to the TSP. They really lobbied, very heavy lobbying, and the Board said no to it, noting that there were some options that were available within existing TSP funds for the REITs, but the fact was they did not

think we ought to get into it. I guess as I look back on that, it was a very good decision by the Board.

If you look at the portfolio that is available—you mentioned you are both involved in your pension plans, but you are also involved in your deferred compensation programs, too, in your respective States—do you think that we have enough options available right now for our Federal employees?

Mr. KENNEDY. I would probably say we do, and I am comfortable with the options that we currently have and the composition of the TSP. And I guess the reason why I say that is you want to make sure that you provide enough options but not too many options because when you start to provide too many options, then you really need to do a better job educating the participants about what these new options are. So I think it adds a whole different sort of element to the process as you start to add a great deal of additional options.

Now, with that said, I do think it is important for us to continue to look at new options and new ideas because things do change in financial markets. And one of the things I can sort of add to the FRTIB is the experience I have had in the alternatives investment space, and I am certainly not advocating that the FRTIB or TSP go in that direction. But as we look at things such as REITs and we look at social responsibility funds and other ideas that kind of gravitate to us, I think it will be good to be able to at least take a look at it and be able to make some pretty good decisions going forward about why we are not going to do that. So I am pretty comfortable with the line-up that we have today.

Senator VOINOVICH. Ms. Bilyeu.

Ms. BILYEU. Just adding to what Mr. Kennedy has said, the whole concept of the array of funds that you have is to allow the individuals, based on how much they want to put into those funds, to balance out what their risk tolerance is. Some of them are stock funds, some are bond funds, and some are lifestyle funds, and the idea is to be able to allow those individuals to match what they believe their risk tolerance is and what their personal investment goal is.

Right now, I think you have a broad array that does do that and allows for the diversification that is part of the entire investment process. As Mr. Kennedy said, though, you do want to continue to look at how that evolves and continues through and, of course, to always make decisions for either adding or deleting a fund through the process of where you are approaching it from the broadest possible perspective for the most people in your fund overall.

Senator VOINOVICH. The last comment, Senator, is that several years ago, we had a member of the Senate by the name of Peter Fitzgerald from the State of Illinois, a banker. I am still asking my staff to see if I could get a copy of his speech on the TSP. But one of the things he said, for all the people here who are part of the TSP program, is that the cost involved to the participants is the lowest in the country today. It is amazing. I never really appreciated that. The cost of being involved in the TSP is the lowest perhaps in the world. And it all adds up if you stay in it for many years. That is another thing, I think, that ought to be driven home

with folks, that this is a pretty good operation that they are fortunate to be a part of.

Thank you very much for your testimony.

Senator AKAKA. Thank you very much, Senator Voinovich.

Let me ask Mr. Walsh a question. The Special Panel on Appeals has issued only five decisions since 1978. What is your understanding of the role of the Special Panel on Appeals and the responsibilities of the chairman?

Mr. WALSH. Thank you, Senator. The role is really to act in a way as an intermediary and also as kind of a check. It is to ensure that both anti-discrimination principles and the civil service or merit systems principles are taken into consideration in these kinds of cases because we have two agencies, each of which has expertise in its own area. So the Special Panel's role is really to achieve parity between the principles while also preserving the authority of the two agencies over their areas of expertise.

And in terms of how many cases have been heard, it is true that there have been very few cases, but that does not necessarily mean that both the chairman and the panel do not have an ongoing role, because just the fact that this appeals process and this panel exists is a check on each agency in terms of applying the principles that are usually the expertise of the other one, to make sure, for example, the MSPB correctly applies anti-discrimination principles and the EEOC correctly applies merit systems principles. The fact that this process and this panel exists is kind of a check and a balance to make sure that happens.

Senator AKAKA. Thank you very much for your testimonies. At this time, there are no further questions. There may be additional questions for the record, which will be submitted to you in writing. The hearing record will remain open until the close of business tomorrow for Members of this Committee to submit additional statements or questions.

Ms. Bilyeu, Mr. Kennedy, and Mr. Walsh, I wish you all the best of luck as we move forward here. I would tell you that I am impressed with your backgrounds and with your testimony and look forward to moving as quickly as we can on confirmation. So thank you again, and thank your families and supporters who are here with you. Thank you very much.

Mr. WALSH. Thank you, Senator.

Mr. KENNEDY. Thank you.

Ms. BILYEU. Thank you.

Senator AKAKA. I would now like to call up the nominees for the D.C. Superior Court.

[Pause.]

Senator AKAKA. I want to welcome everyone to the second part of today's proceedings as this Committee considers the nominations of Todd Edelman, Milton Lee, and Anne Smith to be Associate Judges of the District of Columbia Superior Court.

We consistently receive excellent D.C. Court candidates nominated by the President from those recommended by the nonpartisan Judicial Nomination Commission. I am confident that, if confirmed, these nominees will join the others who have appeared before us in making valuable contributions to the District.

I would now like to welcome Congresswoman Norton to the Committee and yield for her introduction of our nominees. Congresswoman Holmes Norton, please proceed.

TESTIMONY OF HON. ELEANOR HOLMES NORTON, A DELEGATE IN CONGRESS FROM THE DISTRICT OF COLUMBIA

Ms. NORTON. Thank you, Mr. Chairman, and while I am here, may I also thank you for your long and dedicated work for us as you get to do not only this but a lot more for the District of Columbia.

And may I express my thanks especially to Senator Voinovich, who is leaving the Senate this year. Senator Voinovich has rendered especially dedicated service to the District of Columbia. He was a former mayor, and he never forgot what it was like to be mayor of a big city, and he showed every bit of it when he served on our committees and in the Senate, and I thank him personally for that service.

For you, Mr. Chairman, and Mr. Voinovich, we have three especially well qualified candidates, as you, Mr. Chairman, have already said, and I will not belabor the point except to introduce them briefly.

Todd Edelman is a clinical Professor of Law at Georgetown University Law Center. He is well qualified for the court. He has been chief of the Serious Felony Section of the Public Defender Service and has tried in the very court where he is to serve over 60 cases. He is a cum laude graduate of Yale University and was a Root-Tilden Scholar at the New York University School of Law.

Judge Milton Lee is already a judge, but he is a Magistrate Judge on the Superior Court where he would serve. He is a graduate of American University and Catholic University Law School. He, too, worked at the Public Defender Service, and I might say, Mr. Chairman, that our Public Defender Service is renowned for attracting the best and the brightest from across the country. It is the best Public Defender Service in the country. He was Deputy Trial Chief while he was there. He has been on the faculty as a professor at the District of Columbia School of Law. We are particularly grateful in the District that he has spearheaded the development of the District of Columbia Superior Court's Fathering Court Program, considering the duties he will have if he is confirmed.

And finally, Mr. Chairman, I am pleased to introduce Judge Judith Smith to you today, who is also already a judge, but a Magistrate Judge, and a graduate with high distinction from Pennsylvania State University, a Certified Public Accountant, and a graduate of Georgetown University Law Center. She has had the distinction of already serving as a law clerk to an Associate Judge on the Superior Court, so she knows the court she would serve very well. She, too, has extensive trial experience with the Public Defender Service of the District of Columbia.

I do not think you will find better qualified candidates than these to serve on our excellent Superior Court, Mr. Chairman.

Senator AKAKA. Thank you. Thank you very much, Congresswoman Norton. It is always good to see you here. We appreciate your being here today to introduce the nominees.

Ms. NORTON. Thank you, sir.

Senator AKAKA. Thank you very much.

Our nominees all have strong legal backgrounds and have devoted much of their careers to public service. Each of them has served as an attorney for the D.C. Public Defender Service. Mr. Lee has been a Magistrate Judge for the D.C. Superior Court for more than a decade, presiding over a wide range of calendars. Ms. Smith also is a D.C. Superior Court Magistrate Judge, serving in the Court's Family Division. Mr. Edelman currently is a professor in Georgetown Law's Criminal Justice Clinic, and he practiced civil litigation before that.

I believe these nominees have much to offer the D.C. Superior Court, and I hope we can act quickly to confirm them.

Senator Voinovich, do you have any statement to make?

Senator VOINOVICH. Yes. Thank you, Mr. Chairman. I want to extend a welcome to the nominees and to their families, and I thank you for your willingness to serve on the District of Columbia Superior Court.

As Senator Akaka says, we have three experienced attorneys, two of whom currently serve as Magistrate Judges, and I know it is no surprise for me to say that judges have significant responsibilities.

Mr. Chairman, I have reviewed each of the nominees' biographical questionnaires and believe each of them is well qualified to serve as Associate Judge for the Superior Court of the District of Columbia, and each of them would bring extensive legal experience to the bench. Without echoing your remarks about each of these nominees' specific qualifications, I do want to point out that they all have a history of public service as each of them has gained practical legal experience working for the District of Columbia Public Defender Service. I think it is also notable that they have each taught law students practical trial court skills in Georgetown University's law clinics. And I understand that both Judge Smith and Judge Lee have served well as Magistrate Judges, and I also note that Judge Smith hails from my home State of Ohio. It is good to have a Buckeye before me.

I look forward to hearing from each of you about the reasons why you think that you are qualified, but I already know that. I hope the Committee will vote on your nominations in the very near future. Thank you.

Senator AKAKA. Thank you very much, Senator Voinovich.

Each nominee has filed responses to a biographical and financial questionnaire submitted by the Committee. Without objection, this information will be made part of the hearing record, with the exception of the financial data, which will be kept on file and made available for public inspection in the Committee office.

Our Committee rules require that all witnesses at nomination hearings give their testimony under oath. Therefore, at this time, I ask you to please stand and raise your right hand.

Do you swear that the testimony you are about to give this Committee is the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. LEE. I do.

Ms. SMITH. I do.

Mr. EDELMAN. I do.

Senator AKAKA. Thank you. Please note for the record that the witnesses answered in the affirmative.

Judge Lee, I understand you have family here with you today. I would like to give you an opportunity to introduce them at this time.

TESTIMONY OF MILTON C. LEE, JR.[1] TO BE AN ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Mr. LEE. Thank you very much, Mr. Chairman and Senator Voinovich. It is certainly my pleasure. I am honored to be here before you today.

I would like to introduce the members of my family, and I would like to say first and foremost that I really could not be where I am today if I did not have the type of support that they have offered to me. I know they have sacrificed on many occasions so that I can be in a position to continue to serve the citizens of the District of Columbia.

Seated immediately behind me is my wife, Claudia. My sister is in the audience, as well, Sandra Baumgardner, her daughter, Deanna, and her grandson, John. My son, Joshua, is a freshman at Temple University, and he is unable to be here today because he indicated to me last week that he had study commitments and exams to take care of, and while I was a little shocked at the maturity of that response, I was very pleased by it. So he is not here. He is here in spirit, quite frankly.

I would also like to say that there are many other people in the gallery who have been supportive, as well. My staff at the courthouse has really made it a pleasure for me to serve in the capacity that I serve. My secretary, Michelle Fitzgerald, is here. My current law clerk, Sarah Acker, and my current courtroom clerk, Ronnie Mitchell, are all present, as well, and I would like to say publicly that these are the folks who are really the backbone, the workforce of the Superior Court. They often do not get the type of credit that they deserve, and so I want to publicly thank them for everything that they have done for me during my time on the court.

I would also like to thank Chief Judge Lee Satterfield, who has supported me in every endeavor since I have joined the court. Also present is Judge Emmett Sullivan from the U.S. District Court here in the District of Columbia. He is the Chair of the Judicial Nomination Commission, and that commission was responsible for forwarding my name to the White House. I would also like to thank President Barack Obama for the nomination that I received for the position of Associate Judge.

I am fortunate. I am blessed, I think, in many respects, and more than just a little humbled to be in the position to come before you on this nomination. I am born and raised here in the District of Columbia. I am educated by the city school system. I graduated from American University and received my law degree from Catholic University. Upon graduation, I joined the Public Defender Service here in the District of Columbia and practiced with that agency for

[1] The prepared statement of Mr. Lee appears in the Appendix on page 110.

9 years in the very court that I now work with and I hope to continue to work with.

I have also been a faculty member at the University of the District of Columbia School of Law, where I have taught in the Juvenile Law Clinic, and I have transitioned over to many substantive classroom experiences, teaching evidence, criminal procedure, and criminal law, to name a few.

I joined the court in 1997 as a Magistrate Judge, and I have served in every single branch of the court, and I think that experience has served me well over the years.

One of the best experiences I have had with the court has been the work that I have had on the Fathering Court Initiative, and that is a program that is designed to help fathers coming home from a period of incarceration reunite with their families so that they are fathers in every sense of the word. We assist them in getting employment. We provide educational services and job training. We make sure that they are current on their child support, that they are reconnected with their children, and that they do not reoffend. Those are the things that this program has done over the course of the last 4 years, and I am proud to say that I have been a part of that.

My professional life has been dedicated to serving the citizens of the District of Columbia through our judicial system. If confirmed, I would be honored to be in a position to continue that service as an Associate Judge. I recognize that people come to the Superior Court at a time when there is a great deal of anxiety, when they are looking sometimes for answers, for a solution to the things that trouble them the most. I think they deserve to be treated with dignity and respect. They should have their cases decided efficiently and fairly, and we should exercise the greatest amount of professionalism in delivering that justice to them.

That is the commitment that I have made to the citizens of the District of Columbia and the commitment that I make to this Committee, and if confirmed, that is the way that I will approach delivering justice for our citizens.

I want to thank the Committee and its Members. Its staff has been very professional and courteous. They have given us every piece of assistance we could possibly ask for. I look forward to answering any questions that you may have about my qualifications to continue service as an Associate Judge.

Senator AKAKA. Thank you very much, Judge Lee. I want to say, it is good to have your family here, as well as those who support you.

Judge Smith, will you please introduce your family and continue with your statement.

TESTIMONY OF JUDITH ANNE SMITH[1] TO BE AN ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Ms. SMITH. Thank you, Senator Akaka and Senator Voinovich. I want to thank you for the opportunity to appear before you today to have you consider my qualifications for a position as an Associate Judge on the D.C. Superior Court. I am honored to be nomi-

[1] The prepared statement of Ms. Smith appears in the Appendix on page 137.

nated and want to thank the Judicial Nomination Commission, and in particular the Chair of the Commission, the Hon. Emmett Sullivan, for recommending me to the White House, and finally President Barack Obama for nominating me. I also want to thank the Senate Committee staff for their professionalism and assistance throughout this process.

Before I introduce my family, I also would like to thank Congresswoman Norton—I know she may have left already—for her kind remarks and introduction, and Chief Judge Lee Satterfield and several other Superior Court Judges for their advice and guidance.

I do want to introduce my family who traveled from Florida to be here with me today: My parents, Richard and Sarah Smith, and my sister, Christine Carter, all three of whom have set a wonderful example for me and provided their love and support.

I especially want to acknowledge my son, Jalen Pierce Smith, who turns six just next week, who is very excited about being here today. I would also like to thank my significant other, Lonnie Spencer, although he is unable to be here today.

I do also want to acknowledge my Judicial Administrative Assistant, Patricia Harris, my law clerk, Helen Pilstrom, and my courtroom clerk, Jonathan Hopkins, who have been so helpful to me in my first year and a half as a Magistrate Judge. Also, there are a number of friends, former colleagues, and role models here or watching the hearings who have supported me both professionally and personally throughout my years of public service in the District of Columbia. I truly appreciate their advice, support, and encouragement.

As Senator Voinovich noted, I was born in Columbus, Ohio, where I attended public schools. I received my bachelor's degree in accounting from the Pennsylvania State University and became a Certified Public Accountant. I worked for Price Waterhouse for a number of years in both Boston and Columbus. I then relocated here to Washington, DC, more than 20 years ago to attend Georgetown University Law Center and embark on a career in public interest law.

After graduating from Georgetown, I was fortunate to clerk for an exceptional jurist, the Hon. A. Franklin Burgess, Jr., an Associate Judge, D.C. Superior Court, for whom I have great admiration and respect.

Following my clerkship, I spent the majority of the next 15 years in public service in the District of Columbia. I served as a Special Education Attorney, a Juvenile Services Attorney, and a Supervising Attorney at the Public Defender Service (PDS) for the District of Columbia and also as an attorney for the District of Columbia Public Schools and the Office of the State Superintendent of Education for the District of Columbia. I have appeared before dozens of current Superior Court judges as well as several Federal court judges over the years as I worked on special education and juvenile justice issues.

I then had the great fortune to be appointed as a Magistrate Judge in the Family Court of D.C. Superior Court in September 2008, presiding over primarily abuse and neglect proceedings, as I still do now. In this position, I have had the privilege of serving

the citizens of the District of Columbia. If confirmed, I will continue to serve with integrity and provide fair, efficient, and respectful justice to those who come before me.

I am honored to be considered for this position and look forward to answering any questions the Committee may have about my qualifications. Thank you.

Senator AKAKA. Thank you very much, Judge Smith. I want to add my welcome to you, your family, and your supporters, as well.

Now we will hear from Mr. Edelman. Please introduce your family and then give your statement.

TESTIMONY OF TODD E. EDELMAN[1] TO BE AN ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Mr. EDELMAN. Thank you, Mr. Chairman and Senator Voinovich. I am grateful for and honored by the opportunity to appear before you today as a nominee to be an Associate Judge on the Superior Court of the District of Columbia.

I want to begin by introducing my family: My wife, Marisa Nightingale, who is directly behind me, along with our daughter, Nora, who is on the second day of her fifth birthday party today. Our son, Jacob, was not showing this body the respect that it deserved, so he is now in the hallway. [Laughter.]

My mother and stepfather, Sybil and Lewis Mitchell, are also here, up from Florida, as well as my father-in-law and mother-in-law, Stuart and Elena Nightingale. And while I have a lot of people to thank today, I know that I am sitting in front of you primarily because of my family's support, encouragement, and patience.

A number of my friends, colleagues, and students are also here in the gallery, and I would like to thank them not only for their support today, but for their inspiration and their challenges and at times their entertainment over the last 15 years.

I would also like to thank the District of Columbia Judicial Nomination Commission and Judge Sullivan for recommending me to the White House and President Barack Obama for nominating me.

And finally, I would like to thank the Committee for considering my nomination so expeditiously and the Committee staff for their hard work in preparing for this hearing on such short notice and for the courtesy they have shown me during this process.

I went to law school 15 years ago to pursue a career in public service, and I feel fortunate that I have had the opportunity to do so. I have dedicated my legal career to protecting the principles that access to justice should be equally available to everyone in our community and that the quality of representation provided in court should not depend on income, wealth, or connections.

As a public defender at the Public Defender Service and the Georgetown University Law Center's Criminal Justice Clinic, I represented indigent men and women in D.C. Superior Court for over 12 years, work that I have found to be both a daunting responsibility and a unique privilege. I have also spent much of my career teaching other public defenders and legal service providers and other attorneys and law students who work on behalf of low-income people here in Washington.

[1] The prepared statement of Mr. Edelman appears in the Appendix on page 153.

As a clinical professor at Georgetown Law, I aim to instill in my students a passion for using their law degrees to help those who need it the most. The same commitment to public service and the principle of equal justice under the law that motivated me to go to law school and to take these positions at PDS and at Georgetown has motivated me also to seek appointment to the bench.

As I contemplate the next step in my career, I cannot help but think about the way that I started my career, which was as a law clerk to Judge William Bryant in the U.S. District Court for the District of Columbia. Judge Bryant was a legendary trial lawyer, a respected and historic jurist, and, above all else, one of the warmest and kindest men I have ever met. Judge Bryant may have taught me more in that one year than I have learned since, and he set an example that I will seek to emulate should I be confirmed.

Judge Bryant was intellectually curious, committed to applying the law impartially and fairly, and dedicated to showing equal respect to all parties. If I am confirmed, after my career on the bench is over, I hope to be remembered the way Judge Bryant is remembered, as a judge who treated litigants with dignity and his role with humility.

I am quite moved to be here sitting as a nominee for a judgeship on the D.C. Superior Court. That is the court where I grew up as an attorney, where I learned much of what I know about the law and being a lawyer, about winning and losing, and about the joys and challenges of public service. I am humbled to be considered for this position, and I thank you again for considering my qualifications.

Senator AKAKA. Thank you very much, Mr. Edelman. It is wonderful to have all of your loved ones here and those who are supporting you. I am sure they are proud of all you have accomplished.

Let me continue with the standard questions this Committee asks of all nominees. I would like you to answer each of the questions.

Is there anything you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated? Mr. Lee.

Mr. LEE. No, sir, Mr. Chairman.

Senator AKAKA. Ms. Smith.

Ms. SMITH. No, sir.

Senator AKAKA. Mr. Edelman.

Mr. EDELMAN. No, Mr. Chairman.

Senator AKAKA. Do you know of anything, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated? Mr. Lee.

Mr. LEE. No, sir.

Senator AKAKA. Ms. Smith.

Ms. SMITH. No, sir.

Senator AKAKA. Mr. Edelman.

Mr. EDELMAN. No, sir.

Senator AKAKA. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

Mr. LEE. Yes, sir.

Ms. SMITH. Yes, sir.

Mr. EDELMAN. Yes, sir.

Senator AKAKA. Thank you very much.

This is to all three of you on the panel. I see that you are former D.C. public defenders. I commend your decision to serve those who may be unable to afford legal representation. How did your experience as a public defender shape your sense of justice and your approach to later work? Mr. Edelman, I would like to start with you.

Mr. EDELMAN. Thank you. Being a public defender has obviously been the bulk of the work I have done as an attorney, and it has shaped much of the way I see the law. I think the thing that has struck me above all else is the importance of having not just competent counsel, but excellent counsel representing those who are in the situation. People who are charged with crimes are facing very difficult circumstances, and many times that is appropriate, facing lengthy jail terms. It is also appropriate that for people who are in that situation, they receive counsel that is not just minimally competent by some constitutional standards, but our goal should be that everyone who is in that situation, charged with a crime, have counsel who can represent them in a way that someone watching their trial or watching those court proceedings would think, I cannot tell whether that person could afford an attorney or whether they had an attorney appointed for them. So it has very much shaped my view of the role of counsel and the importance of having counsel in those situations.

In addition, I think that being a public defender, people think of us sometimes as cynics about the system. I think it is something, those people who take on this role are actually idealists about the system, and I am an idealistic person with regard to the system, as well. I think that part of our role is to explain to our clients who may well not trust the system the importance of doing so because we need to do that so that we can do our jobs, and I think that is an important role of the judge, as well. The judge needs to earn the trust of all people appearing in front of him or her in order to play the role the judge needs to play in the system.

Senator AKAKA. Thank you. Judge Smith.

Ms. SMITH. Thank you. I do agree with the comments Mr. Edelman made, certainly, about competent counsel. I would also add that during my experience, primarily, I represented teenagers who were involved in the juvenile justice system who also had special education needs, and I had oftentimes a fairly high caseload in terms of the students I was working with.

I think one of the many things that I learned from being a public defender is that while I may have many clients, the case that the respondent had was really the one and only thing that was on his mind, and to slow down, use patience in both explaining the process to him as well as making sure that he had my full attention. I see that carry over into the work I do in the Family Court, where I often have very emotional families in front of me, and so it is very important for me to realize that while I may have more than one case on any day, it is the only case they have and it is very important for them that they have my focus and respect during those proceedings, and that is something that I find very important.

Senator AKAKA. Thank you. Judge Lee.

Mr. LEE. One of the things that I learned as a young lawyer at the Public Defender Service was the importance of representing individuals so that when they got through with their litigation, they felt like they were represented completely and they had a sense that even if the outcome was not the outcome that they wished for or desired, they had a sense of fairness about the process.

So as I have transitioned from the Public Defender Service into an academic life and now a judicial life, my goal really across the board is to make sure that people who come before me feel as though they were dealt with fairly and they understand the process by which we reached a decision, even if they may not agree with that process. And that requires that you treat people as individuals and not as cases that come before you. They are not defined solely by what they are charged with or the litigation that brings them to the court. There is a bigger picture that is required.

I think the system that we have is the greatest system in the world, and it is great because everyone takes their role seriously and they work to the best of their capability to make the results fair and just.

Senator AKAKA. Thank you.

Mr. Edelman, the role of a judge is very different from the role of an advocate and will be relatively new to you. Please discuss how you will transition to the role of an impartial decisionmaker.

Mr. EDELMAN. Thank you, Mr. Chairman. Obviously, as you pointed out, the decision to go from being an advocate, as I have been in my various jobs, and to apply for the bench is a decision to take on a different role and a broader role than I have had before. I think that the key to doing that is to seek out mentorship on the court.

There are many others on the court who have been advocates in the same sense that I have, who have been defense lawyers or public defenders, and many who have been prosecutors or litigators in private practice. All of them have made the transition, I have heard, with some bumps along the way, from beginning to look at things from the point of view of a judge rather than from an advocate, and I think in this and in other areas, the wisest course for me will be to seek out their counsel and discuss how they did it.

I know that, obviously, I am going to be approaching situations differently. I am not going to be approaching situations thinking about what is best for my client, but thinking about the interests of all parties, all litigants, and, of course, what is just, and that is a change in mindset that I will seek out counsel on.

Senator AKAKA. Thank you.

Judge Smith, as a Magistrate Judge for the D.C. Family Court, you know that courtrooms can often be emotionally charged places. How have you maintained a productive courtroom environment?

Ms. SMITH. Mr. Chairman, sometimes it is a difficult balance. We have a high volume of cases, and we have a lot of emotional families in front of us. But it is truly important to make sure, as I mentioned before, that everyone feels like their case is what my focus is at that time. And so I do my best to schedule so that I know they have the appropriate time to have their case heard and be heard, and I try to work the best I can in terms of my patience and

calmness in the hearing so that in some ways that may help calm them down.

I also think it is important that they, again, have the opportunity to be heard as well as have the process explained to them in clear, non-legal language, as many of the families certainly do not have their own knowledge of the law, and that if they need any opportunity to ask questions, they do so and consult with their counsel. So far, I feel like I have been successful in that. Thank you.

Senator AKAKA. Thank you.

Judge Lee, attention to detail is critical for any judge. If a mistake goes unnoticed, it may directly impact the life of someone appearing before you. Please describe the steps you have taken to minimize the number of errors that occur in your courtroom.

Mr. LEE. Senator, I will be the first to tell you that I am not a perfect soul, and recognizing that I am not a perfect soul means that I have to rely on others sometimes to point out what I can do better and when I have made mistakes. I work very closely with my courtroom staff, my chambers staff, to make sure that what I do is done correctly and that if there is a mistake out there, we correct it as quickly as we can.

One of the benefits of working in the Superior Court, notwithstanding how busy our courthouse is, is that our Chief Judge and our presiding judges have committed themselves to putting in place a process that minimizes those mistakes. And so every case that gets reviewed in a courtroom is reviewed by our quality control staff before entries are made in the record to make sure that it is accurate. We have a recording system that we can listen to simultaneously or contemporaneously with what goes on in the courtroom. So we are able to pick up on errors when they are brought to our attention.

These are all things that we all have to rely on because we understand that we are not perfect at what we do, but we make every effort to find a perfect result as often as we possibly can.

Senator AKAKA. Thank you very much, Judge Lee. Senator Voinovich, your questions, please.

Senator VOINOVICH. In terms of public defenders, all of you are going to have people appearing before you, and if you ascertain that the person who is appearing before you has counsel who is not competent, how will you handle something like that?

Mr. EDELMAN. It is a difficult situation because obviously there are a lot of pressures on the court in terms of getting people to go onto the list to be court-appointed counsel. I think that what many judges do in that situation is, first, ask the attorney's client, are you satisfied with the work of your attorney? In some situations, the client will respond, no, I am not, and the judge will——

Senator VOINOVICH. Would you do that right in the beginning, before the trial began?

Mr. EDELMAN. Yes, I would try to do that at the earliest possible time.

Senator VOINOVICH. OK.

Mr. EDELMAN. And the second thing I was going to say was in those situations, I think it is imperative when a judge has a concern about the quality of counsel that the concern be raised as early in the history of the case as possible so you do not get into

a situation where you have an attorney actually in a trial representing somebody, not performing competently. That puts that person at risk and puts any verdict that might be reached at risk.

Senator VOINOVICH. Ms. Smith.

Ms. SMITH. Thank you, Senator Voinovich. In echoing slightly what Mr. Edelman has said, I think it is important to reach out to the participant to determine what the issue may be. I have had one such instance where a litigant raised a question about counsel. They were confused about some things and wanted the opportunity to have the court explain it to them, which I did with parties present, and then an opportunity to say themselves whether they wanted to continue on with their counsel. As Mr. Edelman indicated, we do have mentoring attorneys, as well, and the attorneys that are on the panel have the opportunity to get additional training, if needed, if they are not up to the standards that are expected. And so there are opportunities to address that situation.

Senator VOINOVICH. Mr. Lee.

Mr. LEE. Senator, one of the important functions of, I think, judges in the system that we have, to make sure that it works at the level that we expect from it, is that everyone does what they are committed to doing. We have to have good judges. We have to have good prosecutors. We have to have good defense lawyers. And I think judges have to oversee all of that.

In our courthouse, we are, I think, in a unique position, where we have panels of lawyers who serve in each of our branches, and they have been pre-screened and they apply and they are reviewed by the judges and committees, and there are Continuing Legal Education requirements that they all must meet. These are all core or minimum requirements that we require of the lawyers that appear before us. And part of our obligation is to make sure that after they meet those minimum qualifications, they do what needs to be done on behalf of the clients for us. And if they do not, then we have to respond to that.

Senator VOINOVICH. In other words, do you have a procedure where you screen the people who would represent indigent clients beforehand? Then you have a pool of individuals that are eligible that would step forward. So there is some screening before somebody comes in.

Mr. LEE. That is absolutely correct. We refer to it as the panel system, and each branch of the court, Family Court and the Criminal Court, have panels and designated areas of representation. The lawyers apply to be on the panel. They are screened by a committee that the Chief Judge has created——

Senator VOINOVICH. This takes care of the indigent people.

Mr. LEE. Yes, it does.

Senator VOINOVICH. But you also are going to have people appearing before you who just have lousy lawyers. [Laughter.]

Mr. LEE. That happens, as well. It is not unique to those that are poor.

Senator VOINOVICH. But you still go through the process with them, are you happy with this, and so on and so forth?

Mr. LEE. That is correct. We make sure that the lawyers that come before us are lawyers that are capable of functioning at the

level required for the type of case that they have. I think that is the responsibility of every judge.

Senator VOINOVICH. Well, it seems to me that you have all had some great experiences and all seem to be fairly qualified to take the jobs that you are seeking.

Mr. Chairman, I have no further questions.

Senator AKAKA. Well, thank you very much, Senator Voinovich.

I want to thank all of you. There are no further questions at this time. There may be additional questions for the record, which will be submitted to you in writing. The hearing record will remain open until the close of business tomorrow for Members of this Committee to submit additional statements or questions that they may have for you.

It is my hope that this Committee and the Senate will be able to act quickly on your nominations. We look forward to that happening. And again, thank you very much for being here. Thank you for your families being here and your supporters, as well.

This hearing is adjourned.

[Whereupon, at 3:39 p.m., the Committee was adjourned.]

APPENDIX

STATEMENT OF DANIEL K. AKAKA

Nominations of Dennis Walsh to be Chairman, Special Panel of Appeals; Dana Bilyeu and Michael Kennedy to be Members, Federal Retirement Thrift Investment Board; Milton Lee, Judith Smith, and Todd Edelman to be Associate Judges, Superior Court of the District of Columbia

Committee on Homeland Security and Governmental Affairs

Today, the Committee on Homeland Security and Governmental Affairs meets to consider the nominations of Dana Bilyeu and Michael Kennedy to be Members of the Federal Retirement Thrift Investment Board, and Dennis Walsh to be Chairman of the Special Panel on Appeals. On the second panel, we will consider the nominations of Milton Lee, Judith Smith, and Todd Edelman to be Associate Judges on the District of Columbia Superior Court.

The Federal Retirement Thrift Investment Board was established in 1986 by legislation modernizing the Federal retirement system and creating the Thrift Savings Plan (TSP). The Board administers the TSP, which is a retirement savings plan similar to a 401(k) plan for Federal employees as well as military service members.

Ms. Bilyeu is well qualified to join this Board. She has decades of experience with retirement funds, and she currently is the Executive Officer of the Public Employees' Retirement System of Nevada. In that role, she is responsible for fund management, including investment oversight.

Mr. Kennedy also has strong credentials. He is a Trustee for the Georgia State Employees' pension fund, a position he has held for over a decade. He also has spent many years in the private sector and currently is a Senior Client Partner at an executive recruiting firm in Atlanta.

The Special Panel on Appeals resolves disagreements between the Merit Systems Protection Board (MSPB) and the Equal Employment Opportunity Commission (EEOC). These disagreements arise on occasion in mixed cases – where an employee appeals a personnel action to the MSPB and also petitions the EEOC alleging that the action was based on discrimination.

Mr. Walsh is a distinguished attorney who currently serves as the Associate General Counsel of the Federal Labor Relations Authority. Prior to that, he spent twenty years working at the National Labor Relations Board and served both as a Member and Associate General Counsel.

Furthermore, we consistently receive excellent D.C. court candidates nominated by the President from those recommended by the District's non-partisan Judicial Nomination Commission.

Each of the nominees has served as attorneys for the D.C. Public Defender Service. Mr. Edelman currently is a professor in Georgetown Law's Criminal Justice Clinic, and he practiced civil litigation before that. Mr. Lee has been a Magistrate Judge for the D.C. Superior Court for more than a decade, and he currently is the Presiding Magistrate Judge. Ms. Smith also is a D.C. Superior Court Magistrate Judge, serving in the court's Family Division.

I am impressed with the qualifications of the six nominees before us, and am confident that if confirmed, they will have much to offer the Federal Government as well as the District.

VerDate Nov 24 2008 09:48 Aug 03, 2011 Jkt 057326 PO 00000 Frm 00033 Fmt 6601 Sfmt 6601 P:\DOCS\57326.TXT SAFFAIRS PsN: PAT

57326.001

OPENING STATEMENT OF
SENATOR GEORGE V. VOINOVICH
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD AND SPECIAL PANEL ON APPEALS NOMINATION HEARING

TUESDAY, APRIL 20, 2010

Thank you, Senator Akaka. I also would like to welcome to the Committee three nominees for positions important for our federal workforce: Dana Katherine Bilyeu and Michael Kennedy, who have been nominated to serve as Members of the Federal Retirement Thrift Investment Board, and Dennis Walsh, who has been nominated to serve as Chairman of the Special Panel on Appeals.

In 1986 Congress established the Thrift Savings Plan, or TSP, to provide federal employees with increased retirement security, and to improve the Federal government's ability to attract top-flight talent. The TSP has since grown to be the largest defined contribution retirement plan in the world, with more than 3.9 million plan enrollees and over $200 billion in assets available for benefits. Members of the Federal Retirement Thrift Investment Board are charged with overseeing the TSP's performance, and ensuring that each investment decision the Board makes is "solely in the interest of participants and beneficiaries."

If confirmed, Ms. Bilyeu and Mr. Kennedy, you will join the Federal Retirement Thrift Investment Board at an important time in its history.

Like any other defined contribution plan, recent market conditions have negatively impacted the performance of the Plan's investments. The Board is also working to implement significant modifications to its authorities included in the Family Smoking Prevention and Tobacco Control Act, including the establishment of a qualified Roth contribution option, authorization to establish a mutual fund window, and the automatic enrollment of new federal employees in the TSP.

So I am glad to see that the President has submitted to the Senate two well-qualified nominees for Board membership. Each nominee has extensive experience in pension fund management, as well as demonstrated excellence in the private sector.

As I previously mentioned, the Committee will also consider the nomination of Dennis Walsh to be Chairman of the Special Panel on Appeals. As my colleagues know, the Special Panel on Appeals is tasked with reconciling disagreements between the Merit Systems Protection Board and the Equal Employment Opportunity Commission.

Federal employees must be assured that they can do their jobs without being subjected to employment actions prohibited by our civil service laws, or to discrimination based on race, age, sex, or other protected categories. The Special Panel on Appeals plays an important role in achieving this goal.

57326.002

Like the other nominees, Mr. Walsh appears before this Committee well-qualified for the role of Chairman. He has led a distinguished legal career, and has extensive experience with another important federal agency, the National Labor Relations Board.

I would like to specifically recognize the fact that, owing to Mr. Walsh's intention to continue his service as the Deputy General Counsel of the Federal Labor Relations Authority, he will not receive pay for any services he may perform as Chairman of the Special Panel on Appeals due to prohibitions on dual compensation. Yet Mr. Walsh still has answered the call to further serve his country.

So, I look forward to our discussion today, and to the nominees' swift confirmation.

Thank you, Mr. Chairman.

OPENING STATEMENT OF
SENATOR GEORGE V. VOINOVICH
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE

D.C. SUPERIOR COURT JUDGES NOMINATION HEARING

TUESDAY, APRIL 20, 2010

Thank you, Senator Akaka. I also want to extend a welcome to these three nominees - we appreciate your time and your willingness to serve on the District of Columbia Superior Court.

Since we have three experienced attorneys appearing before us today, two of whom currently serve as Magistrate Judges, I know it is no surprise for me to say that judges have significant responsibilities.

Judges must protect citizens' rights and liberties, uphold and interpret the law, and equitably resolve disputes. I trust that if confirmed, each of you will fulfill these responsibilities with honor, courage, and character befitting the court.

Mr. Chairman, I have reviewed each of the nominee's biographical questionnaires and believe each of them is well qualified to serve as an Associate Judge for the Superior Court of the District of Columbia. Each of them would bring extensive legal experience to the bench.

Without echoing your remarks about each of these nominee's specific qualifications, Senator Akaka, I do want to point out that they all have a history of public service, as each of them has gained practical legal experience working for the District of Columbia Public Defender Service.

I think it's also notable that they have each taught law students practical trial court skills in Georgetown University's law clinics.

I understand that both Judge Smith and Judge Lee have served the D.C. Superior Court well as Magistrate Judges, and I would also note that Judge Smith hails from my home state of Ohio.

I look forward to hearing more from each of these nominees about their education, experience, and interest in continuing to pursue public service, and again, I want to thank each of them for their time today and their willingness to serve the District of Columbia. I hope that the Committee will vote on these nominations in the very near future.

Thank you, Senator Akaka.

57326.004

Statement of Senator Harry Reid at the hearing for Dana Bilyeu

Senator Akaka, members of the Committee, I am pleased to introduce Dana Bilyeu to the Committee. She is an accomplished Nevadan with extensive experience in managing public investment funds. Dana is joined today by her mother, Laurie, and her sister, Brooke. It is a proud moment for their family to see her testify today.

Last year, I recommended Dana to President Obama for the Federal Retirement Thrift Investment Board (FRTIB). As the current Executive Officer of the Public Employees' Retirement System of Nevada (PERS), Dana has demonstrated her clear qualifications as a legal expert and successful manager of a complex financial system. She will be a wonderful addition to the FRTIB.

The FRTIB administers the Thrift Savings Plan, which allows federal employees to save for retirement. The board is comprised of five experts in financial investments and pension benefit plans. They are charged with the responsibilities of developing Thrift Savings Plan policies and overseeing their implementation. They manage approximately $210 billion dollars in assets for more than 3.7 million participants.

The entire Public Employee Retirement System of Nevada has benefitted from Dana's service. For more than 10 years, Dana worked to provide the Retirement Board with sound policy recommendations and implement the programs necessary to achieve the long-term goals of the Retirement System. She has managed the 21 billion dollar trust responsibly, expanding services to members and improving system review processes.

Among many accomplishments at Nevada PERS, Dana has overseen the replacement of the entire information technology structure for the Retirement System. She streamlined PERS for the future by reorganizing the main business departments and developing a comprehensive source document describing departmental functions.

Dana has also served as Deputy Attorney General in the State of Nevada and was a United States Supreme Court Fellow of the National Association of Attorneys General. With more than 25 years of legal experience, Dana has handled complex financial and budgetary issues. She is adept as a legislative liaison and knowledgeable in pension law.

Dana's service to PERS has been invaluable. I know that she will bring to the FRTIB the same commitment, professionalism, and leadership that she has brought to Nevada PERS. I am confident Ms. Bilyeu will be a sound choice for the Federal Retirement Thrift Investment Board and I look forward to her service.

57326.005

PREPARED STATEMENT OF

PAUL STRAUSS

UNITED STATES SENATOR FOR THE DISTRICT OF COLUMBIA

BEFORE THE COMMITTEE ON GOVERNMENT AFFAIRS

ON THE NOMINATIONS OF:

Milton C. Lee, Jr.

Judith Anne Smith

Todd E. Edelman

To be Associate Judges of the Superior Court of the District of Columbia

Tuesday, April 20, 2010

Dirksen Senate Office Building

Room 342

Chairman Akaka and Members of the Senate Committee on Governmental Affairs, I am Paul Strauss, the United States Senator elected by the voters of the District of Columbia. I appreciate the opportunity to provide this statement on behalf of my constituents not only as their elected Representative, but also as an attorney who practices law in our local courts. Today, I wish to articulate my enthusiastic and wholehearted support toward all three of President Barack Obama's nominations to be Associate Judges of the Superior Court of the District of Columbia. The individuals which are the subject of today's Confirmation Hearing are, The Honorable Milton Lee C. Jr., and The Honorable Judith Anne Smith, both presently Magistrate Judges in our court. The final nominee is Mr. Todd E. Edelman, Esquire. I have taken the time over the past week to familiarize myself with the record of these individuals, and spent some time with them personally on an individual basis. As a result of these efforts, I am confident that all of these individuals are extremely well-qualified candidates that would be excellent additions to the District of Columbia Superior Court bench.

I would like to take this opportunity to address the specific qualifications of each of the individual nominees. It is appropriate to begin with the two Magistrate Judges and I will address them in order of seniority.

Milton C. Lee, Jr.

Judge Lee has served as a Magistrate Judge of the Superior Court of the District of Columbia since January 1998 and has served in both the Criminal and Civil divisions of the Court. His more than ten years of experience as a Magistrate Judge, in addition to his varied experience as an attorney and educator make him an ideal candidate for the diverse and important cases that come before the District of Columbia Superior Court.

Following graduation from Catholic University of America's School of Law in 1985, Mr. Lee signed on with the District of Columbia Public Defender Service as a staff attorney, where he served the District's needy population. During his tenure, Mr. Lee was afforded the opportunity to argue multiple appellate cases in front of the District of Columbia Court of Appeals.

Milton Lee put trial law on hold to teach as a Visiting Associate Professor of Law at Georgetown University Law Center in the Criminal Justice Clinic and as a supervisor in the E. Barrett Prettyman Program. In 1993 he joined the faculty at the former District of Columbia School of Law where he established himself as an advocate for Juvenile Law supervising students in the Juvenile Law Clinic. In 1995 he published an article analyzing the then-recent amendments of the Court's juvenile detention statute. His leadership and research achievements at the District of Columbia School of Law garnered him a Professor of the Year award from the student body in 1995 and once again in 2004, for his service as a member of the adjunct faculty.

As a Magistrate Judge, Mr. Lee has continued his professional development and enhanced his reputation as one of this jurisdictions leading authorities in the specialty of Juvenile Law serving as the co-chair of the Juvenile Delinquency Subcommittee in the Family Court. Of his many accomplishments, I am most impressed with Judge Lee's role in the development and leadership of the District of Columbia Superior Court's "Fathering Court" program. This partnership with the Court, multiple governmental agencies, and the private sector is aimed at creating opportunities for non-custodial parents to become meaningful contributors to the development of their children. The track record of this new program is impressive, and we have only begun to see the impact that his work has had on restoring the self-esteem and renewed paternal interaction of ex-offenders as they seek to return to their families and their communities. I can only hope that his promotion from Magistrate to Associate Judge will enhance his leadership of this program and not diminish it.

At every place in Milton Lee's long career in law, he has sought out greater improvements in the legal system and upheld the honor of our justice system. I am confident that both the Court and our community will continue to benefit from Judge Lee's distinguished service on the District's Superior Court bench.

Judith Anne Smith

Judge Judith Anne Smith is one of the more recently appointed Magistrate Judges of the Superior Court for the District of Columbia. I believe her rapid elevation to Associate Judge probably sets a District of Columbia speed record for judicial achievement. Once you spend even a brief amount of time with her, it is easy to understand why so many seem to agree that this honor is worthy of her and well deserved.

Her previous experience in Public Interest Law has been of tremendous benefit to the residents of the District of Columbia and the citizens she has represented. Judge Smith, in her more than 18 years of legal experience, has embarked on a career that has given her diverse exposure to the most underserved residents of the District of Columbia.

Ms. Smith served in the Public Defender Service of the District of Columbia, as the Juvenile Service Program's first Special Education Attorney, where she represented more than 250 clients in special education and competency matters. She was active in assessing the adequacy of the education program at Oak Hill Youth Center as part of the ongoing class action case, *Jerry M. vs. D.C.* In the Office of Special Education of the District of Columbia Public Schools she served as the Executive Director of Federal and Family Court Monitoring and aided the school system in complying with administrative hearings and federal family court orders on special education. Ms. Smith intervened in the class action case, *Blackman-Jones vs. D.C,* that resulted in a Consent Decree. Ms. Smith used her two previous class action cases at the Office of the State Superintendent of Education to spearhead the agency's legal compliance with a number of federal court orders in class action cases, and directives from the U.S. Department of Education.

57326.008

I had the privilege of getting to know Judge Smith and meeting her wonderful family. Judith Smith is an accomplished attorney and has been a distinguished judge. I am confident that she will continue the fine judicial service she has begun.

Todd E. Edelman

As a student, Mr. Edelman displayed immense dedication as both an under-grad and a law student. He graduated *Cum Laude* from Yale University and was a Root-Tilden Scholar at the New York University School of Law where he received his Juris Doctorate. Following his law degree, Edelman came to the District where he was a law clerk for the Honorable William B. Bryant of the United States District Court for the District of Columbia before signing on as a trial attorney with the Public Defender Service of the District of Columbia in 1997. Mr. Edelman served with the Public Defender's office until 2005 in a variety of capacities including Chief of the Serious Felony Section from 2002 through 2004. His most recent trial experience was completed at the highly respected Law Firm Bredhoff & Kaiser, P.L.L.C., where he litigated complex civil and criminal cases. He represented individuals in state and federal criminal prosecutions and both plaintiffs and defendants in civil actions in the areas of labor and employment law, contract, tort, and civil rights claims.

Throughout his career practicing as a trial lawyer, Mr. Edelman has devoted much time to the education of future members of the legal community. In 2003, he became a Visiting Associate Professor of Law at the Georgetown University Law Center. Today he teaches criminal trial litigation as an Adjunct Professor in the Law Center's L.L.M. In addition to his work at Georgetown University Law Center, Mr. Edelman has lectured at several law schools including: Yale, Harvard and George Washington University. He has remained an active member of the legal community, serving on a variety of boards including: the Harvard Law School Trial Advocacy Workshop, the National Legal Aid and Defender Association Trial Advocacy College, and the Georgia Public Defender Standards Council Honors Program. Today, Mr. Edelman serves as an elected member of the Steering Committee of the D.C. Bar's Criminal Law and Individual Rights Section and sits on the Board of Directors of the Washington Council of Lawyers.

I was fortunate enough to meet briefly with Mr. Edelman prior to this hearing and his adorable children and other members of his family are with us today. I have found him to be a remarkable advocate and educator, and I have every confidence that he will epitomize the very best qualities that any bench or bar would hope for in a Judge.

CONCLUSION

Upon examining the information made available to my office, and having taken the opportunity to meet each candidate personally, I am confident each will uphold the high honor of our judicial system. I look forward to their prompt investiture on the Court. While there is no doubt that if anyone is deserving of the prestige that comes form a Presidential appointment and Senate confirmation, it is these nominees. Yet, I am obligated by the very nature of the proceedings here today to point out the entire honor

57326.009

that comes with the ceremony of federal oversight; the fact that these nominees and all residents of the District of Columbia lack full autonomy over our judiciary diminishes our collective dignity. As am I not seated with the full rights and privileges of a U.S. Senator, I am not able to cast a vote in favor of any of the nominations. Today I ask that you extend to me a degree of Senatorial courtesy and cast your vote in support of these nominees for the residents of the District of Columbia who do not have anyone in this body who may cast a vote on their behalf.

In conclusion, I would like to thank Ms. Jenna Kohler, a member of my legislative staff, for her help preparing this testimony as well as all her efforts in coordinating the meetings with the nominees.

Statement for the Record

Nomination of Dana K. Bilyeu to be a member of the Federal Retirement Thrift Investment Board.

Good afternoon and thank you Mr. Chairman, ranking member and committee members for holding the hearing today. My name is Dana Bilyeu and I am honored to appear before you as a nominee to the Federal Retirement Thrift Investment Board. I am deeply grateful to President Obama for his confidence in me for this position. I also want to express my gratitude to Majority Leader Reid for his trust and support in recommending me to the President for nomination to this importance post.

Before I start, I want to thank my husband Lindsay and son Mateo for their continuing support both in our family life and for my professional pursuits. Due to scheduling conflicts-- namely school for both of them, they were unable to attend today's hearing. I would like to introduce you to my mother Laurel Sammons and my sister Brooke Nielsen who are here in the audience today. My mother and my sister inspire me to work to my greatest capacity—a trait I learned through keen observation as they made their way through their personal and professional lives. My father, Daniel Sammons, died in February this year and it is his memory I honor today.

Should I be confirmed, I look forward to working with the other members of the Thrift Investment Board and with the dedicated staff of the agency to further the policy goals of the Board for the Thrift Savings Plan, as it is a critical component of retirement security for federal employees.

If confirmed, I will draw upon my twenty years of experience in the retirement industry to fulfill my obligations to the members of the Thrift Savings Plan as a

57326.011

good steward of the investment policy of the plan, providing low cost, high quality, broadly based investment options for the members. My experience as a retirement professional managing pension assets for members and beneficiaries of the Nevada pension fund will provide a complimentary perspective on retirement financing and investment vehicles for the Board. I began my career in the retirement sector as general counsel, moving on to manage operations, outreach, education and benefits for a diverse population of employees. In my current capacity as executive officer I am responsible for investment policy development, asset allocation recommendations and risk management. I spend the lion share of my average day focused on the same issues that face individuals participating in the Federal Thrift Savings Plan.

I have had the opportunity since my nomination to learn more about the Thrift Investment Board, including the statutory mission, activities and current investment policy framework within which the various investment vehicles for federal employees have been crafted. If confirmed I will work hard to continue the positive leadership already in place for this program.

I have a great deal of experience working with a variety of professionals responsible for managing retirement assets for others, as well as in the education sector within the industry. Now more than ever, given the volatility our nation has seen within the investment markets in the most recent market cycle, it is imperative that the financial literacy efforts of the agency be continued. Financial literacy allows the individual participants in the plan to evaluate their own risk tolerance and to make informed investment choices that match that personal risk tolerance. I understand that the Office of Personnel Management is primarily responsible for educating the federal workforce as to the nature of the benefits available to federal employees, but the efforts of the Thrift Investment Board, and staff in providing tools for employees to better understand the fund options available to them focus employees on the need to set aside funds today to help finance their futures in a manner that best suits the employees' own goals.

Because the Thrift Savings Plan is a defined contribution plan, the most important challenge facing the agency today is the need to increase participation in the program in all employment sectors but particularly for our military. Congress provided a significant tool to aid this effort in allowing an immediate agency match as an incentive to employees to encourage participation as well as automatic enrollment. If confirmed I will continue to emphasize the efforts of the Board to educate the non-participating workforce and to provide appropriate tools for the participating population to make informed investment choices based upon their individual goals.

I believe my background and experience have prepared me to become a valuable and positive member of the Thrift Investment Board. I would like to thank the Committee for considering my nomination. If confirmed, I look forward to working with the members of the Committee, the Committee staff and Congress as a whole. I would be happy to answer any questions the Committee may have.

REDACTED

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL INFORMATION

1. **Name:** (Include any former names used.)

   Dana Katherine Bilyeu (married name), formerly Dana Katherine Sammons (maiden name).

2. **Position to which nominated:**
   Member, Federal Retirement Thrift Investment Board

3. **Date of nomination:**
   January 20, 2010

4. **Address:** (List current place of residence and office addresses.)

   Home and mailing address:

   REDACTED

   Office Address:

   693 West Nye Lane
   Carson City, Nevada 89703

5. **Date and place of birth:**

   March 6, 1961
   Tucson, Arizona

6. **Marital status:** (Include maiden name of wife or husband's name.)

   Married: Spouse's name—Lindsay Smith Bilyeu

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

   REDACTED

8. **Education:** List secondary and higher education institutions, dates attended, degree received and date degree granted.

   High School: Palo Verde High School, Tucson, Arizona 1975-1978 (High School diploma), degree earned 1978

College: University of Arizona, Tucson, Arizona 1978-1982 Bachelor of Arts in History, degree earned 1982

Law School: California Western School of Law, San Diego, California 1982-1985, juris doctor, degree earned 1985

9. **Employment record:** List all jobs held since college, and any relevant or significant jobs held prior to that time, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)

June 1983—May 1985, law clerk, gang prosecution unit, San Diego District Attorney's Office, San Diego, California.

August 1985 – July 1986, law clerk, First Judicial District Court, Carson City, Nevada, The Honorable Michael Fondi, presiding.

August 1986-February 1987—Allison, Mackenzie, Hartman, Soumbeniotis and Russell, Associate Attorney, Carson City, Nevada.

February 1987-January 1995—Deputy Attorney General, Office of the Attorney General, Carson City, Nevada.

January 1995-October 2003—Operations Officer, Public Employees' Retirement System of Nevada, Carson City, Nevada.

October 2003-present—Executive Officer, Public Employees' Retirement System of Nevada, Carson City, Nevada.

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

Member, Federal Social Security Advisory Board, December 2006 to present.

11. **Business relationships:** List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

1999—2001, Past Board Member, Northern Nevada Literary Council. Non-profit educational institution providing literacy education.

12. **Memberships:** List all memberships, affiliations, or and offices currently or formerly held in professional, business, fraternal, scholarly, civic, public, charitable or other organizations.

Member, State Bar of California, 1985—Present (inactive member).

Member, State Bar of Nevada, 1986—Present (active member).

Member, National Association of State Retirement Administrators, 2003—Present and member of the Executive Board, 2009-2010.

Member, National Council on Teacher Retirement, 2003—Present.

Member, National Association of Public Pension Attorneys, 2001—Present.

Member, International Foundation for Employee Benefit Programs, Public Employee Advisory Board, 2005--present

Member, International Foundation for Employee Benefit Programs, Board of Directors, 2008—2009.

Member, Kappa Kappa Gamma, 1979-1982

13. **Political affiliations and activities:**

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None.

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

None.

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more during the past 5 years.

None.

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

Supreme Court Fellow, National Association of Attorneys General, 1989.

15. **Published writings:** Provide the Committee with two copies of any books, articles, reports, or other published materials which you have written.

Letter to the Editorial Board, Las Vegas Review Journal, September 10, 2008 (This was a published response on behalf of Nevada PERS to an editorial written in September 2008. A copy is attached.)

During my employment with Nevada PERS, I have participated in editing and occasionally drafting portions of the agency's newsletter. I do not have a record of individual articles that I helped drafted, and the newsletter does not contain bylines."

16. **Speeches:**

(a) Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated. Provide copies of any testimony to Congress, or to any other legislative or administrative body.

All speeches and testimony are related specifically to my position as the Executive Officer of the Public Employees' Retirement System of Nevada. The text of the following speeches and testimony, when available, is attached:

2005:

Interim Retirement and Benefits Committee (IRBC), Classifications of AB 555; Actuarial Valuation Report s of June 30, 2004; Funding Policy; Funding Status of the Judicial Retirement System; and SB 345 – IRS Ruling on Disability Payments, 1/13/2005

Investment Seminar, 9/2005

RPEN Seminar, Reno, NV, 9/2005

Liaison Officer Conference, Las Vegas, NV, 11/2005

NASRA, Roll Call, Anchorage, AK, 8/2005 – No text available

RPEN Speech, Reno, NV, 7/2005 – No text available

2005 Testimony:

Committee on Government Affairs Presentation, 2/15/2005

Testimony on AB 60, 2/21/2005

Testimony on SB 122 before the Senate Committee on Finance, 3/9/2005

Testimony on AB 113 before the Assembly Committee on Government Affairs, 3/17/2005

57326.017

Testimony on AB 270 before the Assembly Committee on Transportation, 3/31/2005

Testimony on SB 145 before the Senate Committee on Finance, 4/4/2005

Testimony on SB 328 before the Senate Committee on Finance, 4/5/2005

Testimony on SB 346 before the Senate Committee on Legislative Operations and Elections, 4/7/2005

Testimony on SB 485 before the Senate Committee on Finance, 4/11/2005

Testimony on SB 438 before the Senate Committee on Finance, 4/15/2005

Testimony on SB 369 before the Senate Committee on Finance, 4/15/2005

Testimony on SB 122 before the Assembly Committee on Government Affairs, 4/20/2005

Testimony on SB 328 before the Assembly Committee on Government Affairs, 4/20/2005

Testimony on SB 454 before the Senate Committee on Finance, 5/9/2005

Testimony on SB 346 before the Assembly Committee on Elections, Procedures, Ethics, and Constitutional Amendments, 5/10/2005

Testimony on SB 328 before the Assembly Committee on Ways and Means, 5/15/2005

Testimony on SB 438 before the Assembly Committee on Ways and Means, 5/17/2005

Testimony on AB 113 before the Senate Committee on Finance, 5/18/2005

2006:

Interim Retirement and Benefits Committee (IRBC), Update on Assembly Bill 555 (2001) and Senate bill 439 (2003) Concerning Critical Labor Shortage Exemptions from PERS' Reemployment Restrictions; PERS' Actuarial Valuation Report as of June 30, 2005; Status Report on the Judicial Retirement System and Implementation of Senate Bill 438 (2005) Regarding Participation by Justices of the Peace and Municipal Court Judges; Update on One-Fifth of a Year Purchase of Service for Certain Education Employees (NRS 391.165); Executive Staff Salaries; and Senate Bill 346 (2005) Relating to Voluntary Participation in the LRS, 1/2006

NASRA, Roll Call, San Diego, CA, 8/2006 – No text available

Ormsby Teachers, Carson City, NV, 5/2006

Interim Retirement and Benefits Committee (IRBC), PERS' Executive Staff Update; Investment Report for the PERS', Legislators', and Judicial Funds; PERS', Legislators', and Judicial Funds Investment Update; Judicial Retirement System – Annual Actuarial Valuation as of January 1, 2006; Update on 1/5th of a Year Purchases for Certain Education Employees; Update on Senate Bill 438 of the 2005 Legislative Session; and Update on Senate Bill 346 of the 2005 Legislative Session, 6/12/2006

Liaison Officer Conference, Reno, NV, 10/2006

Investment Seminar, Stateline, NV, 9/2006

RPEN, Reno, NV, 12/2006

57326.018

2007:

Interim Retirement and Benefits Committee (IRBC), Actuarial Valuation Report as of June 30, 2006; AB 555 Update; Benefit Provided Under NRS 391.165; SB 346 Update; and SB 438 Update

LOGMAN, Carson City, NV, 2/2007

Liaison Officer Conference, Las Vegas, NV, 11/2007

Investment Seminar, Stateline, NV, 9/2007

NASRA, Roll Call, Aventura, FL, 8/2007 – No text available

Northwest Pension Conference, Reno, NV, 10/2007

RPEN, Reno, NV, 12/2007

Presentation to Las Vegas Chamber of Commerce, Las Vegas, NV, 11/19/2007

2007 Testimony:

Committee on Government Affairs Presentation, 2007 Legislature

Testimony on AB 85 before the Assembly Committee on Ways and Means, 2/23/2007

Budget Testimony before the Senate Committee on Finance, 3/12/2007

Budget Testimony before the Assembly Committee on Ways and Means, 3/14/2007

Testimony on SB 511 before the Senate Committee on Government Affairs, 3/30/2007

Testimony on SB 457 before the Senate Committee on Finance, 4/2/2007

Testimony on AB 208 before the Assembly Committee on Transportation, 4/5/2007

Testimony on AB 590 before the Assembly Committee on Ways and Means, 4/6/2007

Testimony on AJR 8 before the Assembly Committee on Elections, Procedures, Ethics, and Constitutional Amendments, 4/10/2007

Testimony on SB 76 before the Senate Committee on Transportation and Homeland Security, 4/12/2007

Testimony on AB 568 before the Assembly Committee on Ways and Means, 4/17/2007

Testimony on SB 511 before the Assembly Committee on Government Affairs, 4/30/2007

Testimony on SB 457 before the Assembly Committee on Ways and Means, 5/14/2007

Testimony on SB 183 before the Assembly Committee on Government Affairs, 5/15/2007

Testimony on SB 287 before the Senate Committee on Finance, 5/21/2007

Testimony on AB 119 before the Assembly Committee on Government Affairs, 2007 Legislature

Testimony on AB 319 before the Senate Committee on Finance, 2007 Legislature

Testimony on AB 319 before the Assembly Committee on Ways and Means, 2007 Legislature

Testimony on AB 563 before the Assembly Committee on Education, 2007 Legislature

Testimony on SB 156 before the Senate Committee on Finance, 2007 Legislature

2008:

Interim Retirement and Benefits Committee (IRBC), 1/23/2008

NASRA, Roll Call, Salt Lake City, UT, 8/2008 – No text available

Investment Seminar, Stateline, NV, 9/2008

SAGE Commission, Reno, NV, 10/24/2008

Liaison Officer Conference, Reno, NV, 11/14/2008 – No text available

RPEN, Reno, NV 12/8/2008 – No text available

IRBC, 12/15/2008

Professional Fire Fighters of Nevada (PFFN), Reno, NV, 4/10/2008

2009:

Investment Seminar, 9/22/2009

Liaison Officer Conference, Las Vegas, NV, 11/19/2009

2009 Testimony:

Presentation to freshman legislators, 1/16/2009

Presentation to Assembly Government Affairs, 2/16/2009 (identical presentation made to Senate Government Affairs on 3/23/2009)

Testimony on SB 41 before the Senate Committee on Finance, 3/2/2009

Testimony on SB 81 before the Senate Committee on Finance, 3/2/2009

Budget Testimony before the Senate Committee on Finance, 3/2/2009

Budget Testimony before the Assembly Committee on Ways and Means, 3/4/2009

Testimony on SB 284 before the Senate Committee on Finance, 4/3/2009

Testimony on SB 174 before the Senate Committee on Finance, 4/3/2009

Testimony on SB 367 before the Senate Committee on Finance, 4/3/2009

Testimony on AB 92 before the Assembly Committee on Ways and Means, 4/29/2009

Testimony on AB 488 before the Assembly Committee on Ways and Means, 4/29/2009

Testimony on SB 41 before the Assembly Committee on Ways and Means, 5/13/2009

Testimony on SB 174 before the Assembly Committee on Government Affairs, 5/13/2009

Testimony on AB 493 before the Senate Committee on Finance, 5/14/2009

Testimony on AB 488 before the Senate Committee on Finance, 5/19/2009

Testimony on SB 427 before the Senate Committee on Finance, 5/21/2009

Testimony on AB 92 before the Senate Committee on Finance, 5/27/2009

2010:

IRBC, Valuation, Critical Labor Shortage, one-fifth year, and normal retirement age, 2/2/2010

(b) Provide a list of all speeches and testimony you have delivered in the past 10 years, except for those the text of which you are providing to the Committee. Please provide a short description of the speech or testimony, its date of delivery, and the audience to whom you delivered it.

2000/2001:

National Education Association Retiree Reemployment Study, San Diego, CA, 10/24/2000

2001 Testimony:

Testimony on AB 431 before Senate Finance Committee, 5/21/2001

Testimony on AB 555, 2001 Legislature

Testimony on AB 633, 2001 Legislature

Testimony on SB 393, 2001 Legislature, 5/14/2001

2002:

Investment Seminar, Liabilities Overview, 9/2002

2003:

Retired Public Employees of Nevada (RPEN), 12/8/2003

Investment Seminar, Operations, 9/2003

APPFA, Presentation on deferred retirement alternatives, Reno, NV, 4/2003

National Association of State Retirement Administrators (NASRA), Roll Call, Monterey, CA, 8/2003 – No text available

2003 Testimony:

Assembly Government Affairs Presentation, 2/7/2003

Budget Testimony, 2003 Legislature, 3/19/2003

Testimony on AB 249 before the Assembly Committee on Government Affairs, 2003 Legislature

Testimony on AB 480 before the Committee on Government Affairs, 2003 Legislature

Testimony on AJR 3, 2003 Legislature, 4/18/2003

Testimony on SB 45 before the Senate Committee on Finance, 3/3/2003

Testimony on SB 345 before the Assembly Committee on Government Affairs, 4/29/2003

Testimony on SB 439 (PERS' technical bill) before the Senate Committee on Finance, 2003 Legislature

2004:

Investment Seminar, Pension Liability Management, 9/2004

Liaison Officer Conference, PERS Overview, 4/2004

Nevada Association of School Administrators, PERS Overview, 11/8/2004

Nevada State Education Association (retirees), PERS Overview, Las Vegas, NV, 11/2004

RPEN, PERS Overview, 8/2004

RPEN, PERS Update, Reno, NV, 12/2004

For 2005-present, please see my response to Question 16(a), above.

17. **Selection:**

(a) Do you know why you were chosen for this nomination by the President?

I believe I was nominated for this position because I have over twenty years of experience in the retirement industry at the executive management level and have managed a variety of issues related to income security, member communication, investment fund oversight and overall plan governance including fiduciary compliance. This experience will allow me to meaningfully contribute to the work of the Federal Retirement Thrift Investment Board.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

As the Executive Officer of the Public Employees' Retirement System (PERS) of Nevada, I am responsible for all areas of fund management, including the investments of the $22 billion trust. I make recommendations on asset allocation and manager selection, and I am responsible for monitoring and reporting to the Board related to the performance of the investments of the fund and oversight of the due diligence process related to the fund. I am also responsible for the education of our membership related to the benefits of the fund and the retirement choices available to them. If confirmed, my experience as Executive Officer of PERS will allow me to meaningfully contribute to the work of the Federal Retirement Thrift Investment Board.

B. EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

   Membership on the Federal Retirement Thrift Investment Board is a part-time position. If confirmed, I will continue to serve in my current position as the Executive Officer of the Public Employees' Retirement System is my full-time employment. My professional affiliations related to my current employment and my professional licenses therefore will continue.

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

   I have no plans to pursue outside employment during the period of service for this position, except as noted above.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization, or to start employment with any other entity?

   If confirmed, I will continue my present employment during the pendency of this appointment, and have no other plans, agreements or commitments for employment, affiliation or practice with any firm, association or organization or other entity.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

   No.

57326.023

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

Yes.

6. Have you ever been asked by an employer to leave a job or otherwise left a job on a non-voluntary basis? If so, please explain.

No.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

None

2. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration or execution of law or public policy, other than while in a federal government capacity.

In my capacity as the Executive Officer of the Public Employees' Retirement System of Nevada, it is my responsibility to directly and indirectly influence the passage, defeat or modification of legislation affecting the Retirement System in accordance with the adopted legislative agenda of the Board of Trustees of the System. My role is to implement the Board's legislative agenda solely. Implementing the Board's legislative agenda has been my responsibility in the 2005, 2007, and 2009 Nevada legislative sessions.

3. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

   No.

2. Have you ever been investigated, arrested, charged or convicted (including pleas of guilty or nolo contendere) by any federal, State, or other law enforcement authority for violation of any federal, State, county or municipal law, other than a minor traffic offense? If so, provide details.

   No.

3. Have you or any business of which you are or were an officer, director or owner ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

   In my capacity as the Executive Officer of the Public Employees' Retirement System of Nevada, I have been involved in defending litigation against the System on benefit and membership matters. The System (through the Board of Trustees) has been the plaintiff in litigation related to the collection of employer contributions on behalf of members of the System. I have not been named as a party in these cases.

   In 2005 I was named as a co-defendant (along with other employees of the Public Employees' Retirement System and the System itself) in employment litigation by a former employee of the System. The former employee's allegations arose from performance evaluations prepared by her immediate supervisor. The suit was brought in U.S. District Court, Northern District of Nevada. The District Court dismissed the suit, and the dismissal was affirmed by the 9th Circuit Court of Appeals.

4. For responses to question 3, please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

   Please see my response to Question 3, above.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

   None.

E. FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

REDACTED

AFFIDAVIT

Dana K. Bilyeu being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Subscribed and sworn before me this 4th day of February, 2010

Lynette M. Jones Notary Public

State of Nevada, County of Carson

LYNETTE M. JONES
NOTARY PUBLIC
STATE OF NEVADA
No.93-3472-2 My Appt. Exp. Dec. 8, 2012

United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

FEB 0 2 2010

The Honorable Joseph I. Lieberman
Chairman
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Under the Ethics in Government Act of 1978, Presidential nominees requiring Senate confirmation who are not expected to serve in their Government positions for more than 60 days in a calendar year are not required to file public financial disclosure reports. The Act, as amended, however, contains a provision in section 101(b) that allows the committee with jurisdiction to request any financial information it deems appropriate from the nominee.

We understand that your committee desires to receive a financial disclosure report from any Presidential nominee for a position on the Federal Retirement Thrift Investment Board, along with a written opinion from this Office regarding any possible conflicts of interest. Therefore, I am forwarding a copy of the confidential financial disclosure report (OGE Form 450) of Dana Bilyeu, who has been nominated by President Obama for the position of Member with Federal Retirement Thrift Investment Board.

We have reviewed the report and have obtained advice from the Federal Retirement Thrift Investment Board concerning any possible conflict in light of its functions and the nominee's proposed duties.

Based thereon, we believe that Ms. Bilyeu is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Robert I. Cusick
Director

U.S. Senate Committee on Homeland Security and Governmental Affairs
Pre-hearing Questionnaire
For the Nomination of Dana Katherine Bilyeu to be
a Member of the Federal Retirement Thrift Investment Board

I. Nomination Process and Conflicts of Interest

1. Why do you believe the President nominated you to serve as a member of the Federal Retirement Thrift Investment Board ("FRTIB" or "the Thrift Board")?

   I believe I was nominated for this position because I have over twenty years of experience in the retirement industry at the executive management level and have managed a variety of issues related to retirement income security, member communication, investment fund oversight and overall plan governance including fiduciary compliance. My experience includes investment policy development and implementation, as well as employee education. I have previously served on the Board of Directors of the International Foundation of Employee Benefit Plans, a principal provider of education related to all types of employee benefits, including defined contribution plans, defined benefit plans and health benefits.

2. Were any conditions, express or implied, attached to your nomination? If so, please explain.

   No.

3. What specific background and experience do you believe affirmatively qualifies you to be a member of the Thrift Board?

   As the Executive Officer of the Public Employees' Retirement System (PERS) of Nevada, I am responsible for all areas of fund management, including the investments of the $22 billion trust. I make recommendations on investment policy including risk management, asset allocation and manager selection, and I am responsible for monitoring and reporting to the Board related to the performance of the investments of the fund and oversight of the due diligence process related to the fund. I am also responsible for the education of our membership related to the benefits of the fund and the retirement choices available to them. If confirmed, my experience as Executive Officer of PERS will allow me to meaningfully contribute to the work of the Federal Retirement Thrift Investment Board.

4. Have you made any commitments with respect to the policies and principles you will attempt to implement as a member?

   No.

5. If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of a conflict of interest? If so,

57326.027

please explain what procedures and/or criteria that you will use to carry out such a recusal or disqualification.

None of which I am currently aware.

6. Insofar as your non-governmental work involves business and finance, how does that work inform or otherwise relate to the decisions you make as a member of the FRTIB? How do you ensure that no actual or apparent conflict of interest arises?

As indicated in my answer to question 3 above, my current position is related to the work of the Thrift Investment Board in that my primary duties include development of investment and risk policies for the State pension fund. This responsibility directly informs the responsibilities I would have for the Thrift Investment Board. My work at the state level is parallel work to the work of the Thrift Investment Board with no overlapping actual or apparent conflict of interest. Within the structure of Thrift Investment Board, I will work with the designated agency ethics official to insure no potential conflicts arise.

II. Role and Responsibilities of the Federal Retirement Thrift Investment Board and of its Members

7. What do you see as the principal roles and responsibilities of the FRTIB and of each of its members?

The FRTIB is the investment policy-making body for the Federal Thrift Savings Plan. All investment and risk management policies related to the various funds are set by the Board. Members of the Board must make these decisions for the exclusive benefit of the members of the Thrift Savings Plan. Additionally, providing low cost, high quality, diverse investment vehicles to the members of the Plan such that they can position themselves to achieve their personal retirement savings goals is the obligation of the Board.

8. What do you see as the main challenges facing the Federal Employees Retirement System, including the Thrift Savings Plan (TSP), and what do you believe the FRTIB can do to help meet those challenges?

Increasing participation in the Thrift Savings Plan, particularly in the military sector and with the youngest employees, is a significant challenge the agency must address over the near future. Given the recent difficult market conditions, meeting this challenge has never been more important. Congress provided tools to assist in meeting this challenge through immediate agency match as well as the automatic enrollment feature.

Additionally, educating participating members on measuring their personal risk tolerance and savings goals and choosing investments that meet their personal profile will continue to be a significant task. There is no simple answer as to how to achieve success in this endeavor except to remain focused and to capitalize on all methods of delivery of the

57326.028

information for the members, including internet based delivery, interactive tools, publications and outreach.

9. If you are confirmed, what do you expect will be the focus of your efforts during your term?

If confirmed I will focus my efforts on investment performance oversight, fees and participant education, particularly on risk tolerance. Using technology to deliver education will also be a focus of mine. It is my understanding that the agency has been working very hard to enhance the website, making it interactive and robust from a service delivery perspective. These efforts must be supported. As technology advances and communication channels change, the agency must continually challenge current delivery methods and whether they meet the changing needs of the participating population.

10. What objectives would you like to achieve in your term as a member, if confirmed? Why do you believe those objectives are important to the TSP and its participants?

Enhancing investment education delivery to the youngest members of the federal work force will be a principal objective of mine should I be confirmed. Because the TSP is a defined contribution plan and is a core component of a total approach to retirement income security, members must make decisions relating to their savings patterns early in their careers. This is a uniquely challenging sector of the population to tap for early retirement savings since there are many competing obligations for their compensation. The earlier an individual commits to retirement savings the better they position themselves for future retirement security.

III. Policy Questions

11. What actions do you believe should be taken to ensure that the TSP maintains effective and user-friendly information technology, with systems that offer features as good as, or better than, those offered by mutual funds and private-sector pension plans?

It is my understanding that the agency is undergoing a system modernization project that includes a complete overhaul of the agency website. This project is based upon technology infrastructure enhancements that will allow the services delivered to the 4.3 million members of the plan to be both scalable and robust. Efforts to continue to improve electronic delivery of services and flexibility to the agency in call centers are also important to making sure that the services delivered are as good as or better than private sector plans.

12. In any defined-contribution retirement program like the TSP, increased customer service and convenience may require increased overhead costs, so trade-offs may be needed.

    a. In your opinion, how does the TSP compare to commercial defined-benefit plans in terms of customer service and convenience, and in terms of efficiency?

57326.029

Service must be measured in light of the costs associated with the delivery of services. The lower the cost of service delivery, the more an individual participant's funds can be kept invested and not used for overhead. The modernization program mentioned in my answer to question 11 is a significant step in moving to a more cost efficient delivery of services and will provide greater access and self service to the members of the plan.

b. Do you believe any adjustments should be made in the level of customer service and convenience that the TSP provides? For example, what improvements, if any, do you believe should be made in the TSP web site and call centers?

It is difficult to evaluate what, if any, adjustments to customer service should be made until the agency's implementation of the technology modernization project is complete. The goals of that project are to enhance customer service through technology. Based on my preliminary review, it appears that the project is well-designed and will move the website to one that is fully interactive.

c. Do you believe that any changes should be made to reduce overhead and make the TSP funds more efficient?

I have not had an opportunity to review the activities of the agency to reduce overhead and increase efficiency; however it is important to maintain constant vigilance on costs and possible opportunities to maximize efficiencies in operation. This is particularly true as the speed of technology improvement ramps up. There are always opportunities to be evaluated in this changing environment.

13. Do you believe any improvements are needed in the disclosure to TSP participants of overhead costs attributable to particular TSP investment funds?

I am unfamiliar with current disclosure to participants on the costs associated with particular TSP funds. Disclosure of costs (including internal costs of the funds unique to the individual funds themselves) is an area that needs consistent review and improvement. Participants need to understand how costs (including internal costs) affect total return so that they may evaluate the investment vehicle in light of their return expectations.

14. How satisfied are you with current efforts to seek and receive feedback from TSP participants? Do you believe additional steps should be taken?

It is my understanding that the TSP surveys the entire population on a bi-annual basis. With the implementation of the technology modernization project, opportunities for additional feedback from the participants, on a transaction by transaction basis, will exist.

15. What do you believe should be the role of the Employee Thrift Advisory Council (ETAC), and how do you believe FRTIB can make best use of it?

57326.030

The ETAC, by statute, advises the Board and the Executive Director on matters relating to the investment policies for the Thrift Savings Fund and other related items. The council provides a proxy for the members of the Fund and can be used as a barometer to evaluate the investment policies in light of popular demand. The council is advisory only, and the Board, as steward of the investment policy, should consider the opinions of the Council, but must make decisions on investment policy in the best interests of the participants as a whole.

16. Are there measures that should be considered to strengthen the transparency and accountability of the FRTIB and its operations?

Before offering an opinion on what measures should be implemented to increase transparency and accountability, I would want to become more familiar with the current level of both. These are areas that will be subject to review periodically by the FRTIB and are important to establish credibility with the participants.

17. What do you believe are the respective roles of the FRTIB and of the Office of Personnel Management (OPM) in ensuring that participants have the financial knowledge to make informed investment decisions? Are there any steps that you believe should be undertaken to improve those efforts?

OPM is primarily responsible for educating the federal workforce as to the benefits available to employees. The FRTIB should actively participate in crafting the financial literacy message related to the decision-making process for participants within the TSP. If confirmed, it would be my focus that the agencies work cooperatively to insure proper, thorough, understandable information is provided to participants.

18. What is your opinion of the current menu of investment options that the TSP makes available to participants? Do you believe that additional options should be offered? Different options? Fewer options?

Investment options for participants should be evaluated routinely to insure the proper array of investment opportunities is available to members to meet their investment and risk management goals. The proper number of funds to achieve this goal is subject to much debate and should be evaluated in the best interest of the participants. Making significant changes to the array of options available must also be evaluated in light of the disruption to the participants, costs and possible confusion absent very clear education related to the addition (or deletion) of funds.

19. What do you believe should be the respective roles of the FRTIB, the ETAC, Congress, or others in ascertaining and deciding what investment options the TSP should make available? Please explain.

Ultimately, by statute, the responsibility for investment policy rests with the FRTIB. The ETAC, by statute, advises the Board on issues related to the investment policy. Determining the investment option available to members must be made solely in the

57326.031

exclusive benefit of the plan participants and for no other reason. The relationship between the interested parties set forth should be one of full cooperation and partnership to further the best interests of the plan participants.

20. The Family Smoking Prevention and Tobacco Control Act (P.L. 111-31) contained a number of provisions affecting the TSP, including language to provide the FRTIB the authority to establish a mutual fund window for TSP participants if it would be in the best interests of participants. Such a mutual fund window would allow TSP participants to invest in a wised range of mutual fund. What do you believe are the advantages and disadvantages of maintaining the current choices of funds, versus increasing the menu to include other investment options?

As indicated in my answer to question 18, any changes to the array of available investment opportunities should be evaluated as to cost, risk, opportunity, confusion and disruption to investment strategies of the participants. This same approach would hold true in evaluating whether to add a mutual fund window.

21. The Family Smoking Prevention and Tobacco Control Act also required the establishment of a qualified Roth contribution program within the TSP. A survey by OPM showed that federal employees considered the Roth option attractive but did not have enough information to evaluate the tax advantages or disadvantages of the option.

a. Please discuss your approach to the development of the Roth option, particularly with respect to ensuring that participants receive adequate education about their options.

It is my understanding that the agency plans to implement the Roth TSP in January 2012. Design is underway, including policy development, program and infrastructure requirements. Education on the Roth alternative will be developed over time to meet the needs of the diverse participant population. Since the decision to use the Roth alternative is as much a tax strategy as an investment approach, education will be crafted very carefully, again focused on the diverse nature of the participating population.

b. What advice would you give to TSP participants to help them decide whether to use a Roth or a conventional option within the TSP?

At this time I do not have adequate information on the structure of the Roth option to provide my opinion as to the appropriate advice for a plan participant on which option to choose.

22. What do you believe are the most important legislative changes Congress should make to benefit TSP participants? Please explain.

At this time, I do not have recommendations for important legislative changes that would strengthen the program and would want more information about current limitations on the program or barriers to success before offering my opinion how to enhance the program.

57326.032

IV. Relations with Congress

23. Do you agree, without reservation, to respond to any reasonable summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

    Yes.

24. Do you agree, without reservation, to reply to any reasonable request for information from any duly constituted committee of Congress if you are confirmed?

    Yes.

V. Assistance

25. Are these answers your own? Have you consulted with the staff of the FRTIB or any interested parties? If so, please indicate which entities.

    Yes, these answers are my own. Written background information was provided to me by the staff of the FRTIB regarding the FRTIB's current policies and activities.

AFFIDAVIT

I, Dana Katherine Bilyeu, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate and complete.

Subscribed and sworn before me this 16th day of April, 2010.

Notary Public

NOTARY PUBLIC
DISTRICT OF COLUMBIA

My Commission Expires February 28, 2014

NOMINATION OF MICHAEL KENNEDY TO THE

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Mr. Chairman and distinguished members of the Committee.

I am honored to appear before you today as a nominee to the Federal Retirement Thrift Investment Board. I am deeply humbled by the confidence that President Obama has shown in me with this nomination. As you know, the FRTIB was established to provide guidance and oversight for the Thrift Savings Plan, the primary pension fund for federal employees. If confirmed, I look forward to working with the staff and participants in continuing to fulfill the mission of the FRTIB while strengthening the organization.

I believe I was nominated for this position due to my extensive financial services background coupled with my public pension fund experience. For the past ten years, I have had the opportunity to serve the citizens of the State of Georgia as a Trustee of the Employees Retirement System of Georgia. With assets of approximately $14 billion, ERS has administered benefits to over 130,000 active employees and 52,000 retirees. During my tenure on the Board, I have served as a member of the Investment Committee. For five years, I served as the Board Chair. Over this past ten years, we have worked closely with staff in enhancing our communications with participants in the plan. This has been done through the implementation of an effective call center as well as revised and more interactive website. We have provided greater access to participants regarding retirement planning and education. Furthermore, we have upgraded our technology, which has allowed ERS to operate in a more efficient manner. Finally, we have attracted stronger and more experienced talent to the organization, which will benefit the organization long-term.

As an ERS Trustee, I have had the opportunity to become involved in several national pension fund organizations, such as the National Association of State Retirement Administrators (NASRA) and the National Association of Securities Professionals (NASP). My involvement in these organizations has allowed me to interact with Trustees at other states and learn about industry trends. This involvement has also allowed me to develop some "best practices" that we have implemented in the Georgia system. All of these experiences will be beneficial in my involvement with FRTIB, if confirmed.

In the first part of my professional career, I developed a broad background in the financial services industry. I started my career as an Investment Analyst at JP Morgan, where I analyzed bank and savings and loan stocks for portfolio managers. This experience allowed me to develop a foundation for understanding equity capital markets. After completing my MBA at Harvard, I worked as a banker at Wachovia. In this role, I learned about the various financing strategies for companies. Finally, my experience at GE Capital allowed me to focus on areas such as private equity and mezzanine debt. In addition to the traditional equities and fixed income asset classes, I have developed extensive knowledge of alternative investments. If confirmed, these

57326.035

financial experiences should allow me to bring a broad perspective to my position as a Board member at FRTIB.

Currently I am a Senior Client Partner at Korn/Ferry International. In my position, I conduct senior-level searches for top talent in the financial services industry. Over the past several years, I have conducted searches for large pension fund organizations such as the California Public Employees Retirement System (CalPERS), the California State Teachers Retirement System (CalSTRS) and the Teacher Retirement System of Texas (Texas Teachers). These searches have allowed me to gain some insights into these complex organizations while understanding the need to recruit top investment talent. If I am confirmed, my recruiting background will be helpful in my new role at the FRTIB as the organization continues to recruit and retain top-level talent.

Should I be confirmed, I will focus my efforts in three key areas: 1) Investment oversight; 2) Communications and Education; and 3) Recruitment and Retention of top talent. Although the current investment options appear to be adequate, it is always prudent to continually review these options in light of changing financial markets. It is also prudent to analyze and review additional options in order to remain current. Although the FRTIB does a good job in its current communications and education efforts, these areas need to be continually enhanced in order to capture new plan participants. Finally, it is important to make sure that the staff at the FRTIB remains top-notch. This can be done through strategic recruiting as well as providing constructive feedback to current employees. It is important to create a welcoming culture for employees and a team-oriented environment.

I believe that my pension fund experience and financial services background have equipped me to make a positive contribution to the Federal Retirement Thrift Investment Board. If confirmed, I look forward to working with Members of the Committee and the entire Congress, in helping to strengthen the FRTIB and maintain its important mission. I would be happy to respond to any questions you may have.

REDACTED

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL INFORMATION

1. **Name:** (Include any former names used.)

   Michael Denard Kennedy

2. **Position to which nominated:**

   Board Member, Federal Retirement Thrift Investment Board

3. **Date of nomination:**

   1/20/2010

4. **Address:** (List current place of residence and office addresses.)

   Home address: **REDACTED**

   Office address: Korn/Ferry International, 1230 Peachtree Street, Suite 2000, Atlanta, Georgia, 30309

5. **Date and place of birth:**

   November 13, 1956; Winston-Salem, North Carolina

6. **Marital status:** (Include maiden name of wife or husband's name.)

   Single

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

   None

8. **Education:** List secondary and higher education institutions, dates attended, degree received and date degree granted.

   Secondary school: Phillips Exeter Academy, attended from 9/72 to 6/75. Received diploma in June 1975.

   Undergraduate college: University of North Carolina at Chapel Hill, Attended from 8/75 to 5/79. Received BA degree in May, 1979.

Graduate school: Harvard University Graduate School of Business, Attended from 9/81 to 6/82 and 9/84 to 6/85. Received MBA degree in June 1985.

9. **Employment record:** List all jobs held since college, and any relevant or significant jobs held prior to that time, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)

Senior Client Partner
Korn/Ferry International
Description: I am an executive recruiter in the Financial Services Practice. I conduct senior-level searches such as CEO, CFO, Presidents and other senior positions. I also co-lead the firm's Diversity Practice where I work with clients in developing recruiting strategies to attract more diversity to their firms.
Location: Atlanta
Dates of employment: 9/1998 to present

President
Venture South Capital Management Company
Location: Atlanta, GA
Dates of Employment: 7/1995 to 8/1998

Business Development Partner
Pacific Capital
Location: Nashville, TN; Atlanta, GA
Dates of Employment: Fall 1996 to Summer 1997

Vice President
General Electric Capital Corporation (GE Capital)
Location: Atlanta, GA; Stamford, CT
Dates of Employment: 2/1989 to 7/1995

Vice President
Wachovia Corporation
Location: Winston-Salem, NC; Atlanta, GA
Dates of Employment: 8/1985 to 2/1989

Associate
Wachovia Corporation
Location: Winston-Salem, NC
Dates of Employment: 2/1983 to 8/1984

Investment Analyst
JP Morgan Investment Management
Location: New York
Dates of Employment: 7/1979 to 7/1981; Also summer intern 6/82 to 8/82.

57326.038

Intern
Representative Steve Neal, US House of Representatives
Location: Washington, D.C.
Dates of Employment: June, 1979

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

Trustee for the Employees Retirement System of Georgia pension fund; 9/1999 to Present; Chairman, 2000 to 2005

11. **Business relationships:** List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

Senior Client Partner, Korn/Ferry International; 9/1998 to present

President, Venture South Capital Management Company; 7/1995 to 8/1998

Partner, Pacific Capital; Fall 1996 to Summer 1997

Vice President, GE Capital Corporation; 2/1989 to 7/1995

Vice President, Wachovia Corporation; 8/1985 to 2/1989

Trustee, Phillips Exeter Academy; 8/1996 to 6/2000

Chairman, Board of Visitors, University of North Carolina at Chapel Hill; 7/2009 to Present

12. **Memberships:** List all memberships, affiliations, or and offices currently or formerly held in professional, business, fraternal, scholarly, civic, public, charitable or other organizations.

Member, Atlanta Venture Forum; 1/1990 to Present

Member, Harvard Business School Club of Atlanta; 9/2009 to Present

Member, Harvard Business School Club of New York; 1/2007 to Present

Member, National Association of Securities Professionals; 6/2001 to Present

57326.039

Member, General Alumni Association, University of North Carolina at Chapel Hill; 9/1979 to Present

Member, National Steering Committee, Capital Campaign, University of North Carolina at Chapel Hill; 9/1999 to 12/2007

Member, Sigma Pi Phi Fraternity; 6/2004 to Present

Board Chairman, Communities-In-Schools of Atlanta; 1996 to 1997

Member, All Saints Episcopal Church; 7/2007 to Present

Former Trustee, Phillips Exeter Academy; 8/1996 to 6/2000

Member, Association for Corporate Growth (Atlanta Chapter), (Charlotte Chapter); Atlanta Chapter – 2006 to Present; Charlotte Chapter – 1992 to 1995

Former member, Ben Hill United Methodist Church; 1990 to 2006

Currently serve as Chairman of the Board of Visitors at the University of North Carolina at Chapel Hill; 7/2009 to Present

Trustee at the Employees Retirement System of Georgia; 9/1999 to Present

13. **Political affiliations and activities:**

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None

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

Finance Committee, Bill Campbell for Mayor (2001)

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more during the past 5 years.

1) Barack Obama for President- $4600 (2008) (includes primary and general);
2) Lisa Borders for Mayor- $250 (2009);
3) Roy Barnes for Governor- $1,000 (2009);
4) Thurbert Baker for Governor- $1,000 (2009);
5) Richard Moore for Governor- $2,500 (2008);

6) Beverly Perdue for Governor- $1,000 (2008);
7) Ken Lewis for U.S. Senate- $1,000 (2009);
8) John Edwards for President- $1,000 (2008);
9) Johnny Sinclair for City Council- $100 (2009);
10) Cathy Cox for Governor- $1,000 (2006);
11) Thurbert Baker for Attorney General- approx. $1,000 (2006);
12) John Edwards for President- $1,000 (2004).

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

Council for the Opportunity in Graduate Management Education (COGME) fellow at the Harvard Business School; 1981 to 1982

Harvey Beech award winner—University of North Carolina at Chapel Hill (2009).

15. **Published writings:** Provide the Committee with two copies of any books, articles, reports, or other published materials which you have written.

Eunice Azzani and Michael Kennedy, "Workplace Unfairness: Combating Subtle Discrimination," *Diversity Executive*, November/December 2008 (copy attached.)

16. **Speeches:**

(a) Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated. Provide copies of any testimony to Congress, or to any other legislative or administrative body.

None.

(b) Provide a list of all speeches and testimony you have delivered in the past 10 years, except for those the text of which you are providing to the Committee. Please provide a short description of the speech or testimony, its date of delivery, and the audience to whom you delivered it.

Statement to the Subcommittee on Oversight and Investigations, Committee on Financial Services, U.S. House of Representatives, July 15, 2004

17. **Selection:**

(a) Do you know why you were chosen for this nomination by the President?

I believe I was chosen due to my extensive background in public pension funds and investments/corporate finance.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

I have gained pension fund experience from my service as a Trustee on the Board of the Employee Retirement System of Georgia. I have also been actively involved in several pension fund organizations such as the National Association of Securities Professionals and the National Association of State Retirement Administrators.

I have specific investment experience from my employment at JP Morgan, Wachovia, and GE Capital. I developed my knowledge of equity capital markets at JP Morgan, where I was an Equities Research Analyst and followed bank and savings and loan stocks. At Wachovia, I was involved in corporate finance, and learned about the financing structures of companies. At GE Capital, I was exposed to mezzanine and private equity investments as part of a company's overall structure.

B. EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

   No. Service on the Federal Retirement Thrift Investment Board is part-time, and I would maintain my current employment if confirmed.

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

   No, except as noted in my response to Question 1, above.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization, or to start employment with any other entity?

   No, except as noted in my response to Question 1, above.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

   No, except as noted in my response to Question 1, above.

57326.042

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

Yes.

6. Have you ever been asked by an employer to leave a job or otherwise left a job on a non-voluntary basis? If so, please explain.

I have never been asked to leave a job or left a job due to performance issues. As described below, on two occasions, I changed jobs as a result of financial difficulties or a change in business on the part of my employer.

From 1996 to 1997, I worked for Pacific Capital, a small private equity fund in Nashville, Tennessee. The firm consisted of a Partner and Administrative Assistant in addition to me. My role was a business development position, which allowed me to bring transactions to the firm. In 1997, Pacific Capital encountered funding issues and eventually was disbanded. I left the firm in 1997 prior to its unwinding, due to the financial difficulties of the company.

In 1995, when I was working at GE Capital, the company made the strategic decision to scale back its efforts in financing leveraged buyouts. As a result, the company shrank the size of the Corporate Finance Group. I was promoted to Vice President and asked to relocate to Charlotte where I would open a regional office. Due to personal considerations, I eventually chose to remain in Atlanta. Since there was not an opening in the Atlanta office, I left the company and received a severance package.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

I have consulted with the Federal Retirement Thrift Investment Board's designated agency ethics official and the Office of Government Ethics, and I am not currently aware of any potential conflicts of interest. Should a potential conflict arise, I would consult with FRTIB's ethics official before determining how to proceed, and I would recuse myself as necessary.

2. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration or execution of law or public policy, other than while in a federal government capacity.

57326.043

For the past 10 years, I have participated as part of the Board of Trustees at the Employees Retirement System (ERS) of Georgia in presenting to the state legislature ERS's interest in legislation to allow the System to invest in alternative investments.

3. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No.

2. Have you ever been investigated, arrested, charged or convicted (including pleas of guilty or nolo contendere) by any federal, State, or other law enforcement authority for violation of any federal, State, county or municipal law, other than a minor traffic offense? If so, provide details.

No.

3. Have you or any business of which you are or were an officer, director or owner ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

The Employees Retirement System of Georgia was sued in 2000. The suit was brought by a former state official who had been terminated by the Governor for accepting a large amount of gifts from outside business associates. Due to her termination for cause, she was not allowed to receive her entire pension benefits. She sued the pension fund to receive these additional pension funds. I was not on the Board when she was terminated, but I served as the Chairman of the ERS pension fund when the suit was brought, and I provided testimony during the trial in my capacity as Chairman. The jury ruled in favor of ERS.

In addition, other suits have been brought against ERS while I have served as a Board member. None involved any allegations of wrongdoing by me. These suits have either been dismissed or settled out of court.
I am aware of two suits in which my current employer, Korn/Ferry, is a party. I have no involvement in either matter, and neither matter arose in the Atlanta office where I work.

57326.044

In the first case, Korn/Ferry is a plaintiff in a suit against a former employee who allegedly left the firm with proprietary documents and data, and then started his own firm. In the second case, a Korn/Ferry employee has apparently sued the firm alleging discrimination.

4. For responses to question 3, please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

None.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

None.

E. FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

REDACTED

AFFIDAVIT

MICHAEL DENARD KENNEDY being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Michael D. Kennedy

Subscribed and sworn before me this 17th day of February, 20 10

Erin Givens Walker

Notary Public

ERIN GIVENS WALKER
NOTARY PUBLIC, DEKALB COUNTY, GEORGIA
MY COMMISSION EXPIRES AUGUST 19, 2012

United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

FEB 16 2010

The Honorable Joseph I. Lieberman
Chairman
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Under the Ethics in Government Act of 1978, Presidential nominees requiring Senate confirmation who are not expected to serve in their Government positions for more than 60 days in a calendar year are not required to file public financial disclosure reports. The Act, as amended, however, contains a provision in section 101(b) that allows the committee with jurisdiction to request any financial information it deems appropriate from the nominee.

We understand that your committee desires to receive a financial disclosure report from any Presidential nominee for a position on the Federal Retirement Thrift Investment Board, along with a written opinion from this Office regarding any possible conflicts of interest. Therefore, I am forwarding a copy of the confidential financial disclosure report (OGE Form 450) of Michael D. Kennedy, who has been nominated by President Obama for the position of Member of the Federal Retirement Thrift Investment Board.

We have reviewed the report and have obtained advice from the Federal Retirement Thrift Investment Board concerning any possible conflict in light of its functions and the nominee's proposed duties. Based thereon, we believe that Mr. Kennedy is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Robert I. Cusick
Director

U.S. Senate Committee on Homeland Security and Governmental Affairs
Pre-hearing Questionnaire
For the Nomination of Michael D. Kennedy to be
a Member of the Federal Retirement Thrift Investment Board

I. Nomination Process and Conflicts of Interest

1. Why do you believe the President nominated you to serve as a member of the Federal Retirement Thrift Investment Board ("FRTIB" or "the Thrift Board")?

   I believe that I was nominated due to my investments background as well as my public pension fund experience, as discussed further in question three below.

2. Were any conditions, express or implied, attached to your nomination? If so, please explain.

   No.

3. What specific background and experience do you believe affirmatively qualifies you to be a member of the Thrift Board?

   I believe there are four areas in my background that qualify me to become a member:

   A) Investment/Corporate Finance background - My initial position in financial services was at JP Morgan Investment Management where I was an Equity Analyst. As an Analyst, I followed regional bank and savings and loan stocks and made investment recommendations to the Portfolio Management Group. After graduating from Harvard, I worked in Corporate Finance at Wachovia Bank. At Wachovia, I worked in a risk management position as well as in a business development/consulting role. I specifically worked with companies in structuring their debt. I later worked at GE Capital Corporate Finance Group. At GE, I worked with companies to provide senior debt, mezzanine and private equity products. I financed leveraged buyouts and recapitalized companies. In each of these roles, I developed a strong understanding of capital structures and capital markets.

   B) Public Pension Fund experience - In late 1999, I was appointed to join the Employees Retirement System (ERS) of Georgia Board. Shortly after joining the Board, I was elected Vice Chairman. After the first year, I was elected Chairman and served in that capacity until 2005. I currently serve as a member of the board. I have served on the Investment Committee for my entire tenure as a Board member. ERS has assets of approximately $14 billion and administers benefits for 130,000 active employees and over 52,000 retirees. Although this is primarily a defined benefits plan, ERS also has a small defined contribution plan. Over the past ten years, I have actively participated in numerous national conferences such as the National Association of State Retirement Administrators (NASRA), the Council of Institutional Investors, and the National

57326.047

Association of Securities Professionals (NASP). These conferences have allowed me to meet with Trustees from other public plans and learn more about how they are approaching pension fund challenges and issues.

C) Korn/Ferry experience - I have been a Partner at Korn/Ferry International for eleven years as a member of the Financial Services Practice. As a consultant, I have worked on numerous assignments in the asset management sector, including several assignments with large public pension funds such as CalPERS, CalSTRS, and Texas Teachers. These experiences have allowed me to gain insights into these large, complex organizations while understanding their investment approaches. I have been involved in the recruitment of experienced investment professionals into these pension organizations.

D) Education - I received my MBA from the Harvard Business School. At HBS, I focused my studies in finance. This experience allowed me to gain a strong framework in finance, investments, corporate finance and capital markets.

4. Have you made any commitments with respect to the policies and principles you will attempt to implement as a member?

No.

5. If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of a conflict of interest? If so, please explain what procedures and/or criteria that you will use to carry out such a recusal or disqualification.

No.

6. Insofar as your non-governmental work involves business and finance, how does that work inform or otherwise relate to the decisions you make as a member of the FRTIB? How do you ensure that no actual or apparent conflict of interest arises?

My professional work at Korn/Ferry will enhance my ability to make solid decisions at FRTIB, if confirmed. My extensive recruiting experience in the asset management sector will allow me to have broad insights on challenges and trends in the investments area. Due to my knowledge of other pension funds, I will be able to develop some knowledge in "best practices" that I can help implement at FRTIB. Should any potential conflict arise, I would work with FRTIB's designated ethics official to resolve it, and I would recuse myself as necessary.

57326.048

II. Role and Responsibilities of the Federal Retirement Thrift Investment Board and of its Members

7. What do you see as the principal roles and responsibilities of the FRTIB and of each of its members?

The primary role is to provide oversight and guidance to the staff and members of the FRTIB in order to ensure the safety and soundness of the TSP. It is important that the appropriate policies and procedures are implemented to protect the TSP over the long-term.

8. What do you see as the main challenges facing the Federal Employees Retirement System, including the Thrift Savings Plan (TSP), and what do you believe the FRTIB can do to help meet those challenges?

There are two primary challenges confronting the FRTIB. First, there is an ongoing need to continue to grow the TSP through the addition of new participants. Although the TSP is the primary pension plan for federal employees, there are still significant numbers of employees who would benefit from becoming members. Therefore, it will be important for the FRTIB to come up with additional and creative ways to encourage new participants to enroll.

The second challenge concerns communications and investment education. It is essential that the FRTIB continue to enhance its communications efforts in order to reach more employees. It is my understanding that the FRTIB has enhanced its website so that it is more user-friendly. Investment education materials have apparently been added to the website. In addition, the use of call centers has become more significant, which allows employees to get more direct responses to questions. Improved communications should also allow the FRTIB to continue to improve the financial and investment knowledge of employees.

9. If you are confirmed, what do you expect will be the focus of your efforts during your term?

If confirmed, the overall focus during my tenure as a Board member will be to provide oversight and guidance to the members and staff at FRTIB. This oversight will come in three areas: 1) ensuring the appropriate investment options; 2) promoting more effective communications to federal employees about their investment options along with continued education on investments; and, 3) recruiting experienced investment professionals.

10. What objectives would you like to achieve in your term as a member, if confirmed? Why do you believe those objectives are important to the TSP and its participants?

57326.049

If confirmed, my primary objective would be to ensure that the appropriate long-term policies are in place to address the soundness of the Thrift Savings Plan. In addition, it is essential to provide investment oversight to make sure that federal employees are provided with the strongest options that provide the highest potential returns with reasonable risks. It is also important to enhance communications and to provide investment education to federal employees to allow them to make reasonable choices. Finally, I would like to assist in the recruitment and retention of top-performing investment talent at FRTIB.

III. Policy Questions

11. What actions do you believe should be taken to ensure that the TSP maintains effective and user-friendly information technology, with systems that offer features as good as, or better than, those offered by mutual funds and private-sector pension plans?

It is my understanding that the TSP has been going through a technology upgrade. It is vital that the TSP has up-to-date technology in order to effectively communicate with its participants. Part of this effort has been in the improvement in the website. The website has become more user-friendly, which is critical to the flow of information.

As a Trustee at Georgia ERS, I have been actively involved in providing guidance in our efforts to enhance our technology capabilities over the past ten years. Part of our focus has been on enhancing our website capabilities as well the implementation of a call center. During this process, we benchmarked our capabilities against other pension funds. If confirmed, this past experience should help me as I analyze the current technology capabilities at TSP.

12. In any defined-contribution retirement program like the TSP, increased customer service and convenience may require increased overhead costs, so trade-offs may be needed.

a. In your opinion, how does the TSP compare to commercial defined-benefit plans in terms of customer service and convenience, and in terms of efficiency?

At this time, I am not in position to compare the TSP with other organizations regarding customer service and convenience. However, as mentioned above, I do have experience from my Georgia pension background that should allow me to make appropriate comparisons as I learn more about the TSP.

b. Do you believe any adjustments should be made in the level of customer service and convenience that the TSP provides? For example, what improvements, if any, do you believe should be made in the TSP web site and call centers?

If confirmed, I would analyze the current level of customer service and determine what improvements need to be implemented. As a Trustee at the Employees

57326.050

Retirement System of Georgia, I have been involved in customer relations areas such as the implementation of a call center and website redesign.

c. Do you believe that any changes should be made to reduce overhead and make the TSP funds more efficient?

If confirmed, I will analyze the current financial condition of the FRTIB and work with the other members of the Board to take the appropriate steps to ensure that the TSP funds are more efficient.

13. Do you believe any improvements are needed in the disclosure to TSP participants of overhead costs attributable to particular TSP investment funds?

If confirmed, I will analyze the current disclosure situation regarding overhead costs attributable to particular TSP funds prior to making any recommendations for improvements.

14. How satisfied are you with current efforts to seek and receive feedback from TSP participants? Do you believe additional steps should be taken?

It is my understanding that the TSP conducts regular surveys of participants in order to gain feedback. At this time, I am not knowledgeable enough to determine the adequacy of this effort. However, feedback from participants should always be a focus since it will allow the TSP to improve its performance. Hopefully, the website will enable more participants to provide direct feedback as it continues to be enhanced.

15. What do you believe should be the role of the Employee Thrift Advisory Council (ETAC), and how do you believe the FRTIB can make best use of it?

It is my understanding that the Employee Thrift Advisory Council is an organization established to assist the FRTIB. This Council is comprised primarily of members representing specific constituencies such as labor unions, supervisors, Senior Executives, etc. The Council was established to provide input to the FRTIB on investment matters.

The Council can play a vital role in highlighting specific issues that are important to their constituencies. Some of these issues will also be of importance to other groups. The FRTIB should have a strong relationship with this Council since this group can enhance communications. The FRTIB can also use the Council in its communications efforts in reaching more employees and potential participants.

16. Are there measures that should be considered to strengthen the transparency and accountability of the FRTIB and its operations?

If confirmed, I will analyze the current amount of transparency and accountability for the FRTIB. I am a firm believer in providing a high level of transparency to customers. As a

57326.051

Trustee at ERS of Georgia, I have been actively involved in decisions regarding transparency and accountability.

17. What do you believe are the respective roles of the FRTIB and of the Office of Personnel Management (OPM) in ensuring that participants have the financial knowledge to make informed investment decisions? Are there any steps that you believe should be undertaken to improve those efforts?

It is my understanding that the Office of Personnel Management provides investment counseling to federal employees. Therefore, it is essential for the FRTIB and the OPM to have a close working relationship. Although separate organizations, there should be strong collaboration in order to provide retirement counseling to as many people as possible. If confirmed as a new Board member, I would review the current roles and responsibilities and support the needed collaboration to make financial counseling more effective.

18. What is your opinion of the current menu of investment options that the TSP makes available to participants? Do you believe that additional options should be offered? Different option? Fewer options?

Based on my limited exposure to the current menu options, they appear to be appropriate. The lineup of investment fund types, consisting of US equities, non-US equities, diversified fixed income, lifecycle and stable value, appears to be adequate and appropriate.

However, the financial markets have changed dramatically over the past 18 months and will continue to change going forward. It will be necessary to review different options based on the financial markets and private entities. At the same time, the appropriate level of risks must be taken into account to ensure the federal employees are not over-exposed to significant risk situations.

19. What do you believe should be the respective roles of the FRTIB, the ETAC, the Congress, or others in ascertaining and deciding what investment options the TSP should make available? Please explain.

Although the ETAC may have opinions regarding specific investment options, it is the responsibility of the FRTIB, which acts as an independent fiduciary under the laws passed by Congress, to make the final decision regarding investment choices. While other constituencies may have opinions that may enhance investment options for their groups, it is the role of the FRTIB to weigh these choices for the entire body of all federal employees.

20. The Family Smoking Prevention and Tobacco Control Act (P.L. 111-31) contained a number of provisions affecting the TSP, including language to provide the FRTIB the authority to establish a mutual fund window for TSP participants if it would be in the best interests of participants. Such a mutual fund window would allow TSP participants to

57326.052

invest in a wised range of mutual fund. What do you believe are the advantages and disadvantages of maintaining the current choices of funds, versus increasing the menu to include other investment options?

There seems to be interest by some TSP participants in increasing the menu options to provide more mutual fund choices. The primary advantage would be to allow individuals to choose among a larger variety of funds, leading to more diversification. Although this may be beneficial for more investment-savvy participants, it could be a disadvantage for other participants. There would be a need for education on the benefits of these funds. Education would also be necessary to avoid having participants become confused or "turned off" toward the TSP program due to the increased complexity. I would want to study this issue further before offering a recommendation.

21. The Family Smoking Prevention and Tobacco Control Act also required the establishment of a qualified Roth contribution program within the TSP. A survey by OPM showed that federal employees considered the Roth option attractive but did not have enough information to evaluate the tax advantages or disadvantages of the option.

    a. Please discuss your approach to the development of the Roth option, particularly with respect to ensuring that participants receive adequate education about their options.

       It is my understanding that a Roth TSP plan is currently being developed. Although I am not sure when it will be implemented, it will be important to provide the necessary education to qualified participants so that they understand the benefits, particularly related to taxes. Therefore, if confirmed, it would be my goal to ensure that an education strategy is developed and implemented that will effectively reach these participants.

    b. What advice would you give to TSP participants to help them decide whether to use a Roth or a conventional option within the TSP?

       TSP participants will need to understand the tax implications when deciding between a Roth option or a conventional option. Although both of these options are utilized for retirement purposes, the tax consequences differ.

22. What do you believe are the most important legislative changes Congress should make to benefit TSP participants? Please explain.

    I do not have sufficient knowledge to answer this question currently, but if confirmed, I look forward to working with the Committee on any potential legislative changes.

IV. Relations with Congress

23. Do you agree, without reservation, to respond to any reasonable summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

57326.053

Yes.

24. Do you agree, without reservation, to reply to any reasonable request for information from any duly constituted committee of Congress if you are confirmed?

Yes.

V. Assistance

25. Are these answers your own? Have you consulted with the staff of the FRTIB or any interested parties? If so, please indicate which entities.

The staff at the FRTIB provided me with background information on the organization and the TSP. However, all of the answers provided are my own.

AFFIDAVIT

I, Michael D. Kennedy, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate and complete.

Michael D. Kennedy

Subscribed and sworn before me this 12th day of April, 2010.

Rachel H. Ramsey
Notary Public

My commission expires
September 25, 2010

OPENING STATEMENT

DENNIS P. WALSH

NOMINEE FOR POSITION OF CHAIRMAN, SPECIAL PANEL ON APPEALS

SENATE HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE

APRIL 20, 2010

Good afternoon. My name is Dennis P. Walsh, and I am honored to be appearing before you as the President's nominee for the position of Chairman of the Special Panel on Appeals. I would like to thank Senator Akaka, Senator Voinovich, and the other Members of this Committee for this opportunity to appear before you and to be considered for this important position. Also with me today is my wife, Barbara A. O'Neill, who is a prominent labor attorney and public servant in her own right on the legal staff of the National Labor Relations Board, and who has supported me throughout my career in the Federal government.

As you know, the Chairman of the Special Panel on Appeals is a position established by the Civil Service Reform Act of 1978 to address certain mixed cases that involve issues concerning both merit systems principles and anti-discrimination principles as applied to Federal employees. If a Federal employee appeals such a case to the Merit Systems Protection Board, and the MSPB decides the case, the employee can subsequently appeal the decision regarding the discrimination claim to the Equal Employment Opportunity Commission. If the EEOC issues a decision that differs from the MSPB's decision as to the discrimination claim, it refers the case back to the MSPB. The MSPB can concur in the EEOC's decision at that point, which makes it a final decision subject to judicial review. However, if the MSPB determines that the EEOC's decision conflicts with merit systems laws, rules, or policy directives, or that it does not apply such laws, rules or directives correctly to the facts of the case, it must certify the case to the Special Panel on Appeals. That is where this position comes into play. The Chairman of the Special Panel, who is a Presidential appointee, then convenes a Special Panel, consisting of him or herself, a Member of the MSPB, and a Member of

57326.056

the EEOC. The Special Panel has 45 days to consider the case, and must decide if indeed the EEOC's decision is in violation of merit systems laws, rules, or directives, or if it applies those laws, rules or directives incorrectly. In making such a decision, the Special Panel must give due deference to the MSPB on issues involving merit systems principles, and to the EEOC on anti-discrimination principles.

In a nutshell, Senators, that is the position which the President has asked me to assume. I believe I am uniquely positioned to undertake this responsibility because of my extensive experience as an adjudicator of labor cases at the National Labor Relations Board, my experience as a Federal manager at the NLRB, and because of my present position as the Deputy General Counsel of the Federal Labor Relations Authority. As a Member of the National Labor Relations Board, I was called upon to decide cases involving labor law issues under the National Labor Relations Act as part of an ideologically divided, yet collegial body. Our job was to meld our various views together and decide cases as expeditiously as possible. The job of the Chairman of the Special Panel on Appeals, likewise, is to work together with Panel Members who may have disparate points of view, and to issue a decision within a very tight timeframe. My priority as a decision maker on the NLRB was always to decide cases quickly, while at the same time addressing all of the issues thoroughly and fairly. Those skills should serve me well if confirmed as Chairman of the Special Panel. As both a Chief Counsel and a Member of the NLRB, I was often confronted with issues involving both merit systems and anti-discrimination principles, since I was responsible for managing my own staff and also had co-responsibility with the other Board Members and the General Counsel for the overall management of the Board. And finally, in my current position as Deputy General Counsel of the FLRA, I am responsible for the overall management of a nationwide field staff of Federal employees. In this position, therefore, I am becoming even more familiar with the merit systems and anti-discrimination principles that the Chairman of the Special Panel on Appeals is charged with addressing.

The main priority of the Special Panel on Appeals is to decide cases presented to it fairly and expeditiously, within a tight 45-day timeframe. The statutory procedures that result in cases being presented to the Special Panel are complex. That is because those procedures are the product of a congressional compromise that was designed to maintain a delicate balance between merit systems and anti-discrimination principles by providing a third-party administrative tribunal that can reconcile them in a way that preserves the authority of both the MSPB and the EEOC over the areas in which each has the greatest expertise. It is therefore important to have fair and impartial decision makers on the Panel who understand the need both for careful legal rationales and expeditious decisions. I believe I have demonstrated my ability to accomplish both of those objectives in my extensive career as an adjudicator of labor cases.

I thank this committee for its consideration of my nomination, and I would be pleased to answer any questions that you may have.

REDACTED

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL INFORMATION

1. **Name:** (Include any former names used.)

   Dennis P. Walsh

2. **Position to which nominated:**

   Chairman, Special Panel on Appeals

3. **Date of nomination:**

   January 20, 2010

4. **Address:** (List current place of residence and office addresses.)

   Residence:

   REDACTED

   Current Office:
   Federal Labor Relations Authority
   1400 K St., N.W.
   Washington, DC 20424

5. **Date and place of birth:**

   August 27, 1954
   Oxford, NY, USA

6. **Marital status:** (Include maiden name of wife or husband's name.)

   Married: Barbara A. O'Neill

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

   Steven, b. 12/2/1990
   REDACTED

8. **Education:** List secondary and higher education institutions, dates attended, degree received and date degree granted.

   Cornell Law School, 8/1977-1/1983, J.D. 1/1983

57326.059

Hamilton College, 9/1972-6/1976, B.A. 6/1976

Oxford Academy and Central High School, Oxford, NY, 9/1966-6/1972

9. **Employment record:** List all jobs held since college, and any relevant or significant jobs held prior to that time, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)

Deputy General Counsel, Federal Labor Relations Authority, Washington, DC, 12/2009-Present

Deputy Assistant General Counsel, National Labor Relations Board (NLRB), Washington, DC, 4/2009-12/2009

Special Assistant to Associate General Counsel, NLRB, Washington, DC, 1/2008-4/2009

Board Member, NLRB, Washington, DC, 12/2000-12/2001, 12/2002-12/2004, and 1/2006-1/2008

Special Assistant to NLRB Member Wilma B. Liebman, Washington, DC, 12/2004-1/2006

Adjunct Professor of Labor Law, Howard University School of Law, Washington, DC, 8/2005-12/2005, 1/2007-5/2007, 1/2008-5/2008, 1/2010-Present

Special Assistant to Board Member Wilma B. Liebman, NLRB, Washington, DC, 12/2001-12/2002

Chief Counsel to NLRB Member Wilma B. Liebman, NLRB, Washington, DC, 11/1997-12/2000

Chief Counsel, Office of NLRB Member Margaret A. Browning, NLRB, Washington, DC, 3/1994-11/1997

Associate, Spear, Wilderman, Borish, Endy, Browning & Spear, Philadelphia, PA, 11/1989-3/1994

Field Attorney, Region 4, NLRB, Philadelphia, PA, 11/1987-11/1989

Trial Attorney, Appellate Court Branch, NLRB, Washington, DC, 7/1986-11/1987

Attorney-Advisor to Member Patricia Diaz-Dennis, NLRB, Washington, DC, 10/1985-7/1986

57326.060

Law Clerk, Office of Representation Appeals, NLRB, Washington, DC, 9/1984-10/1985

Cook/Bartender, the Chariot Restaurant, Ithaca, NY, 6/1982-6/1983

Law Clerk, Cornell Legal Aid Clinic, Ithaca, NY, 6/1979-9/1979, 6/1982-9/1982

Community Organizer, ACORN, Bridgeport, CT and Boston, MA, 1/1981-7/1981

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

None

11. **Business relationships:** List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

None

12. **Memberships:** List all memberships, affiliations, or and offices currently or formerly held in professional, business, fraternal, scholarly, civic, public, charitable or other organizations.

Peggy Browning Fund	Secretary/ Board Mbr.	5/1997-Present
ABA AIDS Coordinating Committee	Member	1/2001-2/2007
ABA Labor and Employment Law Section	Member	1984-Present
Victoria Springs Homeowners Association	President	6/2000-6/2001
Victoria Springs Homeowners Association	Secretary	5/1996-6/2000
Pack 774, Cub Scouts of America	Committee Member/ Advancements Chairperson	6/1998-5/2001
Olney Boys and Girls Community Sports Association	Volunteer Coach	1998 to Present
NLRB Professional Association	President	1986

Bar Admissions: U.S. District Court (D. NJ) (June 1991), U.S. District Court (E.D. PA) (September 1990), U.S. Court of Appeals (2d, 3d, 4th, 10th Circuits) (1987-88), New Jersey Bar (currently inactive), Pennsylvania Bar (currently inactive), New York State Bar (since 1985) and ABA Member (since 1986)

57326.061

13. **Political affiliations and activities:**

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None

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

None

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more during the past 5 years.

Hillary Clinton For President, 2008: $75;
Democratic Senatorial Campaign Committee, 2008: $25;
Obama for America, 2008: $75; Democratic National Committee, 2006: $35;
Democratic Senatorial Campaign Committee, 2006: $50;
Maryland Democratic Party, 2006: $70;
Citizens for Tom Perez, 2006: $50;
Lynn Partin for Congress, 2006: $50.

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

Editor, Cornell Law Review
Graduated Cum Laude, Cornell Law School
Graduated Summa Cum Laude, Phi Beta Kappa, Hamilton College
Performance Award, National Labor Relations Board: 1985
Special Act Awards, NLRB: 1994, 1995, 1996, 1997

15. **Published writings:** Provide the Committee with two copies of any books, articles, reports, or other published materials which you have written.

Contributor to White Paper, "Perspectives on Returning to Work: Changing Legal Issues and the HIV/AIDS Epidemic," a Handbook Prepared by the *American Bar Association AIDS Coordinating Committee* (Mark E. Rust, Editor), 2000.

Introduction to Special Issue, "Papers from the HIV/AIDS Law & Practice Conference 2004," *AIDS & Public Policy Journal* (University Publishing Group), Spring/Summer 2004, v. 19, No. 1/2.

"The Construction Industry Under the National Labor Relations Act," Paper for *ABA/NLRB Regional Institutes on Basic NLRB Law and Procedures* (March 1995).

Special Issue Editor, "Human Rights and HIV/AIDS," *Human Rights* magazine (ABA, Section of Individual Rights and Responsibilities), Fall 2004, Vol. 31, No. 4.

"1994 Baseball Player's Strike: A Case Study in Labor's Use of its Most Effective Economic Weapon," paper submitted for publication in upcoming book compiling proceedings of *Reversing Field: Examining Issues of Commercialization, Race and Labor in 21st Century Sports Law,* a symposium held at West Virginia University College of Law, October 2007 (West Virginia University Press, upcoming 2010).

16. **Speeches:**

(a) Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated. Provide copies of any testimony to Congress, or to any other legislative or administrative body.

Please see my response to part (b) below, which includes all relevant speeches and testimony. The remarks listed in part (b) were delivered from notes, so I do not have copies of the text to provide to the Committee.

(b) Provide a list of all speeches and testimony you have delivered in the past 10 years, except for those the text of which you are providing to the Committee. Please provide a short description of the speech or testimony, its date of delivery, and the audience to whom you delivered it.

Remarks, Labor and Employment Law Institute, Atlanta Georgia, December 19, 2008: Overview of recent National Labor Relations Board Decisions

Remarks, Painters International Union Lawyers Conference, Las Vegas, November 11, 2007: Overview of recent National Labor Relations Board Decisions

Remarks, ABA Labor and Employment Law Section Continuing Legal Education Conference, Philadelphia, PA, November 8, 2007: Overview of recent National Labor Relations Board Decisions

Remarks, Panel Presentation, "Balls or Strikes: Are Economic Weapons Finding the Zone," Sports Law Conference at West Virginia University College of Law, October 5, 2007: Legal issues from the 1994-1995 Baseball Players Strike

Remarks, Cornell Law School, Ithaca, NY, February 19, 2007: "Supervisory Status Under the NLRB: The *Oakwood Healthcare* Decision and Companion Cases: New Standards, Their Impact and Implications"

57326.083

Remarks, Labor and Employment Relations Association Monthly Meeting, Philadelphia, PA, October 10, 2006: Overview of Recent NLRB Decisions

Luncheon Address, NLRA Basics Institute, St. Louis University School of Law, April 26, 2006: Legal Issues Facing the NLRB and Overview of Recent Decisions

Remarks, NLRB Region 3/Cornell Industrial and Labor Relations School Labor Law Conference, Buffalo, NY, May 6, 2005: Current Representation Case Issues before the NLRB

Remarks, Labor and Employment Law Student Association, Albany Law School, Albany, NY, November 10, 2004: Overview of Recent NLRB Decisions

Luncheon Remarks, Bernard Gottfried Memorial Labor Law Symposium, Wayne State Law School, Detroit, MI, October 14, 2004: Overview of recent NLRB Decisions

Luncheon Speech, UNITE/HERE International Union Lawyers Conference, NY, NY, October 8, 2004: Overview of recent NLRB Decisions

ABA Annual Meeting Presentation, Atlanta, GA, August 8, 2004: NLRB Priorities and Overview of Recent Decisions

Machinists Union Organizers' Conference, Hollywood, MD, July 9, 2004: Overview of Recent NLRB Decisions

Remarks, Industrial Relations Research Association Luncheon Meeting, Chicago, IL, May 6, 2004: Overview of recent NLRB Decisions

Remarks, Joint Labor Law Conference, Boston, MA, October 28, 2003: Overview of pending issues and recent NLRB Decisions

Remarks, NLRB Region 3/Cornell Industrial and Labor Relations School Labor Law Conference, Buffalo, NY, April 19, 2002: Overview of Recent NLRB Decisions

Remarks, Philadelphia Industrial Relations Research Association Monthly Meeting, Philadelphia, PA, April 9, 2002: Overview of recent NLRB Decisions

17. **Selection:**

(a) Do you know why you were chosen for this nomination by the President?

I believe I was selected by the President for this position because of my experience as a Member of an adjudicatory agency that deals with labor law issues, the NLRB.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

I am an experienced adjudicator of labor law issues and an experienced federal manager who understands labor-management issues in the federal sector.

B. EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

   No. I am teaching the Labor Law Course at Howard University School of Law as an Adjunct Professor in Spring 2010. In addition, I intend to continue working in my present position as the Deputy General Counsel at the Federal Labor Relations Authority. I have consulted with the Special Panel on Appeals's designated agency ethics official on this matter, and if I am confirmed as Chairman of the Special Panel on Appeals, I intend to serve in that position without compensation.

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

   Yes, as noted in my response to Question #1, above.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization, or to start employment with any other entity?

   As stated in the response to Question #1, above, I am currently the Deputy General Counsel at the Federal Labor Relations Authority. I intend to remain in that position after my term as Chairman of the Special Panel on Appeals expires, if I am fortunate to be confirmed for this position.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

   No, except as described in my response to Question #1 and Question #3, above.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

   Yes.

6. Have you ever been asked by an employer to leave a job or otherwise left a job on a non-voluntary basis? If so, please explain.

57326.065

No.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

   In connection with the nomination process, I have consulted with the Office of Government Ethics and the Special Panel on Appeals's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the agency's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

2. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration or execution of law or public policy, other than while in a federal government capacity.

   None.

3. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

   Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

   No, except that in 1992, while I was an associate at Spear, Wilderman, Borish, Endy, Browning & Spear, the defendant in a case I was litigating filed a Rule 11 motion against my firm and me. I had inherited an ERISA matter from another attorney, and I had filed a summary judgment motion seeking punitive damages. The defendant argued that punitive damages were not available under the relevant case law, and filed the Rule 11

57326.086

motion as part of this argument. The court did not rule on the motion, and no sanctions were imposed.

2. Have you ever been investigated, arrested, charged or convicted (including pleas of guilty or nolo contendere) by any federal, State, or other law enforcement authority for violation of any federal, State, county or municipal law, other than a minor traffic offense? If so, provide details.

No.

3. Have you or any business of which you are or were an officer, director or owner ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

Yes.

1. Comptroller of Maryland, 301 West Preston St., Baltimore, MD 20201-2383, (410) 767-1967:

In tax years 2003, 2004, and 2005, my employer, the NLRB, mistakenly remitted my state tax deductions to the District of Columbia instead of the State of Maryland due to a payroll error. Upon notification from the State of Maryland of this error, I promptly paid the amount due for 2005, including interest and penalties, in June 2006. I then requested and obtained a refund from the District of Columbia for the amounts mistakenly remitted to the District. In November 2006, after receiving this refund, I paid Maryland the tax due for 2003 and 2004 and requested an abatement of interest and penalties for those two years. A hearing on my request was held on July 10, 2007, and the penalties, but not the interest, were subsequently waived. I promptly paid the interest due.

Name Change for Daughter Rose Walsh to Rose Margaret Walsh, Circuit Court for Montgomery County, Rockville, MD, Case 174317, 12/1997

Homeowners' Association Complaint filed with Montgomery County Commission on Common Ownership Communities, 100 Maryland Ave., Rockville, MD 20850, Case 511-0. Melvin L. DePamphilis v. Victoria Springs Homeowners Association. Homeowners filed complaint against Homeowners Association, of which I was President, alleging that Association overcharged single family homeowners and undercharged townhome owners for dues for a 3-year period, and seeking refunds for single family homeowners. Commission issued Decision and Order denying homeowners' complaint on 5/8/2002.

Application for Bar Membership, State of New Jersey. Hearing held by Committee on Character 3/15/1991 to examine my admitted past alcoholism and depression in the early 1980s. On recommendation of the Committee on Character, the Supreme Court of New Jersey issued an Order granting me admission to the Bar on 5/14/1991.

57326.067

There have been various grievances and other personnel actions filed against either myself as Board Member or the Board Member I was assisting as Chief Counsel in the last 13 years. The details of those grievances and personnel actions are as follows:

(1) Removal of staff attorney from federal service. On September 17, 1998, I issued a Notice of Proposed Removal to a staff attorney at NLRB, and Board Member Wilma B. Liebman issued a Notice of Removal on May 21, 1999. The staff attorney subsequently filed a grievance concerning her removal with her bargaining representative, the NLRB Professional Association. The Professional Association requested arbitration on the grievance, but the matter was settled by offering the staff attorney further employment without backpay.

(2) Grievance of staff attorney concerning the ratings on her performance appraisal (which I approved) for the appraisal period 2/16/99-2/15/00. This grievance was filed on 5/25/00, and was scheduled for voluntary mediation pursuant to the NLRB's Alternative Dispute Resolution procedure. The grievance was settled by modifying the staff attorney's evaluation for the appraisal period at issue.

(3) National Labor Relations Board Professional Association (NLRBPA) grievance regarding promotion decision, filed June 20, 2003. The NLRBPA filed a grievance concerning my decision as Board Member in May 2003 to promote an attorney on my staff to the GS-15 level. The NLRBPA claimed that the attorney was "pre-selected" for the position, and that the posting date for the position was set to ensure that this particular attorney would be eligible when it was posted. The NLRBPA requested arbitration of the grievance (FMCS No. 04-19130-3010) but on November 16, 2004 the parties settled the grievance just before the arbitration was to be held by an agreement that the Board would post a one-time, "red-circled" GS-15 position on another Board Member's staff and would allow Board staff members to bid on it.

(4) National Labor Relations Professional Association grievance regarding my appointment to temporary position as Special Assistant to Member Wilma B. Liebman, December 2004. The NLRBPA grieved my appointment to this temporary position, contending that it should be a merit promotion offered to the bargaining unit under the terms of the collective bargaining agreement. The grievance was denied by management, and the NLRBPA did not request arbitration.

(5) Internal EEO complaint of discrimination filed by clerical assistant on January 27, 2000 against Board Member Wilma B. Liebman, for whom I was Chief Counsel, for failure to promote. The complaint was resolved in October 2001, when I was a Board Member, by transfer of the clerical assistant to the Executive Secretary's Office and a settlement payment.

4. For responses to question 3, please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

57326.088

Please see my response to Question 3, above.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

Although I do not think it should affect the Committee's consideration of my nomination, I would like to disclose that I was treated for depression related to alcoholism on three different occasions between 1981 and 1983. I stopped drinking alcohol in May 1983 and I have been an active member of Alcoholics Anonymous since that time.

E. FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

REDACTED

AFFIDAVIT

Dennis P. Walsh being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Subscribed and sworn before me this 1st day of March, 2010

Notary Public

PAMELA L. GRIMMETT
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires June 14, 2014

District of Columbia: SS
Subscribed and sworn to before me, in my presence,
this 1st day of March, 2010

Notary Public, D.C.
My commission expires 6-14-14

United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

FEB 0 2 2010

The Honorable Joseph I. Lieberman
Chairman
Committee on Homeland Security and
Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Under the Ethics in Government Act of 1978, Presidential nominees requiring Senate confirmation who are not expected to serve in their Government positions for more than 60 days in a calendar year are not required to file public financial disclosure reports. The Act, as amended, however, contains a provision in section 101(b) that allows the committee with jurisdiction to request any financial information it deems appropriate from the nominee.

We understand that your committee desires to receive a financial disclosure report from any Presidential nominee for a position on the Special Panel on Appeals, along with a written opinion from this Office regarding any possible conflicts of interest. Therefore, I am forwarding a copy of the confidential financial disclosure report (OGE Form 450) of Dennis P. Walsh, who has been nominated by President Obama for the position of Chairman with Merit Systems Protection Board, Special Panel on Appeals.

We have reviewed the report and have obtained advice from the Merit Systems Protection Board concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is a letter dated January 21, 2010, from Mr. Walsh to the agency's ethics official, outlining the steps Mr. Walsh will take to avoid conflicts of interest. Unless a specific date has been agreed to, the nominee must fully comply within three months of his confirmation date with any action he agreed to take in his ethics agreement.

Based thereon, we believe that Mr. Walsh is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Robert I. Cusick
Director

James M. Eisenmann
General Counsel
Merit Systems Protection Board
1615 M Street, NW
Washington, DC 20419

Dear Mr. Eisenmann:

The purpose of this letter is to describe the steps I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Chairman of the Special Panel.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter that has a direct and predictable effect on my financial interests or those of any person whose interests are imputed to me, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I currently have an agreement to teach at Howard University Law School for the 2010 spring semester. I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of Howard University, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

I will retain my unpaid position as Secretary and Board member of the Peggy Browning Fund. I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of the Browning Fund, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

Sincerely,

Dennis P. Walsh
1-21-10

U.S. Senate Committee on Homeland Security and Governmental Affairs
Pre-hearing Questionnaire

For the Nomination of Dennis P. Walsh to be

Chairman of the Special Panel on Appeals

I. Nomination Process and Conflicts of Interest

1. Why do you believe the President nominated you to serve as Chairman of the Special Panel on Appeals (the Special Panel)?

I believe the President chose me based on my experience as an adjudicator of labor and employment cases as a Member of the National Labor Relations Board, and based on the fact that I have served as a Federal manager for over 15 years. Accordingly, I believe the choice was a recognition of both my practical experience as a manager working with Federal civil service law and my experience in adjudicating and deciding Federal labor cases.

2. Were any conditions, express or implied, attached to your nomination? If so, please explain.

The only condition was my willingness to accept the Federal statutory prohibition on accepting compensation from more than one Federal agency. See answer to question 8 below.

3. What would be your priorities as Chairman of the Special Panel on Appeals?

If confirmed, my main priority would be to utilize the resources of the MSPB and EEOC to thoroughly familiarize myself with both the procedures of the two agencies regarding mixed civil service and discrimination cases, and the law in those areas, so that I would be fully prepared to convene a Panel and decide a case when the need arises.

4. **What specific background and experience affirmatively qualifies you to be Chairman of the Special Panel on Appeals?**

The primary background and experience that qualifies me for this position is my past service as a Member of the National Labor Relations Board, and my service as a Chief Counsel to two other Members of the NLRB. In those positions, I

57326.071

learned a great deal about how to decide labor and employment cases based on a record developed before an administrative law judge and arguments and evidence presented by opposing parties. I also learned to work with other adjudicators who have differing viewpoints and to come up with compromises and common ground in order to find a way to issue decisions despite the fact that the Board was often divided in its points of view. In addition, as a Federal manager I became familiar with the merit principles that guide Federal employment, as well as the anti-discrimination principles which are applicable to employees in a Federal agency.

5. Have you made any commitments with respect to the policies and principles you will attempt to implement as Chairman? If so, what are they, and to whom were the commitments made?

No, I have made no such commitments.

6. If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of a conflict of interest? If so, please explain the apparent or actual conflicts and the procedures and/or criteria that you will use to carry out such a recusal or disqualification.

I have entered into an ethics agreement with the Merit Systems Protection Board which requires me to recuse myself from any matter that has a direct and predictable effect on the financial interests of Howard University or the Peggy Browning Fund, unless I obtain an appropriate waiver, because of my position as an Adjunct Professor of Labor Law at Howard University School of Law and my position as Secretary and Board Member of the Peggy Browning Fund. As Chairman of the Special Panel, I might also be confronted with cases that impact on Federal employees who also have filed charges with the FLRA that I have participated in, or cases regarding employees of the FLRA itself. I would consult with the Designated Agency Ethics Official of the FLRA to determine if it was necessary to recuse myself from any such cases.

7. The position of Chairman of the Special Panel on Appeals is a part-time position, and the Chairman is permitted to maintain full-time outside employment. If confirmed, do you plan to continue serving as the Deputy General Counsel of the Federal Labor Relations Authority (FLRA) and, if so, do you foresee any circumstances where your position would preclude you from fulfilling your duties as Chairman in a timely and efficient manner?

I plan to continue serving as Deputy General Counsel of the FLRA, and I do not foresee any circumstances where my position would preclude me from timely fulfilling my duties as Chairman. I am confident that I will be able to delegate

my duties as Deputy General Counsel of the FLRA sufficiently to enable me to take the time necessary to convene a Special Panel and decide cases that are presented to me as Chairman of the Special Panel on Appeals.

8. Federal employees are prohibited from receiving pay from more one than federal position, with limited exceptions. If confirmed, given that both your current position with the FLRA and your position on the Special Panel on Appeals would be considered federal positions, how do you plan to comply with the dual pay and employment compensation requirements set forth in subchapter IV of Title 5?

In order to be in compliance with those provisions, I am prepared to take leave without pay from my position with the FLRA, in order to convene a Special Panel and address and decide cases presented to me as Chairman.

II. Role and Responsibilities of Chairman of the Special Panel on Appeals

9. Why do you wish to serve as Chairman?

If confirmed, I would be honored to have the opportunity to serve the Federal employee community by performing this important function in the civil service system of reconciling merit systems principles and discrimination law in the context of employee discrimination claims. On a personal level, I have enjoyed the process of adjudicating labor cases and crafting thorough and meaningful rationales for them, and if confirmed, I look forward to applying those skills to the consideration of mixed merit systems and anti-discrimination cases as Chairman of the Special Panel on Appeals.

10. What do you see as the principal mission of the Special Panel on Appeals? What do you see as its principal responsibilities?

Its principal and only mission is to decide cases that are certified to it by the Merit Systems Protection Board because the MSPB is unable to reconcile a decision made by the EEOC with a decision made by the MSPB on a Federal employee claim that involves "mixed" issues of both civil service and anti-discrimination principals. Its principal responsibility is to decide these cases in a way that preserves parity between the two agencies and the principles they are charged with upholding.

11. You have more than twenty years of combined experience at the FLRA and the National Labor Relations Board (NLRB). How does your experience at the FLRA and the NLRB prepare you to be Chairman of the Special Panel on Appeals, especially in assisting your understanding of the issues related to civil service law and the workplace discrimination laws?

My experience at the NLRB has taught me how to reconcile statutory principals that are sometimes contradictory, such as, in the case of labor law, the principal of maintaining stability of collective-bargaining relationships and the principal of protecting employee free choice. I have learned how to craft rationales for decisions that preserve both important objectives of the National Labor Relations Act, and that bring together sometimes opposing viewpoints of different Board Members regarding those objectives. In addition, the experience of deciding cases at the NLRB concerning discrimination against employees for exercising their right to organize and their right to engage in protected concerted activity has helped me learn many of the same legal principals that are applied in deciding workplace discrimination cases, including cases regarding workplace discrimination in the Federal government. Finally, my brief experience at the FLRA is reinforcing many of the lessons I have learned as a Federal manager at the NLRB concerning civil service principles and how they relate to Federal employee rights in the workplace and to maintaining the efficiency of the Federal service.

III. Policy Questions

12. The Special Panel is to resolve disputes between the Merit Systems Protection Board (MSPB) and the Equal Employment Opportunity Commission (EEOC) in cases in which an appellant alleges a discriminatory motive for an adverse personnel action taken against him or her. The Special Panel has only issued 5 decisions in its entire history, including the most recent case that the panel decided in 2005. What is your opinion of the statutory provisions that require the convening of the Special Panel, given that the Special Panel convenes infrequently?

These provisions were a compromise between proposals that one agency or the other have the final say over "mixed" cases that involve both civil service and anti-discrimination principals, and other proposals that would have given the Federal courts the final say. They are intended to maintain a delicate balance between the two principles by providing a third-party administrative tribunal that can reconcile them in a way that preserves the authority of both the MSPB and the EEOC over the areas in which each has the greatest expertise. The need for

this function may be rare, but, as determined by Congress as part of civil service reform, it is important. In my view, therefore, the infrequency of its use does not detract from the crucial function that the Special Panel plays in the administration of both civil service and anti-discrimination law in the Federal sector.

13. What is your opinion of the statutory provisions establishing the process for "mixed cases," involving the civil service and discrimination laws administered by the Office of Personnel Management, the MSPB, and the EEOC? Do you believe that the appeals process is rather time-consuming and complicated? If so, how would you recommend streamlining the appeals process? Please explain.

The process does appear to be somewhat complicated. However, as set forth above in my answer to question 12, it is the product of a delicate compromise that has resulted in an administrative mechanism for reconciling and preserving both civil service and anti-discrimination principles in the Federal sector. It makes use of the expertise of both the MSPB and the EEOC with regard to the areas with which each is most familiar. Like many congressional compromises, it may appear to be somewhat cumbersome and time-consuming. Because this process serves an important function, however, I would not at this time presume to question it or recommend improvements, before I have had a sufficient amount of experience as part of the process in order to evaluate its effectiveness.

14. The Special Panel is required to issue a final decision within 45 days after a matter has been certified to it, pursuant to 5 U.S.C. § 7702. Do you believe this timeframe is realistic? Please explain.

I do believe this time frame is realistic. In my view it should be possible to convene a panel and decide a case within a six and one-half week time frame, especially given the fact that two agencies have already issued decisions in the case, and the MSPB has looked at it one more time before certifying it to the Special Panel. If confirmed as Chair of the Panel, I would in fact be the only Member who has not considered and ruled on the case at least one time, and I see no reason why I could not bring myself up to speed and make a decision in that time frame.

15. The very first case a special panel decided, Ignacio v. U.S. Postal Service (30 M.S.P.R. 471), provided a framework describing how the panel would decide the cases it received. Is this framework still valid? Do you see any reason to alter this framework?

I have reviewed the Ignacio case, and I currently see no reason why the framework set out in that case would not still be valid. It limits review of the

Special Panel to the issue certified to it by the MSPB, which would be either whether the EEOC's decision made an incorrect interpretation of civil service law, or whether it incorrectly applied that law based on the record in the particular case. It requires the Special Panel to accord due deference to the EEOC on anti-discrimination principles and to the MSPB on civil service principles. In my view this is an appropriate framework for performing the function of reconciling and preserving parity between those principles, which is the function delegated to the Special Panel by Congress.

IV. Relations with Congress

16. Do you agree, without reservation, to respond to any reasonable summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

Yes.

17. Do you agree, without reservation, to reply to any reasonable request for information from any duly constituted committee of Congress if you are confirmed?

Yes.

V. Assistance

18. Are these answers your own? Have you consulted with any interested parties? If so, please indicate which entities.

The answers to these questions are entirely my own. I have received technical assistance in compiling them from Rosalyn Coates, Legislative Counsel at the Merit Systems Protection Board.

AFFIDAVIT

I, DENNIS P. WALSH, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

Subscribed and sworn before me this 14th day of April, 2010.

Notary Public

PAMELA L. GRIMMETT
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires June 14, 2014

Post-Hearing Questions for the Record
Submitted to the Honorable Dennis P. Walsh
From Senator Susan M. Collins
April 20, 2010

1. From January 1981 to July 1981, you were a community organizer for ACORN in Bridgeport, Connecticut, and Boston, Massachusetts. Please describe your activities on behalf of ACORN during this time period?

   During that time I was a Volunteer Organizer for ACORN. I was paid a stipend of $80 per week and worked 6 days a week. In Boston, I knocked on doors in a Roxbury neighborhood and signed up community residents for a new neighborhood chapter of ACORN. I helped the residents organize this chapter and elect their first slate of officers, and advised them on how to address certain neighborhood issues, such as abandoned houses and other issues that concerned the residents. I was then reassigned to Bridgeport, where I was assigned to an existing ACORN neighborhood chapter. I advised this chapter on how to address its neighborhood issues. I was also involved in helping to organize city-wide demonstrations by ACORN members in Bridgeport, including a demonstration where unemployed workers delivered job applications to a company that had received assistance from the city in the form of tax benefits which were contingent on hiring local residents.

2. Were any allegations of wrongdoing made against you based on your activities for ACORN from January 1981 to July 1981?

   No.

3. Are you aware of any allegations of wrongdoing made against the ACORN offices in Bridgeport, Connecticut, or Boston, Massachusetts based on activities conducted by those offices between January 1981 to July 1981? If so, were you aware of the conduct that lead to such allegations and did you report your knowledge of such inappropriate activities to appropriate authorities?

   I am aware of no such allegations, and I was not aware of any such allegations at the time I worked for ACORN.

4. Following your relationship with ACORN from January 1981 to July 1981, did you have any further connections or participate in any other activities on behalf of ACORN? If so, please describe those activities?

   I have had no connection with ACORN and have participated in no activities on their behalf since I left the Volunteer Organizer position in July 1981.

57326.080

Post-Hearing Questions for the Record
Submitted to the Honorable Dennis P. Walsh
From Senator George V. Voinovich
April 20, 2010

1. Mr. Walsh, when you began your service as a Member of the National Labor Relations Board (NLRB), did you receive orally or in writing the following guidance from the NLRB?

   " If you are working in a state (ie, DC) that is different from the state of your residence (ie, MD), you must complete both your own residential state withholding form and the "State Tax Waiver" form for your place of work."

   I do not recall receiving any such guidance on any of the three occasions that I began service as a Member of the National Labor Relations Board.

2. If so, did you complete such forms?

   I do not recall completing such forms because, to my recollection, I was never asked to do so.

57326.081

OPENING STATEMENT OF MILTON C. LEE, JR. NOMINEE, ASSOCIATE JUDGE, DISTRICT OF COLUMBIA SUPERIOR COURT APRIL 20, 2010

Mr. Chairman, and members of the Committee, I am honored to appear before you today, to have you consider my qualifications for a position as an Associate Judge on the District of Columbia Superior Court.

Before I begin I would like to introduce my family who are here with me today: my wife Claudia, my son Joshua, my sister and brother, Sandra and Michael. There are a number of people I need to thank, but first and foremost, I would like to express a most heartfelt appreciation to my family, who have supported me in every way possible, and who have sacrificed beyond words to allow me to pursue a career of public service to the citizens of the District of Columbia where I was born and raised.

There are many other people, some in the gallery, who have been important role models and colleagues throughout my professional career, and while I will not take time to acknowledge them individually, I would like to express my appreciation to them for their sharing their wisdom, friendship, counsel and integrity with me on countless occasions. I would like to specifically acknowledge Chief Judge Lee F. Satterfield of the D.C. Superior Court for his support.

I would like to thank Judge Emmett G. Sullivan and the members of the District of Columbia Judicial Nomination Commission for recommending me to the White House, and President Barack Obama for nominating me.

Finally, I would like to thank this Committee for acting upon my nomination in such a thorough and timely fashion. Throughout the vetting process, the staff of this Committee has treated me with professionalism, respect and courtesy, for which I would like to express my appreciation.

I am fortunate and blessed to be under consideration for a position as an Associate Judge on the Court that serves this city and its residents.

I was born and raised in the District of Columbia. I am the product of the city's educational system. I graduated from American University with an undergraduate degree. I received my law degree from Catholic University's Columbus School of Law.

After receiving my law degree, I served as a member of the District of Columbia Public Defender Service. I practiced in the D.C. Superior Court for many years. After almost nine years as a defense attorney, I joined the faculty at the University of the District of Columbia David A. Clarke School of Law. I taught in the Juvenile Law Clinic

57326.082

for two years before transitioning to the classroom where I taught Evidence, Criminal Law and Procedure and Trial Advocacy among other courses.

Since 1997 I have held the position of Magistrate Judge in the District of Columbia Superior Court. As a magistrate judge I have served in each of the Court operating divisions and have for the last five years served in the Family Court. During that time I have presided over juvenile delinquency matters and domestic relation and child support matters. Most recently I have served as the presiding judge of the Court's Fathering Court Initiative. That initiative is the Court's effort to provide a problem-solving approach to child support issues for men returning to the community from a period of incarceration. Those efforts focus on providing employment, parenting training and wrap-around services to help the participating men act like fathers in every sense of the word. It is our hope that we will develop a national model for fathering programs.

I have spent my professional life serving the citizens of the District of Columbia through the city's judicial system. If confirmed, I would be honored to be in a position to continue that service as an Associate Judge on the Court. I recognize that many people come to the Court at a time of when anxiety is high in their lives. They deserve to be treated with dignity and respect. Their cases should be resolved fairly and efficiently and in a manner that demonstrates the highest level of professionalism. That is the commitment that I make to people of the city where I was born and raised.

I am honored to be considered for this position, and I look forward to answering any questions the Committee might have about my qualifications.

57326.083

QUESTIONNAIRE FOR NOMINEES TO THE DISTRICT OF COLUMBIA COURTS COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, UNITED STATES SENATE

I. BIOGRAPHICAL AND PROFESSIONAL INFORMATION

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

   Milton C. Lee, Jr.

2. Citizenship (if you are a naturalized U.S. citizen, please provide proof of your naturalization).

   Born in the United States

3. Current office address and telephone number.

   District of Columbia Superior Court
   500 Indiana Avenue, N.W.
   Room 4450
   Washington, D.C. 20001
   202-879-4793

4. Date and place of birth.

   January 14, 1960 Washington, D.C.

5. Marital status (if married, include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

   Married to:

   Claudia A. Crichlow
   Administrative Law Judge
   Office of Administrative Hearings
   441 Fourth Street, N.W.
   Room 870N
   Washington, D.C. 20001

6. Names and ages of children. List occupation and employer's name if appropriate.

   Joshua D. Hager, 18
   Student Temple University

VerDate Nov 24 2008 09:48 Aug 03, 2011 Jkt 057326 PO 00000 Frm 00116 Fmt 6601 Sfmt 6601 P:\DOCS\57326.TXT SAFFAIRS PsN: PAT

57326.084

7. Education. List secondary school(s), college(s), law school(s), and any other institutions of higher education attended; list dates of attendance, degree received, and date each degree was received. Please list dating back from most recent to earliest.

The Catholic University Columbus School of Law
August 1982 to May 1985
Juris Doctor, May 1985

American University School of Justice
August 1979 to May 1982
B.S. Law and Society, May 1982

University of Tampa
August 1978 to May 1979

St. John's College High School
August 1974 to May 1978
High School Diploma

8. Employment record. List all jobs held since college, other than legal experience covered in question 16, including the dates of employment, job title or description of job, and name and address of employer. Please list dating back from most recent to earliest. If you have served in the US military, please list dates of service, rank or rate, serial number, and type of discharge received.

Recreation Aid
District of Columbia Recreation Department
3149 16th Street, N.W.
Washington, D.C. 20010
1979 to 1985

9. Honors and awards. List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Certificate of Appreciation Thurgood Marshall Academy
June 2009

Certificate of Appreciation for Contributions to the Fathering Court Initiative
The Office of the Attorney General for the District of Columbia
January 24, 2008

Outstanding Adjunct Faculty Award
University of the District of Columbia David A. Clarke School of Law

VerDate Nov 24 2008 09:48 Aug 03, 2011 Jkt 057326 PO 00000 Frm 00117 Fmt 6601 Sfmt 6601 P:\DOCS\57326.TXT SAFFAIRS PsN: PAT

57326.085

2005

Certificate of Appreciation Noyes Elementary School
Principal Wayne Ryan
June 14, 2005

Certificate of Appreciation
Omega Psi Phi Fraternity
November 16, 2003

Certificate of Appreciation
Friends of the Superior Court
February 24, 1998

Certificate of Appreciation
District of Columbia School of Law
Dean William Robinson
December 19, 1997

Outstanding Professor Award 1994-1995
Student Bar Association
District of Columbia School of Law

~~10.~~ Business relationships. List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, or educational or other institution.

None

11. Bar associations. List all bar associations, legal or judicial-related committees, conferences, or organizations of which you are or have ever been a member, and provide titles and dates of any offices which you have held in such groups.

District of Columbia Bar Association 1985 - present

American Association of Law Schools 1993-1997

Board of Trustees Law Students In Court 1992-1997

Board of Governors for Center for Juvenile and Criminal Justice 1995-1998

VerDate Nov 24 2008 09:48 Aug 03, 2011 Jkt 057326 PO 00000 Frm 00118 Fmt 6601 Sfmt 6601 P:\DOCS\57326.TXT SAFFAIRS PsN: PAT

57326.086

Board of Trustees Advocates for Education and Justice 1996-1997

Washington Bar Association Judicial Council 2001

Criminal Law Individual Rights Committee Steering Committee D.C. Bar 1995-1998

Chair of the Nominating Committee Criminal Law and Individual Rights Steering Committee 1996-1997

District of Columbia Superior Court Committees – present assignments
- Chief Judge's Leadership Team, member
- Criminal Rules Committee, member
- Mental Health and Mental Retardation Subcommittee, Co-chair
- Juvenile Delinquency Subcommittee, member
- Third Party Custodian Committee, member
- Mental Health and Mental Retardation Rules Advisory Committee, member
- Security Committee, member
- Pretrial Mental Examination Committee, member
- Strategic Planning and Leadership Council

Fathering Court Executive Committee, Chair – 2007 – present

American Bar Association, 1985 - 1997

National Bar Association, 1985 - 1990

Member National Association of Criminal Defense Lawyers 1990 - 1997

Public Defender Service Alumni Association Vice –President 1995-1997

Criminal Practice Institute Annual Conference Co-chair, 1989 - 1992

12. Other memberships. List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, public, charitable, or other organizations, other than those listed in response to Question 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion.

The Legends Golf Club, Myrtle Beach South Carolina, 2006

Armed Forces Retirement Home Golf Club, Washington, D.C., 2005

Both are public golf clubs that are available to the general public. To the best of my knowledge, neither currently discriminates or formerly discriminated on the basis of race,

VerDate Nov 24 2008 09:48 Aug 03, 2011 Jkt 057326 PO 00000 Frm 00119 Fmt 6601 Sfmt 6601 P:\DOCS\57326.TXT SAFFAIRS PsN: PAT

57326.087

sex, or religion.

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

District of Columbia Court of Appeals November 13, 1985

14. Published writings. List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited.

"Juvenile Detention Law In The District of Columbia: A Practitioner's Guide," 3 D.C. Law Rev. 281 (1995) (with John Copacino and Paul Holland)

Manual for Special Education Representation (prepared and distributed by the Annie E. Casey Foundation), 1998 with Joseph Tulman, Susan Sutler and Mary Hynes

"Criminal Discovery: What Truth Do We Seek?" 4 D.C. Law Rev. 7 (1998)

I have also contributed many chapters to the Criminal Practice Institute Manual over my many years of practice. I was co-chair for the Institute conference for three years while with the Public Defender Service in the District of Columbia.

15. Speeches. List the titles of any formal speeches you have delivered during the last five (5) years and the date and place where they were delivered. Please provide the Committee with four (4) copies of any of these speeches.

2005 Neglect Practice Institute: The Impact of the Supreme Court's decision Washington v. Crawford on practice in the Neglect Branch of the Superior Court

Winter 2007 Mount Calvary Baptist Church: The New Child Support Guidelines in the District of Columbia

National Children Support Conference, Washington, D.C. August, 2008: Fathering Court Initiatives: A New Approach to Child Support

September 3, 2008: Premiere of the Play "Resurrection" by Daniel Beatty. Speech subject: The Fathering Court Initiative in the District of Columbia.

I do not have copies of the above presentations.

16. Legal career (In responding to the following, please include and highlight any experience

VerDate Nov 24 2008 09:48 Aug 03, 2011 Jkt 057326 PO 00000 Frm 00120 Fmt 6601 Sfmt 6601 P:\DOCS\57326.TXT SAFFAIRS PsN: PAT

57326.088

related to family law).

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

(1) Whether you served as a law clerk to a judge, and if so, the name of the judge, the court, and the dates of your clerkship;

No.

(2) Whether you practiced alone, and if so, the addresses and dates;

I handle a few criminal cases in the District of Columbia Superior Court during my tenure at the University of the District of Columbia School of Law.

(3) The dates, names, and address of law firms, companies, or governmental agencies with which you have been employed.

--Upon the graduation from law school I joined the District of Columbia Public Defender Service in 1985 and remained with that office until August 1993. While at the Public Defender Service I represented indigent criminal defendants in all phases of litigation including jury and non-jury trials, sentencing, post conviction proceedings and appellate review. The first 18 months of my career at the Public Defender Service allowed me to focus on Juvenile Delinquency representation. Part of that experience included work with a team of lawyers who initiated the Jerry M. litigation. This was a civil case filed by the Public Defender Service against the District of Columbia regarding the conditions for youth held at the Oak Hill Detention Center. That case resulted in a consent decree in 1986. During my time at the Public Defender Service I tried over 70 cases and argued several cases before the District of Columbia Court of Appeals.

During my last two years at the Public Defender Service I held the position of Deputy Trial Chief. As Deputy Trial Chief I maintained a small caseload of Felony I cases, provided oversight and supervision of for lawyers assigned to the trial division, provided testimony before the City Council, participated in ongoing training and served on several Superior Court committees.

--August 1990 to June 1991 while on leave from the Public Defender Service I was a Visiting Associate Professor of Law at the Georgetown University Law Center. During that year I taught and supervised third year law and graduate students in the E. Barrett Prettyman Criminal Justice Clinic. In addition, I occasionally supervised and taught students in the Juvenile Justice Clinic. Following my year as a visiting professor, I taught

VerDate Nov 24 2008 09:48 Aug 03, 2011 Jkt 057326 PO 00000 Frm 00121 Fmt 6601 Sfmt 6601 P:\DOCS\57326.TXT SAFFAIRS PsN: PAT

57326.089

trial advocacy as a member of the adjunct faculty. I remained on the adjunct faculty until my appointment to the District of Columbia Superior Court as a Hearing Commissioner.

--August 1993 to August 1997 Professor of Law at the former District of Columbia School of Law (now the University of the District of Columbia David A. Clarke School of Law). I joined the faculty as a tenure track assistant professor of law. I taught and at times directed the Juvenile Law Clinic. The Clinic provided court-certified third year law students with an opportunity to represent children charged in delinquency cases in the Family Division of the Superior Court. The Clinic also provided groundbreaking representation to parents seeking special education services for their children under the Individuals with Educational Disabilities Act (IDEA) in the District of Columbia Public Schools. Since the introduction of special education advocacy into the curriculum many legal service organizations like the Public Defender Service and the Georgetown Law Center's Juvenile Justice Clinic have incorporated special education representation into their service models. The law school continues to provide training to judges, lawyers and legal service providers on special education issues.

From August 1995 to November 1997 I served the law school as a classroom instructor. During that time I taught Criminal Law, Criminal Procedure, Evidence, Trial Advocacy, Advanced Criminal Procedure and Wills and Estates.

In 1996 I was promoted to the position of Associate Professor of Law. I continued to represent a modest number of criminal defendants and juvenile offenders in the District of Columbia Superior Court.

I continue to teach at the University of the District of Columbia David A. Clarke School of Law as a member of the adjunct faculty. My primary areas of concentration include teaching Evidence, Criminal Procedure and Advanced Criminal Procedure.

--November 24, 1997, I took the oath of office and began a four year term as a Hearing Commissioner in the District of Columbia Superior Court. I have been reappointed to additional four terms in 2001, 2005 and 2009. Hearing Commissioners were judicial officers of limited jurisdiction and presided over cases in the Family Court, Civil and Criminal Divisions of the Superior Court (the title was changed to magistrate judge when the Family Court Act was passed in 2002). My initial assignment was to the Domestic Relations Branch of the Court where I presided over divorce and child support matters. Since my initial assignment I have served in each of

VerDate Nov 24 2008 09:48 Aug 03, 2011 Jkt 057326 PO 00000 Frm 00122 Fmt 6601 Sfmt 6601 P:\DOCS\57326.TXT SAFFAIRS PsN: PAT

57326.090

the available assignments except the newly created dedicated neglect and abuse calendars. I have held assignments that include the Small Claims and Conciliation Branch, the Collection and Subrogation calendar, Arraignment and Presentment court, New Referrals (juvenile delinquency and neglect initial hearings), Preliminary Hearings calendar, Child Support calendars, the Domestic Violence calendar and all three of the misdemeanor Traffic calendars.

Since 2007 I have been assigned to preside over the newly created Fathering Court Initiative child support calendar. That calendar was created as a treatment-oriented approach to child support issues for non-custodial parents returning from a recent period of incarceration. I also serve as the alternate Chair of the Commission on Mental Health. In connection with that position I preside over the initial phase of involuntary civil commitment proceedings at St. Elizabeths Hospital.

During 2005 and 2006 I served as Deputy Presiding Magistrate Judge. In 2007 I was appointed by Chief Judge Rufus King to the position of Presiding Magistrate Judge. In that position I was responsible for ensuring that each of the twenty-four magistrate judge calendars are covered each day consistent with the master assignment calendar for the year issued by the chief Judge. In addition, my responsibilities include time and attendance management for all staff in the Office of Magistrate Judges. The presiding magistrate judge is also for oversight for staffing and procurement for the office. I have continued to serve in this position under Chief Judge Satterfield and serve on the Chief's management team.

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

--1985 to 1993: representation of indigent juvenile respondents and adult criminal defendants in all phases of delinquency and criminal litigation;

--1993 to 1997: representation of juveniles and adults in the District of Columbia Superior Court as a sole practitioner

--1993 to 1997: classroom and clinical instruction at the University of the District of Columbia David A. Clarke School of Law

C. Describe your typical former clients and describe the areas of practice, if any, in which you have specialized.

VerDate Nov 24 2008 09:48 Aug 03, 2011 Jkt 057326 PO 00000 Frm 00123 Fmt 6601 Sfmt 6601 P:\DOCS\57326.TXT SAFFAIRS PsN: PAT

57326.091

Typical clients include individuals with criminal or delinquency charges. In the majority of those cases clients suffered from substance abuse and/or health related problems, were indigent, undereducated, unemployed or underemployed and the product of single parent homes (most often female headed households).

D. Describe the general nature of your litigation experience, including:

(1) Whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your court appearances has varied over time, please describe in detail each such variance and give applicable dates.

While a member of the Public Defender Service I appeared in court almost daily between 1985 and 1993. During that period, I tried between 7 – 10 cases per year. In addition, I tried approximately 10 cases as associate counsel. Most cases were tried as sole or lead counsel. I tried another 10 - 15 cases after leaving the Public Defender Service.

During my tenure at the law school I appeared in court far less frequently. Most court appearances were related to the supervision of students not more than three times per week during the academic year.

(2) What percentage of these appearances was in:

(a) Federal courts (including Federal courts in D.C.);
(b) State courts of record (excluding D.C. courts);
(c) D.C. courts (Superior Court and D.C. Court of Appeals only);
(d) other courts and administrative bodies.

The vast majority of my litigation experience was in the District of Columbia Superior Court. There were a few cases that required appearance in the United States District Court or before administrative bodies.

(3) What percentage of your litigation has been:
(a) civil; 30% (family cases)
(b) criminal. 70%

(4) What is the total number of cases in courts of record you tried to verdict or judgment (rather than settled or resolved, but may include cases decided on motion if they are tabulated separately). Indicate whether you were sole counsel, lead counsel, or associate counsel in these cases.

I have tried over 70 cases as lead counsel. I tried approximately 10 other

VerDate Nov 24 2008 09:48 Aug 03, 2011 Jkt 057326 PO 00000 Frm 00124 Fmt 6601 Sfmt 6601 P:\DOCS\57326.TXT SAFFAIRS PsN: PAT

57326.092

cases as associate counsel.

(5) What percentage of cases were tried:

(a) a jury;
75%

(b) the court (include cases decided on motion but tabulate them separately).
25%

17. Describe the five (5) most significant litigated matters which you personally handled. Provide citations, if the cases were reported, or the docket number and date if unreported. Give a capsule summary of the substance of each case and a succinct statement of what you believe was of particular significance about the case. Identify the party/parties you represented and 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 court and the name of the judge or judges before whom the case was litigated; and (c) the name(s) and address(es) and, telephone number(s) of co-counsel and of the principal counsel for the other parties.

United States v. Musa Mahdi
Docket No. F-2272-92

In January 1993 I was appointed to represent a sixteen year old defendant charged with Second Degree Murder while Armed. A jury had returned a verdict of guilty on the lesser included offense of Second Degree Murder while Armed (following an acquittal on the First Degree Murder while Armed count) during the summer of 1992. At that time Mr. Mahdi was represented by a private attorney retained by his family. Following the jury's verdict, but before sentence had been imposed, it was discovered that the government had failed to disclose Brady information regarding an eyewitness' relationship with the DEA and the FBI. While the trial court found that the failure was not intentional, the Honorable Harold Cushenberry vacated the jury's verdict and ordered a new trial. A conflict arose and private counsel was forced to withdraw from the case shortly before the new trial. I was appointed by the court to represent Mr. Mahdi. At that time I held the position of Deputy Trial Chief at the Public Defender Service. I asked my colleague, Aminata Iypana (202-843-4519), to assist in the representation of Mr. Mahdi.

The case was assigned to the Honorable Cheryl Long's (now a Senior Judge in the District of Columbia Superior Court (202-879-1200) Felony I calendar and was set for trial. Mr. Daniel Zachem, Esq., was assigned to represent the government I believe that Mr. Zachem is still with the United States Attorney's Office). Factually this was a

VerDate Nov 24 2008 09:48 Aug 03, 2011 Jkt 057326 PO 00000 Frm 00125 Fmt 6601 Sfmt 6601 P:\DOCS\57326.TXT SAFFAIRS PsN: PAT

57326.093

difficult case because there were several eyewitnesses: a husband and wife who observed the incident from their bedroom window, a police officer in an observation post who observed part of the incident from the same house, and the government, between the first and the second trial, convinced the co-defendant to accept a plea agreement that included testimony against Mr. Mahdi. The co-defendant, James Simms, was represented by Mr. John Beamon, Esq. (as a result of serious health related problems Mr. Beamon has retired from the practice of law and now resides in a nursing facility in New York).

By the time I was appointed to this matter almost one year had passed since the incident. This meant that the defense was at a significant disadvantage at constructing a defense despite the previous trial. The government witnesses were nowhere to be found. The defense at the first trial consisted of little more than Mr. Mahdi's claim of self-defense. Moreover, the attorney from the first trial had failed to investigate, develop and present significant information that would have supported Mr. Mahdi's claim of self-defense. In addition, Mr. Mahdi was woefully under-prepared to testify. Nonetheless, we trudged forward and prepared for trial.

After several pre-trial motions were decided b Judge Long (one motion included a request for greater information regarding the eyewitnesses' relationship and contact with law enforcement agencies) we tried this matter before the Honorable John Suda. Judge Suda denied the defense motions to suppress statements (a motion that had not been filed by defendant's previous counsel) and a jury was selected. Mr. Zachem had streamlined the government's presentation and avoided some obvious problem areas. Much of the defense was an attack on the former co-defendant and his plea agreement that later resulted in a term of probation and a demonstration that the eyewitness with the relationship with the DEA and FBI was so biased that his testimony could not be credited given the considerable amount of material assistance he and his family had received over man years.

The defense at this trial was also self-defense, but the presentation of evidence was substantially different. During our investigation we discovered that the decedent had a ten ear history of admissions to St. Elizabeths Hospital as well as treatment at many out-patient clinics throughout the cit. Decedent's treatment records indicated a significant mental health history that was often exacerbated by the use of illicit drugs and a failure to take prescribed medication. In addition, there were several arrests for violent behavior. Perhaps the most important and compelling evidence included a request by the decedent's mother for an order of protection. This information was presented to the jury through the use of medical records and eyewitnesses to the decedent's violent and psychotic outburst. One witness presented by the defense was the decedent's mother. She sought and received a civil protection order because she was afraid of her son. She testified that her son visited her on the day of his death and, she believed, based on her experience, that her son had not been taking his medication and was using illicit drugs again. This evidence put into context the confrontation between Mr. Mahdi and the decedent only few short hours later.

VerDate Nov 24 2008 09:48 Aug 03, 2011 Jkt 057326 PO 00000 Frm 00126 Fmt 6601 Sfmt 6601 P:\DOCS\57326.TXT SAFFAIRS PsN: PAT

57326.094

The one remaining issue was information revealed in the autopsy report that included a total of five stab wounds and the toxicology report that indicated that no illicit drugs were found in the decedent. The defense called Dr. Jeffrey Janosky from Baltimore, Maryland. Dr. Janosky provided expert testimony based primarily on medical records and information supplied by eyewitnesses regarding the decedent's behavior, the effect of the use of cocaine and PCP on an individual with a documented history of mental health problems with psychotic feature. The doctor also testified that the absence of illicit drugs in the blood and urine of the decedent was not very probative on the issue of decedent's recent drug use because the medical treatment of decedent at Washington Hospital Center included several blood transfusions and the use of a catheter. As a result, the blood tested by the medical examiner's office was not of the decedent. Moreover, the medical examiner's office had failed to obtain, preserve and test the fluid behind decedent's eyes to determine whether there were traces of illicit drugs.

Mr. Mahdi took the witness stand and presented testimony that was consistent with what was presented at the first trial. Five-foot six-inch, one-hundred pound Musa Mahdi testified about terror of his violent confrontation with the decedent, about how he was forced to defend his life as he fought to escape the grip of decedent's bear hug and how he had every reason to fear the decedent given his history and reputation for drug use and violence.

The jury was hopelessly deadlocked and could not reach a verdict. A mistrial was declared and the case was scheduled for a third trial. One month before the retrial the government and defense agreed to a plea of guilt to voluntary manslaughter before Judge Long. As part of our sentencing package Judge Long was made aware of Mr. Mahdi's testimony and decedent's history. Mr. Mahdi, after being tried twice, was sentenced to five years in prison pursuant to the Youth Rehabilitation Act. At sentencing Judge Long commented that "this plea agreement was the appropriate result in this matter."

United States v. Monte Glen
Docket No. 90 FEL 3695

In 1993 I tried the above case before the Honorable Peter Wolf (now a Senior Judge in the District of Columbia Superior Court – 202-879-1088) where the defendant was charged in a multi-count indictment with four counts of Assault with Intent to Kill while Armed. The prosecutor in this matter was Mr. Robert Walker, Esq. (I believe that Mr. Walker is now with the Department of Justice).

At the time of trial I also represented Mr. Glen in a separate case where he was charged with First Degree Murder while Armed. After a two week trial the jury acquitted Mr. Glen on all counts in less than two hours. This a significant win because there were several eyewitnesses to the event and the case turned completely on creditability. Of

VerDate Nov 24 2008 09:48 Aug 03, 2011 Jkt 057326 PO 00000 Frm 00127 Fmt 6601 Sfmt 6601 P:\DOCS\57326.TXT SAFFAIRS PsN: PAT

57326.095

course, Mr. Glen, barely seventeen years old, and his mother were elated with the result. A few weeks later Mr. Glen was released from jail on the murder charge, in part because of the acquittal, and due to the government's inability to obtain an indictment.

A few weeks later while in trial with the same prosecutor before the Honorable Stephen Milliken (now a Senior Judge in the District of Columbia Superior Court 202-879-1823) I learned that Monte Glen had been murdered the night before. Later that day I spoke with Mr. Glen's mother who informed me of the details of her son's death. I often think of how cruel fate can be and wonder what would have happened to Mr. Glen had he not been release pending trial. I learned much later that Mr. Glen had been killed as a result of something that occurred while he was held in jail pending trial.

Several months after Mr. Glen's death several people were arrested and later indicted. At that time I knew little more than I knew the day of Mr. Glen's death. As deputy chief of the trial division it was not uncommon for lawyers to ask me to speak with clients about their options in preparation for trial. A senior lawyer in the office asked me to speak with and possibly cross-examine a client. While at the jail waiting for the client I reviewed documents related to his case. As I read more and more I realized that this client was charged with the death of Monte Glen. At that moment the client appeared from the cellblock and I was shaking hands with the man who was charged with and who had confessed to killing my client Monte Glen.

United States v. Jose Valdez
Docket No. F-2748-90

During the early part of 1992 I was appointed to represent a gentleman from the Dominican Republic who was charged with Second Degree Murder while Armed. Mr. Valdez had been in the United States for approximately three years and worked in the maintenance department of a local hotel. Mr. Valdez was married with three children. He worked hard and spent most of his time with his family or in the Mount Pleasant section of the District of Columbia with people he knew from his country. On a summer evening in 1990 Mr. Valdez and two of his friends were returning from a party when his newly purchased care broke down near 16th and Irving Streets, N.W. As Mr. Valdez and his friends looked for a way to repair his car, a confrontation arose with a neighborhood homeless man who took offense to one of Mr. Valdez's friends using the bathroom near where he made his home. The confrontation ended with the man fatally stabbed and Mr. Valdez's friend clinging to life as a result of a stab wound.

Mr. Valdez was later indicted along with his two friends for Second Degree Murder while Armed. Mr. Valdez spoke very little English and previously had been represented by a Spanish speaking lawyer. I met Mr. Valdez only a few months before his trial date. I

VerDate Nov 24 2008 09:48 Aug 03, 2011 Jkt 057326 PO 00000 Frm 00128 Fmt 6601 Sfmt 6601 P:\DOCS\57326.TXT SAFFAIRS PsN: PAT

57326.096

spoke almost no Spanish. To say the least, we were an odd couple with a serious language barrier. As a result of his inability to communicate, I recruited a young lawyer from the Public Defender Service to assist in the representation of Mr. Valdez. It was good trial experience for Eduardo Juarez and it was an absolute necessity for me to get the assistance of a Spanish speaking lawyer if we were going to provide Mr. Valdez with effective representation. One thing clearly stood out in my mind about Mr. Valdez; He had an almost blind faith in the United States justice system. Unlike where he was born, the United States system convinced that he would be acquitted because the truth was that he has nothing to do with the death of Paul Jones.

Every facet of this representation was difficult. Every conversation with Mr. Valdez had to be interpreted through Mr. Juarez. I often joked with them that many of the discussions that they had right in front of me were also probably about me, I just didn't know it. I often felt like an outsider because I simply could not communicate. After about a month of investigation and trial preparation I began to realize that while I felt uncomfortable about not understanding Spanish, it must have been far worse for Mr. Valdez. Everything in court happened so fast and had to be interpreted by people Mr. Valdez never met prior to the court hearing.

As the investigation continued and the trial date approached, I became convinced that Mr. Valdez should join in with his co-defendant and present a defense of self-defense. There were multiple witnesses who placed a group of men from Mr. Valdez's car attacking and ultimately killing the decedent. Despite my suggestion about a change in defense strategy, Mr. Valdez refused to accept that self-defense was the best defense. And so misidentification and innocent presence remained our defense strategy.

We went to trial in June 1992. Six weeks later the Honorable Zinora Mitchell-Rankin (202-879-7846) took a verdict of not guilty for Mr. Valdez and one co-defendant. A second co-defendant was found guilty of Second Degree Murder while Armed. The prosecutor, Clendon Lee (now deceased), felt that the result for all defendants was appropriate given the evidence.

Latimer v. Edwards
Docket No. 00 SUP 1402

This matter involved a motion filed by Respondent Edwards on June 24, 2009 to terminate his child support order. The basis for the motion involved the presentation of genetic tests that demonstrated that Respondent was not the father of the minor child. Paternity had been previously established somewhere around 2002 through the introduction of an acknowledgment of paternity executed pursuant to D.C. Code §16-909.01 close in time to the child's birth. After the entry of a child support order Respondent complied with the order to pay $652.00 per month.

VerDate Nov 24 2008 09:48 Aug 03, 2011 Jkt 057326 PO 00000 Frm 00129 Fmt 6601 Sfmt 6601 P:\DOCS\57326.TXT SAFFAIRS PsN: PAT

57326.097

On July 21, 2005 Respondent filed his first motion for genetic testing. Respondent contended in his motion that Petitioner had made statements that he was not the father of the child and that after several years it had become readily apparent that the minor child did not look like him. After several hearings that motion was denied and the order of support continued.

On May 31, 2006 Respondent filed a request to terminate the support obligation. That motion was later denied without a hearing. Respondent filed his third and final motion on this issue on June 24, 2009. This time the motion was accompanied by privately performed genetic test results that excluded Respondent as the father of the minor child. The District of Columbia government had entered the case because Petitioner and the minor child began receiving public benefits. The Government filed an opposition to Respondent's motion to terminate support based on the previous establishment of paternity. The Government's general position was that once paternity has been established through a voluntary acknowledgment the availability of genetic test results could not be used to attack the previous paternity finding.

Respondent's motion presented a number of complicated issues that included the fact that the minor child and Respondent had developed a significant relationship. Respondent faced other obstacles for his motion. The D.C. Code as well as the court rules impose strict time limits a party's ability to attack a finding of paternity. See, Super. Ct. Dom. Rel. Rule 60(b). Respondent's motion was far beyond the one year time limit generally imposed. While many cases from the District of Columbia Court of Appeals suggest that the time period for an attack on the judgment could be extended upon a showing of extraordinary circumstances, the great weight of authority was not favorable to Respondent's position.

The parties appeared for hearing on Respondent's motion on my calendar on October 7, 2009. Before addressing the merits of the motion, the parties were invited to openly discuss resolutions that may avoid the court taking testimony on some very sensitive and intimate details of their relationship. It was made clear to the parties that while Respondent's motion had clear merit, the existing law in the District of Columbia was not necessarily favorable to his position. The Government's position remained unchanged – paternity had been established through a voluntary acknowledgment and the government was entitled to collect funds for the public benefits made available to Petitioner and the minor child. The genetic test result clearly established that Respondent was not the child's father, but those test results may not change the existing order of support. After much discussion, Petitioner acknowledged that Respondent was not the father and named another individual as a potential father. Petitioner admitted that she withheld the information at the time of the acknowledgment in part due to embarrassment, but also because Respondent had acted as the father since the child's birth. The other potential father was incarcerated at the time of birth and had remained incarcerated since that time. Based on these disclosures it was clear that Respondent had executed an acknowledgment of paternity without having all relevant information available to him. Still, the time limits

VerDate Nov 24 2008 09:48 Aug 03, 2011 Jkt 057326 PO 00000 Frm 00130 Fmt 6601 Sfmt 6601 P:\DOCS\57326.TXT SAFFAIRS PsN: PAT

57326.098

for attacking the paternity judgment had long ago expired and what seemed like appropriate relief may be something that evaded Respondent's grasp.

After a lunch recess and continued discussions the parties returned to court and Petitioner indicated that she was agreeable to terminating the order of support. In addition, Petitioner agreed to waive her right to any child support arrearage that maybe due to her. As part of the resolution of the motion, Respondent agreed to pay off any amount that was presently due to the Government.

After signing the consent order and before dismissing the parties I asked what now happens to a little girl who had only known Respondent as her daddy. Petitioner and Respondent, who had communicate little over the years, both indicated that it was their desire for Respondent to continue his role in the child's life. Respondent agreed that he was daddy to her and Petitioner thought that continuing that relationship would be beneficial. This case presents one of those instances where the court may not have been able to deliver what many would view as a just outcome. The parties, however, were able to find fair outcome for themselves. The court was a conduit for them to find that resolution.

Holeman v. Davis
Docket No. 89 SUP 2399

Petitioner Gloria Davis (now Holman) and Respondent Percy Davis were married on December 31, 1983. Petitioner gave birth to two children during the marriage: Brandon Davis, born on June 13, 1983 and Sean Davis, born October 19, 1988. Petitioner alleged that Respondent was the father of both children and sought child support for both children following the parties' permanent separation on April 1, 1989. On January 24, 1990 a temporary order of support was entered that required Respondent to pay $463.00 per month. The initial order of support specifically noted that Respondent reserved the right to request Human Leukocyte Antigen (HLA) testing on the issue of paternity for the minor child Sean. The parties eventually divorced in 2006.

On April 23, 1990, as a result of Petitioner's hospitalization, Respondent filed a motion to modify custody and to terminate the order of support. On August 7, 1990 the court awarded custody of Brandon to Respondent while Petitioner retained custody of Sean. The order of support was not terminated. Moreover, the court order indicated that Respondent was the father of both children. Neither party made any efforts to appeal this order.

On August 11, 2003, Respondent filed a motion for blood testing alleging that he was not the father of the minor child Sean because the parties had been separated during the time for conception. Respondent's motion was denied on October 14, 2003 where the court indicated that Sean had been born during the marriage and that Respondent had failed to

VerDate Nov 24 2008 09:48 Aug 03, 2011 Jkt 057326 PO 00000 Frm 00131 Fmt 6601 Sfmt 6601 P:\DOCS\57326.TXT SAFFAIRS PsN: PAT

57326.099

rebut the establishment of paternity based on the marital presumption. Respondent continually failed to honor the order of support and was charged with contempt on September 14, 2005. Respondent was sentenced to forty-five (45) days for his failure to pay child support.

On September 11, 2006, Respondent, now represented by counsel, filed a motion to modify support and a new request for genetic testing. After hearing on the motion the court ordered genetic testing on December 15, 2006. The genetic test results excluded Respondent as the father of the minor child Sean. The order for genetic testing was appealed by Petitioner and the order for genetic testing was affirmed by the Honorable Cheryl Long. Respondent followed the appellate court's ruling by filing a motion for relief from the judgment of paternity and the order of support for Sean.

Following the affirmative of the order for genetic testing the case was assigned to my calendar on remand to address the issue of what relief, if any, was appropriate given the test results. After issuing a briefing schedule and hearing oral argument on Respondent's motion for relief, I granted Respondent request for relief and the child support arrearages for Sean were vacated along with the order for contempt. Appellate review made clear that the marital presumption had been erroneously applied by the trial court and that the issue of paternity had never been litigated. Without a proper finding of paternity there was no legal basis for the order of support.

18. Describe the most significant legal activities you have pursued, including significant litigation which did not proceed to trial or legal matters that did not involve litigation. Describe the nature of your participation in each instance described, but you may omit any information protected by the attorney-client privilege (unless the privilege has been waived).

In December 2006 Chief Judge Rufus King of the District of Columbia Superior Court held a town hall style meeting where the concept of a Fathering Court was introduced. The idea was that the Court would work through the child support system to provide assistance to fathers in paying support and becoming better parents. Several months later I was asked to lead this initiative. After the Court was awarded a grant from the Department of Justice the Fathering Court Initiative was launched on November 1, 2007.

The Fathering Court Initiative is a partnership between the Court, government agencies like the Child Support Services Division of the Office of the Attorney General (OAG), the Department of Human Services (DHA) and the Department of Employment Services (DOES) and the private sector. The pilot project was designed to work with 90 non-custodial parents with child support cases who were returning from a period of incarceration. The Fathering Court Initiative provides employment for every participant through either Project Empowerment through DOES or through a private employment counselor hired to develop employment opportunities for ex-offenders. Job placement

VerDate Nov 24 2008 09:48 Aug 03, 2011 Jkt 057326 PO 00000 Frm 00132 Fmt 6601 Sfmt 6601 P:\DOCS\57326.TXT SAFFAIRS PsN: PAT

57326.100

services include a three week job readiness program that seeks to prepare participants for the rigors of regular employment. Once employment is in place, the Court imposes a child support order with wage withholding that deducts support payments directly from the employer. This approach to support payments makes it easier to ensure that payments are made timely permits the Initiative to focus on the sometimes more difficult task of preparing non-custodial parents to be actively involved in their child's life.

The Initiative provides support groups for participants through a partnership with the Concerned Black Men organization. The Healthy Families Thriving Communities Collaborative provides intensive case management services and offer parenting classes based on the "Quenching the Fathering Thirst" curriculum. This 13 week course is taught by the Initiative's case management team. The case managers provide intensive supervision and treatment oriented intervention for our families. The Court Services and Offender Supervision Agency (CSOSA) provides parole, probation and supervised release monitoring for program participants. Drug treatment, when necessary, is provided through CSOSA or APRA. Each family is provided with free financial counseling through our partnership with Capital Area Asset Builders. Educational services are available to program participants through the University of the District of Columbia.

All of the services are designed to ease the transition back to the community and to reunite parents with their children. All participants attend court hearings regularly, pa support and maintain regular and consistent contact with their children. In January 2009 our first two graduates completed the program. On January 29 of this year five more men graduated from the program. All graduates have been working since their return to the community and have re-offended. Each graduate pays support and is actively engaged in raising their children. Communication has increased between parents and each graduate will soon join the Fathering Court Initiative Alumni Association, an organization that is designed to put graduates in a position to mentor current program participants.

The three-year pilot program is nearing completion. The Department of Justice has indicated that it is interested in continuing funding of the Initiative. Several other jurisdictions have visited our program and expressed interest in creating their own initiatives. The challenge now for the District of Columbia Superior Court Fathering Initiative is to ensure sustainability and to undertake efforts to expand the program to as many of the over 85,000 support cases currently active in the court as possible. As the presiding judge of the Fathering Court Initiative it is my hope that we can continue to provide service to families in the District of Columbia.

19. Have you ever held judicial office? If so, please give the details of such service, including the court(s) on which you served, whether you were elected or appointed, the dates of your service, and a description of the jurisdiction of the court. Please provide four (4) copies of all opinions you wrote during such service as a judge.

Since 1997 I have held the position of Magistrate Judge in the District of Columbia

VerDate Nov 24 2008 09:48 Aug 03, 2011 Jkt 057326 PO 00000 Frm 00133 Fmt 6601 Sfmt 6601 P:\DOCS\57326.TXT SAFFAIRS PsN: PAT

57326.101

Superior Court. I was originally appointed by Chief Judge Eugene Hamilton with the consent of the Board of Judges to a four-year term. I have been reappointed every four year since and was recently unanimously reappointed on November 23, 2009 by Chief Judge Satterfield and the Board of Judges.

The jurisdiction of magistrate judges is codified at 11 D.C. Code §1732 (2002). Magistrate Judges serve in the Civil and Criminal Branches as well as in the Family Court.

A. List all court decisions you have made which were reversed or otherwise criticized on appeal.

Maalouf v. Butt, 817 A.2d 189 (D.C. 2003) (Reversed and Remanded).
Mazda American Credit v. Smith, 05 CA 6638 (Affirmed in Part, Reversed in Part, and Remanded)

Attached

20. Have you ever been a candidate for elective, judicial, or any other public office? If so, please give the details, including the date(s) of the election, the office(s) sought, and the results of the election(s).

No.

21. Political activities and affiliations.

a. List all public offices, either elected or appointed, which you have held or sought as a candidate or applicant.

None.

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

None.

c. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity during the last five (5) years of $50 or more.

None

22. To your knowledge, have you ever been investigated, arrested, charged, or convicted (include pleas of guilty or nolo contendere) by federal, State, local, or other law

VerDate Nov 24 2008 09:48 Aug 03, 2011 Jkt 057326 PO 00000 Frm 00134 Fmt 6601 Sfmt 6601 P:\DOCS\57326.TXT SAFFAIRS PsN: PAT

57326.102

enforcement authorities for violations of any federal, State, county, or municipal law, other than for a minor traffic offense? If so, please provide details.

I was arrested in December 1992 or 1993. This case was not papered and I was not charged in this matter. I was released from the police station without any finding or appearance in court.

This unfortunate incident arose when officers from the Fourth District were summoned to my home by mother regarding a dispute over the delivery of a refrigerator. My mother had made repeated calls to the police during this period when she suffered from a variety of illness including Multiple Sclerosis and breast cancer. These illnesses and their sometimes debilitating treatments had an adverse effect on my mother's mental health. These difficulties only became worse in late 1991 and 1992 when my mother was diagnosed with liver cancer.

I had previously made numerous attempts to inform Fourth District officials that my mother may often call for assistance and, while I did not want the police to ignore her calls, I held the expectation that the responding officers would be put on notice and would exercise some degree of discretion tempered with the appropriate amount of patience when responding.

I was summoned from my office by a neighbor who indicated that the police were present at my home. Upon arrival I was met by a single officer from the Fourth District station. This officer had obviously interviewed my mother and obtained information without being aware of her very fragile condition. The officer made several accusations regarding the care I provided for my mother in my home. While it is an understatement to say that I took offense to the officer's remarks, it is fair to say that my verbal response to the officer led to my arrest. I should have never let this incident escalate. It was my responsibility to handle this matter in a better manner. Less than one year later my mother lost her battle with cancer and passed away quietly at Sibley Memorial Hospital.

23. Have you or any business of which you are or were a officer, director or owner ever been a party or otherwise involved as a party in any other legal or administrative proceedings? If so, give the particulars. Do not list any proceedings in which you were merely a guardian ad litem or stakeholder. Include all proceedings in which you were a party in interest, a material witness, were named as a co-conspirator or co-respondent, and list any grand jury investigation in which you appeared as a witness.

In 1992, my mother brought a medical malpractice suit against a physician who had misdiagnosed her cancer. When my passed away in 1994, I became a party to the suit in my capacity as personal representative for my mother's estate. In 1996, the case settled prior to trial, and the funds from the settlement were distributed as party of my mother's intestate estate.

VerDate Nov 24 2008 09:48 Aug 03, 2011 Jkt 057326 PO 00000 Frm 00135 Fmt 6601 Sfmt 6601 P:\DOCS\57326.TXT SAFFAIRS PsN: PAT

57326.103

24. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, bar or professional association, disciplinary committee, or other professional group? If so, please provide the details.

Somewhere around 1991 there was a complaint filed with the District of Columbia Office of Bar Counsel regarding my representation of Daniel Kinard in a murder case that was tried before the Honorable Franklin Burgess (202-879-1164). That complaint arose from my testimony during a hearing on a claim of ineffective assistance of counsel. The trial found that I provided effective assistance to Mr. Kinard and denied a motion for a new trial. The Bar complaint was summarily dismissed without a hearing.

II. POTENTIAL CONFLICTS OF INTEREST

1. Will you sever all connections with your present employer(s), business firm(s), business association(s), or business organization(s) if you are confirmed?

I am currently employed by the District of Columbia Superior Court as the Presiding Magistrate Judge. If confirmed, I will no longer serve in that position.

2. Describe all financial arrangements, deferred compensation agreements, or other continuing dealings with your law firm, business associates, or clients.

None.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest.

None.

4. Describe any business relationship, dealing, or financial transaction which you have had in the last ten (10) years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest other than while in a federal government capacity.

None.

5. Describe any activity during the last ten (10) years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of legislation or affecting the administration and execution of law or public policy other than while as a federal government employee.

None.

VerDate Nov 24 2008 09:48 Aug 03, 2011 Jkt 057326 PO 00000 Frm 00136 Fmt 6601 Sfmt 6601 P:\DOCS\57326.TXT SAFFAIRS PsN: PAT

57326.104

6. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service as a judge? If so, explain.

Since joining the Court in 1997 I have continued to teach at the University of the District of Columbia David A. Clarke School of Law as a member of the adjunct faculty. I expect to continue in that role.

7. Explain how you will resolve any potential conflicts of interest, including any that may have been disclosed by your responses to the above items. Please provide three (3) copies of any trust or other relevant agreements.

I will resolve any potential conflict of interest pursuant to the mandates of the District of Columbia Code of Judicial Conduct. In addition, I will withdraw from any activity that would create even an appearance of a conflict of interest.

8. If confirmed, do you expect to serve out your full term?

Yes.

III. FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

REDACTED

IV. DISTRICT OF COLUMBIA REQUIREMENTS

Supplemental questions concerning specific statutory qualifications for service as a judge in the courts of the District of Columbia pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970, D.C. Code Section 11-1501 (b), as amended.

1. Are you a citizen of the United States?

   Yes.

2. Are you a member of the bar of the District of Columbia?

   Yes.

3. Have you been a member of the bar of the District of Columbia for at least five (5) years? Please provide the date you were admitted to practice in the District of Columbia.

   Yes. I was admitted to the District of Columbia Bar on November 13, 1985.

4. If the answer to Question 3 is "no" --

   A. Are you a professor of law in a law school in the District of Columbia?

   B. Are you a lawyer employed in the District of Columbia by the United States or the District of Columbia?

   C. Have you been eligible for membership in the bar of the District of Columbia for at least five (5) years?

   D. Upon what grounds is that eligibility based?

5. Are you a bona fide resident of the District of Columbia?

   Yes.

6. Have you maintained an actual place of abode in the greater Washington, D.C. area for at least five (5) years? Please list the addresses of your actual places of abode (including temporary residences) with dates of occupancy for the last five (5) years.

   Yes. **REDACTED**

7. Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nominating Commission?

VerDate Nov 24 2008 09:48 Aug 03, 2011 Jkt 057326 PO 00000 Frm 00138 Fmt 6601 Sfmt 6601 P:\DOCS\57326.TXT SAFFAIRS PsN: PAT

57326.106

No.

8. Have you been a member of either of these Commissions within the last 12 months?

No.

9. Please provide the committee with four (4) copies of your District of Columbia Judicial Nomination commission questionnaire.

Attached

AFFIDAVIT

MILTON C. LEE, JR. being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Milton C. Lee, Jr.

SUBSCRIBED and SWORN TO before me this 17th day of March 2010.

Jeanette Long
Notary Public

JEANETTE LONG
NOTARY PUBLIC
DISTRICT OF COLUMBIA
My Commission Expires October 31, 2013

VerDate Nov 24 2008 09:48 Aug 03, 2011 Jkt 057326 PO 00000 Frm 00139 Fmt 6601 Sfmt 6601 P:\DOCS\57326.TXT SAFFAIRS PsN: PAT

57326.107

Milton Lee
Response To Senator Tom Coburn's Additional Questions for the Record

1. What in your view is the role of a judge?

   The role of a judge is to hear and decide matters assigned to the judge's calendar in a prompt, efficient and fair manner. Judges must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary costs or delay.

   a. Do you think it is ever proper for judges to indulge their own values in determining what the law means? If so, under what circumstances? Please explain your answer.

      Please see below.

   b. Do you think it is ever proper for judges to indulge their own policy preferences in determining what the law means? If so, under what circumstances? Please explain your answer.

      As required by the Code of Judicial Conduct, judges must be faithful to the law and not be swayed by partisan interests, public clamor, or fear of criticism. A judge must perform judicial duties without bias or prejudice. Judges must perform their duties impartially and fairly, because to act otherwise would bring the judiciary into disrepute and undermine public confidence. This rule applies to both judicial and extra-judicial activities and would prohibit a judge from indulging in his or her own values and policy preferences when conducting the business of the court.

2. How would you define "judicial activism?"

   "Judicial activism" can be defined as a court ruling that is not faithful to the constitutional provision, statutory language or judicial precedents that apply in a particular case.

3. Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?

   The Constitution changes only when amended through the process described in Article V. It is the role of the courts to decide cases arising under the Constitution, and in doing so to apply the Constitution to new sets of facts. If confirmed to serve on the Superior Court, my interpretation of the Constitution would be bound by the rulings of the Supreme Court and the District of Columbia Court of Appeals.

57326.108

OPENING STATEMENT OF JUDITH A. SMITH
NOMINEE, ASSOCIATE JUDGE, D.C. SUPERIOR COURT
APRIL 20, 2010

Mr. Chairman, and members of the Committee, I want to thank you for the opportunity to appear before you today, to have you consider my qualifications for a position as an Associate Judge on the D.C. Superior Court. I am honored to be nominated and want to thank the Judicial Nomination Commission, and in particular the Chair of the Commission, The Honorable Emmet Sullivan, for recommending me to the White House and finally to President Barack Obama for nominating me. I also want to thank the Senate Committee staff for their professionalism and assistance throughout this process.

I would like to introduce my family who travelled from Florida to be here with me today: my parents, Richard and Sarah Smith and my sister, Christine Carter. I especially want to acknowledge my son, Jalen Pierce Smith, who is getting his first civics lesson today. There are a number of friends, colleagues and role models here or watching the hearings as well who have supported me both professionally and personally throughout my years of public service in the District of Columbia. I truly appreciate their advice, support and encouragement.

I was born in Columbus, Ohio, where I attended public schools. I received my Bachelor's degree in Accounting from The Pennsylvania State University, became a Certified Public Accountant and worked for Price Waterhouse for three years in Boston and Columbus. I then relocated to Washington, D.C. more than twenty years ago to attend the Georgetown University Law Center and embark on a career in public interest law. After graduating, from Georgetown, I was fortunate to clerk for an exceptional jurist, The Honorable A. Franklin Burgess, Jr., Associate Judge, D.C. Superior Court, for whom I have great respect and admiration.

Following my clerkship, I spent the majority of the next fifteen years in public service in the District of Columbia. I served as a Special Education Attorney, Juvenile Services Attorney and Supervising Attorney at the Public Defender Service for the District of Columbia, and also as an attorney for the District of Columbia Public Schools and the Office of the State Superintendent of Education for the District of Columbia. I appeared before dozens of current Superior Court judges and several Federal court judges over the years as I worked on special education and juvenile justice issues. I then had the great fortune to be appointed as a Magistrate Judge in the Family Court of the D.C. Superior Court in September 2008, presiding over, primarily, abuse and neglect matters. In this position, I have had the privilege of serving the citizens of the District. If confirmed, I will continue to serve with integrity and provide fair, efficient and respectful justice to those who come before me.

I am honored to be considered for this position, and I look forward to answering any questions the Committee might have about my qualifications.

Thank you.

57326.109

REDACTED

QUESTIONNAIRE FOR NOMINEES TO THE DISTRICT OF COLUMBIA COURTS COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, UNITED STATES SENATE

I. BIOGRAPHICAL AND PROFESSIONAL INFORMATION

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

Judith Anne Smith. Also known as Judith Lieberman Smith, during a former marriage, from 9/6/92 through 12/29/98 (date of divorce). Name legally changed back to Judith Anne Smith on 10/23/01.

2. Citizenship (if you are a naturalized U.S. citizen, please provide proof of your naturalization).

United States Citizen.

3. Current office address and telephone number.

Magistrate Judge Judith Smith
D.C. Superior Court
500 Indiana Avenue, NW
Suite 4450
Washington, DC 20001
202-879-1460

4. Date and place of birth.

October 2, 1963. Columbus, Ohio.

5. Marital status (if married, include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Divorced.

6. Names and ages of children. List occupation and employer's name if appropriate.

REDACTED

7. Education. List secondary school(s), college(s), law school(s), and any other institutions of higher education attended; list dates of attendance, degree received, and date each degree was received. Please list dating back from most recent to earliest.

VerDate Nov 24 2008 09:48 Aug 03, 2011 Jkt 057326 PO 00000 Frm 00142 Fmt 6601 Sfmt 6601 P:\DOCS\57326.TXT SAFFAIRS PsN: PAT

57326.110

University of Maryland, College Park *1999-2000*
I took four graduate level classes in a Masters in Special Education program to gain knowledge in the legal field in which I was working at the time. I was not working toward a degree but was admitted as an "advanced special student."

Georgetown University Law Center, *September 1989-May 1992, J.D. received May 1992*

Pennsylvania State University, *August 1981-May 1985, B.S.-Accounting received May 1985*

Grove City High School, *Sept.-May 1981, High School Diploma received May 1981*

8. Employment record. List all jobs held since college, other than legal experience covered in question 16, including the dates of employment, job title or description of job, and name and address of employer. Please list dating back from most recent to earliest. If you have served in the US military, please list dates of service, rank or rate, serial number, and type of discharge received.

Controller *September 1987-August 1989*
Clarke & Company, Inc.
535 Boylston Street
Boston, MA 02116
Supervised financial/accounting operations of this public relations and advertising company.

Auditor/Staff Accountant *September 1985-August 1987*
Price Waterhouse (now PriceWaterhouseCoopers)
Boston, MA and Columbus, OH offices
Performed audits for banking, mutual fund and manufacturing clients of this international public accounting firm.

9. Honors and awards. List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

I received a number of small academic-based scholarships to attend college. I graduated with High Distinction from The Pennsylvania State University (PSU) and received Honors grades in Legal Research and Writing at Georgetown Law Center. I was a member of the following Honor and/or Leadership Societies at PSU:

University Scholars' Program
Lions' Paw Senior Honor Society
Parmi Nous Senior Honor Society
Omicron Delta Kappa National Leadership Society
Mortar Board Senior Honor Society

VerDate Nov 24 2008 09:48 Aug 03, 2011 Jkt 057326 PO 00000 Frm 00143 Fmt 6601 Sfmt 6601 P:\DOCS\57326.TXT SAFFAIRS PsN: PAT

57326.111

Beta Gamma Sigma Business Honor Fraternity

10. Business relationships. List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, or educational or other institution.

None.

11. Bar associations. List all bar associations, legal or judicial-related committees, conferences, or organizations of which you are or have ever been a member, and provide titles and dates of any offices which you have held in such groups.

I am a member of the District of Columbia Bar Association. I do not participate on any committees. I was selected as D.C. Board of Professional Responsibility Hearing Committee member in May of 2008 but resigned in August 2008 before hearing any cases due to my selection as a Magistrate Judge.

12. Other memberships. List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, public, charitable, or other organizations, other than those listed in response to Question 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion.

Juvenile Justice Advisory Group, mayoral appointment (2002-2008)
State Advisory Panel on Special Education (2001-2002)
In college, I was involved in residence hall student government and also chaired the Equal Justice Foundation at Georgetown. To my knowledge, no organization that I have ever been a member of has discriminated on the basis of race, sex, religion or any other protected class.

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

Maryland State Bar, admitted December 1992 (inactive status)
District of Columbia Bar, admitted September 1993
U.S. Supreme Court Bar, admitted June 2002

14. Published writings. List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited.

VerDate Nov 24 2008 09:48 Aug 03, 2011 Jkt 057326 PO 00000 Frm 00144 Fmt 6601 Sfmt 6601 P:\DOCS\57326.TXT SAFFAIRS PsN: PAT

57326.112

I have no published writings.

15. Speeches. List the titles of any formal speeches you have delivered during the last five (5) years and the date and place where they were delivered. Please provide the Committee with four (4) copies of any of these speeches.

I have not delivered any speeches in the last five years.

16. Legal career (In responding to the following, please include and highlight any experience related to family law).
    A. Describe chronologically your law practice and experience after graduation from law school, including:
        (1) Whether you served as a law clerk to a judge, and if so, the name of the judge, the court, and the dates of your clerkship;
        (2) Whether you practiced alone, and if so, the addresses and dates;
        (3) The dates, names, and address of law firms, companies, or governmental agencies with which you have been employed.

Experience related to family law is marked below with an asterisk.

***MAGISTRATE JUDGE, SEPTEMBER 2008-PRESENT**
Superior Court of the District of Columbia, 500 Indiana Avenue, N.W., Washington, DC; Serving in the Family Court.

ATTORNEY ADVISOR, APRIL 2008-SEPTEMBER 2008
Office of the State Superintendent of Education, Office of the General Counsel, Washington, DC

***JUVENILE SERVICES PROGRAM COORDINATOR, JANUARY 2007-APRIL 2008**
Public Defender Service for the District of Columbia, Community Defender Division Washington, DC; Family Court work.

***EXECUTIVE DIRECTOR, NOVEMBER 2001-JANUARY 2007**
FEDERAL AND FAMILY COURT MONITORING/MEDIATION AND COMPLIANCE
District of Columbia Public Schools, Office of Special Education, Washington, DC

***ATTORNEY, MAY 1994-SEPTEMBER 1995, FEBRUARY 1996-NOVEMBER 2001**
Public Defender Service for the District of Columbia, Washington, DC;
Special Education Attorney (February 1996-November 2001)
Juvenile Services Program Staff Attorney (May 1994-September 1995)

ADJUNCT PROFESSOR/CLINICAL INSTRUCTOR, JANUARY 1994-MAY 1994
Georgetown University Law Center, Washington, DC
Street Law Corrections Clinic

SELF-EMPLOYED, SEPTEMBER 1993-MAY 1994
Law Office of Judith Smith, Washington, DC (primarily criminal law)

VerDate Nov 24 2008 09:48 Aug 03, 2011 Jkt 057326 PO 00000 Frm 00145 Fmt 6601 Sfmt 6601 P:\DOCS\57326.TXT SAFFAIRS PsN: PAT

57326.113

JUDICIAL LAW CLERK, SEPTEMBER 1992-SEPTEMBER 1993
The Honorable A. Franklin Burgess, Jr., Superior Court for the District of Columbia

SUMMER LEGAL ASSOCIATE, JUNE 1991-AUGUST 1991
Bricker and Eckler, Columbus, OH

LEGAL RESEARCHER, SEPTEMBER 1990-MAY 1991
National Criminal Justice Association, DC

SUMMER LEGAL INTERN, JUNE 1990-AUGUST 1990
Legal Aid Society for the District of Columbia, Washington, D.C.

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

September 2008-present: *Magistrate Judge, Abuse and Neglect calendar, with some related paternity, custody, support and delinquency matters.*

April 2008-September 2008: *Education law with a focus on special education. Federal court litigation, administrative law, drafting of federal and local regulations and policy.*

2007-2008: *Juvenile delinquency, post-commitment representation and juvenile justice policy.*

2001-2007: *Special Education law policy, as a senior leadership employee of District of Columbia Public Schools, Office of Special Education. Extensive participation in federal class actions, federal appeals and family court matters relating to special education, assisting DC Office of the Attorney General (primarily Equity and Appellate Divisions) and DCPS Office of the General Counsel in their representation of DCPS.*

1996-2001: *Special Education law on behalf of students charged in the juvenile delinquency system in DC. Juvenile delinquency matters in Superior Court (including several competency matters and transfer/waiver hearings) and administrative hearings on special education.*

1993-1995: *Criminal law, on behalf of indigent adults and juveniles in DC*

C. Describe your typical former clients and describe the areas of practice, if any, in which you have specialized.

Prior to becoming a Magistrate Judge, although I represented children as young as nine years old and as old as 24 years old, throughout the majority of the time period mentioned in (B) above, my typical clients were indigent teenagers who had some involvement with the juvenile justice system (from truancy to serious felonies) who also had significant educational difficulties. I specialized in Special Education law under the federal Individuals with Disabilities Education Act (IDEA), as well as juvenile delinquency and adult criminal matters in D.C. Superior Court.

In my position at DCPS and more recently at OSSE, my role was legal advisor to senior management officials on education law and policy.

D. Describe the general nature of your litigation experience, including:

VerDate Nov 24 2008 09:48 Aug 03, 2011 Jkt 057326 PO 00000 Frm 00146 Fmt 6601 Sfmt 6601 P:\DOCS\57326.TXT SAFFAIRS PsN: PAT

57326.114

(1) Whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your court appearances has varied over time, please describe in detail each such variance and give applicable dates.

Prior to becoming a Magistrate Judge in 2008, over the years the frequency of my appearances in court varied. From 1994-2001, I appeared frequently in DC Superior Court juvenile matters, on special education issues and also handled dozens of special education administrative hearings. From 2001-2007, I appeared frequently in DC Superior Court family matters, as the DCPS Supervisor of the liaison to the Family Court. I also appeared occasionally during that time period in federal court when education matters were appealed or a complaint was filed against the school system. In those matters, OAG (or formerly OCC) was counsel of record; I was frequently the legal representative from DCPS, primarily present to assist in settlement or mediation negotiations. See also the answer to Question 17 regarding Blackman/Jones federal class action. In 2007-2008, while back at PDS, and in 2008 while at OSSE, I rarely appeared in court and never as counsel of record.

(2) What percentage of these appearances was in:
- (a) Federal courts (including Federal courts in D.C.); ***20%***
- (b) State courts of record (excluding D.C. courts); ***0%***
- (c) D.C. courts (Superior Court and D.C. Court of Appeals only); ***40%***
- (d) other courts and administrative bodies. ***40%***

(3) What percentage of your litigation has been:
- (a) civil; ***50%*** *(special education, IDEA/civil rights)*
- (b) criminal. ***50%*** *(primarily juvenile)*

(4) What is the total number of cases in courts of record you tried to verdict or judgment (rather than settled or resolved, but may include cases decided on motion if they are tabulated separately). Indicate whether you were sole counsel, lead counsel, or associate counsel in these cases.

I tried no matters to a verdict or judgment in court; however, I handled approximately thirty special education administrative matters to a judgment. Since becoming a Magistrate Judge in 2008, I have presided over approximately 20 bench trials.

(5) What percentage of these trials was to
- (a) a jury; N/A
- (b) the court (include cases decided on motion but tabulate them separately). *100% - special education matters before an Administrative Law Judge*

17. Describe the five (5) most significant litigated matters which you personally handled. Provide citations, if the cases were reported, or the docket number and date if unreported. Give a capsule summary of the substance of each case and a succinct statement of what you believe was of particular significance about the case. Identify the party/parties you

VerDate Nov 24 2008 09:48 Aug 03, 2011 Jkt 057326 PO 00000 Frm 00147 Fmt 6601 Sfmt 6601 P:\DOCS\57326.TXT SAFFAIRS PsN: PAT

57326.115

represented and 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 court and the name of the judge or judges before whom the case was litigated; and (c) the name(s) and address(es) and, telephone number(s) of co-counsel and of the principal counsel for the other parties.

The majority of my work at PDS was in a support role to the trial attorneys. While at DCPS, litigation was primarily handled by OAG and again I was in a support role. I played a significant role in four matters, all of which are listed below; however, I was not sole or lead counsel in these matters.

• Blackman/Jones vs. the District of Columbia is a consolidated class action in United States District Court for the District of Columbia (Civil Action No. 97-1629 PLF consolidated with Civil Action No. 97-2402 PLF). Filed in 1997, it has been pending before the Honorable Paul Friedman for more than ten years, in various stages of settlement. I was intimately involved during my more than five years of employment with DCPS (2001-2006) and also was involved again while at OSSE (2008). Throughout most of the litigation the class was represented by Tammy Seltzer (Bazelon Center for Mental Health but has since become a consultant: 202-257-9084) and Alisa Reff (Drinker, Biddle & Reath, LLP, 1500 K Street, NW, WDC 20005; 202-842-8852) although both withdrew after the consent agreement was approved by the Court in August 2006. Ira Burnham (Bazelon, 1101 15th Street, NW, WDC, 20005; 202-467-5730) and Steve Ney (private practice) took over representation of the plaintiff class in late 2006 so I had minimal involvement with them. The defendant/government is represented by Robert Utiger (202-724-6532), Edward Taptich, Cary Pollak, and Daniel Rezneck, Office of the Attorney General, Equity Division. As OAG represents DCPS in court matters, I was not counsel of record; however as the longest serving DCPS employee throughout much of the case, my involvement was consistent and significant.

Prior to my joining DCPS, in 1998, the D.C. government and D.C. Public Schools were found liable for violating IDEA by failing to provide timely administrative due process hearings and by failing to timely implement the administrative Hearing Officer Decisions (HOD) and Settlement Agreements (SA) that resulted from the eventual hearings. Since liability was determined, the parties participated in three long term mediation attempts to address the remedy. I was involved in two of the three mediations. The most recent mediation sessions began in the spring of 2005 and lasted through the summer of 2006. The parties mediated extensively with the assistance of the Honorable David S. Tatel, U.S. Circuit Court for the District of Columbia and Amy Totenberg (404-622-6970), a noted expert in this field. The parties reached a consent agreement approved by the Court in August 2006 that will ultimately bring DCPS into compliance with IDEA and provide compensatory education for the long time period during which DCPS was not in compliance. Given the longstanding nature of the violations and the thousands of class members involved, such a positive resolution would be significant. This case was one of several federal class actions for which it was my responsibility to ensure that the DCPS Office of Special Education was compliant. My unit was directly responsible for the provision of Compensatory Education outlined in the Decree, with a $10 million budget, which was the only part of the agreement that was in compliance as of January 2007.

• In the Matter of B. S. was a case that spanned more than three years of court involvement, from 1998-2001. B.S. had been charged in several juvenile matters. I was appointed by the Honorable Natalia Combs Greene to address the competency issues raised by a variety of expert evaluations due to the client's mental retardation. The competency matters were litigated in 2000 and 2001 before Judge Combs Greene and the Honorable Shellie Bowers in the Family Division of D.C. Superior Court. The D.C. Government was represented by Tom Gillice, Assistant Corporation Counsel (now at USAO: 202-305-1392); B.S. was represented in his delinquency matter by CJA attorney Mark

VerDate Nov 24 2008 09:48 Aug 03, 2011 Jkt 057326 PO 00000 Frm 00148 Fmt 6601 Sfmt 6601 P:\DOCS\57326.TXT SAFFAIRS PsN: PAT

57326.116

Alexander (whereabouts unknown at this time). Throughout these matters, I filed motions on behalf of B.S., argued the motions in court and cross-examined the witnesses (primarily expert witnesses). I also attended neglect hearings on behalf of B.S. and his mother, in D.C. Superior Court and delinquency matters in Maryland. This case highlighted the tightly intertwined nature of the neglect and delinquency systems, as well as the close involvement of the mental retardation, mental health and education systems. Ultimately B.S. was placed residentially through a complicated agreement between the Youth Services Administration, Child and Family Services Administration and D.C. Public Schools. Significant delays in placement occurred, however, because of the overlapping roles of the agencies and lack of a clear lead agency.

- *In the Matter of G.G. involved an underlying charge of sexual abuse, primarily litigated in 2000-01. The matter was before the Honorable Thomas Motley. The government was represented by Tom Gillice. G.G. was represented by several attorneys from PDS, including Hannah McElhinny (202-628-1200). Competency was again an issue and was fully litigated. G.G. was one of the least competent clients I ever represented. He showed a complete lack of understanding of the judicial system and the charges against him. In this case, as above, the mother was very involved yet showed the same lack of understanding of the system. Judge Motley found that G.G. was not competent to stand trial. This was a difficult decision for Judge Motley and for all parties involved as it meant that G.G. might not receive services the Court believed necessary. Following the dismissal, I continued to work with the DCPS and DMH to ensure that services available outside the court system remained in place. Unfortunately, G.G. was eventually charged as an adult in a subsequent matter. As his competency remained at issue, his case led to a call for revision of the laws that then allowed a mentally retarded person found not competent to stand trial to avoid involuntarily commitment, unless the person was also found not competent due to mental health issues.*

- *In the Matter of S. M. involved a delinquency matter in D.C. Superior Court in which the government was moving to transfer S.M. to adult court. This matter was litigated primarily in 1997 and 1998 before several judges in the Family Division of D.C. Superior Court and with several prosecutors in the Office of Corporation Counsel. S.M. was represented by Ottrell Ferrell, (then PDS) and the now Honorable Michael Ryan (D.C. Superior Court) who at the time was a PDS attorney. I played a significant role in investigating education and mental health issues, reviewing evaluations and records for legal relationships to the transfer standards, and preparing expert and lay witnesses for testimony. Ultimately, Judge John Campbell granted the government's request to transfer S.M. to adult court for prosecution. This matter also explored the relationships amongst neglect, delinquency, mental health, and special education and their impact on the child.*

18. Describe the most significant legal activities you have pursued, including significant litigation which did not proceed to trial or legal matters that did not involve litigation. Describe the nature of your participation in each instance described, but you may omit any information protected by the attorney-client privilege (unless the privilege has been waived).

As noted, the majority of my work representing individuals was to assist trial counsel at disposition or sentencing, or in administrative matters. I taught in the Street Law Corrections Clinic at Georgetown Law; I worked extensively on juvenile justice and education policy issues; I drafted administrative rule-makings on special education while at OSSE; I handled close to 100 administrative hearings, approximately 30 of which went to a full hearing; and I was engaged in extensive federal court mediation in the Blackman/Jones matter noted above. I was also extensively involved in the mediation J.C. vs. Vance, another DCPS federal class action (education for students at DC Jail); the matter was mediated by the

VerDate Nov 24 2008 09:48 Aug 03, 2011 Jkt 057326 PO 00000 Frm 00149 Fmt 6601 Sfmt 6601 P:\DOCS\57326.TXT SAFFAIRS PsN: PAT

57326.117

Honorable Richard Levie (retired DC Superior Court) from JAMS.

In addition, I was involved in almost every administrative decision under IDEA that was appealed or in which the parent filed for a preliminary injunction under Blackman/Jones. It was my responsibility to ensure that DCPS, as the "client" of OAG, offered its position on the merits of the appeal as well as provided all necessary documentation to support its position. As noted above, in each of these appeals, OAG was counsel of record and I worked closely with them. Robert Utiger was the primary supervisor I worked with in the Equity Division at OAG. The majority of the matters were before Judge Urbina or Judge Friedman. Elise Baach, Special Master in the Blackman/Jones case, heard the preliminary injunction matters in an effort to resolve them before they were sent to Judge Friedman. Ms. Baach can be reached at 301-656-6404.

19. Have you ever held judicial office? If so, please give the details of such service, including the court(s) on which you served, whether you were elected or appointed, the dates of your service, and a description of the jurisdiction of the court. Please provide four (4) copies of all opinions you wrote during such service as a judge.

Yes – I am currently a Magistrate Judge at D.C. Superior Court; the sole local trial court for the District of Columbia. I was appointed September 15, 2008 and have served exclusively in the Family Court (neglect, abuse, and related paternity, support, custody, adoption and termination of parental rights matters; I also provide occasional coverage to the new referrals calendar for juvenile delinquency cases). I have written Opinions in twenty bench trials. These Family Court decisions are confidential. Below is a list of these opinions. Redacted copies are attached.

In re E.J., (Neglect)
In re N.G., (Neglect)
In re T.B./D.B./C.B./T.B./T.B./D.B./N.B./S.B. (Termination of Parental Rights - eight siblings)
In re M.B./J.B./J.H./B.S. (Neglect)
In re J.R. (Neglect and Jurisdictional Order)
In re K.H./S.H./S.H. (Neglect and Paternity Order)
In re C.B./T.B./S.B./D.B. (Neglect)
In re L.A./J.A./J.A./R.A. (Neglect and two Pretrial Orders)
In re R.B. (Adoption)
In re I.G. (Termination of Parental Rights)
In re K.C. (Adoption/TPR/Custody)
In re A.H. (Adoption/TPR)
In re G.J. (Termination of Parental Rights)
In re T.G. (Guardianship)
In re A.J./Q.J./Q.J. (Adoption/TPR)
In re W.M. (Neglect)

A. List all court decisions you have made which were reversed or otherwise criticized on appeal.

I have had no matters reversed or otherwise criticized on appeal.

20. Have you ever been a candidate for elective, judicial, or any other public office? If so, please give the details, including the date(s) of the election, the office(s) sought, and the results of the election(s).

VerDate Nov 24 2008 09:48 Aug 03, 2011 Jkt 057326 PO 00000 Frm 00150 Fmt 6601 Sfmt 6601 P:\DOCS\57326.TXT SAFFAIRS PsN: PAT

57326.118

No.

21. Political activities and affiliations.

a. List all public offices, either elected or appointed, which you have held or sought as a candidate or applicant.

None.

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

None.

c. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity during the last five (5) years of $50 or more.

None.

22. To your knowledge, have you ever been investigated, arrested, charged, or convicted (include pleas of guilty or nolo contendere) by federal, State, local, or other law enforcement authorities for violations of any federal, State, county, or municipal law, other than for a minor traffic offense? If so, please provide details.

No.

23. Have you or any business of which you are or were an officer, director or owner ever been a party or otherwise involved as a party in any other legal or administrative proceedings? If so, give the particulars. Do not list any proceedings in which you were merely a guardian ad litem or stakeholder. Include all proceedings in which you were a party in interest, a material witness, were named as a co-conspirator or co-respondent, and list any grand jury investigation in which you appeared as a witness.

During my time at the District of Columbia Public Schools (DCPS), individual class members in the Blackman/Jones class action (see response to Question 17, above) often moved for preliminary injunctions against DCPS in federal court, pursuant to the Blackman/Jones consent decree.

In one such case, the plaintiff attorney named several DCPS employees, including me in my capacity as a former employee of the DCPS, as co-defendants, along with the District. The matter is Chanda Alston vs. D.C., Civil Action No. 07-682 (Judge Ricardo Urbina, U.S. District Court for the District of Columbia). The primary allegation by the plaintiff is that the

VerDate Nov 24 2008 09:48 Aug 03, 2011 Jkt 057326 PO 00000 Frm 00151 Fmt 6601 Sfmt 6601 P:\DOCS\57326.TXT SAFFAIRS PsN: PAT

57326.119

school system violated the rights of a student with a disability by failing to timely place her in an appropriate educational program. The city, DCPS and the employees are all represented by the DC Office of the Attorney General in the matter. The current OAG attorney is Sarah Knapp. In June 2008, Judge Urbina dismissed several claims relating to the individual DCPS employees. In March 2010, Judge Urbina dismissed some additional claims, including most of the claims against the individual DCPS employees. The remaining claims are pending before that court.

In another such case in 2003, in which I was not named as a party, a plaintiff who was upset that DCPS had missed a deadline to provide her child with a specialized computer spoke with the press during the litigation. The DCPS superintendent responded by asking outside reviewers to determine the cause of the delay. Pending the results of the review, the superintendent placed several employees, including two IT specialists, my supervisor (the assistant superintendent for special education) and me, on paid administrative leave. Based on the review, the superintendent determined that the compliance failures were due to systemic problems at DCPS, and I was reinstated in my job. I was not reprimanded or disciplined.

24. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, bar or professional association, disciplinary committee, or other professional group? If so, please provide the details.

No.

II. POTENTIAL CONFLICTS OF INTEREST

1. Will you sever all connections with your present employer(s), business firm(s), business association(s), or business organization(s) if you are confirmed?

Yes.

2. Describe all financial arrangements, deferred compensation agreements, or other continuing dealings with your law firm, business associates, or clients.

None.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest.

None.

4. Describe any business relationship, dealing, or financial transaction which you have had in the last ten (10) years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest other than while

VerDate Nov 24 2008 09:48 Aug 03, 2011 Jkt 057326 PO 00000 Frm 00152 Fmt 6601 Sfmt 6601 P:\DOCS\57326.TXT SAFFAIRS PsN: PAT

57326.120

in a federal government capacity.

None.

5. Describe any activity during the last ten (10) years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of legislation or affecting the administration and execution of law or public policy other than while as a federal government employee.

None.

6. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service as a judge? If so, explain.

No.

7. Explain how you will resolve any potential conflicts of interest, including any that may have been disclosed by your responses to the above items. Please provide three (3) copies of any trust or other relevant agreements.

I am not aware of any potential conflicts. If a potential conflict does arise, I would resolve it pursuant to the District of Columbia Code of Judicial Conduct, and I would recuse myself or withdraw from my involvement in the conflicting activity as appropriate.

8. If confirmed, do you expect to serve out your full term?

Yes.

III. FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

REDACTED

IV. DISTRICT OF COLUMBIA REQUIREMENTS

Supplemental questions concerning specific statutory qualifications for service as a judge in the courts of the District of Columbia pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970, D.C. Code Section 11 - 1501 (b), as amended.

1. Are you a citizen of the United States?

57326.121

Yes.

2. Are you a member of the bar of the District of Columbia?

Yes.

3. Have you been a member of the bar of the District of Columbia for at least five (5) years? Please provide the date you were admitted to practice in the District of Columbia.

Yes. Admitted September 1993.

4. If the answer to Question 3 is "no" --

   A. Are you a professor of law in a law school in the District of Columbia?

   B. Are you a lawyer employed in the District of Columbia by the United States or the District of Columbia?

   C. Have you been eligible for membership in the bar of the District of Columbia for at least five (5) years?

   D. Upon what grounds is that eligibility based?

5. Are you a bona fide resident of the District of Columbia?

Yes.

6. Have you maintained an actual place of abode in the greater Washington, D.C. area for at least five (5) years? Please list the addresses of your actual places of abode (including temporary residences) with dates of occupancy for the last five (5) years.

Yes. **REDACTED**

7. Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nominating Commission?

No.

8. Have you been a member of either of these Commissions within the last 12 months?

No.

VerDate Nov 24 2008 09:48 Aug 03, 2011 Jkt 057326 PO 00000 Frm 00154 Fmt 6601 Sfmt 6601 P:\DOCS\57326.TXT SAFFAIRS PsN: PAT

57326.122

9. Please provide the committee with four (4) copies of your District of Columbia Judicial Nomination commission questionnaire.

Please see attached.

AFFIDAVIT

JUDITH A. SMITH being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

SUBSCRIBED and SWORN TO before me this 12 day of april 2010.

Mary F. Vincent
Notary Public

MARY E VINCENT
Notary Public, District of Columbia
My Commission Expires March 31, 2013

VerDate Nov 24 2008 09:48 Aug 03, 2011 Jkt 057326 PO 00000 Frm 00155 Fmt 6601 Sfmt 6601 P:\DOCS\57326.TXT SAFFAIRS PsN: PAT

57326.123

Senator Tom Coburn
Additional Questions for the Record
Nomination Hearing of Judith Smith
April 20, 2010

1. What in your view is the role of a judge?

A judge should weigh the facts, as presented, be knowledgeable about the law, and apply the law fairly, consistently and promptly. Judges should be respectful of the parties, attorneys, witnesses and court staff, always setting the example of professionalism, integrity and impartiality.

a. Do you think it is ever proper for judges to indulge their own values in determining what the law means? If so, under what circumstances? Please explain your answer.

If confirmed as an Associate Judge, my role would be to follow the statutes and the case law and apply them, as written. Where a statute is unclear or a question of law is one of first impression, interpretation should be done after thorough research and with the utmost objectivity.

b. Do you think it is ever proper for judges to indulge their own policy preferences in determining what the law means? If so, under what circumstances? Please explain your answer.

If confirmed to serve as an Associate Judge on the D.C. Superior Court, my role would not be to set or change policy based on my personal preferences. If an agency policy is inconsistent with a statute or law, such as when an agency policy may conflict with my parens patriae role in the neglect cases that come before me, my role would be to follow the law—in a neglect case, that would mean that any action I take must be consistent with protecting the best interests of the child.

2. How would you define "judicial activism?"

I believe this term includes making legal rulings that are based upon a judge's personal opinion or bias, rather than on well-established or impartial interpretation of a particular law; and, being overly controlling in the courtroom, such as raising legal arguments that should be raised by counsel or the parties.

3. Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?

If confirmed to serve as an Associate Judge, I would be bound by the Constitution as written and as interpreted by the Supreme Court and appellate courts. It is not the role of an Associate Judge to evaluate the Constitution based on how society interprets it.

57326.124

Opening Statement of Todd E. Edelman
Nominee, Associate Judge, D.C. Superior Court
April 20, 2010

Mr. Chairman and members of the Committee, I am grateful for and honored by the opportunity to appear before you today as a nominee to be an Associate Judge on the District of Columbia Superior Court. I would like to thank the District of Columbia Judicial Nomination Commission for recommending me to the White House, and President Barack Obama for nominating me. I would also like to thank the Committee for considering my nomination so expeditiously, and the Committee's staff for their hard work in preparing for this hearing and for the courtesy they have shown me during this process.

I want to begin by introducing the members of my family who are with me today: my wife, Marisa Nightingale; our children, Nora and Jacob; my mother and stepfather, Sybil and Lewis Mitchell; and my father-in-law and mother-in-law, Stuart and Elena Nightingale. While I have many people to thank today, I know that I am sitting before you primarily because of my family's support, encouragement, and patience. A number of my friends, colleagues, and students are also here in the gallery, and I would like to thank them not only for their support today, but for inspiring me, challenging me, and, at times, entertaining me over the past fifteen years.

I became a lawyer in order to pursue a career in public service, and I feel fortunate that I have had the opportunity to do so. I have dedicated my legal career to protecting the principles that access to justice should be equally available to everyone in our community, and that the quality of representation provided in court should not depend on income, wealth, or connections. At the Public Defender Service and the Georgetown University Law Center's Criminal Justice Clinic, I have represented indigent clients in D.C. Superior Court for over twelve years, work that has been both a daunting responsibility and a unique privilege. I have also spent much of my career training public defenders, legal services lawyers, and other attorneys and law students who represent low-income people here in Washington. As a clinical professor at Georgetown Law, I aim to instill in my students a passion for using their law degrees to work for those who are most in need of their help. The same commitment to public service and to the principle of equal justice under law that motivated me to go to law school and to pursue these positions at PDS and at Georgetown has also motivated me to seek appointment to the bench.

As I contemplate this next step in my career, I cannot help thinking back to the way I began my career, as a law clerk to Judge William B. Bryant on the United States District Court for the District of Columbia. Judge Bryant was a legendary trial lawyer, a respected and historic jurist, and, above all, the wisest, kindest man I have ever met. Judge Bryant may have taught me more in that one year than I have learned since, and set an example that I will seek to emulate should I be confirmed. Judge Bryant was intellectually curious, committed to applying the law impartially and fairly, and dedicated to showing equal respect to all parties. If I am confirmed, after my career on the bench is over, I hope to be remembered the way Judge Bryant is: as a judge who treated litigants with dignity and his role with humility.

I am quite moved to be considered for a judgeship on the D.C. Superior Court – the court where I grew up as an attorney, and where I learned much of what I know about the law, about being a lawyer, about winning and losing, and about the joys and challenges of public service. I am humbled to be considered for this position, and thank you again for considering my nomination.

57326.126

QUESTIONNAIRE FOR NOMINEES TO THE DISTRICT OF COLUMBIA COURTS COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, UNITED STATES SENATE

I. BIOGRAPHICAL AND PROFESSIONAL INFORMATION

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

Todd Eric Edelman

2. **Citizenship (if you are a naturalized U.S. citizen, please provide proof of your naturalization).**

I am a citizen of the United States.

3. **Current office address and telephone number.**

Georgetown University Law Center
Criminal Justice Clinic
111 F Street N.W.
Washington, D.C. 20001
(202) 662-4248

4. **Date and place of birth.**

January 16, 1968, St. Louis, Missouri

5. **Marital status (if married, include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

Married. My wife, Marisa Ottolenghi Nightingale, is a self-employed media consultant. The majority of her work consists of providing media consulting to the National Campaign to Prevent Teen and Unplanned Pregnancy, a not-for-profit organization where she worked on staff for twelve years and where she remains a Senior Advisor.

6. **Names and ages of children. List occupation and employer's name if appropriate.**

We have two children: **REDACTED**

7. **Education. List secondary school(s), college(s), law school(s), and any other institutions of higher education attended; list dates of attendance, degree received, and date each degree was received. Please list dating back from most recent to earliest.**

New York University School of Law: Attended 1991-1994. Received J.D., *cum laude*, May 1994.

57326.127

Yale University: Attended 1986-1990. Received B.A., *cum laude* and with Distinction in Political Science, May 1990.

Ladue Horton Watkins High School (St. Louis, Missouri): Attended 1982-1986. Received High School Diploma, June 1986.

8. Employment record. List all jobs held since college, other than legal experience covered in question 16, including the dates of employment, job title or description of job, and name and address of employer. Please list dating back from most recent to earliest. If you have served in the US military, please list dates of service, rank or rate, serial number, and type of discharge received.

Summer Associate, May – August 1993
O'Donoghue & O'Donoghue LLP
4748 Wisconsin Avenue N.W.
Washington, D.C. 20016

Law Clerk, January – April 1993
Cohen, Weiss and Simon LLP
330 West 42nd Street, 25th Floor
New York, NY 10036

Law Clerk, June – August 1992
United Mine Workers of America
Current address: 8315 Lee Highway
Fairfax, VA 22301
(address in 1992: 900 15th Street NW, Washington, D.C. 20005)

Law Clerk, January – April 1992
South Brooklyn Legal Services
105 Court Street, 3rd Floor
Brooklyn, NY 11201

Research Associate, July 1990 – June 1991
Environmental Law Institute
Current address: 2000 L Street N.W., Suite 620
Washington, D.C. 20036
(address in 1990-91: 1616 P Street N.W., Washington, D.C. 20036)

See response to question (16) for all employment since 1994.

57326.128

9. **Honors and awards. List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.**

Wasserstein Public Interest Fellowship, Harvard Law School, 2003.

E. Barrett Prettyman Fellowship, Georgetown University Law Center, 1995-1997.

Root-Tilden Scholarship, New York University School of Law, 1991-1994.

Graduated *cum laude*, New York University School of Law, 1994.

Sol D. Kapelson Prize for Highest Excellence in Legal Writing, New York University School of Law, 1994 (awarded at graduation).

American Jurisprudence Award for Evidence, New York University School of Law, 1993.

Graduated *cum laude* and with Distinction in Political Science, Yale University, 1990.

Yale University Community Service Award, 1988.

Valedictorian, Ladue Horton Watkins High School, 1986.

10. **Business relationships. List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, or educational or other institution.**

Of Counsel, Bredhoff & Kaiser PLLC, 2005-2008.

11. **Bar associations. List all bar associations, legal or judicial-related committees, conferences, or organizations of which you are or have ever been a member, and provide titles and dates of any offices which you have held in such groups.**

Board of Directors, Washington Council of Lawyers, 2007-present.

Steering Committee, District of Columbia Bar Criminal Law and Individual Rights Section, 2006-present.

Faculty, Southern Public Defender Training Center, 2008 & 2009.

Faculty, Washington Council of Lawyers Litigation Skills Training Program, 2005, 2007-2009.

Faculty, AFL-CIO Lawyers Coordinating Committee Litigation Workshop, 2007 & 2009.

57326.129

Faculty, Equal Justice Works Leadership Development Training Conference, 2008.

Faculty, Harvard Law School Trial Advocacy Workshop, 2006.

Faculty, National Legal Aid and Defender Association Trial Advocacy College, 2005.

Faculty, Georgia Public Defender Standards Council Honors Program, 2005.

Voting Member, District of Columbia Advisory Commission on Sentencing, 2003-04.

Delegate, District of Columbia Judicial Conference, 2002, 2003, 2004, 2006 & 2010.

12. Other memberships. List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, public, charitable, or other organizations, other than those listed in response to Question 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion.

From 1996 to 1998, I served on the Board of Directors of Helping Individual Prostitutes Survive. It did not and does not discriminate on the basis of race, sex, or religion.

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

Illinois, 1994 - present

District of Columbia, 1994 – present.

United States Court of Appeals for the Eleventh Circuit, 2006 – present.

United States District Court for the District of Columbia, 2008 – present.

14. Published writings. List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited.

Co-author, *Stories Told and Untold: Lawyering Theory Analyses of the First Rodney King Assault Trial,* 12 Clin. L. Rev. 1 (2005)

Contributor, CRIME SCENE INVESTIGATION (Elwin Street Limited, 2004)

15. **Speeches. List the titles of any formal speeches you have delivered during the last five (5) years and the date and place where they were delivered. Please provide the Committee with four (4) copies of any of these speeches.**

I have delivered no formal speeches over the past five years.

In my current position at the Georgetown University Law Center, I co-teach the Criminal Justice Clinic (CJC). From 2004-2008, I was an Adjunct Professor of Law at the Georgetown University Law Center, and co-taught a Criminal Trial Litigation class. I have guest lectured at George Washington University School of Law in 2007 and at Yale Law School in 2005 and 2006. I participated in a discussion of the Clinical Law Review article cited in response to question (14) above at the New York Law School Clinical Theory Workshop in 2006.

Finally, I have frequently volunteered my time to serve as a trainer on trial skills and trial practice issues, particularly for law students and organizations involved in the representation of low-income people. In addition to leading individual training sessions and moderating panels, I have served on the faculty of the Harvard Law School Trial Advocacy Workshop, the Southern Public Defender Training Center, the National Legal Aid and Defender Association Trial Advocacy College, the Georgia Public Defender Standards Council Honors Program, the Equal Justice Works Leadership Development Training Conference, the Washington Council of Lawyers Litigation Skills Training, and the AFL-CIO Lawyers Coordinating Committee Litigation Workshop.

16. **Legal career.**

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

(1) **Whether you served as a law clerk to a judge, and if so, the name of the judge, the court, and the dates of your clerkship;**

(2) **Whether you practiced alone, and if so, the addresses and dates;**

(3) **The dates, names, and address of law firms, companies, or governmental agencies with which you have been employed.**

After graduating from law school, I served as a law clerk for Senior United States District Court Judge William B. Bryant of the United States District Court for the District of Columbia. I clerked for Judge Bryant from September 1994 to August 1995. The United States District Court for the District of Columbia is located at 333 Constitution Avenue, N.W., Washington, D.C. 20001.

Following my clerkship, I received an E. Barrett Prettyman Fellowship at the Georgetown University Law Center's Criminal Justice Clinic. I was a Prettyman

57326.131

Fellow from August 1995 to September 1997. The Clinic's office is located at 111 F Street N.W., Washington, D.C. 20001.

After the completion of my Fellowship, I worked for eight years at the Public Defender Service (PDS) for the District of Columbia. I was a trial attorney at PDS from October 1997 to December 2005 and, as set forth in detail below, tried cases on behalf of indigent defendants at every level of the Superior Court's Criminal Division. I served as a Staff Attorney from October 1997 to April 2001; as a Supervising Attorney from April 2001 to August 2002; as Chief of the Serious Felony Section from August 2002 to July 2004; and, finally, as the Agency's Training Director from July 2004 to December 2005. I was also detailed to the Georgetown University Law Center Criminal Justice Clinic as a Visiting Professor for the 2003-04 academic year, and taught a Criminal Trial Litigation course as an Adjunct Professor in the Law Center's L.L.M. program beginning in 2004. When I was first employed at PDS, the office was located at 451 Indiana Avenue, Washington, D.C. 20001; in 1999, the agency moved to its current address at 633 Indiana Avenue, Washington, D.C. 20004.

I left PDS in 2005 to work at the law firm of Bredhoff & Kaiser, P.L.L.C. I was Of Counsel to the firm from December 2005 to August 2008. While at the law firm, I continued to teach Criminal Trial Litigation as an Adjunct Professor at the Georgetown University Law Center. Bredhoff & Kaiser, P.L.L.C. is located at 805 15th Street N.W., Suite 1000, Washington, D.C. 20005.

In August 2008, I was appointed to be a Visiting Associate Professor Law at the Georgetown University Law Center. At Georgetown, I co-teach the Criminal Justice Clinic, a two-semester, fourteen-credit clinical course for third-year law students. In this position, I lecture in and lead twice-weekly classes on criminal law and procedure, evidence, trial advocacy, and professional responsibility; closely supervise the students as they represent indigent defendants in misdemeanor cases in Superior Court; and train and supervise the E. Barrett Prettyman Fellows. The Georgetown University Law Center Criminal Justice Clinic is located at 111 F Street N.W., Washington, D.C. 20001.

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

For the first ten years of my career as a practicing attorney, my practice consisted exclusively of the representation of indigent defendants in criminal cases in Superior Court. As an E. Barrett Prettyman Fellow at the Georgetown University Law Center (1995-97), I began my career by representing defendants in misdemeanor and low-level felony cases through Georgetown's Criminal Justice Clinic; I also supervised third-year students who were serving as student counsel in misdemeanor cases.

During my eight years (1997-2005) at the Public Defender Service (PDS) for the District of Columbia, I represented indigent defendants charged with crimes in

57326.132

every level of the Superior Court of the District of Columbia's Criminal Division. As a Staff Attorney (1997-2001), I carried an average caseload of 25-30 clients at a time. I began by representing defendants in misdemeanor cases; within six months, I was handling "general felony" cases (such as felony drug and gun charges), and by the end of my first year at the agency, I represented defendants charged with more serious felonies (such as assault with intent to kill, armed robbery, and burglary). Although PDS generally does not promote trial attorneys to the "felony one" practice level (i.e., to the assignment consisting primarily of defense of homicide and sexual assault cases) until they have been with the agency for five to six years, I began serving as lead counsel in such cases after less than three years, and continued to represent defendants in those cases for my remaining five years at the agency. When I became a supervisor in 2001, my caseload diminished to accommodate my supervisory responsibilities: I represented approximately 15-20 clients at a time as Supervising Attorney and Chief of the Serious Felony Section, and carried a caseload of 5-10 cases after I was promoted to Training Director in 2004. During my eight years at PDS, I served as lead counsel in approximately thirty-five felony trials and between ten and fifteen non-jury trials.

A significant portion of my work at PDS consisted of supervising, mentoring, and training other attorneys. As a Supervising Attorney (2001-2002), I directly supervised the pretrial work of Staff Attorneys, reviewing their pretrial preparation, observing and critiquing their in-court performance, and assisting them in the overall management of their caseload. As Chief of the Serious Felony Section (2002-2004), my role was to oversee the attorneys handling serious felony cases and to lead PDS' response to certain issues that arose in relation to such cases. In this position, I supervised Staff Attorneys handling serious felony cases; directed twice-monthly trial skills training courses for attorneys in the Section; and formulated the agency's strategy for handling key issues related to forensic science and expert witnesses. I also represented PDS on the District of Columbia Advisory Commission on Sentencing during the period in which it developed the voluntary sentencing guidelines that are now in place in Superior Court.

After I was promoted to PDS Training Director (2004-2005), most of my work focused on the training and professional development of the agency's attorneys. I designed and conducted an intensive trial skills training program for new staff attorneys, creating a training curriculum and materials that PDS continues to use. I also oversaw ongoing "trial practice group" trial skills and professional education training sessions for attorneys at each level of practice, developed a training program for non-PDS attorneys accepting appointments under the Criminal Justice Act, and created training programs for PDS investigators, social workers, and other agency staff.

My work at Bredhoff & Kaiser, P.L.L.C. (2005-2008) represented a major shift in the emphasis of my practice. While most of my work still consisted of litigation, my work focused on complex civil cases, which comprised approximately 90 percent of my work at the firm. In addition, while I had previously worked

57326.133

exclusively in Superior Court, my work at the firm took me to state and federal courts across the country, including United States District Courts for the Northern District of Illinois, Eastern District of New York, Western District of North Carolina, and Western District of Texas and state courts in California, Indiana and Arizona.

While international and local labor unions and associated benefit funds have historically made up the bulk of Bredhoff and Kaiser's clientele, the firm now also represents individuals and other entities in a variety of other employment, benefits, civil rights, and other civil matters as well as in white collar criminal matters. While at the firm, I represented, *inter alia,* two separate groups of retirees in federal court class actions against former employers who had substantially reduced their health insurance benefits; an international union and its local affiliate in an arbitration against another union regarding control of a pension fund for school janitors; and defendants in contract, RICO, and employment cases in both federal and state courts. In addition, I conducted internal investigations on behalf of employers relating to claims of discrimination, harassment, and embezzlement; counseled employers regarding their response to such complaints; and represented employers before the National Labor Relations Board and other administrative agencies. I also defended public employees in disciplinary hearings; represented witnesses and parties under investigation in white collar criminal matters; and negotiated separation and severance agreements on behalf of employees. My work at Bredhoff & Kaiser also included the *pro bono* representation of clients in both criminal and civil cases.

As a clinical professor at Georgetown Law (2008-present), I am both a practicing criminal defense lawyer in Superior Court and a teacher of law students and post-graduate fellows in the Prettyman program. My primary responsibilities consist of teaching my year-long clinical course for third-year law students, closely supervising the students on all aspects of their misdemeanor cases, and training the Prettyman Fellows and supervising them in their own cases. I also serve as lead counsel on a small number of serious felony and post-conviction cases, and am engaged in academic research and writing on discovery and evidentiary issues.

C. Describe your typical former clients and describe the areas of practice, if any, in which you have specialized.

Please see answers to parts (A) and (B), above.

D. Describe the general nature of your litigation experience, including:

(1) Whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your court appearances has varied over time, please describe in detail each such variance and give applicable dates.

57326.134

As an E. Barrett Prettyman Fellow (1995-97) and an attorney with the Public Defender Service for the District of Columbia (1997-2005), I appeared in court several times per week. At Bredhoff & Kaiser (2005-2008), I appeared in court or before administrative bodies occasionally, depending on the stage of the civil cases on which I was working; I would estimate that, on average, I appeared in court one or two times per month while working at the firm. As a clinical professor in the Georgetown University Law Center's Criminal Justice Clinic (2008-present), I appear in court several times per week.

(2) What percentage of these appearances was in:

(a) Federal courts (including Federal courts in D.C.);
(b) State courts of record (excluding D.C. courts);
(c) D.C. courts (Superior Court and D.C. Court of Appeals only);
(d) other courts and administrative bodies.

As an E. Barrett Prettyman Fellow (1995-97), an attorney with the Public Defender Service for the District of Columbia (1997-2005), and a clinical professor in the Georgetown University Law Center's Criminal Justice Clinic (2008-present), all of my appearances were in the Superior Court of the District of Columbia. As an attorney with Bredhoff & Kaiser (2005-2008), approximately sixty percent of my appearances were in federal courts, twenty percent of my appearances were in other state courts of record, five percent of my appearances were in the Superior Court of the District of Columbia, and fifteen percent of my appearances were before other courts administrative bodies.

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

As an E. Barrett Prettyman Fellow (1995-97), an attorney with the Public Defender Service for the District of Columbia (1997-2005), and a clinical professor in the Georgetown University Law Center's Criminal Justice Clinic (2008-present), my litigation consisted entirely of criminal cases. As an attorney with Bredhoff & Kaiser (2005-2008), approximately ninety percent of my work was on complex civil cases, and ten percent of my work was devoted to criminal or investigative work.

(4) What is the total number of cases in courts of record you tried to verdict or judgment (rather than settled or resolved, but may include cases decided on motion if they are tabulated separately). Indicate whether you were sole counsel, lead counsel, or associate counsel in these cases.

I would estimate that I have tried between sixty and seventy cases, and

57326.135

have litigated dispositive pretrial motions in another ten to fifteen cases. I was lead or sole counsel in virtually all of these trials; I served as junior counsel in three of these trials, and as associate counsel in three to five civil cases. In addition, I have participated in approximately twenty trials as supervisory counsel (i.e., in approximately twenty trials in which either Prettyman Fellows or students under my supervision have served as primary counsel).

(5) What percentage of these trials was to
(a) a jury;
(b) the court (include cases decided on motion but tabulate them separately).

Approximately two-thirds of my trials have been jury trials, with the remainder tried to the court or administrative body.

17. Describe the five (5) most significant litigated matters which you personally handled. Provide citations, if the cases were reported, or the docket number and date if unreported. Give a capsule summary of the substance of each case and a succinct statement of what you believe was of particular significance about the case. Identify the party/parties you represented and 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 court and the name of the judge or judges before whom the case was litigated; and (c) the name(s) and address(es) and, telephone number(s) of co-counsel and of the principal counsel for the other parties.

1) ***United States v. Daron McMillian***
Superior Court for the District of Columbia
Criminal No. F-5324-00
September 2000-October 2005

The *McMillian* case turned on complex and intensively-litigated Fourth Amendment issues, and also involved a number of unusual hearsay and other evidentiary issues, scientific issues relating to gunshot residue tests, and challenging cross examinations of the government's civilian and police witnesses. I served as lead counsel for Mr. McMillian, an indigent teenager who was charged in August 2000 with first degree murder while armed and related offenses. The defendant made admissions during a statement videotaped by police, but, after a complicated suppression hearing in front of Judge Shellie Bowers that spanned from November 2002 to April 2003, the statement was suppressed on 4th Amendment grounds. Following a three-week trial in front of Judge Rafael Diaz in September-October 2005, the jury acquitted Mr. McMillian of first degree murder while armed and possession of a firearm during a crime of violence, but convicted him of carrying a pistol without a license and related misdemeanors.

57326.136

I began representing Mr. McMillian as lead counsel shortly after his initial presentment, and was his lead counsel at the preventive detention hearing, suppression and other motions hearings, and trial. I wrote and filed approximately twenty motions, including two extensive briefs on the 4th Amendment issues and motions *in limine* relating to various evidentiary issues. At trial, I cross examined all of the government's principal witnesses, and delivered the closing argument.

The United States was represented at the suppression hearing in this case by Assistant United States Attorneys Roger Kemp and Lynn Mattucci, Office of the United States Attorney for the District of Columbia, 555 4th Street N.W., Washington, D.C. 20530 (telephone number 202-514-7566) and at trial by Mr. Kemp and by former Assistant United States Attorney Thomas DiBiase, who now works at the law firm of Shapiro, Lifschitz & Schram, 1742 N Street N.W., Washington, D.C. 20036 (telephone number 202-689-1900). Hannah McElhinny of the Public Defender Service, 633 Indiana Avenue, Washington, D.C. 20001 (telephone number 202-824-2393), served as the junior co-counsel in this case.

2) ***United States v. Daron McMillian***
Superior Court for the District of Columbia
Criminal No. F-4447-02
July 2002-September 2009

The second *McMillian* case required months of litigation on unique collateral estoppel and suppression issues, the intensive litigation of numerous *Brady* issues, and the development of challenges to the persuasive effect of a videotaped confession. I served as lead counsel for Mr. McMillian in this second case, in which he was charged in July 2002 for a double homicide and related offenses that had allegedly occurred prior to his arrest in 2000. During the same videotaped interrogation involved in Mr. McMillian's other case, Mr. McMillian made admissions related to this case. After a week-long evidentiary hearing in February 2005, Judge Rhonda Reid Winston denied the defense request to apply Judge Bowers' suppression ruling in the earlier case pursuant to principles of collateral estoppel, but again suppressed those statements on 4th Amendment grounds. The government filed an interlocutory appeal, and the Court of Appeals reversed the order suppressing the statement. *See United States v. McMillian,* 898 A.2d 922 (D.C. 2007). The trial of the case took approximately three weeks in April-May 2009 in front of Judge Michael Rankin. The government relied primarily on the statement and two eyewitnesses; the defense presented approximately ten witnesses, including Mr. McMillian, a number of police officers, and

57326.137

several eyewitnesses. A mistrial was declared after the jury could not reach a verdict; the jurors later indicated that they were divided 11-1 in favor of acquittal. Mr. McMillian subsequently pled guilty pursuant to Superior Court of Criminal Procedure Rule 11(e)(1)(C), and was sentenced to a total term of incarceration of ten years.

I was Mr. McMillian's lead counsel throughout the pendency of this case, representing him at his detention hearing, at the suppression and other motions hearing, and at trial. I wrote and filed over forty motions on his behalf, and I believe that, over the seven years that the case was pending, I spent well over a thousand hours on the case. I cross examined the principal witnesses and made the arguments for the defense at the suppression hearing. At trial, I cross examined the government's eyewitnesses and the detectives who conducted the interrogation of Mr. McMillian, presented the testimony of a number of defense witnesses, and delivered the closing argument.

The United States was represented at the suppression hearing in this case by Assistant United States Attorneys Roger Kemp and Lynn Mattucci, Office of the United States Attorney for the District of Columbia, 555 4th Street N.W., Washington, D.C. 20530, and at trial by Mr. Kemp and by Assistant United States Attorney Steven Wasserman (telephone number 202-514-7566). Hannah McElhinny of the Public Defender Service, 633 Indiana Avenue, Washington, D.C. 20001 (telephone number 202-824-2393), served as the junior co-counsel in this case.

3) ***Fields et al. v. Lyon Workspace Products et al.***
United States District Court for the Northern District of Illinois
Case No. 1:07-cv-6894
December 2007 – August 2008

The *Fields* class action held tremendous significance for the retiree plaintiffs and their families, centered on complicated issues of contract interpretation, and involved contentious discovery disputes resulting from the defendants' assertion of various privileges. I served as principal counsel for a class of retirees who had spent their working lives at Lyon Workspace Products' locker manufacturing factory in Montgomery, Illinois. In 2007, Lyon unilaterally changed the manner by which it calculated the monthly health insurance premiums for its retirees, resulting in an increase in those premiums from just over $200 per month to almost $3,700 per month; all of the retirees were forced to drop out of the health plan, leaving many of them with diminished or no access to health care. The class action filed in December 2007 before Judge Joan Lefkow charged that Lyon had violated the obligations created by collective bargaining agreements and the health insurance plan documents, and sought remedies under the Employee

57326.138

Retirement Income Security Act and the Labor Management Relations Act. In September 2008, the parties agreed to a settlement that essentially provided all of the retirees with the monetary value of the health insurance plan of which they had been deprived by Lyon's actions.

I served as primary counsel for the class of retirees through most of the litigation. I interviewed, met with, and counseled groups of retirees; wrote the complaint; drafted and responded to written discovery requests; appeared in court for several status hearings; conducted all depositions on behalf of the class, including the depositions taken of Lyon executives; and initiated settlement negotiations, which concluded shortly after I had left Bredhoff & Kaiser to begin work at the Georgetown University Law Center.

I was assisted in this case by local counsel, Stephen A. Yokich of the law firm of Cornfield & Feldman, 25 East Washington Street, Suite 1400, Chicago, IL 60602 (telephone number 312-236-7800). Lyon was represented by Eric P. Mathiesen of the law firm of Ogletree, Deakins, Nash, Smoak & Stewart, P.C., Two First National Plaza, 25th Floor, 20 South Clark Street, Chicago, IL 60603 (telephone number 317-916-1300).

4) ***United States v. Norma McNeil***
Superior Court for the District of Columbia
Criminal No. F-7223-01
November 2002 – July 2004

The *McNeil* case required intensive focus on forensic psychiatry and psychology, pharmacology and toxicology, and implicated a seldom-used doctrine known as "settled insanity" that defines the legal boundary between intoxication and insanity. I served as lead counsel for Ms. McNeil, an indigent defendant who was charged with first degree murder while armed of her eighteen month-old daughter. Ms. McNeil's defense rested on a claim of insanity, while the government contended that Ms. McNeil's actions were driven by PCP intoxication. The trial, which took over a month, was heard before Judge Russell Canan in March-April 2004. Ms. McNeil was convicted of first degree felony murder as well as all but two of the other counts against her, and was sentenced to thirty-three years in prison. Three years later, her convictions were reversed by the Court of Appeals. *See McNeil v. United States,* 933 A.2d 354 (D.C. 2007). Ms. McNeil subsequently pled guilty pursuant to an agreement under which she received a sentence of fifteen years.

As lead counsel, I wrote and argued numerous motions on Ms. McNeil's behalf, including the motions relating to the "settled

57326.139

insanity" issue. At trial, I cross examined the government's two main experts, a forensic psychiatrist and a forensic toxicologist; presented the testimony of numerous experts and eyewitnesses; and delivered the closing argument. I also formulated the objection that led to the reversal of the convictions by the Court of Appeals.

The United States was represented in this case by Assistant United States Attorneys Rachel Carlson Lieber (telephone number 202-353-8055) and Kimberley Knowles (telephone number 202-353-8087), Office of the United States Attorney for the District of Columbia, 555 4th Street N.W., Washington, D.C. 20530. Kimberly Clark of the Public Defender Service's Mental Health Division, 633 Indiana Avenue, Washington, D.C. 20001 (telephone number 202-824-2857), served as the junior co-counsel in this case.

5) ***United States v. Raymond Benn***
Superior Court of the District of Columbia
Criminal No. F-13098-92
November 2002 – January 2010

The *Benn* case included relatively novel litigation regarding the admissibility of expert testimony on eyewitness identification and the presentation of third-party perpetrator evidence, and has changed the law in the District of Columbia regarding the admissibility of eyewitness identification experts. I served as lead counsel for Mr. Benn, an indigent defendant, in this first degree murder while armed case after his convictions were overturned on appeal. *See Benn v. United States,* 801 A.2d 132 (2002) ("*Benn I*"). In the second trial, the government presented the testimony of five witnesses who did not previously know Mr. Benn, but who all identified him as one of the people who had violently taken the decedent into their custody shortly before his murder. After hearing evidence in the second trial, which occurred in April 2003 in front of Judge Geoffrey Alprin, the jury acquitted Mr. Benn of murder, but convicted him of armed kidnapping and related offenses. The Court of Appeals' recent ruling in this case did not (for the first time in the Court's history) uphold a trial court's exclusion of eyewitness identification testimony, liberalized the law regarding the admissibility of such experts, and returned the case to the trial court on remand for further consideration of that issue. *See Benn v. United States,* 978 A.2d 1257 (D.C. 2009) ("*Benn II*"). In January 2010, Mr. Benn pled guilty to the time he had already served.

I became lead counsel for Mr. Benn when the case was remanded to the trial court following *Benn I.* As lead counsel, I wrote the forty-page motion and proffer specifically cited by the Court of Appeals in its decision, *see Benn II,* 978 A.2d at 1270 *et seq.*, and argued the eyewitness identification expert issues before the trial court. At trial, I

cross examined the government's eyewitnesses and delivered the closing argument. I represented Mr. Benn once again in the trial court following the remand ordered in *Benn II.*

The United States was represented in this case by Assistant United States Attorney Colleen Covell, who now works as an Assistant United States Attorney for the District of Colorado, 1225 17th Street, Suite 700, Denver, CO 80202 (telephone number 303-454-0100). Christopher Flood, now Deputy Director of the Orleans Public Defenders, 2601 Tulane Avenue, Suite 700, New Orleans, LA 70119 (telephone number 504-821-8101) served as my junior counsel at trial.

18. Describe the most significant legal activities you have pursued, including significant litigation which did not proceed to trial or legal matters that did not involve litigation. Describe the nature of your participation in each instance described, but you may omit any information protected by the attorney-client privilege (unless the privilege has been waived).

Teaching law students and training other lawyers has been one of my central pursuits over the past five to seven years. Since the summer of 2008, I have taught full-time as a clinical professor in the Georgetown University Law Center's Criminal Justice Clinic; I previously taught at Georgetown Law as an Adjunct Professor from 2004 to 2008 and as a Visiting Associate Professor of Law during the 2003-2004 academic year. I spent much of my last four to five years at the Public Defender Service for the District of Columbia supervising, training, and mentoring other attorneys, serving as a Supervising Attorney, as Chief of the Agency's Serious Felony Section, and ultimately as the agency's Training Director.

As noted above, I have frequently volunteered my time to serve as a trainer and lecturer on trial skills issues, particularly for law students and organizations involved in the representation of low-income people. I have served on the faculty of the Harvard Law School Trial Advocacy Workshop, the Southern Public Defender Training Center, the National Legal Aid and Defender Association Trial Advocacy College, the Georgia Public Defender Standards Council Honors Program, the Equal Justice Works Leadership Development Training, the Washington Council of Lawyers Litigation Skills Training, and the AFL-CIO Lawyers Coordinating Committee Litigation Workshop. Since leaving the Public Defender Service, I have returned to the agency regularly to give presentations and trainings on various topics related to evidence, criminal law and procedure, and trial practice. I have made similar presentations for lawyers at the Children's Law Center and several private law firms (including Arnold & Porter and Venable LLP), and at training programs for lawyers who accept appointments under the Criminal Justice Act. I have also moderated panels on trial practice and criminal justice policy sponsored by the District of Columbia Bar and the Washington Council of Lawyers, as well as at the Criminal Practice Institute. In addition to my work at Georgetown Law, I have been a guest lecturer at Yale Law School, Harvard Law School, George Washington University School of Law, and New York Law School, as well as for the D.C. Law Students in Court Program.

57326.141

While at Bredhoff & Kaiser, a significant portion of my practice involved non-litigation work. I conducted internal investigations on behalf of employers relating to claims of discrimination, harassment and embezzlement; counseled employers regarding their response to such complaints; negotiated separation and severance agreements on behalf of employees; and represented witnesses and parties under investigation by grand juries and administrative agencies.

19. **Have you ever held judicial office? If so, please give the details of such service, including the court(s) on which you served, whether you were elected or appointed, the dates of your service, and a description of the jurisdiction of the court. Please provide four (4) copies of all opinions you wrote during such service as a judge.**

No.

A. **List all court decisions you have made which were reversed or otherwise criticized on appeal.**

Not applicable.

20. **Have you ever been a candidate for elective, judicial, or any other public office? If so, please give the details, including the date(s) of the election, the office(s) sought, and the results of the election(s).**

No.

21. **Political activities and affiliations.**

- **List all public offices, either elected or appointed, which you have held or sought as a candidate or applicant.**

None.

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

None.

- **Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity during the last five (5) years of $50 or more.**

In October 2008, I made contributions totaling $550 to Obama for America.

In October 2007, my wife and I contributed $200 to the campaign of Brad Lander, a candidate for New York City Council.

22. To your knowledge, have you ever been investigated, arrested, charged, or convicted (include pleas of guilty or nolo contendere) by federal, State, local, or other law enforcement authorities for violations of any federal, State, county, or municipal law, other than for a minor traffic offense? If so, please provide details.

No.

23. Have you or any business of which you are or were a officer, director or owner ever been a party or otherwise involved as a party in any other legal or administrative proceedings? If so, give the particulars. Do not list any proceedings in which you were merely a guardian ad litem or stakeholder. Include all proceedings in which you were a party in interest, a material witness, were named as a co-conspirator or co-respondent, and list any grand jury investigation in which you appeared as a witness.

No.

24. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, bar or professional association, disciplinary committee, or other professional group? If so, please provide the details.

No.

II. POTENTIAL CONFLICTS OF INTEREST

1. **Will you sever all connections with your present employer(s), business firm(s), business association(s), or business organization(s) if you are confirmed?**

   Yes.

2. **Describe all financial arrangements, deferred compensation agreements, or other continuing dealings with your law firm, business associates, or clients.**

   None.

3. **Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest.**

   None.

4. **Describe any business relationship, dealing, or financial transaction which you have had in the last ten (10) years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest other than while in a federal government capacity.**

   None.

5. **Describe any activity during the last ten (10) years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of legislation or affecting the administration and execution of law or public policy other than while as a federal government employee.**

   None.

6. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service as a judge? If so, explain.**

   No.

7. **Explain how you will resolve any potential conflicts of interest, including any that may have been disclosed by your responses to the above items. Please provide three (3) copies of any trust or other relevant agreements.**

   I am not aware of any potential conflicts. If a potential conflict does arise, I would resolve it pursuant to the District of Columbia Code of Judicial Conduct.

8. **If confirmed, do you expect to serve out your full term?**

   Yes.

III. FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

REDACTED

IV. DISTRICT OF COLUMBIA REQUIREMENTS

Supplemental questions concerning specific statutory qualifications for service as a judge in the courts of the District of Columbia pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970, D.C. Code Section I I - 150 1 (b), as amended.

1. **Are you a citizen of the United States?**

   Yes.

2. **Are you a member of the bar of the District of Columbia?**

   Yes.

3. **Have you been a member of the bar of the District of Columbia for at least five (5) years? Please provide the date you were admitted to practice in the District of Columbia.**

   Yes. I was admitted to practice in the District of Columbia on July 7, 1995.

4. **If the answer to Question 3 is "no" --**

   A. **Are you a professor of law in a law school in the District of Columbia?**

   B. **Are you a lawyer employed in the District of Columbia by the United States or the District of Columbia?**

   C. **Have you been eligible for membership in the bar of the District of Columbia for at least five (5) years?**

   D. **Upon what grounds is that eligibility based?**

   Not applicable.

5. **Are you a bona fide resident of the District of Columbia?**

   Yes.

6. **Have you maintained an actual place of abode in the greater Washington, D.C. area for at least five (5) years? Please list the addresses of your actual places of abode (including temporary residences) with dates of occupancy for the last five (5) years.**

   Yes.

   REDACTED

57326.145

7. **Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nominating Commission?**

   No.

8. **Have you been a member of either of these Commissions within the last 12 months?**

   No.

9. **Please provide the committee with four (4) copies of your District of Columbia Judicial Nomination commission questionnaire.**

   Attached.

AFFIDAVIT

Todd Eric Edelman, being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

SUBSCRIBED and SWORN TO before me this 6th day of April 2010.

Notary Public

Dorothy A. Boothby
District of Columbia
My Commission Expires
May 14, 2012

Senator Tom Coburn
Additional Questions for the Record
Nomination Hearing of Todd Edelman
April 20, 2010

1. **What in your view is the role of a judge?**

   a. **Do you think it is ever proper for judges to indulge their own values in determining what the law means? If so, under what circumstances? Please explain your answer.**

   b. **Do you think it is ever proper for judges to indulge their own policy preferences in determining what the law means? If so, under what circumstances? Please explain your answer.**

In my view, judges should strive to play a modest role and rule as narrowly as possible. Judges should recognize that they are unelected officials, limited in authority to the issues presented to them by the parties and to the outcomes dictated by the statutes and higher court precedents that control their decisions. Judges on the Superior Court of the District of Columbia have the authority to make findings of fact based on the evidence presented to them; to apply the law as determined by the legislature and as interpreted by the Supreme Court and the District of Columbia Court of Appeals; and to exercise discretion in the prescribed areas (such as sentencing) in which the judicial branch has been granted such authority.

Accordingly, I do not believe that judges should indulge their own personal values or policy preferences in determining what the law means. Such considerations are appropriate in the legislative process, but the personal views or policy priorities of a judge should not be relevant in the decisions he or she renders. In determining what the law means, a Superior Court judge should follow the plain language of the statute and the binding precedents set forth by the U.S. Supreme Court and the District of Columbia Court of Appeals.

2. **How would you define "judicial activism?"**

I define "judicial activism" as the issuance of decisions by judges that exceed their limited authority and/or represent opinions reached not on the law as authoritatively stated, but on a personal desire to see a particular outcome achieved. Such results-oriented decision-making can take a variety of forms: judges engage in it when they substitute their personal or policy preferences about the law for the declarations of the legislature as to what the law actually is; when they ignore or circumvent the binding precedents of higher court; or when they skew their findings of fact or discretionary evidentiary rulings to advance a particular outcome in a case. If I am fortunate enough to be confirmed for a judgeship on the District's trial court, I will base my decisions solely on the law as set forth by the legislature and as interpreted by the higher courts, and will not issue such results-oriented decisions.

3. **Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

No. If confirmed, I would resolve issues of constitutional interpretation by faithfully applying the binding precedents of the Supreme Court and the District of Columbia Court of Appeals, not via reference to any other interpretive principle.

57326.125