

**NOMINATIONS OF ROBERT ALLEN WHERRY,
HARRY A. HAINES, MARK VAN DYKE HOLMES,
AND DIANE L. KROUPA**

HEARING

BEFORE THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

ON THE

NOMINATIONS OF

ROBERT ALLEN WHERRY, HARRY A. HAINES, MARK VAN DYKE HOLMES,
AND DIANE L. KROUPA, TO BE JUDGES ON THE U.S. TAX COURT

APRIL 1, 2003



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**NOMINATIONS OF ROBERT ALLEN WHERRY,
HARRY A. HAINES, MARK VAN DYKE
HOLMES, AND DIANE L. KROUPA**

TUESDAY, APRIL 1, 2003

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 11:40 a.m., in room 215, Dirksen Senate Office Building, Hon. Charles E. Grassley (chairman of the committee) presiding.

Also present: Senator Baucus.

OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM IOWA, CHAIRMAN, COMMITTEE ON FINANCE

The CHAIRMAN. We are going to go from our hearing on taxpayer scams to, now, people who adjudicate in the area of tax law. We are going to have a brief hearing to consider nominations of four distinguished tax lawyers who have been appointed to the Tax Court.

I am pleased that the President has sent to us four nominees with strong tax background, excellent qualifications for the Court.

We have Mr. Robert Wherry from Colorado, who brings a long background of experience in private sector tax litigation and controversy.

Next, we have Mr. Harry Haines from the State of Montana, who is well known by Senator Baucus, so I will let Senator Baucus speak about his capabilities. But I would like to note that he has sound qualifications for the job.

We are particularly pleased that he has firsthand knowledge of tax issues facing farmers and ranchers. That is very nice to know that, as I come from agriculture.

Then we have Mark van Dyke Holmes, who is currently at Department of Justice, serving as Deputy Assistant Attorney General for Tax.

Finally, Ms. Diane Kroupa, from Minnesota. She was formerly Chief Tax Judge in her State, and before that was in private practice. She is the first Tax Court judge from Minnesota. I know that her two Senators are very proud of her nomination, as well as her qualifications.

Because of the timing of this hearing, Senator Dayton and Senator Coleman could not introduce you, but they wanted me to express their appreciation for your nomination and backing your qualifications.

Obviously, I do not know, Ms. Kroupa, whether your tax work had you involved with the problems of farmers and ranchers, as is the case with Mr. Haines. But I am told that you are from a family of farmers in South Dakota, so that brings additional reinforcement of somebody who knows that food grows on farms, not in supermarkets.

I am pleased that the administration has sent us such highly qualified people.

I am going to turn to Senator Baucus at this point.

**OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR
FROM MONTANA**

Senator BAUCUS. Well, thank you very much, Mr. Chairman. I agree, all the nominees seem to be very well qualified, and I am happy that the President has so named all of them.

I want to individually just thank you, because this is a job that requires a lot of work. It requires a lot of service. You are not getting paid a lot for it. Your families, too, will be sacrificing.

One reason, is living in Washington, DC as opposed to back in your home States. But thank you very, very much for what you do. I know you all regard it as a high honor. We certainly do, too. Your family does, the President does.

I believe, frankly, that the most noble calling is service of one kind or another, whether it is public service, private service, but it is serving people. Clearly, all of you will be serving those people who come before you, their families, and many others, too, and I thank you very much for it.

I would like, Mr. Chairman, as you indicated, to briefly introduce one of the nominees, and that is my friend, Harry Haines.

I have known Harry for some time. He is from Missoula. Missoula is one of the shining stars in our State. A lot of people would like to live in Missoula. The law school sets up shop there, and the University of Montana is in Missoula. It is a great place to live, as are all towns in our State.

Harry is not only an excellent tax lawyer, but he has been an excellent tax lawyer for 35 years. He has very broad, sophisticated tax law experience in Montana, and he has performed, actually, tax planning for many different entities, corporations, small businesses, and understands the complicated tax rules regarding reorganizations, liquidations, formations. He has done it.

From establishing pension plans to handling real estate deals, Harry has incredible experience. In fact, he will bring to the Tax Court a particular expertise in estate planning. He is a Fellow of the American College of Trust and Estate Counsel, and he has been in that position since 1998.

He has served as a consultant to many lawyers in Montana and accountants on various tax planning matters. He is sort of the lawyer's lawyer when it comes to tax matters.

He is also an adjunct professor at the University of Montana Law School. He has taught many great Montanans to become great tax lawyers and practitioners. He will be the first Tax Court judge from Montana. This is the first.

He will also join the three of you who are graduates—at least, I think he will join four other judges currently on the bench who

are graduates of NYU's LLM program on taxation, and we are very happy that he is representing our own State. He is one of our State's very best.

Thank you, you the rest of you. I look forward to actually talking with you after you serve for a while to see what you actually think. I told Harry yesterday that after he has served for about a year, I would like to sit down and have lunch with him and have him tell me what he thinks, and what advice he may have for us in Congress, what can we do to kind of help provide the appropriate service to our people. But thank you for what you are doing. It is a real sacrifice, and I personally thank you.

The CHAIRMAN. If you have that lunch with him, you may find out more information than you want to deal with. [Laughter.]

Senator BAUCUS. That usually happens.

The CHAIRMAN. We are going to do two things right now. Number one, each of you at this point could introduce any family members or friends that you have brought to support you and that you are proud of, and who are proud of your appointment.

We would open it up for your introduction of them, Mr. Wherry, then Mr. Haines, then Mr. Holmes, and then Ms. Kroupa. Then after that, I would ask you to make any statement you might want to make before we ask a few questions.

Mr. WHERRY. Thank you, Mr. Chairman. Yes, I would like to introduce my wife Leslie, and my son Richard, who is playing a little hookey from school today. Thank you, Mr. Chairman and Senator Baucus.

The CHAIRMAN. Mr. Haines?

Mr. HAINES. Thank you, Mr. Chairman. My wife Janet is with me today.

Senator BAUCUS. Good to see you, Janet.

The CHAIRMAN. Now, Mr. Holmes?

Mr. HOLMES. Mr. Chairman, my wife, Marianne Bizek, is with me today.

The CHAIRMAN. Ms. Kroupa?

Ms. KROUPA. And Mr. Chairman, my husband, Bob Fackler, is here with our two daughters, Erin and Sara Fackler.

The CHAIRMAN. All right. Well congratulations to all of you for coming to support, and more importantly, to be proud of the people who have been nominated.

Now, first of all, if each of you would have any written statements that might be longer than anything you want to say in summary, they will be included in the record if you want. I would call on each of you then in succession from my left to my right for any opening comments you might have.

STATEMENT OF ROBERT ALLEN WHERRY, TO BE A JUDGE, U.S. TAX COURT

Mr. WHERRY. Thank you. Good morning, Mr. Chairman, Senator Baucus, members, and staff of the committee. I appear before you today as a nominee to be a judge on the U.S. Tax Court.

I am grateful and proud to have been nominated by President Bush to be a judge on the U.S. Tax Court, a court in which I have appeared on several occasions in my tenure as a practicing attorney.

I am also appreciative of the time and attention spent and confidence shown in me by the interview committee, comprised of many of the administration's highest tax and Presidential Office of Legal Counsel officials who participated in the selection process.

Before taking your questions, a few words would seem appropriate as to my qualifications and interest in this position. During 30-plus years in the tax enforcement and compliance area, I have represented individual taxpayers, estates, corporations, nonprofit, and other business entities in a variety of federal, State, and local tax disputes, including audits and administrative appeals before IRS appeals officers and settlement officers in examination and collection disputes, and in court litigation.

That litigation work includes the representation of clients before the U.S. District Courts, U.S. Court of Federal Claims, U.S. Court of Appeals, U.S. Supreme Court, and a variety of State courts.

As a former State tax auditor and as a tax representative, I have developed personal respect for, and friendship with, many of the good and professional people within our government who strive to apply our tax laws in a fair and evenhanded manner.

Nevertheless, the sheer volume of tax returns and antiquated computer system, complex tax laws, and our fast-moving, innovative, and convoluted business environment inevitably create conflict.

Congress has established the U.S. Tax Court to provide a forum to fairly resolve those disputes in a prompt and just manner before the taxpayers have to pay the tax.

As a participant in, and officer of, the U.S. Tax Court, I have for years applauded its operations and its effort to provide and grant all parties before it a respectful and fair forum for resolving tax disputes.

It is my hope to be of service to our country and its citizens by continuing the Tax Courts judicial tradition of sincere and careful attention to each case in an effort to reach a just resolution.

I support the efforts of Congress and the Internal Revenue Service to ensure that taxpayers' rights are acknowledged and respected throughout our tax system. This includes the right of those who follow the tax laws voluntarily to reasonable assurances that their fellow citizens do not abuse the tax system and that all citizens will pay their statutory fair share of the tax collected.

I am very grateful for the support of my wife Leslie and my son Richard, who are here today with me, and my daughter Marsha who could not be here today because of her college classes.

I promise the committee that, as a judge, if confirmed, I will keep an open mind, listen carefully to all parties, and diligently strive to determine the facts of each case based on the evidence, and to apply the tax laws as enacted by Congress to those facts.

Further, the committee should know that I believe a fair trial requires that both the taxpayer and the government be treated with respect and courtesy, and I intend to do just that, if confirmed.

I will be pleased to answer your questions. Thank you.

[The prepared statement of Mr. Wherry appears in the appendix.]

The CHAIRMAN. Mr. Haines?

STATEMENT OF HARRY A. HAINES, TO BE A JUDGE, U.S. TAX COURT

Mr. HAINES. Thank you, Mr. Chairman. Senator Baucus, thank you for your kind words.

Senator BAUCUS. You bet.

Mr. HAINES. Thank you for your continued support.

Thank you for this opportunity to appear before you today as a nominee for the position of judge on the U.S. Tax Court. I am very honored and humbled to be here, and recognize the importance of the role the Tax Code plays in tax disputes in this country.

My family roots in this country go back to Massachusetts in 1700, and members of my family fought for the colonies at Bunker Hill. And as the lands opened up going across the country, we became homesteaders, farmers, settlers, civil servants, and merchants, until we ended up hitting the shores of the Pacific Ocean.

So, I have family spread all over the country with opportunities coming from countries that did not have the opportunities before. These family roots are intrinsic to what I am, and my belief in the fairness of this country, and my belief in the opportunities within this country.

I was born and raised in western Montana, in Missoula, Montana. I received my bachelor of arts degree in political science from St. Olaf College in Northfield, Minnesota. I also have a juris doctor from the University of Montana in Missoula, and I have a master's of tax law from New York University.

I have been involved in the tax law for 37 years. I have seen just about everything that can be seen, I think, as far as the problems of business people, farmers, individuals.

I have dealt with all sorts of administrative and other problems trying to solve problems of the taxpayers, but I have also seen the problems of government in the enforcement activities and what is needed there. So, I believe my experience will give me an even-handed approach to the court.

My wife Janet is here with me. Without her support and patience, I could not be where I am today. Our oldest son, Eric, lives in Seattle, Washington with his family. I have a son, Rob, who lives in Missoula with his family. We have a daughter, Jeannie, who lives in Los Angeles. All have careers, or are beginning careers, and then they will be going on with their own lives. All are very supportive of this.

If confirmed and appointed, I would welcome this opportunity and be honored to serve my country as a judge. I dedicate myself to the fair application of the law to all. Thank you very much.

The CHAIRMAN. Thank you.

[The prepared statement of Mr. Haines appears in the appendix.]

The CHAIRMAN. Mr. Holmes?

STATEMENT OF MARK VAN DYKE HOLMES, TO BE A JUDGE, U.S. TAX COURT

Mr. HOLMES. Thank you, Mr. Chairman and Senator Baucus.

Mr. Chairman, I, too, and pleased and humbled that President Bush has nominated me to be a judge on the U.S. Tax Court, as I was when asked to serve as a Deputy Assistant Attorney General in the Justice Department's Tax Division.

I am also grateful for the time and attention spent by the committee of the administration's highest tax officials who participated in the selection process.

I am especially glad that my wife, Marianne, is here with me today, as she has been throughout my career.

Mr. Chairman, I have been a litigator or in public service for over 20 years. I have represented individuals, States, corporations, and other business entities in a variety of disputes.

More recently, I have represented the government in successfully arguing against one of the largest corporate tax shelters ever devised and have helped Assistant Attorney General Lee O'Connor in helping to manage the largest and finest tax law firm in America, the Tax Division of the Department of Justice.

I think my years as both a general, and more specifically a tax, litigator, have provided me with a good understanding of the way in which our tax and judicial system works at its most important level, the level confronting the individual litigant.

In my work both in the public and private sectors, I have also developed a very healthy respect for the many good and professional people within our government who seek to apply the tax laws in a fair and even-handed manner.

But I have also realized how important it is for taxpayers, especially small taxpayers facing a system that is sometimes bewilderingly complex, to have some way of challenging the government's determination of what they owe.

Fairness to many taxpayers depends critically on having the opportunity to challenge the government's position in the courtroom. I enthusiastically endorse the continuing efforts on the part of this committee, Congress, and the IRS to ensure that taxpayers' rights are acknowledged and respected throughout the system.

If confirmed, I look forward to helping strengthen the fairness of this process as a Tax Court judge. I can assure the committee that I will work diligently to determine the facts of each case consistent with the evidence introduced at trial, and to even-handedly apply the law as enacted by Congress to those facts.

I can assure the committee that I will fulfill my duties as a judge with the recognition that both the taxpayer and the government are entitled to be treated with fairness, courtesy, and respect. I look forward to continuing the fine tradition of service of those many Tax Court judges who have come before me.

I also wish to thank you, Mr. Chairman, for scheduling the hearing so promptly, and your committee staff for their help in preparing for it.

Thank you again for the opportunity to appear.

[The prepared statement of Mr. Holmes appears in the appendix.]

The CHAIRMAN. Ms. Kroupa, while you are speaking, your colleagues can join you either at the dais up here or at the two empty microphones at the end, whichever might be your desire. Then I will call on them after you get done speaking.

Ms. Kroupa?

STATEMENT OF DIANE L. KROUPA, TO BE A JUDGE, U.S. TAX COURT

Ms. KROUPA. Thank you, Chairman Grassley and Ranking Member Baucus. I, too, am deeply honored to be here before the committee as you consider my nomination to the U.S. Tax Court. I am grateful to President Bush for the opportunity to serve my country in this capacity.

I have already introduced my family. They are very special to me, and I would like to recognize them again. My husband, Bob Fackler, and our two daughters, Erin and Sara. Thank you.

I also want to thank Senator Norm Coleman and Senator Mark Dayton for being here and showing their support for my nomination.

Although I could not have imagined the road my career would take as I was growing up on a farm in South Dakota, the values that I learned on the farm, hard work, treating one's neighbors like you would want to be treated, and helping one's neighbors, are values that have been the cornerstones of my career.

If confirmed, I promise that I will use my 22 years of experience, first as an attorney at the Internal Revenue Service in the Legislation and Regulations Division, and then as a law clerk for Hon. Joel Gerber over at the U.S. Tax Court, and my 12 years of experience in private practice representing all kinds of taxpayers, and my 6 years of experience as a Minnesota Tax Court judge, to render impartial decisions and to treat all taxpayers who appear in front of me fairly.

Thank you.

The CHAIRMAN. Senator Dayton?

STATEMENT OF HON. MARK DAYTON, A U.S. SENATOR FROM MINNESOTA

Senator DAYTON. Thank you, Mr. Chairman, Ranking Member. I appreciate this opportunity to speak on behalf of Judge Kroupa. I am pleased to appear with my colleague, Senator Coleman, in a bipartisan spirit of support for this outstanding nominee, who just explained very well her credentials, which are so impeccable that it almost seems as though your entire career has been one of preparation for this very important responsibility, as well as a deserved high honor from the President. I give her my full endorsement and support.

She is one of the best and the brightest from Minnesota, especially in this field, both in private practice, as well as on the Minnesota Tax Court, as well as serving two and a half years as chief judge.

She was also named for her efforts in drafting manuals helping people defending themselves in property tax matters in Minnesota. She was named the 1998 Volunteer of the Year by the Minnesota Bar Association's Tax Section. As I say, she is preeminently well-qualified and she will serve with great distinction.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Dayton.

Now, Senator Coleman?

**STATEMENT OF HON. NORMAN COLEMAN, A U.S. SENATOR
FROM MINNESOTA**

Senator COLEMAN. Thank you, Mr. Chairman and Senator Baucus, Ranking Member. I am also pleased to be here with my colleague, Senator Dayton, in a bipartisan show of support for the nomination of Judge Kroupa.

First, as I am sure the Chairman and the Ranking Member understand, those farm values have served her well. She has had a distinguished career in Minnesota and will serve this country well in a position on the U.S. Tax Court.

I have known Judge Kroupa for over a decade. I worked in the Attorney General's Office for a number of years. I was Chief Prosecutor, I was Solicitor General. I did a lot of work in the area of violence against women and violence against children. I have known Judge Kroupa since 1989, when she was co-chair of the Violence Against Women Coalition.

She also, by the way, in 1993, won the Outstanding Volunteer of the Year Award from the Junior League of Minneapolis. So, she has a long history of distinguished service. I know her family. These are good folks. They serve the community. They represent the very best.

They bring, I think, the best of the work ethic and integrity, the kind of values that we really need to see in public life, and certainly on the court. So, I join with my colleague with unqualified and wholeheartedly endorsing the nomination of Judge Kroupa. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you both, Senator Coleman and Senator Dayton. You can stay if you want to or you can go if you want to.

We will have just a few questions of the nominees. Three of these questions are questions that we would ask every nominee, so do not think we are singling you out for anything different. So I am going to ask each of these three questions separately, and then I am going to ask each of you separately to say yes or no, or however you want to respond.

Is there anything that 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. Wherry?

Mr. WHERRY. Mr. Chairman, no.

The CHAIRMAN. Mr. Haines?

Mr. HAINES. No, Mr. Chairman.

The CHAIRMAN. Mr. Holmes?

Mr. HOLMES. No, Mr. Chairman.

The CHAIRMAN. Ms. Kroupa?

Ms. KROUPA. No, sir.

The CHAIRMAN. Question number two. Do you know of any reason, 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. Wherry?

Mr. WHERRY. Mr. Chairman, no.

The CHAIRMAN. Mr. Haines?

Mr. HAINES. No, Mr. Chairman.

The CHAIRMAN. Mr. Holmes?

Mr. HOLMES. No, Mr. Chairman.

The CHAIRMAN. Ms. Kroupa?

Ms. KROUPA. No, Mr. Chairman.

The CHAIRMAN. The last question. 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. Wherry?

Mr. WHERRY. Mr. Chairman, yes, I do.

The CHAIRMAN. Mr. Haines?

Mr. HAINES. Mr. Chairman, I agree.

The CHAIRMAN. Mr. Holmes?

Mr. HOLMES. Yes, Mr. Chairman.

The CHAIRMAN. And Ms. Kroupa?

Ms. KROUPA. Yes, I do, Mr. Chairman.

The CHAIRMAN. Thank you.

I have maybe just a couple of questions to ask one or more of you. Then let me say at this point, I do not think you will get any questions from other members to answer in writing, people who could not be here. But you may. If you do, the sooner you respond to them, the sooner we will be able to act upon your nomination as a committee.

Mr. Holmes, you are at the Department of Justice. Today we heard quite a bit about efforts to shut down tax scam promoters. I would like you to provide a little insight, in your work in Justice, in this regard. Also, your thoughts on this matter about a perspective of your possible new judgeship.

Mr. HOLMES. Well, perhaps the most important initiative that the Tax Division, under AEG O'Connor, has taken, is a new emphasis on enjoining, through civil process, the promoters, especially those on the Internet, of the various scams, schemes, and cons that this committee heard about last year, and has heard about for a number of years now.

The number of those injunctions has increased more than geometrically, from one just a couple of years ago, to 16 last year, and now we estimate that there will be dozens this year.

The process, as you heard from the IRS's own witness, between detecting some of these and actually getting them referred to the Justice Department and then getting them enjoined has gone, in some cases, for over a year now, to months, and indeed, in some cases, weeks.

Moreover, the Assistant Attorney General and her deputies have been working on coordinating civilly and criminally so that some of these scheme promoters can not only be enjoined, but then, of course, indicted and put in jail.

Now, in the Tax Court, of course, we do not have criminal jurisdiction and do not have much injunction power. But, clearly, many of the victims of these scams, schemes and cons end up in front of Tax Court, and there they do have to be dealt with fairly.

But you have to separate also out between those taxpayers who are trying to game the system and those who are really trying to express their rights. That is an important thing that each of us have confirmed we would have to do.

The CHAIRMAN. I only have two more questions. One is to Mr. Haines. I would appreciate any thoughts you have on what sort of tax controversy issues you see in your practice as it relates to agri-

culture, farmers, and ranchers, and what perspective you would bring to the Tax Court on matters of that.

Mr. HAINES. Thank you, Mr. Chairman. The biggest problem with farmers and ranchers, is they are land rich and money poor. Most do not have any reserves. The cattle markets are down and succession taxes are an issue for them.

We are finding, in Montana in particular, that there is a lot of investing going on in cattle ranches by outsiders. They are coming in and buying them, but they are converting them to personal residences for privacy.

So, they will buy a 1,000-acre ranch for a home in a parkland. The prices that are being obtained are just irresistible by the natives there. So we are finding, at least in western Montana, conversion of producing ranches into non-producing residential properties by quite wealthy individuals.

The succession problem is a difficult one to deal with because the land values are so high and the cash is not available. The elections that take place under the Internal Revenue Code are not really an answer to that because estate tax liens and other problems arise with regard to the ranch properties.

So it is a problem and I am not sure what can be done other than legislative relief or some other mechanism where they can pay these without having to lien all of their properties and all their rights for 15 years.

The CHAIRMAN. I thank you for that.

My last question, when you deal with hearings we had in Enron, you could probably speak for the next hour about the question. I do not want a long answer, but I would like to have something that you might see, and the sort of reaction. Those hearings showed lawyers and law firms writing opinion letters for tax shelters that had little or no bearing on reality.

Two questions. Have any of you written opinion letters for tax shelters in your practice? Second, what is your opinion of these lawyers and law firms that wrote these letters in support of such tax shelters?

Mr. Wherry?

Mr. WHERRY. Mr. Chairman, I and my law firm have been fairly conservative. We have not participated in the tax shelter opinion writing operations. However, I know that many of my colleagues had, and that that is a serious problem.

I understand yours and the Congress' concern that if the public perception in the press is that some people are abusing the system and not paying their fair share of tax, that our voluntary compliance tax system may be severely damaged.

I think that simply the hearings that your committee and the Congress has been conducting, and your CARE bill, for instance, that I believe you are going to take up in the next week or so with legislation offsetting revenue from the tax shelter area, simply shining a spotlight on this problem is likely to improve the problem considerably, because I think that major accounting firms, some of which have been implicated in some of these opinions, major law firms and corporations can't stand that public scrutiny.

The Sprint case, for example, where two of their top executives were pushed out by the board when they learned of some of the

things that were going on. I think public opinion and peer pressure is an important aspect.

I also think that we need to improve the efforts in universities and educational institutions. When I was in college, I was an accounting major and there was a lot of emphasis on the conservatism principle, and that seems to have been forgotten in recent years.

So, I think those steps are helpful. I also think that the service and Treasury are working with Circular 230 to try to improve the rules. I think that effort will also result in positive developments in this area.

Finally, the courts themselves. As you know, several of these taxpayers who invested in some of these shelters have filed lawsuits against major accounting firms and law firms for millions of dollars, and even using the RICO statutes for treble damage approaches. I think that through the courts, although they grind very slowly, some of these people may ultimately be brought to task and that that will also help.

But, unfortunately, there is such a lag between the headlines that we see and the final results from the courts, which may be years later, it is not nearly as effective as the hearings that the Congress has been conducting and the efforts that Assistant Secretary Olson and Chief Counsel B. John Williams have been conducting to improve enforcement, and I applaud those efforts.

Thank you.

The CHAIRMAN. Mr. Haines, if you have got anything to add.

Mr. HAINES. Not really. We have not certified any tax shelters or given any legal opinions for the same reasons.

The CHAIRMAN. Mr. Holmes?

Mr. HOLMES. In none of my private firms have I done any of that kind of thing.

Ms. KROUPA. The same for me as well. Faegre and Benson is a longstanding firm in Minnesota and we have not been involved in that. Prior to that, I was on the Minnesota Tax Court.

The CHAIRMAN. All right. Thank you.

Now, Senator Baucus?

Senator BAUCUS. Thank you.

In addition to the disinfectant of sunshine, which I think probably is the greatest remedy, what else can either tax judges do, or Congress do to minimize the reoccurrence of Sprints, Enrons, WorldComs? Let us take Enron.

In one sense, the lawyers and accountants followed the letter of the law, maybe, arguably, but spinning such extremely complicated arrangements that it was almost impossible for the IRS to fathom it, and almost impossible for our Joint Tax Committee to figure out.

So in some sense, they are just really being very creative in figuring out ways that had no economic substance to them. Maybe that is part of the answer, if we just try to look for economic substance and there is not any there, it just invalidates the transaction, in a way.

But any thoughts you have. I ask this question because this country and this Congress and the media says you can have the disinfectant of sunshine for a while, but then the Congress and

media is off into something else. So, there is not an awful lot of sunshine, at least not as bright as it had been.

What else can be done? Anybody who wants to take a stab at it.

Mr. HOLMES. I will try to fill the silence here. I think the most important thing is what the IRS is already doing with the help of Congress, which is to make sure that there are disclosure and listing requirements, especially for these very complicated corporate tax shelters.

Once you have those requirements, then you give the IRS, using the penalty provisions, and using the Justice Department's Tax Division as the summons enforcer, an instrument to get into accounting firms, law firms, perhaps, find out who they have been marketing these things to, and then you are able to start getting deterrents simply through audits and appeals, the normal process. But the idea is to get them into the system as quickly and efficiently as possible. That has proven very difficult in the past, but less so now.

Again, as the new summons enforcement powers, the use of John Doe summonses, for instance, gets used and courts get used to those new instruments, I think the situation will improve.

Because, again, you are right. There certainly is no way that publicity can be sustained at a high level for a long enough time. The IRS has been there for a long time, the Justice Department has been there for a long time, and will continue to be there and will continue to use these tools.

Senator BAUCUS. We are trying to do just what you are suggesting and help the Service with certain regulations, and also check some boxes if this is a certain kind of transaction. We want to know about it, and so forth.

Also, we are trying to get the economic substance codified. We think that is a good idea, although we want to give you flexibility. But we think, on balance, that helps.

Before we leave, you are about to be judges, of course. What advice do you have in your practice when you run up against certain problems with the tax law in your practice that perhaps we should know about? Is there anything that comes to mind? Sometimes you are driving to and from work. My gosh, why do they not change that? Are there any of those that come to mind right now?

Mr. HAINES. There is in the area of enforcement that might be helpful, and that is failure to file cases. I have had quite a number of those cases in western Montana. The profile of the person that is failing to file is not necessarily a tax protestor, it is a middle America person who has had a tragedy, a divorce, an illness, or something else. When they fail to file the first year, it leads to a failure to file the second year, and it goes on and on.

The minimum that I have seen is no less than 5 years, and I had one up to 15. The problem is going in and making the step to disclose to the Internal Revenue Service for fear of criminal prosecution.

There was an amnesty program that was put in by the IRS in the late 1970's that would encourage people to make disclosure. But even if you do that, you end up with a tremendous problem, if there are taxes owed, for accrued interest and it becomes an economic issue, too.

We are based on voluntary compliance. You want to encourage voluntary compliance. I am not sure how to do that, other than when these come to us, we try to get liaison established with the IRS immediately and go that way. But there is a lot of fear out there for the enforcement process when they get into these situations.

Senator BAUCUS. Thank you very much. I wish you all the very best of luck.

Mr. WHERRY. Thank you.

Mr. HAINES. Thank you.

Mr. HOLMES. Thank you.

Ms. KROUPA. Thank you.

The CHAIRMAN. Senator Baucus and I would hope to be able to, at our mark-up tomorrow, vote these nominations out if we do not have objection from other Senators and if there are not any questions filed that have to be answered before you get your nomination out.

So, from that standpoint, we would hope to move very quickly. We thank you all, congratulate you all.

The hearing is adjourned.

[Whereupon, at 12:20 p.m. the hearing was concluded.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HARRY A. HAINES

Mr. Chairman, Senator Baucus and Members of the Senate Finance Committee. Thank you for this opportunity to appear before you today as a nominee for the position of Judge on the United States Tax Court. Senator Baucus recommended me to the President and I am deeply grateful to him not only for the recommendation but for his continued support. I am very honored and humbled by the nomination received from President Bush. The United States Tax Court plays a key and extremely important role in the resolution of disputes within our tax system and I would be privileged to serve if confirmed and appointed.

My family roots in this Country began in 1735 in Boston, Massachusetts. Family members fought for the Colonies at the Battle of Bunker Hill. As new lands were opened for homesteading, the family moved across the United States settling in Pennsylvania, Iowa and eventually California. The last homesteaders were my grandfather and grandmother who homesteaded in Montana in 1915. A great grandfather in this line was a miner who felt that the copper mines of Butte, Montana, later called the "Richest Hill on Earth" would never amount to anything and went on to find, unsuccessfully as it turned out, his fortune in the gold mines of northern California.

My Irish and German ancestors came to this country in 1848 at the height of the potato famine in Ireland and during the period of social, economic and political upheaval in Germany. My Irish side of the family came West with the railroads while my German ancestors moved to the frontier of Minnesota to make shoes for the pioneers living there prior to Minnesota becoming a State.

My Norwegian and Swedish grandparents immigrated in the 1890's. My Swedish grandfather was a Sheriff at Ray, North Dakota when the West was still a bit dicey and had many stories of the early days to tell.

I was born and raised in western Montana at Missoula, Montana. I received my undergraduate degree from St. Olaf College in Northfield, Minnesota, my Juris Doctor from the University of Montana Law School at Missoula, Montana and my Masters in Tax Law from New York University. I have been engaged in the private practice of tax law in Missoula for the past 37 years representing taxpayers in a broad spectrum of tax situations. My tax practice has not been limited to a specialty area. I have taught tax law to tax professionals of all types and to the general public. I believe my experience will allow me to serve objectively and even-handedly if I am fortunate enough to be confirmed and appointed.

My wife, Janet, is with me today. Her unfailing support and patience has been invaluable to me. My son, Eric, who lives in Seattle, my son, Rob, who lives in Missoula, and my step-daughter, Jeannie, who lives in Los Angeles, could not be here today. All are grown and either in careers or starting careers of their own. All are very supportive of this possible move.

If confirmed and appointed, I would welcome this opportunity and be honored to serve my Country as a Judge on the United States Tax Court and dedicate myself to the fair application of the law.

Thank you.

SENATE FINANCE COMMITTEE
STATEMENT OF INFORMATION REQUESTED OF NOMINEE

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names used.)
Harry Allen Haines
2. Position to which nominated:
Federal Judge: U.S. Tax Court
3. Date of nomination:
February 12, 2003
4. Address: (List current residence, office, and mailing addresses.)
**Current Residence: 1600 Arthur Avenue
Missoula, Montana 59801**
**Work Address: 111 North Higgins Avenue, Suite 600
Missoula, Montana 59802**
**Work Mailing Address: P. O. Box 4747
Missoula, Montana 59806**
5. Date and place of birth:
May 30, 1939; Missoula, Montana
6. Marital status: (Include maiden name of wife or husband's name.)
Married to Janet L. Meyers
7. Names and ages of children:

Son, Jon Eric Haines, age 37; Son, Robert Allen Haines, age 37; Step-daughter Jeanne Meredith Toole, age 23

8. Education: (List secondary and higher education institutions, dates attended, degree received, and date degree granted.)
- 1. Missoula County High School - 1953 to 1957**
 - 2. University of Montana, Missoula, Montana 1958, no degree**
 - 3. St. Olaf College, Northfield, Minnesota 1959-1961, Bachelor of Arts, June, 1961**
 - 4. University of Montana, School of Law, 1961 - 1964, Juris Doctor, June, 1964**
 - 5. New York University, School of Law, 1965-1966, Masters in Tax Law, October, 1966**
9. Employment record: (List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.)
- 1. Employee, Haines Independent Wholesale Grocery, Missoula, Montana 1961 - 1964.**
 - 2. Associate Lawyer, Worden & Worden, Attorneys at Law, Missoula, Montana, Summers 1964 and 1965.**
 - 3. Adjunct Professor, University of Montana Law School, Missoula, Montana, Fall 1964 to June 1965.**
 - 4. Teaching Fellow, New York University School of Law, New York, New York Fall 1965 to June 1966.**
 - 5. Adjunct Professor, University of Montana School of Law, Missoula, Montana, 1967, 1969, 1971, 1973-1974, 1981 -1991**
 - 5. Lawyer, Worden, Thane & Haines, P. C. , and its predecessors from 1966 to present specializing in the practice of tax law.**
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 held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution.)

President, Worden, Thane & Haines, P.C., law firm, Missoula, Montana, and principal since 1969. During that time I have represented many business clients in tax matters.

Partner, Ashberry Associates, a general partnership consisting of myself and two of my law partners, a former law partner, and a widow of a law partner which owns commercial real estate in Missoula, Montana.

Commercial Law Affiliates, now known as Meritas, an international network of 180 law firms, Board of Directors.

University of Montana Grizzly Athletic Association, member and Board of Directors.

University of Montana Law School Board of Visitors

Montana Tax Institute, Board of Directors

Board of Director member on following 501(c)(3) organizations:

International Choral Festival, Inc.

Missoula Symphony Association

L.E.A.W. Foundation, Inc.

Gallagher Western Montana Foundation

YMCA

Missoula Children's Theatre

Young Audiences of Western Montana

12. Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations.)

Commercial Law Affiliates, now known as Meritas, an international network of 180 law firms, Board of Directors.

University of Montana Grizzly Athletic Association, member and Board of Directors.

University of Montana Law School Board of Visitors

Montana Tax Institute, Board of Directors

YMCA, 501(c)(3), Board of Directors

Missoula Children's Theatre, 501(c)(3) Board of Directors

Young Audiences of Western Montana, 501(c)(3) Board of Directors.

International Choral Festival, Inc., 501(c)(3), Board of Directors

Missoula Symphony Association, 501(c)(3) Board of Directors

Gallagher Western Montana Foundation, 501(c)(3), Board of Directors
L.E.A.W Foundation, 501(c)(3), Board of Directors
Missoula Country Club, Board of Directors, President
St. Paul's Lutheran Church, Board of Directors, President
Sigma Chi Fraternity
International Legal Fraternity of Phi Delta Phi.
Western Montana Estate Planning Council, Founder, Board of Directors
and President
Western Montana Bar Association, Board of Directors, President
Montana Bar Association
American Bar Association
The American College of Trust and Estate Counsel, Fellow
Member of Rotary Club, part of Rotary International, in Missoula, Montana
Worden, Thane & Haines, P.C. law firm, Missoula, Montana, Board of
Directors, President

13. Political affiliations and activities:

- a. List all public offices for which you have been a candidate.

None

- b. List all memberships and offices held in and services rendered to all political parties or election committees 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 for the past 10 years.

**1996, Karla Gray for Chief Justice, Montana Supreme Court \$50
Spring, 2002, National Republican Congressional Committee
solicitation headed by Congressman Tom Davis, \$100**

14. Honors and Awards: (List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievement.)

**Teaching Fellow, New York University School of Law; A/V Rating
Martindale Hubbell Law Directory; Selected for recognition in "The Best
Lawyers in America" publication since its inception; Fellow in The
American College of Trust and Estate Counsel; Who's Who National
Directory.**

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

"Future Interests in Estate Planning", 39 Montana Law Review 141 (1978) [dealing primarily with generation skipping taxes both federal and state]; State Bar of Montana, Commercial Law Practice Manual 1991 "Article 9 - Secured Transactions - Perfection"; "Article 9 - Secured Transactions - Consumer Goods"

Montana Tax Institute sponsored by Law School 1969 ["Problems in the Formation of Corporations"] 1970 ["The Vagaries of Pension and Profit Sharing Plans"] 1971 ["Death, Disability or Retirement of Professional Partners or Shareholders of Professional Corporations"] 1976 ["Problems of Closely Held Corporations"] 1977 ["The 1976 Tax Reform Act Generation Skipping Transfers"] 1981 ["Recent Changes in the Estate and Gift Tax and Their Effects on Tax Planning" 1981 Economic Recovery Tax Act] 1984 ["Fiduciary Returns for Estates and Trusts"] 1993 ["An Employee: To Be or Not To Be"-Independent contractor/employee rules]

State Bar of Montana 1975 ["Choice of Business Form"] 1980 ["Valuation of Interests in Closely Held Businesses for Estate and Gift Tax Purposes. Methods to determine and control values in business interests (exclusive of special use elections)"] 1982 [UCC---Article 9 Revisited] 1984 ["Federal and Montana Income Taxation of Trusts and Estates; the effect of Administrative and dispositive provisions in wills and trusts and the Uniform Principal and Income Act."] 1992 ["Secured Transactions, a review]

National Business Institute 1988 "Basic Probate in Montana"; 1992 "Planning Opportunities with Living Trusts in Montana" 1994 "Planning Opportunities with Living Trusts" repeated; 1996 "Mastering Real Estate Titles and Title Insurance in Montana"

American Institute of Certified Public Accountants 1979 Discussion Leader two day seminar "Income Taxation of Estates and Trusts" 1981 repeated seminar with updated materials; 1982 Estate Planning Workshop, two day seminar discussion leader. 1983 Fiduciary Income Tax Returns Workshop, two day seminar discussion leader. 1986 Fiduciary Income Tax Returns Workshop, two day seminar.

Professional Education Systems, Inc 1998 Federal Estate and Gift Tax Workshop based upon Federal Materials developed by Albert W. Secor, American College of Trust and Estate Counsel. The Montana Inheritance and Estate Tax Materials for the course were developed by me. An over-all review of federal and state gift and estate taxation and their application to the preparation of various tax forms.

16. Speeches: (List all formal speeches you have delivered during the past five years which are on topics relevant to the position for which you have been nominated. Provide the Committee with two copies of each formal speech.)

I have given numerous talks in the past five years to various groups including the public at large relating to taxation and the trends in legislation and case law. Almost all were informal in nature with substantial time for questioning.

17. Qualifications: (State what, in your opinion, qualifies you to serve in the position to which you have been nominated.)

After returning to Missoula, Montana from New York University with a Masters in Tax Law in 1966, I have practiced tax law in the private sector for 37 years. My experience has been broad. In the initial 15 years of my practice I prepared income tax returns for clients and represented them if the returns were audited. I now only prepare fiduciary income tax returns for trusts or estates. I have also represented taxpayers who have failed to file returns. When a taxpayer presents us with these types of situations, I have always insisted that they comply with the tax laws, and through structures with accountants whom we hire, all delinquent returns are filed and we clear them through the audit process. I have worked through offers in compromise, obtained revenue rulings, applied for and received determination letters for retirement plans and the qualification of foundations for contribution deductions and exemption status.

I have done tax planning for structured settlements, property settlements in divorce cases, condemnation awards, and all types of real estate transactions including 1031 exchanges, residential sales, farm and ranch planning, conservation easements, development of property and the sale and exchange of property.

I have also had an extensive practice in business tax planning involving sole proprietors, general partnerships, limited partnerships, corporations, limited liability companies, professional corporations, professional partnerships, associations and trusts. This has involved me with the formation, reorganization, liquidation and transfer of these entities. I have planned the income tax structure on the sales and purchases of businesses of all kinds. I have developed, structured and written fringe benefit programs including retirement plans and medical reimbursement plans and succession planning through employee stock options, whether qualified or non-qualified, buy-sell agreements, and other arrangements.

I have been privileged to be a Fellow in The American College of Trust and Estate Counsel since 1988. The College is a professional association consisting of approximately 2,700 lawyers in the United States. A lawyer cannot apply for membership in the College. He or she must be nominated and elected by the membership at large. Fellows are selected on the basis of professional reputation and ability in the fields of trusts and estates and on the basis of having made substantial contributions to these fields through lecturing, writing, teaching and bar activities. A grounding in tax law is essential to this area of practice. The College emphasizes continuing education by providing excellent educational materials and seminars, and it has been an important source for knowing what is going on in Congress and the courts.

Estate, gift and generation skipping tax planning has also been a focus. I have over the years filed many estate, gift and generation skipping tax returns and taken them through audit. In this area I have extensive experience in the structuring and drafting of trusts and wills to meet client's needs including provisions, where applicable, for marital deduction planning, applicable exclusion trusts, charitable remainder annuity and unitrusts, charitable lead trusts, generation skipping trusts and their interplay with private foundations and public charities.

I have also taught tax law to college students, law students, lawyers, accountants, bankers, trust officers, CLU's, financial advisers and to the general public. An example of some of the more formal things I have done in this regard appears under questions 15 and 16 in Biographical Information. I have served as a consultant to other lawyers and accountants on tax planning matters.

In all that I have done, I have had hands-on experience in that I have developed the plan, prepared the documents, implemented the plan, and concluded the matter. This has forced me to know the details in the tax law as it then exists as well as anticipating law changes. This requires an appreciation and knowledge of the trends in tax legislation, tax case law and tax policy. I constantly read and research in this area. I update myself through attendance at seminars

Any cases that I have had in Tax Court have been resolved prior to trial. My litigation experience has been limited to State Courts and usually involves the resolution of private party disputes or succession disputes for decedents. Although it doesn't really relate to tax litigation, an example of the type of case would be In re the Trust of Jameison, 300 Mont. 418, 2000 MT 190, 8 P.3rd 83 (Mont. 2000) in which I was successful setting aside a revocable trust that had been established pursuant to a power of attorney.

I believe that I would make a good Tax Court Judge. I would be bringing my 37 years of practical experience to the Court. I believe that my knowledge, skills and experience will result in an even-handed approach in my service on the Bench. I have no difficulty, after careful consideration, in making decisions and applying the law, as I understand it, based upon the facts presented to me whether it be for the government or for the taxpayer. I believe in and support the government of the United States and its system of justice.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? If not, provide details.

Yes

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, provide details.

No.

3. Has any person or entity made a commitment or agreement to employ your services in any capacity after you leave government service? If so, provide details

No

4. If you are confirmed by the Senate, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? If not, explain.

Yes

C. POTENTIAL CONFLICTS OF INTEREST

1. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

I currently have estate tax returns within the audit process with the IRS. I also am representing, together with another attorney in my office, a client in a Tax Court case. My wife and I own publicly traded securities. I personally guarantee my law firm's operating line of credit and an equipment loan. I am owed money by my law firm and by the purchaser of a commercial building sold.

2. 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 serve on the Board of Directors of several 501(c)(3) organizations. I am an officer and director in my law firm. I also am the registered agent for several corporations. My law firm bears my name.

As a lawyer I have structured, drawn the documents for, and implemented individual income, estate, gift and generation skipping tax plans and business plans for many clients. I serve as a "Trust Protector" on several irrevocable trusts.

3. 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 and execution of law or public policy. Activities performed as an employee of the Federal government need not be listed.

None

4. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Provide the Committee with two copies of any trust or other agreements.)

I will designate other attorneys in the office to complete the audits on the estate tax returns filed. The Tax Court case is being handled by another attorney in my firm but I am also named as counsel of record. I will withdraw from the case as a counsel of record. I would recuse myself should any of the matters on which I have worked for clients come before the Tax Court. I would also recuse myself on any Tax Court matters that involve corporations in which my wife or I hold investments or concerning any entities that owe money to us. I will resign all positions as a Board member for any corporation and any registered agent positions. I will resign all positions held as a Trust Protector. I will also resign any positions held within my law firm and terminate my employment relationship. My name will be deleted from the firm name. My personal guarantees on the law firm's operating line of credit and equipment loan will be released.

5. Two copies of written opinions should be provided directly to the Committee by the designated agency ethics officer of the agency to which you have been nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position.

6. The following information is to be provided only by nominees to the positions of United States Trade Representative and Deputy United States Trade Representative:

Have you ever represented, advised, or otherwise aided a foreign government or a foreign political organization with respect to any international trade matter? If so, provide the name of the foreign entity, a description of the work performed (including any work you supervised), the time frame of the work (e.g., March to December 1995), and the number of hours spent on the representation.

D. LEGAL AND OTHER MATTERS

1. Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional conduct before 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 held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, provide details.

No.

3. Have you ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

Yes. I was appointed in 1996, by a State District Court Judge, Guardian ad Litem for a minor child to review a structured settlement reached in a medical malpractice case. In 1998 the grandmother of the minor child sued the attorneys who had represented the child in the underlying case for legal malpractice and sued me as the Guardian ad Litem. The latter case was filed in the Montana Twentieth Judicial District, Lake County, Polson, Montana as Cause No. DV 98-129. Attached is a copy of an Order Granting Defendant's Motions for Summary Judgment which sets out the facts in more detail. Subsequent to granting the Summary Judgment, the Court dismissed the case against the defendants, including myself. The Plaintiff then appealed to the Montana Supreme Court but the appeal was dismissed as to me in February, 2001.

4. Have you ever been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offense? If so, provide details.

No.

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. TESTIFYING BEFORE CONGRESS

1. If you are confirmed by the Senate, are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so?

Yes

2. If you are confirmed by the Senate, are you willing to provide such information as is requested by such committees?

Yes

PREPARED STATEMENT OF MARK VAN DYKE HOLMES

Thank you, Mr. Chairman, Senator Baucus and members of the Committee.

Mr. Chairman, I am pleased and humbled that President Bush has nominated me to be a judge on the United States Tax Court, as I was when asked to serve as Deputy Assistant Attorney General in the Justice Department's Tax Division. I am also grateful for the time and attention spent by the committee of the Administration's highest tax officials who participated in the selection process. I am especially glad that my wife, Marianne Bizek, is here with me today, as she has been throughout my career.

Mr. Chairman, I have been a litigator or in public service for 20 years. I have represented individuals, estates, corporations and other business entities in a variety of disputes; more recently, I have represented the Government in successfully arguing against one of the largest corporate tax shelters ever devised; and have helped AAG Eileen O'Connor in helping to manage the largest and finest tax law firm in America—the Tax Division of the Department of Justice. I think my years as a both a general and, more specifically, a tax litigator have provided me with a good understanding of the way in which our tax and judicial system works at its most important level—the level of confronting the individual litigant.

In my work both in the public and private sectors, I have also developed a very healthy respect for the many good and professional people within our government who seek to apply our tax laws in a fair and even-handed manner. But, I also have realized how important it is for taxpayers—especially small taxpayers facing a system of sometimes bewildering complexity—to have some way of challenging their government's determination of what they owe. Fairness to many taxpayers depends critically on having the opportunity to challenge the government's position in a courtroom. I enthusiastically endorse the continuing efforts on the part of the Congress and the Internal Revenue Service to ensure that taxpayer's rights are acknowledged and respected throughout our tax system.

If confirmed, I look forward to helping strengthen the fairness of this process as a Tax Court judge. I can assure the Committee that I will work diligently to determine the facts of each case consistent with the evidence introduced at trial and to apply evenhandedly the law as enacted by Congress to those facts. I can assure the Committee that I will fulfill my duties as a judge with a recognition that both the taxpayer and the government are entitled to be treated with fairness, courtesy and respect. I look forward to continuing the fine tradition of service of those many Tax Court judges who have come before me. I also wish to thank you, Mr. Chairman, for scheduling a hearing so promptly on my nomination; and your Committee's staff for their help in preparing for it.

Thank you again for the opportunity to appear before you today.

SENATE FINANCE COMMITTEE
STATEMENT OF INFORMATION REQUESTED OF NOMINEE

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names used.)
Mark van Dyke Holmes
2. Position to which nominated:
U.S. Tax Court Judge
3. Date of nomination:
February 25, 2003.
4. Address: (List current residence, office, and mailing addresses.)
Residence: 217 Woodland Terrace
Alexandria, Virginia 22302

Office: Rm. 4609
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Mailing: (because of anthrax-related screening delays, mail should be sent to me
at home or to the office through PO Box 813, Ben Franklin Stn.,
Washington, DC 20044)
5. Date and place of birth:
July 6, 1960 at Buffalo, New York.
6. Marital status: (Include maiden name of wife or husband's name.)
Married to Marianne E. Bizek.

7. Names and ages of children:
- None.
8. Education: (List secondary and higher education institutions, dates attended, degree received, and date degree granted.)
- Calasanctius High School, 9/72 – 6/76, High School, 6/76
 Harvard College, 9/76 – 6/79, BA, 6/79
 Univ. of Chicago Law School, 9/80 – 6/83, JD, 6/83
9. Employment record: (List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.)
- Special Assistant, NYC Dep't of Personnel, New York NY, 9/79 – 6/80
 Intern (title ?), NYS Financial Control Board, New York NY, Summer 1980
 Research Assistant, Univ. of Chicago Law School, Chicago IL, 7/80 – 6/81
 Summer Associate, Cahill Gordon & Reindel, New York NY, Summer 1982
 Research Assistant, Univ. of Chicago Law School, Chicago IL, 9/82 – 6/83
 Associate, Cahill Gordon & Reindel, New York NY, 10/83 – 12/85
 Clerk, Hon. Alex Kozinski – 9th Cir., Pasadena CA, 12/85 – 7/87
 Advisor/Legal Assistant, US ITC, Washington DC, 9/87 – 11/87
 Associate, Sullivan & Cromwell, New York NY, 11/87 – 2/91
 Advisor/Legal Assistant to Commissioners, US ITC, Washington DC, 2/91 – 1/97
 Counsel, Miller & Chevalier, Washington DC, 3/97 – 9/01
 Deputy Assistant Attorney General – Tax, US DOJ, Washington DC, 9/01 - present
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.)
- Intern (title ?), NY State Comptroller's Office, Albany NY, Summer 1979
 Legal Assistant (title ?), Erie County Attorney's Office, Buffalo NY, Summer 1978
11. Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution.)
- Counsel, Miller & Chevalier.
 Consultant, Akins & Associates, 1994

12. Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations.)

New York State Society (Buffalo Nite Committee) - Member since 2001.
 ABA – Member since 1998.
 DC Bar Assn – Member since 1998.
 Federalist Society – Member since 1982.
 St. Joseph’s on Capitol Hill - Parishioner since about 1993.
 Assumption (Brooklyn) – Parishioner from 1984 until 1995.
 Prelature of Opus Dei – Cooperator since 2000.
 John Carroll Society – Member since 2002.
 AAA – Member since 1987.
 Old Town Sport & Health – Member since 2002.
 Arlington Sport & Health – Member 1991-2002.
 Harvard Alumni Association – Member since 1979.
 Metropolitan Museum of Art – Member since at least 1991.

13. Political affiliations and activities:

- a. List all public offices for which you have been a candidate.

None.

- b. List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

1996 – Volunteer, Quinn for Congress (NY, 31 CD)
 Dole for President
 Gramm for President

- c. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more for the past 10 years.

2002 – Kelly for Attorney General - \$100
 2001 – Quinn for Congress - \$1000
 2000 – Quinn for Congress - \$1000
 Lazio 2000 - \$1000
 Friends of Phil Gramm - \$1000
 Republican National Committee - \$2000
 Value in Electing Women PAC - \$250
 Yob for Congress - \$50
 1999 – Bush for President - \$1000
 Rogan for Congress - \$100
 McIntosh for Governor - \$1000
 1998 – Quinn for Congress - \$900

Cordray for Attorney General - \$50

Miller for Congress - \$150

1997 – Quinn for Congress - \$100

1996 – Quinn for Congress - \$100

1995 – Phil Gramm for President - \$2000

(My checking records are not complete beyond the last three years; but this is my list of contributions to the best of my memory.)

14. Honors and Awards: (List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievement.)

Presidential Scholarship – 1976

National Merit Scholarship – 1976

NYC Urban Fellowship – 1979-80

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

I wrote a couple articles (that I'm not even sure were published) for ephemeral undergraduate and law school student publications.

At least one speech I gave in the Eastern Caribbean (on the protection of intellectual property rights under the WTO and NAFTA) was published by the Organization of Eastern Caribbean States at the end of 1994.

16. Speeches: (List all formal speeches you have delivered during the past five years which are on topics relevant to the position for which you have been nominated. Provide the Committee with two copies of each formal speech.)

ABA Tax Section, May 2002, "The Tax Division in 2002"

17. Qualifications: (State what, in your opinion, qualifies you to serve in the position to which you have been nominated.)

I've been a litigator since graduation from law school twenty years ago, and for the last several years a specialist in tax litigation. I have represented both private parties and the government in tax litigation. I have also worked as a manager in government. This blend of experience will, I think, allow me if confirmed to administer a docket of numerous cases – many relatively simple, some quite complex, deciding them all in an impartial and efficient way.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? If not, provide details.

Yes.

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, provide details.

No.

3. Has any person or entity made a commitment or agreement to employ your services in any capacity after you leave government service? If so, provide details.

No.

4. If you are confirmed by the Senate, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? If not, explain.

Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

Investments – My wife and I own stock and mutual funds, and I would of course screen any cases to prevent a conflict of interest.

Litigation – I believe that there are cases, both from my previous firm and over which I had some involvement while at the Tax Division, that I could not work on.

Relative – My mother works part-time as a preparer at H&R Block, though to my knowledge none of her clients have ever been involved in litigation as a result.

In all these or other cases that raise a potential conflict of interest question, I would discuss the matter with ethics officials at the Office of Court Administration or other appropriate agency.

2. 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.

Apart from litigation I've worked on, none.

3. 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 and execution of law or public policy. Activities performed as an employee of the Federal government need not be listed.

None.

4. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Provide the Committee with two copies of any trust or other agreements.)

I would recuse myself from any case involving a company my wife or I owned stock in, and any cases in which I participated.

5. Two copies of written opinions should be provided directly to the Committee by the designated agency ethics officer of the agency to which you have been nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position.

To be supplied.

6. The following information is to be provided only by nominees to the positions of United States Trade Representative and Deputy United States Trade Representative:

Have you ever represented, advised, or otherwise aided a foreign government or a foreign political organization with respect to any international trade matter? If so, provide the name of the foreign entity, a description of the work performed (including any work you supervised), the time frame of the work (e.g., March to December 1995), and the number of hours spent on the representation.

N/A

D. LEGAL AND OTHER MATTERS

1. Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional conduct before 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 held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, provide details.

No.

3. Have you ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

2001 – *Holmes v. Comm'r* (Tax Ct., Washington DC). My wife and I challenged a proposed deficiency of less than \$500 arising from the calculation of my wife's IRA contribution deduction for the 1998 tax year. The IRS conceded.

1991-97 – *Holmes v. US* (WDNY, 2d Cir). Together with my parents, I sued for a partial refund of taxes for deductions arising from our investment in a coop. We won at trial; and then won again at the Second Circuit and on remand. I finally received the full refund sought in 1997.

1992 – *Holmes v. Comm'r* (Tax Ct., Washington DC). This was my case for the 1986 tax year arising from the same facts as *Holmes v. US*. I settled with the IRS for \$1500, while the district court litigation was pending.

4. Have you ever been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offense? If so, provide details.

No.

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. TESTIFYING BEFORE CONGRESS

1. If you are confirmed by the Senate, are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so?

Yes.

2. If you are confirmed by the Senate, are you willing to provide such information as is requested by such committees?

Yes.

PREPARED STATEMENT OF DIANE L. KROUPA

Chairman Grassley, Ranking Member Baucus and members of the Committee.

My name is Diane Kroupa. I am deeply honored to appear before the Committee today as you consider my nomination to be a United States Tax Court Judge. I am humbled and grateful to President Bush for the opportunity to serve my country in this capacity.

I want to acknowledge special members of my family who are able to be here today. First, my husband, Bob Fackler, who has been my life's partner and who is second to none in providing me encouragement and support. Bob has been my best friend, my coach and my compass—my true north—for nearly twenty-three years. Next, our two daughters, Erin and Sara Fackler, who are our proudest accomplishments. Both Erin and Sara have learned “on the job” how Bob and I must balance not only our individual careers with each other but how we must balance this with being parents and with being active members in the community. I am extremely grateful to Erin and Sara for their support. Last but not least, my brother and sister-in-law, Greg and Renette Kroupa, from White Lake, South Dakota.

I also want to express special thanks to Senator Norm Coleman who I have known since 1989 when he was a prosecutor in the Minnesota Attorney General's Office. Thanks as well to Senator Dayton for being here today to support my nomination.

I have a deep and great respect for public service. If confirmed, my dream will be reality. Although I did not imagine the road my career would take while I was growing up on a farm in central South Dakota, the values I learned on the farm—working hard, helping one's neighbors and treating others the way you would want to be treated—have been the cornerstones of my twenty-two years of tax practice. It is these skills that I will use, if confirmed, to render impartial, well-reasoned decisions and to treat all people fairly.

I have truly been blessed. I have worked with individuals of deep conviction and leadership in our tax system starting upon graduation from law school when I worked in the Chief Counsel's Office (Legislation and Regulations Division) and interacted with this Committee's then staff on tax legislation. Many of the people with whom I have worked closely have been my mentors. We share not only a passion for tax law but common goals of keeping the tax provisions understandable and ensuring that taxpayers pay their fair share, and no more.

I have been fortunate to address various tax issues in different capacities. Through these experiences, I have gained a deep appreciation of each party's position and I have gained valuable insights. I gained insights first being a government attorney representing the IRS in administrating tax legislation and regulations, then interpreting the tax statutes, regulations and caselaw as a law clerk at the US Tax Court. Second, I gained insight as a private practice attorney representing corporate and individual clients who wanted first and foremost to understand the tax law, not evade it. Third, as a state tax court judge in Minnesota, one of the few states that has an independent tax court created to provide timely and equitable disposition of tax contests, I appreciated well-preparedness and I learned the importance of each case to the parties involved. Based upon these experiences, I am confident that, if confirmed, I will have the judicial temperament and necessary background to apply the tax laws to all taxpayers fairly.

Although the US Tax Court is a thousand miles from the farm in South Dakota, I will not forget the values I learned on the farm. Traveling to the areas in which the taxpayers are located will keep me grounded. If confirmed, I will be thrilled to return to public service as a US Tax Court Judge, and, if confirmed, I will feel as if I have come “home.”

Thank you. I would be happy to answer any questions you or members of the Committee might have.

SENATE FINANCE COMMITTEE
STATEMENT OF INFORMATION REQUESTED OF NOMINEE

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names used.)
Diane Lynn Kroupa
2. Position to which nominated:
United States Tax Court Judge
3. Date of nomination:
February 25, 2003
4. Address: (List current residence, office, and mailing addresses.)

Residence:	Office:
330 Zircon Lane North Plymouth, MN 55447	Faegre & Benson LLP 2200 Wells Fargo Center 90 South 7th Street Minneapolis, MN 55402
5. Date and place of birth:
October 12, 1955 (Mitchell, South Dakota)
6. Marital status: (Include maiden name of wife or husband's name.)
Married on September 12, 1981 to Robert Eugene Fackler
7. Names and ages of children:

Erin Elizabeth Fackler	14	July 15, 1988
Sara Marie Fackler	10	May 25, 1992

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

University	Dates Attended	Degree	Degree Date
University of South Dakota Law School Vermillion, SD 57069	1978-1981	Juris Doctor (J.D.)	1981
Georgetown University Edmund E. Walsh School of Foreign Service Washington, D.C. 20057	1974-1978	Bachelor of Science in the Foreign Service (B.S.F.S.)	1978

9. Employment record: (List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.)

Dates	Job Title	Employer	Location
2001 to present	Attorney/Special Counsel	Faegre & Benson LLP	Minneapolis, MN
1995 to 2001	Judge (Chief Judge April 1998 to 2001)	Minnesota Tax Court	St. Paul, MN
1987 to 1995	Law Partner	Parsinen Bowman & Levy PA n/k/a Parsinen Kaplan Rosberg & Gotlieb PA	Minneapolis, MN
1985 to 1987	Associate (Tax Department)	Dorsey & Whitney LLP	Minneapolis, MN
1984 to 1985	Legal Advisor/Law Clerk	United States Tax Court (Hon. Joel Gerber)	Washington, DC
1981 to 1984	Attorney Advisor	Office of Chief Counsel, Internal Revenue Service, Treasury Department (former Legislation & Regulations Division)	Washington, DC
Summer 1980	Summer Associate/Legal Intern (Clinical)	Boyce Murphy McDowell & Greenfield Law Offices	Sioux Falls, SD
Summer 1979	Legal Intern	South Dakota Legislative Research Council	Pierre, SD
1978	College Graduation from Georgetown	Full time student/ University of SD Law	Vermillion, SD

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.)

All government service is listed in Answer 9.

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

I have not held any position with any for profit corporation, company, firm, partnership or other business enterprise other than as described in A9 (relating to employment).

12. Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations.)

While I was a Minnesota Tax Court Judge from March 10, 1995 to February 27, 2001, I limited my memberships to judicial and professional organizations. I did not participate in any charitable fundraising or solicitation efforts nor allow my name to be used in any solicitation efforts for any charitable or other organization during my judgeship in compliance with judicial canons. In addition, I did not participate in, nor attend, any political events during my tenure as a Minnesota Tax Court Judge.

Minnesota Bar

Licensed member-1986 to present.

South Dakota Bar

Licensed member-1981 to present.

District of Columbia Bar

Licensed member-1985 to present.

National Association of Women Judges

Member-1995 to present; Minnesota Planning Committee for National Conference-1999 to 2001; Friends of the NAWJ 2002 Conference- March, 2001 to October, 2002.

National Conference of State Tax Judges

Judge Participant-1995 to 2001; Planning Committee Member and Speaker at the 20th Annual Conference-2000-Cambridge, Massachusetts. Speaker at the Nineteenth Annual Conference-1999-Portland, Oregon. Speaker at the Seventeenth Annual Conference-1997-Minneapolis, Minnesota. Speaker at the Sixteenth and Fifteenth Annual Conference-1996 and 1995-Cambridge, Massachusetts.

ABA Tax Section

Member-1981 to present; Member, Sales and Exchange Subcommittee; Task Force on Nonrecognition Transactions; Like Kind Exchanges of Real and Personal Property.

Minnesota State Bar Association

Member-1985 to present; Tax Section Member-1985 to present; Tax Council-2001 to present; Community Relations Committee Member-1999 to present; Speakers Bureau-1985 to present.

Hennepin County Bar Association

Tax Section Member-1985 to present; Former Chair-1988 to 1990; Mentoring Committee Member-1995 to present; Chair 1999; Co-Chair-2000; Urban Youth Intern Initiative; Community Relations Committee Member-2000 to present; Speakers Bureau-1994 to present.

Minnesota Women Lawyers

Community Outreach, Mentoring and Senior Partners Committees-1985 to present.

Minnesota Supreme Court Task Force on Minnesota Bar Exam
2000.**American Judicature Society**

Member, 1995 to present.

Hamline University School of Law Advisory Board

Member-1995 to present.

Everyone Wins Reading Program-Benjamin E. Mays Elementary School, St. Paul, MN. Weekly Volunteer Reader-1995 to 2001.**Minnesota Judicial Center, Bring Our Daughters and Sons to Work**

Planning Committee Volunteer-1995 to 2001; Chair, 1997.

Mock Trial Competitions for high school and college students

Judge Participant-1995 to present; International Mock Trial Judge-2001.

The Blake School

8th Grade Community Service Chair-2002; 8th Grade Homeroom Parent-Ms. Krig's 8th Grade-2002; Middle School Hospitality Committee Member-2002; Chair, Highcroft Community Service -2001; Highcroft Faculty Appreciation Committee-1993 to present; Chair-2000; Chair, Highcroft Hospitality Committee-2000; Room Parent, Mr. Druskin's Second Grade Class-1999; Member, Diversity Committee-1998-2000; Grade Representative, Highcroft Hospitality Committee-1995 to 2001; Volunteer, Highcroft Book Fair -1995 to present; Volunteer Coordinator, Highcroft Book Fair-1999.

The Junior League of Minneapolis

Member, 1988 to present; Sustainer Rep to Transfer Committee-2001; Sustainer Rep to Placement Committee-2000; Sustainer Rep to Membership Management Marketing Board-1999; Sustainer Chair of JLM's 75th Community-Adopt a Child Care-1998-1996; Sustainer Rep to Community Management Board-1997; Chair of Helping Hands Committee-1995; Assistant Chair of Transfer Committee-1994; Member of Nominating Committee-1994, only elected position of the League; Legal Advisor-1993; ex-officio member of the Board of Directors and Management Boards; Chair of Bylaws Ad Hoc Committee-1992; Co-Chair of Violence Against Women Coalition, a project of the JLM; Member of Gala Silent Auction Committee-1991; Member of Women in Leadership Program-1989-1990.

Georgetown University Alumni Interviewer

1988 to present.

Greater Minneapolis Crisis Nursery

Board Member-1998 to present; Nominating and Governance Committee Chair-1998 to present; Beach Ball Steering Committee/Board Liaison-1998 to present; Patron Committee Member-2001; Executive Director Search Committee Member-2001.

PGA 2002 Championship-Hazeltine

Philanthropic Committee-2000 to 2002; Chair, Charity Ticket Distribution-2000 to 2002.

Minnesota Public Radio-Winemakers' Event

Steering Committee-2001 to present; Auction Chair-2001; Guest Services Chair-2002.

Washburn Family Guidance Center

Patron Committee-2001.

Minneapolis Institute of Art

Art in Bloom-Volunteer Coordinator-1995; Auction Close Out Chair-1996.

Minnesota Orchestra-WAMSO, Arts Council

Volunteer Coordinator-2000; Steering Committee-2002.

Minnesota Orchestra Symphony Ball

Legal Advisor-1994.

Holy Name Church

Member, 1988 to present; Religious Education Instructor, Second Grade-1997.

Friends for Minnesota Academic Excellence Foundation

Director and Secretary-1989-1995.

Minnesota Women's Education Council

Legal Advisor, Director 1991-1994.

Minnesota Women's Political Caucus

Legal Advisor, Director 1991-1994.

Violence Against Women Coalition

Honorary Board-1989-1995.

Phoenix Residence

Director 1987-1989.

Arlington House

Director 1985-1987.

YWCA Leader Lunch Program

Marketing Director-1985-1988.

13. Political affiliations and activities:

- a. List all public offices for which you have been a candidate.

None

- b. List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

While I was a Minnesota Tax Court Judge from March 10, 1995 to February 27, 2001, I was not involved in any political endeavors or campaigns in compliance with judicial canons. Since then, I have been the following:

**Republican Precinct Chair-2002 (Plymouth/Wayzata, MN);
Republican Senate District 43 Convention Delegate-2002;
Republican 3rd Congressional District Convention Delegate-2002;
State (Minnesota) Republican Convention-Alternate-2002.**

- c. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more for the past 10 years.

While I was a Minnesota Tax Court Judge from March 10, 1995 to February 27, 2001, I did not make any political contributions to any candidate, campaign or political party in compliance with judicial canons. Since then and before I became a judge in March 1995, I made political contributions involving Presidential, Senatorial, Congressional, Gubernatorial, Legislative, Mayoral, County Attorney, County and Local Board Commissions and School Board elections. Despite checking the federal and Minnesota Election Commission's websites and my files, I cannot recall every political contribution I made to specific candidates, political parties, political action committees or similar organizations, nor do I recall the exact amount contributed since February 27, 2001 to present and before March 10, 1995. Although I do not recall the exact amount, each contribution was at least \$50 but never exceeded the election contribution limits.

Here is the list of political contributions I made generally with respect to 2002 elections:

Amount	Candidate/Political Party
\$1000	Republican National Committee
\$2000	Norm Coleman for Senate (General Election)/Coleman Leadership Committee
\$2000	Norm Coleman for Senate (Primary Election)
\$1000	Mark Kennedy for Congress
\$2000	Tim Pawlenty for Governor (Separate Primary and General Election)
\$100	Catherine Shreves (for Minnesota Legislature)
\$500	Amy Klobuchar (Hennepin County Attorney)
\$5000	Arne Carlson for Governor (1990 & 1994)

Although I do not recall the specific amount contributed, I recall contributing money to Senator Rudy Boschwitz, Senator Rod Grams, Senator Fred Thompson, Governor Bill Janklow, Congressman Jim Ramstad, Congressman Gil Gutnetch, State Senator Martha Robertson, State Representative Ron Abrams, State Representative Jeff Johnson, State Auditor Judi Dutcher, Hennepin County Commissioners Penny Steele, Mary Tabornino, Peter McLaughlin, Mike Opat and Sandra Hillary, Minnesota Attorney General Candidate Charlie Weaver,

Minneapolis Mayor Sharon Sayles Belton and Hennepin County Attorney Mike Freeman.

14. Honors and Awards: (List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievement.)

Distinguished Service Award (2001)—Minnesota State Bar Tax Section.
Award to tax attorney with substantial tax experience and continuous contributions to the tax system and profession.

Chief Counsel's Merit Award (1983)—Department of Treasury.
Award to attorney in Chief Counsel's Office for outstanding service in tax administration.

Volunteer of the Year (1998)—Minnesota State Bar Tax Section.
Award to tax attorney for substantial volunteer contributions to community and charities.

Outstanding Volunteer of the Year (1993)—Junior League of Minneapolis.
Award of 1000 member volunteer organization to one active member for substantial commitment to volunteerism and the community.

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

Minnesota Tax Court Update, Minnesota State Bar Ass'n Tax Section News, Vol. 100, No. 3, at 16 (Fall, 2000).

Property Tax Appeals: A Perspective from the Bench, 10 Minn. Real Est. L. J. 49 (1997).

Minnesota Tax Court Update, Minnesota State Bar Ass'n Tax Section News, Vol. 95, No. 3, at 20 (Fall, 1995).

Contributing Author, Advising Minnesota Business Entities, Multivolume ed. approx. 1994-1995. I do not recall the publisher but attorney Dick Saliterman, Minneapolis, MN was the lead author.

Like Kind Exchanges of Real Estate, Minnesota Law Journal (April 1989).

Tying the Employment Knot, Credit Union Director 20-22 (Spring 1988).

Note, The Privileged Few: What is the Scope of the Attorney-Client Privilege for a Corporation? 25 South Dakota Law Review 415-432 (1980).

All published decisions of cases in which I was a Minnesota Tax Court Judge are available on the Minnesota Tax Court's web site:

<http://www.taxcourt.state.mn.us/>

16. Speeches: (List all formal speeches you have delivered during the past five years which are on topics relevant to the position for which you have been nominated. Provide the Committee with two copies of each formal speech.)

No formal speech I have given during the past five years has been on the United States Tax Court or any subject or area solely within the United States Tax Court's jurisdiction.

I frequently spoke on Minnesota Tax Court practice and procedures, tax controversies and other tax or judicial issues while a Minnesota Tax Court Judge. In addition, I frequently explained tax procedures, the judicial process and judicial and legal careers to interested groups. Groups included elementary and high school classes, Boy and Girl Scout troops, Leaders of Today and Tomorrow (LOTT) programs sponsored through the League of Women Voters, law schools, mentor relationships and charitable organizations in general. I also was a member of the Speakers' Bureau for both the Minnesota State Bar Association and Hennepin County Bar Association. I do not have any record of these informal speeches.

The only speeches for which I have a record are speeches I gave for continuing legal education ("CLE") purposes or continuing education purposes for tax attorneys, accountants, valuation experts, appraisers or assessors. These speeches are shown in the following table and are based upon my CLE records from June 1998 to present. The speeches prior to June 1998 are based upon my best recollection:

Seminar Sponsor	Title of Speech	Location Date
International Association of Assessing Officers (IAAO) Legal Seminar	How to Select an Appraiser for Valuation Cases	San Antonio, TX Dec. 5-6, 2002
11 th Annual Business Valuation Seminar-University of St. Thomas	The Role of the Judge and Expert in Litigation	St. Thomas University- Minneapolis, MN May 17, 2001
International Association of Assessing Officers (IAAO) Legal Seminar	The Role of the Judge—Weighing the Evidence in Property Tax Appeals	Charleston, SC April 5, 2001
ABA Tax Section & Institute for Professionals in Taxation (IPT)	Advanced Property Tax Seminar—Stigma in Environmentally Impaired Property	New Orleans, LA March 22-23, 2001
Estate Planners Council-Minnesota State Bar Association	Tax Residency Issues—Minnesota Supreme Court Decisions	Minneapolis, MN Feb. 28, 2001
Minnesota Tax Judges Conference-Minnesota State Bar Association	Minnesota Tax Court Update	St. Paul, MN June 7, 2000

International Association of Assessing Officers (IAAO) Legal Seminar	Litigation v. Legislation—What Best Achieves Fairness and Reform—The Westling Decision and Minnesota's Contamination Tax Legislation	San Francisco, CA Dec. 1999
Minnesota Assessing Officers Association Legal Seminar	Minnesota Tax Court Update	St. Cloud, MN May 1999
Minnesota Institute of Legal Education (MILE)	Minnesota Tax Court Procedures	Minneapolis, MN March 4, 1999
International Association of Assessing Officers (IAAO) Legal Seminar	Property Tax Appeals—Role of Judges	Nashville, TN May 1998
Hennepin County Bar Association	Perspectives from the Bench	Minneapolis, MN May 18, 1998
Minnesota Institute of Legal Education (MILE)	Property Tax Appeals: A Perspective from the Bench	Minneapolis, MN November 1997
Minnesota Institute of Legal Education (MILE)	Minnesota Tax Court—A Perspective from the Bench	Minneapolis, MN November 1996
Minnesota State Bar Association (MSBA) Tax Council	Perspectives from the Bench	Minneapolis, MN July 1995
Minnesota Tax Judges Conference-Minnesota State Bar Association	Minnesota Tax Court Update	St. Paul, MN June 1995

17. Qualifications: (State what, in your opinion, qualifies you to serve in the position to which you have been nominated.)

I have over twenty-two years of tax experience including six years of judicial experience, twelve years of private practice experience plus four years as a government attorney. Based upon this diverse yet specialized background in tax, I received the coveted Distinguished Service Award from the Minnesota State Bar Tax Section in 2001. Each year the Tax Section selects an attorney who has substantial tax experience and who continually has contributed to the tax system and profession.

First, I have judicial experience as a Minnesota Tax Court judge for six years. During this time, I presided over and managed Tax Court cases throughout the state involving every aspect of Minnesota tax laws. I presided over approximately 400 tax hearings. In addition to my judicial responsibilities, I was the Chief Judge for two and one-half years and responsible for assigning cases, overall managing of the Court's docket, personnel and the Tax Court's budget.

My six years of judicial experience as a Tax Court judge is coupled with twelve years of private practice experience and four years experience as a government attorney. While a government attorney in the Office of Chief Counsel, Honors Program, I drafted federal income tax legislation and regulations. I frequently explained

tax laws via television interviews, national teleconferences and speeches to national trade associations and other industry organizations.

I was also a law clerk at the United States Tax Court where I researched and drafted opinions on federal income tax provisions and regulations. My law clerk experience gives me a unique understanding of the United States Tax Court. In addition, I am thrilled at the prospect of, if confirmed, becoming a colleague of the Honorable Joel Gerber, the judge for whom I clerked in 1984-1985.

While in private practice for twelve years, I represented clients in various tax matters, including audits, appeals, litigation and collection. I have experience with the Internal Revenue Service, the Department of Revenue in various states, the Department of Jobs and Training, and other governmental agencies. Most recently, I led a group of attorneys to resolve tax disputes involving the valuation of commercial and industrial real estate.

In addition to my legal background, I am a committed public servant who believes in giving back to the community and helping others. I drafted a pro se booklet to help taxpayers who represent themselves in property tax appeals to understand what they must do to successfully contest the valuation or classification of their property. I frequently gave speeches to high school and elementary school students who were interested in learning about the judicial system or different careers in the legal system. I also mentor law students, associates and other professionals. I frequently give speeches to interested groups and participate in Mock Trial competitions. I continue to volunteer for and be active in numerous civic and community activities involving children and women.

I am honored to have received the Outstanding Volunteer of the Year award by the Minnesota State Bar Tax Section in 1998 and the Active Volunteer of the Year award by the Junior League of Minneapolis in 1993 for contributions to the community.

My attached resume highlights my tax experience and community involvement.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? If not, provide details.

Yes. I will sever the sole business connection I have (i.e., as an attorney/special counsel with Faegre & Benson LLP). I will remain a member only of professional or judicial organizations such as the Minnesota State Bar, the District of Columbia Bar, the South Dakota State Bar, the ABA (Tax Section) and the National Association of Women Judges (NAWJ).

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, provide details.

No.

3. Has any person or entity made a commitment or agreement to employ your services in any capacity after you leave government service? If so, provide details.

No.

4. If you are confirmed by the Senate, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? If not, explain.

Yes. I expect to serve the entire 15 year term as a US Tax Court Judge.

C. POTENTIAL CONFLICTS OF INTEREST

1. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

None, to the best of my knowledge and belief.

2. 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, to the best of my knowledge and belief.

3. 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 and

execution of law or public policy. Activities performed as an employee of the Federal government need not be listed.

None.

4. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Provide the Committee with two copies of any trust or other agreements.)

I do not anticipate any conflicts of interest to the best of the knowledge and belief regarding any investments, business dealings or clients of Faegre & Benson LLP. If any potential conflicts of interest arise, I will analyze the facts, seek guidance from the Chief Judge and/or other appropriate individuals, and if appropriate, recuse myself.

5. Two copies of written opinions should be provided directly to the Committee by the designated agency ethics officer of the agency to which you have been nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position.

[Administrative Office of the US Courts to Determine]

6. The following information is to be provided only by nominees to the positions of United States Trade Representative and Deputy United States Trade Representative:

Have you ever represented, advised, or otherwise aided a foreign government or a foreign political organization with respect to any international trade matter? If so, provide the name of the foreign entity, a description of the work performed (including any work you supervised), the time frame of the work (e.g., March to December 1995), and the number of hours spent on the representation.

Not Applicable to US Tax Court Judicial Appointment.

D. LEGAL AND OTHER MATTERS

1. Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional conduct before 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 held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, provide details.

No, to the best of my knowledge and belief, other than minor traffic offenses.

3. Have you ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

First, I was involved in the Kroupa v. Kroupa matter. My parents' original divorce action, Delores I. Kroupa v. Edwin R. Kroupa (filed Nov. 1991 in 4th Jud. Cir., Brule County, SD) was subsequently amended to add me, my four siblings (Marvin R. Kroupa, Greg G. Kroupa, Robert J. Kroupa and Cheryl M. Kroupa Younkin) and my paternal grandmother, Marie L. Kroupa, as third party defendants to resolve ownership interests in land and other assets in the family farm/ranch. The matter was appealed to the South Dakota Supreme Court. The South Dakota Supreme Court's published decision in Kroupa v. Kroupa appears at 574 N.W.2d 208 (S.D. 1998).

In addition, a former room/house mate brought a small claims suit against me and the other four room/house mates who rented a townhome at 2208 Tunlaw Road, NW, in Washington, DC while the six of us were undergraduate students at Georgetown University. The former room/house mate alleged that the five remaining house mates were liable for the value of a bike that apparently was stolen from the townhome's front porch. The suit was brought in approximately 1975 (perhaps 1976) and my share of the claim was \$60.

4. Have you ever been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offense? If so, provide details.

To the best of my knowledge and belief, I have no convictions other than minor traffic offenses.

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

I listed my qualifications to be a United States Tax Court Judge in A17.

E. TESTIFYING BEFORE CONGRESS

1. If you are confirmed by the Senate, are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so?

Yes.

2. If you are confirmed by the Senate, are you willing to provide such information as is requested by such committees?

Yes.

PREPARED STATEMENT OF ROBERT A. WHERRY, JR.

Good morning, Mr. Chairman, Senator Baucus, and members of the Committee. I appear before you today as a nominee to be a judge on the United States Tax Court. Thank you for your time and your scheduling of this nomination hearing so promptly.

I am grateful and proud to have been nominated by President Bush to be a judge on the United States Tax Court, a court in which I have appeared on several occasions in my tenure as a practicing tax attorney. I am also appreciative of the time and attention spent and confidence in me shown by the interview committee comprised of many of the Administration's highest tax and Presidential counsel officials who participated in the selection process.

Before taking your questions, a few words seem appropriate as to my qualifications and interest in this position. During thirty plus years in the tax enforcement and compliance arena, I have represented individual taxpayers, estates, corporations, nonprofit and other business entities in a variety of federal, state and local tax disputes including audits and administrative appeals before IRS Appeals Officers and Settlement Officers in examination and collection disputes, and in court litigation. That litigation work includes the representation of clients before the United States district courts, the United States Court of Federal Claims, the United States Courts of Appeal, United States Supreme Court, and a variety of state courts.

My work as a tax practitioner and litigator has provided an understanding of the way in which our tax system should work at its most important taxpayer level. As a Colorado State tax auditor and as a taxpayer representative, I have developed personal respect for and friendship with the many good and professional people within our government who strive to apply our tax laws in a fair and even-handed manner. Nevertheless, the sheer volume of tax returns, an antiquated computer system, complex tax laws and our fast moving, innovative and convoluted business environment inevitably create honest conflict between even reasonable people. Congress has established the U.S. Tax Court to provide a forum to fairly resolve those disputes in a prompt and just manner before having to pay the tax.

As a participant in and officer of the U.S. Tax Court, I have for years applauded its operations and its efforts to provide and grant all parties before it a respectful and fair forum for resolving tax disputes. It is my hope to be of service to our Country and its citizens by continuing the U.S. Tax Court's judicial tradition of sincere and careful attention to each case in an effort to reach a just resolution. The perception of fairness in a taxpayer's mind often depends upon the right to challenge tax administrators in a courtroom. I, therefore, support the efforts of Congress and the Internal Revenue Service to ensure that taxpayer's rights are acknowledged and respected throughout our tax system. This includes the rights of those who follow the tax laws voluntarily to reasonable assurances that their fellow citizens do not abuse the tax system and that all citizens will pay their statutory share.

I am very grateful for the support of my wife, Leslie, and my son, Richard, who are here with me today, and my daughter, Marsha, who could not be here today because of her college classes, as we contemplate my work in the administration of our tax laws if I am confirmed as a United States Tax Court judge. While I may not always reach the correct result, I can and do promise the Committee that as a judge, I will keep an open mind, listen carefully to all parties and diligently strive to determine the facts of each case based on the evidence introduced in the case and

to apply the tax law, as enacted by Congress, to those facts. Further, the Committee should know that I believe a fair trial requires that both the taxpayer and the government be treated with respect and courtesy, and I intend to do just that!
Thank you, and I will be pleased to answer your questions.

**RESPONSES TO SENATE FINANCE COMMITTEE
STATEMENT OF INFORMATION REQUESTED OF NOMINEE**

A. BIOGRAPHICAL INFORMATION

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

Response: Robert A. Wherry, Jr., a/k/a Bob Wherry

Question 2: Position to which nominated:

Response: U.S. Tax Court Judge

Question 3: Date of nomination:

Response: February 6, 2003

Question 4: Address:

Response: Home: 9875 E. Crestline Cir.
Greenwood Village, CO 80111
Office: 1660 Lincoln Street, Suite 2900
Denver, CO 80264

Question 5: Date and place of birth:

Response: 4/7/1944 Langley Field, VA

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

Response: Married Leslie Anne (Ross) Wherry

Question 7: Names and ages of children:

Response: Richard W. Wherry (Age 27; DOB: 9/7/1975)
Marsha I. Wherry (Age 24; DOB: 8/5/1978)

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

Response: George Washington High School
Denver, Colorado
1/1962 - 6/1962 (No degree)

South High School
Denver, Colorado
9/1959 - 12/1961 (High School Diploma 6/1962)

Ohio State University
Columbus, Ohio
9/1962 - 5/1963 (No degree)

University of Colorado @ Boulder
Boulder, Colorado
9/1963 - 5/1969 (BS & JD)

New York University
New York, N.Y.
9/1969 - 3/70 and 1/1972 - 5/1972 (LLM-Taxation)

Question 9: Employment record: (List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.)

Response: Lentz, Evans and King P.C.
1660 Lincoln Street, Suite 2900
Denver, CO 80264
(2/1973 - Present)

Duties: Attorney and Stockholder of Law Firm

Harrison Western Corporation
4860 Robb Street, Suite 101
Wheat Ridge, CO 80033
(1/1989 - 1/1994)

Duties: Member of Board of Directors

State of Colorado
Attorney General's Office
Inheritance Tax Department
(8/1972 - 2/1973)

Duties: Tax Auditor

U.S. Army
Fort Dix, N.J. and
Fort Buckner, Okinawa

Duties: 2nd Basic Training Brigade Courts and Boards
Staff Judge Advocate Office
USARYIS

Ernst and Ernst
Tax Department
Denver, Colorado

Duties: Staff Accountant
Tax Return Preparation

Question 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.)

Response: Colorado Department of Revenue Advisory Committee
Member Board of Adjustment Appeals, Greenwood Village, CO
City & County of Denver Mayor's tax issues working group

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

Response: (1) Vice President, Secretary and Director, Lentz, Evans and King P.C.;
(2) President and Director LEKNOM II (a nominee corporation, now dissolved);
(3) Director Harrison Western Corporation
(4) Regent, American College of Tax Counsel. This is a nonprofit organization
(5) Colorado State correspondent *State Tax Notes*
(6) I presently represent a variety of clients in federal and state tax and business matters and other litigation. With respect to some of them, I have filed a power of attorney with the Internal Revenue Service (Form 2848) and/or the State of Colorado (Form DR 0145) authorizing the representation. In addition, from time to time, with respect to some of these entity clients, I may have served as their registered agent for purposes of service of process under the Colorado Secretary of State's and state law requirements for Colorado entities.

Question 12: Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations.)

- Response:** (1) American College of Tax Counsel (Regent & Chairman of Nominating Committee)
 (2) American Bar Association - Section of Taxation (Chairman of Administrative Practice Committee)
 (3) American Bar Association - Section of Dispute Resolution (Member of Advisory Committee and Member of Section Council)
 (4) Colorado State Bar Association (Chairman State Tax Section 1981-1982, Council Member 1976-1981)
 (5) Greater Tax Counsel's Association (Secretary 1985, President 1986)
 (6) City and County of Denver Bar Association
 (7) State of Colorado and National Republican Party
 (8) Colorado Association of Commerce & Industry (Chairman, Small Business Tax Committee (early 1980's))
 (9) Center for Tax Policy, Formerly Colorado Public Expenditures Council
 (10) Southwest Region - Internal Revenue Service Bar Association Liaison Committee (Chairman During Portion of 1980's)
 (11) Western Regional Internal Revenue Service Bar Association Liaison Committee
 (12) Orchard - Timberline Homeowners Association (President 1981-1988)
 (13) Mountain States Legal Foundation (Member Board of Litigation 2001-2003)
 (14) State and Local Tax Group ("SALT")
 (15) City of Greenwood Village Board of Adjustment Appeals (Member)
 (16) The Law Club
 (17) Model T Club of America
 (18) American Contract Bridge League
 (19) Brown Palace Club (Luncheon Club at Brown Palace Hotel)
 (20) Christ Methodist Church
 (21) Denver Art Museum Member
 (22) Denver Museum of Nature & Science
 (23) University of Colorado Alumni Association
 (24) New York University Alumni Association

Question 13: Political affiliations and activities:

- a. List all public offices for which you have been a candidate.**

Response: Republican Committee Person

- b. List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.**

Response: Member National and State Republican Party, Precinct Committee Person, county, state and congressional assembly or convention delegate

- c. **Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more for the past 10 years.**

Response:

<u>YEAR</u>	<u>PERSON OR ENTITY</u>	<u>AMOUNT</u>
1994	Bill Owens for State Treasurer	\$100.00
1995	Sandy Adams for Auditor	\$50.00
1996	Citizens to Elect John Brackney	\$50.00
1997	Citizens for Bill Owens	\$100.00
1997	Citizens for Bill Owens	\$150.00
1998	Martha Krutz for Congress	\$100.00
1998	Sam Zakhem for Congress Committee	\$100.00
1998	Citizens for Bill Owens	\$250.00
1998	Citizens for Bill Owens	\$250.00
1999	Les Woodward for School Board	\$50.00
2000	Committee to Elect Robert Hardaway for State Representative	\$500.00
2000	Colorado Leadership Fund	\$50.00
2000	RNC Victory 2000	\$50.00
2001	Coloradans for Coffman Exploratory Committee	\$150.00
2002	Paul D. Schauer for CU Regent	\$50.00
2002	Citizens for Bill Owens	\$50.00
2002	Wayne Allard for U.S. Senate Committee	\$100.00
2002	RNC	\$50.00
2002	Committee to Elect Mike Coffman	\$50.00
2002	Don Mares for Auditor	\$50.00

Question 14: Honors and Awards: (List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievement.)

Response:(1) National Defense Service Medal
 (2) Good Conduct Medal
 (3) USARYIS Soldier of the Month
 (4) USO Council of Japan Certificate of Recognition-Gold Plate Dinner
 (5) Who's Who In American Law (1996-1997)
 (6) Best Lawyers in American (1993-Present)
 (7) ABA Section of Taxation Certificate of Recognition
 (8) ABA Section of Dispute Resolution Certificate of Recognition
 (9) City of Greenwood Village Certificate of Service Award

Question 15: Published writings: (List the titles, publishers, and dates of all books, articles, reports, or other published materials you have written.)

Response: See attached list.

Question 16: Speeches: (List all formal speeches you have delivered during the past five years which are on topics relevant to the position for which you have been nominated. Provide the Committee with two copies of each formal speech.)

Response:

<u>Year</u>	<u>Topic</u>
I have given programs at the educational seminars listed below. However, I did not prepare formal speeches. Rather, I prepared educational outlines for inclusion in the program materials.	
(1) 1998	CBA Health Law Section -- Sales & Use Tax for the Health Care Industry.
(2) 1998	CBA -- 1998 Restructuring Act: Burden of Proof, Practitioner Privilege, Other Procedural Provisions & The CPA
(3) 1998	Greater Denver Tax Council 1998 Tax Program -- IRS Restructuring and Reform Act (H.R. 2676) P.L. 105-206--General, etc.
(4) 1998	Colorado Society of CPA's - 1998 IRS Restructuring Act: The Burden of Proof & the CPA Privilege
(5) 1998	NBI Colorado Sales and Use Tax Update -- Areas of Sales & Use Tax Exposure for Manufacturers
(6) 1999	University of Denver Tax Institute -- Taxation Principles & Reporting Requirements With Respect to Damage Awards
(7) 2001	NBI Colorado Sales and Use Tax Update -- Application of Sales & Use Tax to Construction Industry
(8) 2001	NBI Colorado Sales and Use Tax Update -- Sales & Use Tax Procedures & Compliance Consideration
(9) 2002	University of Denver Tax Institute -- Penalty Administration: A Question of Taxpayer Equity (Panel)
(10) 2002	A New Road to Successful Case Resolution: Using Mediation and Arbitration in Tax Matters (Panel)

Question 17: Qualifications: (State what, in your opinion, qualifies you to serve in the position to which you have been nominated.)

Response: I have prepared tax returns for filing with state and federal agencies and represented taxpayers before the Internal Revenue Service, Colorado Department of Revenue, numerous local governments, federal and state courts in many types of civil tax disputes. I provided tax services to military and Department of Defense personnel in the Far East. I began preparing federal income tax protests while working at Ernst & Ernst and attending law school in the late 1960's and began litigating tax cases in the courts in 1973. While most of my cases have settled, I have also tried a number of tax cases in the U.S. Tax Court, U.S. and State District Courts, U.S. Court of Federal Claims, and Appellate Courts. I have also taught tax litigation courses for the National Institute of Trial Advocacy and have actively participated in the ABA Tax Section Administrative Practice and Court Procedure Committees and in the ABA Section of Dispute Resolution. These activities, coupled with my formal education will, I believe, bring substantial theoretical and practical

experience to the U.S. Tax Court and will assist me in justly resolving tax controversies which arise before the Court. I am excited and anxious to have the opportunity to serve our country and its taxpayers, if the Senate approves my nomination as a U.S. Tax Court Judge.

B. FUTURE EMPLOYMENT RELATIONSHIPS

Question 1: Will you sever all connections with your present employers, business firms, associations or organizations if you are confirmed by the Senate. If not, provide details.

Response: Yes, with the following exceptions.

(1) Prior to my nomination, I had agreed to speak on May 14, 2003, for the National Business Institute at a seminar regarding Colorado's Manufacturer's Guide to Sales and Use Tax. As there is now little time for NBI to find a replacement speaker, I plan to honor my prior commitment, if I am allowed to do so. If my nomination is confirmed, I will consult with the Chief Judge and such others as may be appropriate to make an informed decision. I also note that this speech involves state sales and use taxes, and should not require me to answer any questions or make any pronouncements with respect to federal tax law.

(2) I am also committed to make a speech to the Colorado Bar Association Tax Section on Alternative Dispute Resolution procedures and opportunities in April, 2003. That speech is unpaid.

(3) Under my Current and Deferred Compensation Agreement with Lentz, Evans and King P.C., if upon termination of my employment, I do not compete with the corporation in the practice of law in the metropolitan Denver area, I am entitled to receive deferred compensation based on a pre-established formula. I am also entitled to receive compensation under the formula for all work performed up to the date of my termination of employment by my firm, although the fees for such work may be collected after the termination date. I also am entitled and required to sell my stock in Lentz, Evans and King P.C., to the corporation when I cease to practice law as an employee of the corporation. In order to avoid the possibility that any future compensation I receive from Lentz, Evans and King P.C., would be tied to the gross earnings or net income of the firm, I will seek to negotiate a specific buy-out liquidation amount that represents a fair and reasonable settlement of the firm's legal obligation to me under the Current and Deferred Compensation Agreement. It may, however, be necessary for the firm to make payments under this arrangement for a period of up to five years. Again, if my nomination is confirmed, I will consult with the Chief Judge and such others as may be appropriate to make an informed decision.

Question 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, provide details.

Response: None other than the May 14, 2003, National Business Institute speech mentioned in Question 1, directly above.

Question 3: Has any person or entity made a commitment or agreement to employ your services in any capacity after you leave government service? If so, provide details.

Response: None other than the May 14, 2003, National Business Institute speech mentioned in Question 1, directly above.

Question 4: If you are confirmed by the Senate, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? If not, explain.

Response: Yes

C. POTENTIAL CONFLICTS OF INTEREST

Question 1: Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

Response: My personal investments and those investments of the Lentz, Evans and King P.C., Profit Sharing Trust, which are held in the trust for my benefit, as listed in Part VII of my Financial Disclosure Report, could conceivably result in a potential conflict of interest if an entity in which I or my wife own an interest were to become a party in a case pending before the United States Tax Court. I believe an actual conflict of interest will be avoided since I will carefully monitor the parties who are involved in the cases assigned to me or otherwise before the U.S. Tax Court, as well as my and Lentz, Evans and King, P.C., Profit Sharing Trust investments or those of any successor entity. This will allow me to identify any conflicts of interest and to recuse myself in all appropriate cases, if any.

Question 2: 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 for which you have been nominated.

Response: I have actively represented clients in federal income, estate, gift, employment, and nonprofit tax matters during the last ten years (and for approximately 25 years before that). If any case or matter in

which I were involved previously should come before the United States Tax Court, I would recuse myself. If any of my former clients were involved in a case before me, I would recuse myself if I was required to do so or I felt it was appropriate to do so after disclosure or upon request by either party to the litigation. There is also a potential conflict of interest with respect to deferred compensation under the current agreements between myself and Lentz, Evans and King P.C. As to this issue, please see my response to Section F Financial Data, Question 7, page 17, below.

Question 3: 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 and execution of law or public policy. Activities performed as an employee of the Federal government need not be listed.

Response: During the last ten years I have from time to time testified on or commented with respect to pending legislation, as well as writing articles for *Tax Analysts* as a correspondent which regularly discussed Colorado State tax legislation. Most of these actions were conducted in a news reporting capacity, but with respect to a few bills and regulations, I actively supported, opposed, or proposed modifications to the legislation. The specific matters which I can remember testifying on in this regard are as follows:

(1) I met with representatives of the Colorado Department of Revenue and helped draft, as an attorney and representative, of the Colorado Auto Dealers Association, new regulations regarding the use of inventory vehicles and full use plates by motor vehicle dealers.

(2) I testified at the Department's hearing on proposed regulations regarding conservation easement credits under CRS §39-22-522.

(3) I testified in 2002 at the Colorado State Senate and Finance Committee Hearing against Senate Bill 02-215 which would have authorized the Regional Transportation District, Football District and Scientific and Cultural Facilities District to impose use tax on purchases which are exempt from state sales and use tax.

(4) I testified in 2002 at the Colorado State House Transportation Committee against H.B. 02-167, granting the Regional Transportation District, with approval of the voters, authority to increase the rate of sales tax and as a result of the *Howard Electric* case, in certain instances, use tax.

(5) I testified in the Colorado Senate and Colorado House Finance Committees in support of H.B. 99-1237 amending §39-22-518, C.R.S., to permit a Colorado modification to federal taxable income with respect to certain capital gains where the property was originally acquired prior to May 9, 1994, and held for at least five years if there is excess revenue as determined under Article 10, §20 of the State Constitution.

(6) I testified in the House Finance and Senate Finance Committees hearings with respect to H.B. 99-1247, deleting the exemption from home rule city use tax for so-called old and cold personal property used in Colorado for its intended purpose for three years or more, pursuant to §29-2-109(2), C.R.S. This bill was enacted to conform Colorado statutes to the decision of the Colorado Supreme Court in *Winslow Construction Co. v. City and County of Denver*, 960 P.2d 685 (Colo. 1998) which had held this section to be inapplicable to home rule cities under the Colorado Constitution.

(7) I have testified on and provided written comments concerning proposed regulations of the Colorado Department of Revenue regarding procedural provisions governing hearings before the Executive Director pursuant to §§ 39-21-103 and 39-21-105, C.R.S.

(8) I have provided testimony with respect to amended proposed special regulations of the Colorado Department of Revenue with respect to the taxation of computer software.

(9) I have participated as a member of the Colorado Bar Association and American Bar Association Tax Section, Colorado Association of Commerce and Industry, and American College of Tax Counsel committees and groups in the preparation of legislation and comments on regulations which were later filed by those groups. I was not the only participant, nor did I have final editorial control with respect to the proposed legislation or regulation comments.

Question 4: Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Provide the Committee with two copies of any trust or other agreements.)

Response: Where potential conflicts of interest exist, I will review the facts carefully and consult with the Chief Judge and/or other appropriate individuals, including if necessary, counsel to determine my obligations in appropriate cases, I will recuse myself.

Question 5: Two copies of written opinions should be provided directly to the Committee by the designated agency ethics officer of the agency to which you have been nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position.

Response:

Question 6: The following information is to be provided only by nominees to the positions of United States Trade Representative and Deputy United States Trade Representative:

Have you ever represented, advised, or otherwise aided a foreign government or a foreign political organization with respect to any international trade matter? If so, provide the name of the foreign entity, a description of the work performed (including any work you supervised), the time frame of the work (e.g., March to December 1995), and the number of hours spent on the representation.

Response: N/A

D. LEGAL AND OTHER MATTERS

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

Response: No

Question 2: Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, provide details.

Response: No

Question 3: Have you ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

Response: Yes --

I was a defendant, together with Lentz, Evans and King P.C. ("LEK") and Frank King ("Frank") in a legal malpractice action in the State District Court, City and County of Denver, Docket No. 01-CV-7031.

LEK, Frank and I represented Mikama, Inc., an S corporation, involved in real estate development ("Mikama") and its three shareholders, Michael A. Conviser ("Mike"), J. Mark Longfield ("Mark") and his daughter M. Karoline Longfield ("Katie"), each of which owned one third of Mikama's stock. The sole issue in these tax disputes was whether discharge of indebtedness income from an S corporation increases the tax basis of its shareholders in that corporation ("Increased Basis Issue").¹

On Frank King's recommendation and that of her accountant, Katie filed refund claims for 1989, 1991, and 1992 to recover taxes plus interest paid, which would not have been due if she was entitled to additional flow through losses from Mikama because of the Increased Basis Issue, which losses could be carried back to 1989 and 1991, and were in part incurred in 1992. Katie could also have claimed additional carryforward losses from 1992 and/or 1993 to her taxable years 1995 and 1996 for flow through losses from Mikama because of the Increased Basis Issue. On December 19, 1997, the Internal Revenue Service ("Service") denied Katie's 1989, 1991, and 1992 refund claims and advised her as did I, in writing, that to pursue the refund claims a separate refund case would have to be filed by December 19, 1999.

I advised Katie, who was then a Tenth Circuit Court resident, in July, 1999 that I did not believe it would be cost effective to pursue refund litigation with respect to the Increased Basis Issue because, as of that time and December 18, 1999, all 22 federal judges to consider this issue had ruled against the taxpayers. See *Nelson v. Comm.*, 110 T.C. 114 (1998) *aff'd*, 182 F.3d 1152 (10th Cir. 1999) and *U.S. v Farley*, CCH 99-1 USTC ¶ 5370 (D.C.W.D. Pa. 1999). No refund case was filed by Katie, or on her behalf, before the December 19, 1999, statute of limitations deadline. Katie did not file protective refund claims for her 1995 and 1996 tax years. My advice proved incorrect. On January 27, 2000, the Third Circuit Court of Appeals reversed the District Court's ruling in *U.S. v Farley*, 202 F.3d 198 (3rd Cir. 2000). Based on this conflict in the Circuit Court opinions, the taxpayer in *Gitlitz v. Comm.*, 531 U.S. 206 (2001) filed a petition for *certiorari* which was granted. On January 9, 2001, the U.S. Supreme Court issued its decision in favor of the taxpayer and reversing the Tenth Circuit.

Katie could have saved approximately \$400,000 of tax and interest, computed to December, 2002, had a successful refund suit been brought and refund claims filed for all years. Katie sued Frank, LEK and me, for the \$400,000. In December, 2003 Frank and I were dismissed from the law suit. The case was settled in January, 2003.

¹For additional discussion of the facts, see *Conviser v. Comm.*, T.C. Memo 1999-47, CCH 77 TCM 1432 (1999), and on reconsideration, T.C. Memo 2001-54, CCH 81 TCM 1258 (2001). This issue was also before the U.S. Tax Court. Katie's case received Docket No. 17943-96, and Mark's case received Docket No. 23707-96. Petitioners Mike, Mark and Katie ultimately prevailed in all three U.S. Tax Court cases.

Question 4: Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, provide details.

Response: No

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

Response: Yes

E. TESTIFYING BEFORE CONGRESS

Question 1: If you are confirmed by the Senate, are you willing to appear and testify before any duly constituted committee of the Congress on such occasion as you may reasonably requested to do so?

Response: Yes

Question 2: If you are confirmed by the Senate, are you willing to provide such information as is requested by such committees?

Response: Yes

