

**NOMINATIONS OF JERRY S. BYRD, JUDITH NAN  
MACALUSO, J. MICHAEL RYAN, III, AND FERN  
FLANAGAN SADDLER**

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**HEARING**

BEFORE THE

COMMITTEE ON  
GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE  
ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

ON THE

NOMINATIONS OF JERRY S. BYRD, JUDITH NAN MACALUSO, J. MICHAEL  
RYAN, III, AND FERN FLANAGAN SADDLER, TO BE ASSOCIATE  
JUDGES FOR THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

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JUNE 18, 2003

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Printed for the use of the Committee on Governmental Affairs



U.S. GOVERNMENT PRINTING OFFICE

88-679 PDF

WASHINGTON : 2003

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**NOMINATIONS OF JERRY S. BYRD, JUDITH  
NAN MACALUSO, J. MICHAEL RYAN, III, AND  
FERN FLANAGAN SADDLER**

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**WEDNESDAY, JUNE 18, 2003**

U.S. SENATE,  
COMMITTEE ON GOVERNMENTAL AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10 a.m., in room SD-342, Dirksen Senate Office Building, Hon. George V. Voinovich, presiding.

Present: Senators Voinovich and Carper.

**OPENING STATEMENT OF SENATOR VOINOVICH**

Senator VOINOVICH. Good morning. I apologize for being late this morning. I had a small emergency in the office. A special welcome to the families, friends, and colleagues that are here.

The hearing will come to order, and I would like to welcome you today.

The Senate Committee on Governmental Affairs convenes to consider four nominations to the Superior Court of the District of Columbia, Jerry S. Byrd to be an Associate Judge, Family Court Division; Judith Macaluso to be an Associate Judge, Family Court Division; J. Michael Ryan to be an Associate Judge, Family Court Division; and Fern Flanagan Saddler to be an Associate Judge.

The three nominees to the Family Court Division of the District Superior Court have been nominated to fill new positions created by Congress in the Family Court Act of 2001. These justices will serve the Family Court for the first 5 years of their 15 year term.

The Committee takes its oversight responsibility of the District of Columbia Family Court very seriously. We created the Family Court system, and we are committed to making it successful.

I welcome today's opportunity to discuss the court with you.

Jerry Byrd has served as a Magistrate Judge in D.C. Superior Court since 1981. His legal background includes 16 years of service with neighborhood legal services.

Judith Macaluso has made a career of public service. She, too, serves as a Magistrate Judge in the D.C. Superior Court. Prior to that, Ms. Macaluso served as a trial attorney with the U.S. Department of Justice and the Department of Labor.

Michael Ryan serves as Special Counsel to the Director of the Public Defender Service. Mr. Ryan's career includes an impressive dedication to mental health issues. He is a member of the Mental Health Retardation Branch Working Group at the D.C. Superior

Court and is an advisory board member of the Criminal Justice Mental Health Consensus Project of the Police Executive Research Forum.

Fern Flanagan Saddler was nominated by President Bush to fill a vacancy created by the retirement of Judge Patricia A. Wynn. Ms. Flanagan currently serves as Magistrate Judge for the Superior Court and has served since 1991. Her impressive background also includes service as the Acting Chief Deputy Clerk of the D.C. Court of Appeals and senior staff attorney at the Court of Appeals.

I now welcome my colleague, Congresswoman Eleanor Holmes Norton for the District of Columbia, who is here to offer a few words of introduction for our nominees. Eleanor, thank you for being here with us today. You always have been very conscientious about your responsibilities, and we both recognize how important these judges are to the District.

**STATEMENT OF HON. ELEANOR HOLMES NORTON, A REPRESENTATIVE IN CONGRESS FROM THE DISTRICT OF COLUMBIA**

Ms. NORTON. Thank you very much, Mr. Chairman. And may I thank you as well for your very kind and diligent attention to matters facing the District of Columbia, not the least of which was the creation or the revision of the Family Court, the first revision in 30 years, on which you and your Committee worked so diligently, and this particular introduction is of special interest. Fifteen new judges were authorized. Three of the four nominees here today will be Family Court Judges.

You have outlined their qualifications. I will try not to repeat what you have said; rather I will quickly run through some of their impressive credentials. I will do so in alphabetical order.

Jerry S. Byrd, who is now Deputy Presiding Magistrate of the Superior Court, where he has served since 1981, graduated cum laude from Fisk University and from Howard University Law School.

Judith N. Macaluso, Magistrate Judge for 5½ years, spent 22 years as a trial and appellant attorney, won 17 awards at the Justice Department and served at the Labor Department. She is a magna cum laude graduate of Howard University Law School.

J. Michael Ryan is Special Counsel to the Director of our Public Defender Service, which we consider the best public defender service in the country. You have spoken of his work in mental health where he has special responsibilities at the Public Defender's Service. He is also an Adjunct Assistant Professor of Psychology at Georgetown University Medical School. He has a B.A. from William and Mary and has a law degree from George Washington University.

Finally, Fern Flanagan Saddler, the only judge of general jurisdiction, not for the Family Court in particular. A Magistrate Judge for 11 years, she is a graduate of Wellesley College and of Georgetown University Law School.

I very much appreciate your willingness to hold this hearing so promptly, Mr. Chairman.

Senator VOINOVICH. Thank you, Congresswoman.

You know that you are welcome to stay for the remainder of the hearing, but I know that you have a very full schedule. We thank you again for being here with us this morning.

Ms. NORTON. Thank you very much.

Senator VOINOVICH. It is the custom of the Committee to swear in witnesses. Therefore, I would ask all of you to rise.

[Witnesses Sworn.]

Senator VOINOVICH. Let the record note that all the witnesses answered in the affirmative.

I understand that some of you have family members here today as well as supportive colleagues and friends. Please take this opportunity to introduce them now and make any opening remarks that you would like to make at this time.

Mr. Byrd, we will start with you.

Mr. BYRD. Thank you, Mr. Chairman. I would like to introduce Ms. Byrd; and Jerry Byrd, Jr., who just graduated from St. John's College High School. My secretary, Aylice Cobb is here. My good friend and colleague, Magistrate Judge Aida Melendez is here. And my long-time friend and colleague for over 20 years, Presiding Magistrate Judge J. Dennis Doyle is here also.

Senator VOINOVICH. Thank you. Ms. Macaluso.

Ms. MACALUSO. Thank you, Mr. Chairman. I will make an introduction and make very brief remarks, if I may.

With me today is Vincent Macaluso, my wonderful husband of 32 years. He is retired from a long career as a public servant. Two of our children were able to be here today, Corine Macaluso, my beloved stepdaughter. She is a Transportation Specialist with the Department of Energy's Office of Civilian Radioactive Waste Management. Adam Macaluso, my beloved stepson, is a trial attorney with GEICO.

I am very pleased to introduce dear friends from my legal life, J. Patrick Glynn, a Director of the Torts Branch, Civil Division, U.S. Department of Justice; Margaret Jane Mahoney, a trial attorney with the Environmental Torts Branch, Civil Division, U.S. Department of Justice; Jim Faulk, Jr., a Federal trial attorney and sports attorney, and past Chair of the Litigation Section of the District of Columbia Bar.

I am honored to be able to introduce my very good friends from the mental health advocacy community, Joan Bowser, who is President of the District of Columbia Chapter of the National Alliance for the Mentally Ill; and Morton Schussheim who, with his late wife, Hanna Schussheim, was a Founding member of Friends of St. Elizabeths and is on the Board of Directors of the District of Columbia Chapter of the National Alliance for the Mentally Ill.

Would now be the appropriate time for me to make my brief remarks?

Senator VOINOVICH. I think what I will do is let everybody introduce their family and then we will hear statements. Thank you. Mr. Ryan.

Mr. RYAN. Thank you, Mr. Chairman.

I would like to introduce my wife, Catherine Blake Ryan; my son, Michael Porter Ryan; and my daughter, Virginia Blake Ryan.

I regret that my parents passed away and could not be here to be present, as well. The Director of the Public Defenders Service

for the District of Columbia, Ronald S. Sullivan, Jr. is here with me; my colleagues from the Public Defender Service, close friends and neighbors from my neighborhood, the Palisades. Thank you.

Senator VOINOVICH. Thank you. Ms. Saddler.

Ms. SADDLER. Good morning, and thank you, Mr. Chairman.

With me today are my wonderful husband, Reverend Paul Harvey Saddler, Executive Minister at Shaw Community Ministry in the District of Columbia; my brother, Dr. T. Earl Flanagan, Jr., retired Chief of the Dental Staff at St. Elizabeth's Hospital in Washington, DC; two of my favorite cousins, Malcolm Gee and Joan Miller are here today.

I, too, regret that my parents could not be here; they are both deceased.

I also have a host of friends, relatives and colleagues here. My colleagues that are here have already been introduced by Judge Byrd so I will not repeat that and I do thank them for coming. Here also are my secretary, Lillie Tyler; and my law clerk, Deborah Ohiomoba. I thank them for coming.

Senator VOINOVICH. Thank you, very much.

Mr. Byrd, we welcome any comments you would like to make to the Committee.

**TESTIMONY OF JERRY S. BYRD,<sup>1</sup> NOMINEE TO BE AN ASSOCIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

Mr. BYRD. Thank you, Mr. Chairman.

I see that Congresswoman Elenor Holmes Norton has gone but I want—

Senator VOINOVICH. Excuse me, Mr. Bryd, I would like to mention that Senator Carper has joined us. Senator Carper, thank you for being here.

Senator CARPER. My pleasure.

Mr. BYRD. I just want to put on the record that I appreciate her introduction of me at this hearing.

It is a privilege and an honor for me to appear here today, to have this Committee consider whether to consent to my nomination as an Associate Judge in the District of Columbia Family Court.

It is a culminating event. It is the end of a long-time dream. I appreciate the time and effort spent by the Committee members and the staff in considering my nomination.

I am particularly grateful to the staff members who worked with me and assisted me in this process, and I really needed it.

And finally, of course, I would not be here if the President had not submitted my name to the Senate, and for this I thank the President and the White House Office of Counsel to the President, who saw merit in my candidacy.

Last but not least, I am indebted to the D.C. Judicial Nomination Commission for submitting my name to the President.

One final remark: As you said, Mr. Chairman, Congress passed the D.C. Family Court Act to create a court that would specialize in family matters, particularly those dealing with children. This

<sup>1</sup>The biographical and professional information for Mr. Byrd appears in the Appendix on page 27.



Committee has an oversight function to see that the type of judges that are appointed, in fact, have the credentials that are required by the statute.

I would just like to say that as to whatever experience I may have gained over the years and I bring to the Family Court, I will dedicate it to the service of the community and D.C. children. I will devote myself to continued training, especially in the behavioral sciences as they improve in diagnosing and dealing with some of the problems that families face in the District of Columbia. Thank you.

Senator VOINOVICH. Thank you, Mr. Byrd. Ms. Macaluso.

**TESTIMONY OF JUDITH NAN MACALUSO,<sup>1</sup> A NOMINEE TO BE AN ASSOCIATED JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

Ms. MACALUSO. Thank you, Mr. Chairman and Senator Carper.

I want to thank you both for taking the time to conduct this hearing and to consider my nomination.

I also want to thank the highly professional, yet compassionate, Senate staff who helped me through the process and answered my many questions.

It is also important for me to thank the members of the Judicial Nomination Commission who recommended me as a candidate; the staff of the White House Counsel's Office and the White House Counsel, Alberto Gonzalez; and President George W. Bush for nominating me.

It would be a great privilege and a great responsibility to be entrusted with a judgeship on the District of Columbia's Family Court. Everyone who comes before the D.C. Superior Court deserves the best the court has to offer, but those involved in Family Court are truly the city's most vulnerable people, and I can assure you that, if I am fortunate enough to be confirmed as an Associate Judge on the Family Court, I will do my best to meet their needs.

Thank you for considering me.

Senator VOINOVICH. Thank you. Mr. Ryan.

**TESTIMONY OF J. MICHAEL RYAN, III,<sup>2</sup> A NOMINEE TO BE AN ASSOCIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

Mr. RYAN. Chairman Voinovich, Senator Carper, and Committee staffers, thank you.

I am honored to be nominated by the President of the United States to be a judge on the Family Court. I am honored to appear before the Governmental Affairs Committee and the U.S. Senate for confirmation.

I grew up in a house in which commitment to public service was always regarded as the highest and best use of one's talents. My father, Joseph Michael Francis Ryan, Jr., who passed away last summer, was a judge on the Superior Court and its predecessor courts for 35 years, the first 10 years actually in a family assign-

<sup>1</sup>The biographical and professional information for Ms. Macaluso appears in the Appendix on page 41.

<sup>2</sup>The biographical and professional information for Mr. Ryan appears in the Appendix on page 76.

ment. He was an attorney for the Department of Justice and in the U.S. Attorney's Office before that.

My grandfather, Joseph M. F. Ryan, Sr., was a lawyer in Philadelphia for over 50 years.

My commitment to our community and its legal system runs deep. My wife, Catherine, and I are raising our children, Virginia and Porter, to feel this commitment, to appreciate these same values and to understand that the ultimate measure of one's worth is the manner in which we serve our community.

My career, from law school to present, honors this commitment. As an attorney for the Public Defender Service in our Mental Health Division, trying many cases in the court's Family Division, it has been my privilege to serve our community for almost 18 years.

I have always relished the chance to give a voice to those least fortunate in our society. And the role of the zealous advocate is, without doubt, very important. However, the impartial judge is the sine qua non of our system of justice.

If given the opportunity to serve on the Superior Court, I will strive to emulate the best of those who have gone before me, and in front of whom I have practiced, judges who provide an accessible forum for the solution of problems, judges who respect both the law and the litigants, and judges who demonstrate patient fairness in the resolution of disputes.

Thank you for this opportunity to address the Committee. The new Family Court is both a challenge and a promise. My career, I would submit, has prepared me to meet this challenge and I am dedicated to fulfill the promise to this city if given the opportunity.

Senator VOINOVICH. Thank you, Mr. Ryan. Ms. Saddler.

**TESTIMONY OF FERN FLANAGAN SADDLER,<sup>1</sup> A NOMINEE TO BE AN ASSOCIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

Ms. SADDLER. Thank you, Mr. Chairman, Senator Carper, and staff members, for this opportunity to make remarks.

I would like to say that it is quite an honor and a privilege to be here today. I am so humbled by this occasion.

It has been a lifelong dream of mine to become an Associate Judge of the Superior Court of DC.

There are so many persons that I wish to thank today. Obviously, I do not have time to thank everyone; we would run out of time. But I would especially like to thank the Judicial Nomination Commission for submitting my name to President George Bush as a candidate for the Superior Court. I wish to thank the President for nominating me as an Associate Judge of the Superior Court. And I would like to thank the Senate staff and the Senate for convening this hearing today. The staff has been particularly helpful and has worked diligently to get me to this stage and through the process.

I would also like to thank, even though she left, Delegate Eleanor Holmes Norton for introducing me today, and Senator Paul

<sup>1</sup>The biographical and professional information for Ms. Saddler appears in the Appendix on page 113.

Strauss, Shadow Senator for the District of Columbia, for being here today and submitting a statement in support of my nomination.<sup>1</sup> And also, to Senator John Warner and his staff for supporting my nomination, also, and for the statement submitted in support.

If confirmed, I will be an excellent Associate Judge and will do my best to serve the District of Columbia to the best of my ability.

Thank you very much.

Senator VOINOVICH. Thank you. For the record, I would reiterate that the Judicial Nomination Commission recommended your names to the President of the United States. The President then recommended you to the Senate. The Committee reviewed reports from the FBI on each of you. The staff of this Committee have reviewed your qualifications and have asked you many of the tough questions you needed to answer.

I have personally reviewed the FBI files on each of you, and I am impressed by your qualifications. The fact that three of you have served as magistrates and have been in public service a long time, it is very comforting to me as you are moving into new positions.

Mr. Ryan, you spoke very eloquently, and you are anxious to have an opportunity to serve.

This court is very important. I come from a State where we have juvenile judges. I must tell you that when I appointed those judges to fill a vacancy I really paid a lot of attention to the qualities and qualifications of the individuals. As a judge you have an opportunity to make a real difference in the lives of some youngsters and families that really have some problems.

What you do and how conscientious you are in carrying out your responsibilities, can leave a lasting impression. You can touch a family. You can touch the individual that comes before you and make a difference for the rest of their lives.

That is why we were so interested to establish the Family Court, so we would have that kind of special attention you will bring. You all have unique experiences, and as you to start to work with these cases, with the social workers, and so forth, you have an unbelievable opportunity to touch the lives of people and make a real difference.

I hope you look forward to that opportunity. It is a special one.

Senator Carper, would you like to make any comments before I ask the witnesses to answer some questions that they are required to answer?

#### **OPENING STATEMENT OF SENATOR CARPER**

Senator CARPER. Like Governor Voinovich, I was once a governor. In Delaware, we do not elect judges, we appoint them. Governor's nominate them. We have a judicial nominating commission. They submit the names to the governor and the governor considers those nominees, nominates one and our State Senate than has the opportunity to hold hearings and then to vote to confirm or not to confirm.

<sup>1</sup>The prepared statement of Senator Paul Strauss appears in the Appendix on page 18.

So this is a process we have both been through from earlier parts of our life and I look forward to asking some questions of all of you.

Thank you for coming, and a special welcome to your families and to the Shadow Senator sitting out there in the audience.

Senator VOINOVICH. There are three questions that I am required by the Committee to ask each if you.

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? I would like each one of you to respond.

Mr. BYRD. No, sir.

Ms. MACALUSO. No.

Mr. RYAN. No, sir.

Ms. SADDLER. No, sir.

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

Mr. BYRD. No, sir.

Ms. MACALUSO. No, sir.

Mr. RYAN. No, sir.

Ms. SADDLER. No, sir.

Senator VOINOVICH. Do you know of any reason, personal or otherwise, that would in any way prevent you from serving the full term for the office to which you have been nominated?

Mr. BYRD. Mr. Chairman, I would say that I can serve the 5-year term in the Family Court, but would not be able to serve the 15 year term of the regular Associate Judge because I will be forced to retire before I can serve my 15 years.

Senator VOINOVICH. Why would you be forced to retire?

Mr. BYRD. The retirement age is 74 and I am 67 now.

Senator CARPER. You are not. Do you have any ID we could see? Whatever you are eating and drinking, keep it up.

Mr. BYRD. Other than that, yes, I can serve.

Senator CARPER. God, you are old. So am I.

Mr. BYRD. Senator Carper, I believe that Shadow Senator Strauss, introduced me to you in the Senate cafeteria about a week ago.

Senator CARPER. We were eating spinach salads that day, as I recall.

Senator VOINOVICH. Ms. Macaluso.

Ms. MACALUSO. There is nothing that would interfere with my serving out my full term. Thank you, Mr. Chairman.

Mr. RYAN. There is nothing that I am aware of that would interfere with my serving a full term, Mr. Chairman.

Senator VOINOVICH. Ms. Saddler.

Ms. SADDLER. There is nothing I am aware of that would prevent me from serving the full-term.

Senator VOINOVICH. Thank you.

I have a few additional questions that I now would like to ask, but I am going to yield to Senator Carper. He was so kind to come in and appear here this morning. So often, when I have done this, none of my colleagues are able to attend. It is not that they are

not interested, but everyone is so busy. They know that you have all gone through the rigors of this whole process.

But I particularly appreciate Senator Carper being here and Senator, I would like to give you an opportunity to ask any questions that you might have because I know you are very busy.

Senator CARPER. You are very kind, Mr. Chairman. Thank you very much.

I have three questions I want to ask of each of you. I will mention the questions and then we will come back and take them one at a time. I would like for you to answer these questions in about a minute, if you will. So fairly crisp responses.

Why do you want to be a judge? And particularly why do you want to be this kind of judge?

Setting aside modesty, I admire modesty in people, but setting aside modesty, why are you well prepared to assume these responsibilities?

And how about describing for us the attributes of judges whom you admire and who you would seek to emulate?

Mr. BYRD. I guess I go first?

Senator CARPER. Since you are the oldest.

Mr. BYRD. The reason I would like to be an Associate Judge is that I have served as a Magistrate Judge for a long time and I have found that—an Associate Judge, of course, has more responsibility and can do more in terms of assisting the community and helping the Family Court than a Magistrate Judge.

As an Associate Judge, I would have more control over the cases that I have. I would control the cases from the beginning to the end. I would be able to fashion orders and solutions to problems that, as a Magistrate Judge, I would not be able to do because once a Magistrate Judge gets through with preliminary proceedings the case is passed over to an Associate Judge.

I think I am well prepared for an assignment in the Family Court. I guess out of the 20 years I have been at the court, I have spent, maybe 10 or 15 years dealing with family matters one way or another. So, I have dealt with the type of family cases that I would get as an Associate Judge, at least in their preliminary stages.

For example, in our abuse and neglect cases, as a Magistrate Judge, I have dealt with the initial hearing stages and the initial placement of the children, but I have not dealt with the fact-finding or dispositional hearings. That is something I would have to do as an Associate Judge.

But the divorces and other items such as mental retardation cases, mental health cases, establishing paternity and child support cases, I already do. So I would think that I would be qualified in these areas.

As far as attributes for a judge, I would say that Judge James Belson, who is now a Senior Judge at the Court of Appeals but started out as a Judge in Superior Court, has attributes of a judge that I emulate and that I think are very good.

Senator CARPER. What are those?

Mr. BYRD. He has, first, a good judicial demeanor. He is competent and intelligent. He was compassionate as a trial judge, and he dealt with his cases on an expedited basis. After he served for

10 or 15 years as a trial judge he went to the Court of Appeals where he writes instructive and understandable decisions. This shows to me that he is well-rounded. He is well-liked and well-respected.

So he is the type of judge that I would emulate, that I do emulate.

Senator CARPER. Thank you.

Ms. MACALUSO. Senator Carper, to address your first question of why I want to be a judge, I have always felt, even as I was a lawyer for 22 years, that was the part of the legal system that most fit my personality. What I really wanted to do was make the case come out right, rather than be an advocate for one side.

And then I was fortunate enough to become a Magistrate Judge, which is a judge of a court of limited jurisdiction. I found that was indeed the niche within the legal system that satisfied me best.

Being a judge of the Family Court is a particular attraction and a wonderful opportunity. It is an opportunity to serve, as I indicated before, the most vulnerable citizens of the District of Columbia and to serve them at a particular time when the Family Court is first being formed, when we will be able to make a most important contribution to shape the Family Court.

As Judge Byrd indicated, the Magistrate Judges are particularly well prepared to make this contribution. We have already presided over many of the kinds of cases involved in Family Court, child abuse, child neglect, juvenile delinquency, paternity, child support, uncontested divorces, mental retardation. We have handled mental health issues in the context of criminal calendars. We have handled domestic violence issues on the domestic violence calendar and also in the context of felony criminal calendars. And we have done so in the role of a judge.

So we do come to this position, I think, particularly well prepared.

Attributes that I would seek to emulate, I particularly admire Noel Kramer on our court, and she has a plaque in our own personal office within her chambers. On that plaque are written the words, "Patients, Dignity, Fairness." Those are certainly three wonderful attributes for me to keep in mind, as this judge I respect very highly, keeps them in mind on a daily basis.

You cannot put everything on a plaque, so to that I would add "Timeliness." I think it is tremendously important for a judge to issue decisions quickly.

And also respect for each individual who comes before you. It is vitally important that a judge never lose the sense that those people before the judge are distinct individuals. They are not just items on that day's conveyor belt.

Those are the attributes that I hope to emulate.

Senator CARPER. Those are great attributes. I would hope that all of you would subscribe to them and embrace them.

They are great words on the plaque but they are even better when they come from your heart. Mr. Ryan.

Mr. RYAN. Senator Carper, thank you.

I would like to become a judge. I have been an advocate for many years and I would like very much to be the problem solver, the per-

son who ultimately helps the community solve the problems that are brought to the courthouse.

As a public interest lawyer, the pinnacle of community service, as far as I am concerned, short of joining the legislature perhaps, is being a trial judge. I would like very much to do that.

I believe that I am qualified for that because of the extensive experience that I have had litigating in most of the divisions of the courthouse.

Specifically for the Family Court, the experience that I have had in mental health law, I believe uniquely qualifies me for that and prepares me for it, because the mental health issues that one sees in the courthouse go through all of the different divisions and they affect, especially in the Family Division, the development of children and the forces that keep the family together and drive a family apart.

So I would say that my mental health experience is very important in bringing me to the Family Court.

With respect to qualities that I admire in jurists, the ability to make the courthouse an accessible forum to all people is perhaps most important to me. Judges who demonstrate respect for both the law and the litigants, the parties that are before them, and everyone in the courtroom, and give the community the impression that this is a very serious and honorable thing that is being undertaken in the courthouse is very important to me.

And patient fairness is ultimately what I would look for in myself as a judge and what I have admired in others. There are many great judges that have practiced in front of me over the years and the ones that came to mind immediately were Truman Morrison and Ricardo Urbina and Emmett Sullivan, three great judges that I have had the privilege of appearing in front of and would love to do as well as they have done.

Senator CARPER. Thank you, Mr. Ryan. Ms. Saddler.

Ms. SADDLER. Thank you, Senator.

In response to your question of why I want to be an Associate Judge, as I mentioned earlier, that has been a lifelong dream. And I have served for the past 12 years as a Magistrate Judge at the Superior Court of the District of Columbia and have rotated among the three divisions and have extensive experience in all three divisions.

I want to an Associate Judge. There are some things that Associate Judges do that the Magistrate Judges cannot do and I would like the opportunity to do that. For example, the Associate Judges conduct jury trials whereas as we do not do that. Every trial we do is a bench trial. So I look forward to that opportunity. And there are some assignments or divisions that we do not have jurisdiction over, such as landlord and tenant. So I look forward to those assignments.

And I would like to be an Associate Judge because I believe I can help the court. I have done a good job, a very good job as a Magistrate Judge. I am familiar with the players there. I know just about all of the staff. I am very familiar with the court and its divisions. I think I can be very helpful to this court.

Senator CARPER. Just describe the attributes of the kind of judge you would be.

Ms. SADDLER. I believe one of the most important attributes of a judge is an excellent judicial temperament, somebody who treats all litigants fairly, with dignity, and with respect, who is well-prepared when they come to the bench, makes well-reasoned decisions based upon the law, and applicable facts in each case.

As to the attributes of judges that I admire, I would name Judge Nan Shuker and Judge Paul Weber. I have worked with both of them extensively, especially Judge Shuker when I was in the Civil Division, and Judge Paul Weber was also—I worked with him closely before he retired when I was in the Civil Division. They both are very well-prepared judges. And I have also appeared in front of them when I was an attorney.

They are well-prepared with their cases. It appears that they have read the materials and are familiar with the materials. They always appear fair and just. They take the bench on time. They have proper courtroom demeanor and decorum in my view.

Senator CARPER. Mr. Chairman, as Ms. Saddler concludes her remarks, I am just reminded that most of the attributes that they have described that they would seek to be in a judge would be good attributes for guys like us.

Thank you for letting me join you, Senator Voinovich. I serve on a bunch of different committees, and I have another one that is meeting right now and I am going to slip out and join that.

Thank you for giving me a chance to ask those questions. Welcome and good luck. Thanks for your public service. And to your families that are gathered in the room with us today, thank you for sharing your loved ones, even your cousins, with the people of this district. Thank you.

Senator VOINOVICH. Thank you, Senator Carper.

I thought that Senator Carper's questions were very well stated and your responses were very kind. And quite frankly, some of the questions that I wanted to ask you already answered for me.

Mr. Ryan, I have a question I would like to ask you. After this hearing is over, your names will be brought to the Committee for consideration and then Members will have to decide if they will recommend you to the full Senate. And I am sure that one of the questions that will be on the minds of many of the Members when they look at the record, is the issue of the tax difficulties that you disclosed to this Committee in your pre-hearing questionnaire.

I would like you to comment on the record about this. As I say, it will be an issue that will be raised by some of them and I would rather have it in the record so that we do not have any question about it.

Mr. RYAN. Surely, Mr. Chairman. There were taxes that we filed late as a result of having to have a major overhaul of the way our income had been calculated. And we worked with the IRS to make those filings. We paid everything that was due and owing, although we did pay them late. We filed extensions up until a point and worked closely with the IRS to file what we were supposed to file when we could. We met all of our obligations and have thereafter, sir.

Senator VOINOVICH. I would like a commitment from you today in public that you are going to file your returns from now, on time.



Mr. RYAN. Absolutely. You have that. And I have done that since then.

Senator VOINOVICH. There will never be any question whatsoever in the future.

Mr. RYAN. You have that, Mr. Chairman.

Senator VOINOVICH. All of you have to understand that you are going to set an example for other people. Frankly, what you do in your personal, private lives many times, as you know in this business, gets out in the press. And if you say one thing to somebody in the Courtroom and you do something else, the impact that you have on those individuals is not positive.

Thank you, very much, Mr. Ryan.

Mr. RYAN. Thank you Senator.

Senator VOINOVICH. One of the things that the statute requires is that all Family Court judges must have, Mr. Byrd, Ms. Macaluso, and Mr. Ryan, training and experience in family law, must intend to serve the 5-year term, and must certify to the chief judge that he or she will participate in ongoing training programs.

I would like to know, first, do you all agree to conscientiously participate in the training sessions? And if any of you would like to comment on that, I would be interested in hearing your thoughts.

Mr. BYRD. Yes, sir. I would like to say, Mr. Chairman, that with respect to the training program, that I would and will presently participate in the training programs in Superior Court.

And that not only is it required by the statute, but that I think it will make me a better Family Court Judge. As a person who has gone to law school and as a judge, I can oftentimes read new legal decisions and I do not really need that much training. But when it comes to applying the behavioral sciences to the volatile situations that we get in these family law cases, then I know that I am in need of that type of training, that type of introduction to those disciplines.

The presiding judge of the Family Court, Joe Satterfield, has ongoing training. And I just yesterday went to a training session. So I intend to fully go to all training sessions, not only because they are required by statute, but because it will make me a better Family Court Judge.

Senator VOINOVICH. Thank you. Ms. Macaluso.

Ms. MACALUSO. Mr. Chairman, I do not think I can improve upon or even enlarge upon the remarks that Judge Byrd just made. I was with Judge Byrd yesterday in the training session that we had over the lunch hour. As a matter of fact, there is another training session starting at 4:30 this afternoon.

Both of us are very dedicated to attending these training sessions.

We have been very fortunate because, as Magistrate Judges already at the court, we have had the opportunity over the last several months while our nominations have been pending to start this training and to attend the ongoing Family Court training. We both know how valuable and on point this training is.

Thank you, sir.

Senator VOINOVICH. Mr. Ryan.

Mr. RYAN. I look forward to any opportunity to go to trainings dealing with the Family Court and trainings generally dealing with the work of being a judge. I look forward to it, sir.

Senator VOINOVICH. Ms. Saddler, the training that you have received, have you found it well worthwhile in your responsibilities as a magistrate?

Ms. SADDLER. Extremely worthwhile. I have been a member of the Judicial Training Committee for several years. And in that aspect on several occasions I am called upon to train. Often it is helpful to learn when you are training, also.

But I have found it extremely helpful to go to all the training sessions, have tried to go to all of them, and will participate in any training for whatever division I am sent to, if confirmed.

Senator VOINOVICH. Under the Family Court Act, ongoing training for Family Court judges must include child development, family dynamics including domestic violence, relevant Federal and D.C. laws, permanency planning and practice, and recognizable risk factors for child abuse.

I just want to repeat that again. It includes child development, family dynamics including domestic violence, relevant Federal and D.C. laws, permanency planning and practice, and recognizable risk factors for child abuse.

Since you started the training, Mr. Byrd and Ms. Macaluso, do you think there is anything else that we ought to have included in there in terms of training?

Ms. MACALUSO. May I jump in to speak for that?

I do not know that the area of mental illness has been specifically highlighted in that list. And yet, mental health issues permeate virtually all of the child abuse and child neglect cases and are present in a great majority of the juvenile delinquency cases.

I know that, although that category is not specified, certainly Michael Ryan, if he is fortunate enough to be confirmed, and I if I am fortunate enough to be confirmed, are dedicated and motivated with respect to those issues.

Judge Ann O'Regan Keery at the court is a former General Counsel of St. Elizabeths and we have something of a mental health caucus building at the court, now. And I know that area of training will be something we will work very hard to address.

Senator VOINOVICH. Thank you. That is a very good point. You are right, that if you go back to it there is usually some problem that deals with mental illness.

I will be interested to see the recommendation that just came out of the President's Commission. Michael Hogan, who is the Chairman, is the Mental Health Director for the State of Ohio. I hired him many years ago, and he continues to serve in that capacity.

I think that mental illness is something that we need to talk more about in this country because it can have a profound impact on our society.

That is a good suggestion. We will have the staff make note of that.

I think that I have asked enough questions. Would any of you like to make any further comments before we adjourn this hearing?

Again, I would like to thank all of you for coming here today, and I would like to thank the members of your families for being here

and backing you up. I know that this is a special time for your families. Many of you have indicated that reaching the bench has been a desire on your part for a long time. And today, if everything goes the way I expect it to, that desire that you have will be achieved.

I think the fact that you have diverse experiences, it is a great benefit. You have worked your way up and get your eye on that job, and wow, I have an opportunity to serve and make a difference for my fellow human beings.

So again, thank you very much for being here. And for the children that are here, you can mark this down in your books as a special day. Again, thank you very much.

The hearing is adjourned.

[Whereupon, at 10:47 a.m., the hearing was adjourned.]



## A P P E N D I X

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### PREPARED STATEMENT OF SENATOR LAUTENBERG

Mr. Chairman, we have before us four nominees to be Associate Judges of the Superior Court of the District of Columbia. I would make two related points.

The District of Columbia has more people than Wyoming and nearly as many as Vermont and Alaska. Yet DC is not a State and so does not have two U.S. Senators; its House Member, Delegate Eleanor Holmes Norton, had her voting privilege rescinded by House Republicans when they took over in 1995.

It would be easy—and terribly *unfortunate*—for the Administration to try to “ram” judicial nominees down DC’s throat. There have been far too many instances over the years in which the Executive Branch and, I’m sorry to say, Congress have run roughshod over Home Rule in D.C.

*Fortunately*, that does not appear to be the case here.

We have the DC Judicial Nomination Commission, which compiles and submits a list of nominees to the President. The President makes his selections from that list.

Which brings me to my second point: I think it is refreshing that the District of Columbia—one of the most progressive jurisdictions in the country—can come to some agreement with a conservative Republican President on judicial nominees?

I think it is a model we ought to be looking at with regard to reaching a consensus on other Federal judicial nominees.

Thank you, Mr. Chairman. I look forward to hearing from our nominees.

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### PREPARED STATEMENT OF SENATOR WARNER

Chairman Collins, Senator Lieberman, and my other distinguished colleagues on the Senate’s Government Affairs Committee, I thank you for holding this confirmation hearing today.

Today, I am pleased to introduce to you Magistrate Judge Fern Flanagan Saddler, who has been nominated to serve as a judge on the District of Columbia’s Superior Court.

Miss Saddler has a strong legal background. Subsequent to earning her J.D. at Georgetown University Law Center in 1979, she practiced law for many years in Washington, D.c. at the law firm Mitchell, Shorter and Gartrell. She represented many clients in civil, family, and criminal cases before local and Federal trial courts as well as Federal appellate courts.

Over the years, Magistrate Judge Saddler has served the District of Columbia Court of Appeals in many capacities. First, she served as a Senior Staff Attorney for the court, and then as the Acting Chief Deputy Clerk.

In February 1991, she was sworn in as a Magistrate Judge for the Superior Court of the District of Columbia. For the past 11 years, she has rotated among the Family, Criminal, and Civil Divisions of the court.

As you can see, Magistrate Judge Saddler’s experience with the law is extensive. I support her nomination, and look forward to the Committee reporting out her nomination favorably.

Statement of

Paul Strauss

United States Senator

District of Columbia

Before the Committee on Governmental Affairs

United States Senate

On the Nominations of;

The Honorable Jerry Stewart Byrd to be an Associate Judge  
of the Family Court of the District of Columbia;

The Honorable Judith Nan Macaluso to be an Associate Judge  
of the Family Court of the District of Columbia;

Joseph Michael Francis Ryan, III, to be an Associate Judge of the  
Family Court of the District of Columbia;

The Honorable Fern Flanagan Saddler to be an Associate Judge  
of the Superior Court of the District of Columbia.

Wednesday, June 18, 2003

Dirksen Senate Office Building

Room 342

Chairman Voinovich and Members of the Senate Committee on Governmental Affairs, I am Paul Strauss, a United States Senator elected by the voters of the District of Columbia, a position sometimes referred to as the Shadow Senator. I am also an attorney practicing in our local courts. In each of these capacities, I appreciate the opportunity to provide this statement on behalf of my constituents in the District of Columbia. I wish to express my enthusiastic and wholehearted support toward all four of President George Bush's nominees to be Associate Judges of the Superior Court of the District of Columbia, and the newly created Family Court of the District of Columbia. The individuals which are the subject of today's Confirmation Hearing are The Honorable Jerry Stewart Byrd, Fern Flanagan Saddler and Judith Nan Macaluso, all presently Magistrate Judges in our court. The final nominee is Mr. Joseph Michael Francis Ryan, III. He is the son of a former Associate Judge of the Superior Court, and a gifted attorney in his own right. I have taken the time over the past several weeks to familiarize myself with the record of these individuals, and spent some time with them personally on an individual basis. As a result of these efforts, I am confident that all of these individuals are extremely well-qualified candidates that would be excellent additions to the District of Columbia Superior Court bench.

I would like to take this opportunity to address the specific qualifications of each of the individual nominees. It is appropriate to begin with the three Magistrate Judges, and I will address them in order of seniority. Before doing so, it is fitting to briefly focus on the qualifications and careers of these Magistrate Judges as a group, because in many ways they have already advanced themselves into the positions for which they are before this Committee today. All of them began as what was formerly called "Hearing Commissioners", in our Court system. The jurisdiction of these Commissioners was initially a fairly, limited one, in which they were restricted to drafting orders which then needed to be signed off on by Associate Judges. Over time, due in large part to the professionalism and quality of judicial service by the very nominees before you, the role of these Commissioners expanded and their duties and responsibilities grew until their positions evolved into the Magistrate Judges of today's court. In essence, through their prior judicial service, they have already elevated themselves to Judgeships. Nevertheless, the "promotions" that are before you today are well deserved, and in some cases, long

overdue.

**The Honorable Jerry Stewart Byrd**

The most senior of the nominees for Associate Judge of the Family Court in Superior Court is Judge Jerry Stewart Byrd. Judge Byrd's nomination bid to the Family Court has been long overdue. Through his education and experience in practicing law, Judge Byrd has already spent over twenty years on the bench. He attended Howard University School of Law on fellowship and has a broad understanding of the legal system, particularly those areas concerning family law. In addition to working for the Regional Advice Branch of the National Labor Relations Board, Judge Byrd has used his legal skills at the Neighborhood Legal Services Program as staff attorney and later, as managing attorney, where he put his impeccable knowledge to work. The economically disadvantaged of the District of Columbia depended on this legal program. Foregoing more lucrative opportunities in private practice, Judge Byrd has shown the consideration and heart he has for D.C. citizens. His typical clients were persons best described as the working poor with legal matters regarding housing problems, child support disputes, as well as cases involving marriage, adoptions, and juvenile concerns.

Beyond his activism at the community level in local D.C. neighborhoods, Judge Byrd is highly regarded by community members and his colleagues as Magistrate Judge. Judge Byrd is one of few judges who live east of the Anacostia River, a geographic area long under-represented in our judiciary. Because he is truly a part of this District of Columbia community, he is able to relate to community problems more directly and can identify with their difficulties. Not only is he Deputy Presiding Magistrate Judge in his section of the Court, but he was also awarded the Superior Court Medal of Excellence for his committee work on the Court. Many of his opinion articles are published in the *Daily Washington Law Reporter*, twelve of them in the area of family law. Perhaps no higher compliment exists than to have the support or admiration of one's colleagues. The Honorable Ronald A. Goodbread, Magistrate Judge, writes in a statement:

Judge Byrd is, by far, the prime candidate for this nomination on that basis alone. Having already spent over 20 years on the bench, he has more experience than all of the other Magistrate Judges combined. His maturity, experience, and judgment on these issues is, in fact, unsuppressed by anyone already on the Superior Court. In addition, he is one of the Court's leading judicial scholars. He has shown his mastery of



arcane legal issues in virtually every branch of the law, having published 19 opinions in our local legal organ, the Daily Washington Law Reporter, 12 of them in the area of family law. He is highly regarded not only by members of the bar but also by his colleagues on the bench. He is currently Deputy Presiding Magistrate Judge in our section of the Court, a position of leadership which his service earned him in the eyes of his colleagues here. In 2002, the Chief Judge awarded him the Superior Court Medal of Excellence for his committee work on the Court, one of only two judicial officers ever to receive that award. Simply put, he is in a league by himself in laying claim to one of the three Associate Judgeships currently vacant.

Finally there is this: After over 20 years of service at our level of the judiciary here, he has at long last been put forward by the D.C. Judicial Nominations Commission for the first time. Now, after all those years of "labor in the vineyard" he has the chance that he so richly deserves. It is no coincidence, in my view, that this wait has had much to do with the fact that he is a conservative, both in personal and judicial philosophy. The grandson of a slave, he brings to the bench and to this community the very best of ...ethical principles...<sup>1</sup>

He has also received an award for his services as a member of the Board of Directors of the Hospitality Community Federal Union and beyond his extensive knowledge of law, he was Honorably Discharged from the United States Army. Judge Byrd would be a valuable asset to the Superior Court with his wisdom, background and capacity for understanding others. I urge favorable action on his nomination as soon as possible.

#### **The Honorable Fern Flanagan Saddler**

The next nominee for an Associate Judge position on the Superior Court is Magistrate Judge Fern Flanagan Saddler. Judge Saddler's previous experience as Senior Staff attorney and Acting Chief Deputy Clerk in the District of Columbia Court of Appeals shows her dedication to the District's citizens, in addition to practicing law in D.C. for more than twenty years. Attending Wellesley College on scholarship and receiving her law degree from Georgetown University Law Center, Judge Saddler has been a D.C. citizen since law school. Judge Saddler has an accomplished record in law and was an Associate Attorney for Mitchell, Shorter & Gartrell. She dealt with many

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<sup>1</sup> Letter from Hon. Ronald A. Goodbread to Special White House Counsel, H. C. Bartolomucci, Esq. December 10, 2002.

civil, family, criminal, and probate matters in both local and Federal trial and appellate courts. A year before she was appointed as a Hearing Commissioner, Judge Saddler served as Acting Chief Deputy Clerk for D.C.'s Court of Appeals where she assisted the Chief Judge in preparing the Court's calendar. Serving as Magistrate Judge for the District of Columbia since 1991, she has most recently worked in the Family Division of the Court. It is here Judge Saddler has presided over many cases involving divorce and child abuse. She has also rotated among the Criminal and Civil Divisions of the court while presiding over thousands of matters in those divisions. Judge Saddler was also Assistant Bar Counsel to the Board on Professional Responsibility of the D.C. Court of Appeals from 1984 to 1987. It was here she initiated and conducted investigations pertaining to alleged professional misconduct by members of the District of Columbia Bar. Also during this time her article, "Representation of an Uncooperative Client" was published in District Lawyer. By all accounts she has in her hard work achieved much success.

Not only is Judge Saddler valuable to the District of Columbia court system but she is also a well-respected citizen in D.C. She has been active in many community, civic and professional organizations. She was the South Manor Neighborhood Association 1999 Grassroots Honoree while also receiving a Certificate of Appreciation from the Judicial Council of the Washington Bar Association. Judge Saddler also displays a strong commitment to her community as a member of both the South Manor Neighborhood Association and the Plymouthite Club, formed from the Plymouth Congregational United Church of Christ. Moreover, a significant portion of Judge Saddler's law work involves working in the juvenile court system helping troubled youths and neglected children. Her soft spoken but firm demeanor creates an appropriate judicial temperament. Through her record of community and church involvement, Judge Saddler displays the many worthy characteristics which make it clear to me and all who know her that she would do an excellent job representing the District of Columbia as an Associate Judge for Superior Court. I must remind the committee that her nomination for Associate Judge has been pending for some time and I respectfully request prompt action on her confirmation.

**The Honorable Judith Nan Macaluso**

The third nominee for Family Court on the District of Columbia Superior Court is Judge Judith Nan Macaluso. Judge Macaluso has an accomplished record. She has served not only as a Magistrate Judge in all Divisions of the District of Columbia Superior Court, but she has also been a successful trial lawyer for the United States Department of Justice and the U.S. Department of Labor. As litigation attorney for seven years working in the Solicitor's Office of the U.S. Department of Labor, Judge Macaluso specialized in appellate practice. She defended the Occupational Safety and Health Act's regulations and civil prosecution in the United States Court of Appeals. She was an immigration attorney in 1985, developing a specialty in political asylum cases, and then began working as trial attorney for the United States Department of Justice, often defending the government in complicated environmental tort cases covering widespread environmental issues. Judge Macaluso also dealt with contract cases as trial attorney. The diverse array of issues Judge Macaluso has handled shows how she can adapt to any situation in the court system.

In her six years as Magistrate Judge, Judge Macaluso has made significant contributions in proceedings of all natures including family court matters, civil division and criminal division. Within each of these capacities, Judge Macaluso has presided over hundreds of cases involving child abuse and neglect, juvenile delinquency, mental retardation, domestic violence and divorce. At the Department of Justice, she specialized in environmental health issues, while concentrating on mental health issues in Superior Court, serving on the Court's Pretrial Mental Examination Committee among other things. Judge Macaluso also contributed a memorandum of recommendations for improving the Court's supervision of the care afforded mentally retarded individuals and wrote the current edition of the Court's Mental Retardation Bench Book, which she also revises yearly. She was involved in such projects as the Mental Health and Mental Retardation Working Group, a committee of the Superior Court's Family Division, and on the OPTIONS Program Review Committee. Both were short-term positions, but the results from each have been successful. Judge Macaluso is also a Board Member and secretary of the National Alliance District of Columbia Chapter for the mentally ill. Judge Macaluso is aware of the seriousness of each case she has presided, and how every

decision must be approached with the utmost care. Four of her opinions are published in *Daily Washington Law*, with one of particular significance. In *Wisconsin Avenue Sunoco v. Boone*, a towing company could not recover storage charges when it failed immediately to inform a vehicle's owner that his vehicle had been towed. She has received numerous awards, including Special Recognition by the American Bar Association, the Court Critic's Award in 2002 and seventeen awards from the U.S. Department of Justice while she tenured there. This obviously shows her competence as a Magistrate Judge and the experience and intelligence she would bring to Superior Court.

**Mr. Joseph Michael Francis Ryan III**

Mr. Joseph Michael Ryan is the final nominee for D.C. Family Court Associate Judge. He is an accomplished lawyer. Mr. Ryan's professional work experience makes him a rounded, well-qualified candidate for the position of Family Court Associate Judge. He belongs to many organizations focusing on mental health problems including serving as Chairman of the Jail Diversion Task Force and Advisory Board Member for the Criminal Justice/Mental Health Consensus Project, to name a few. On the Jail Diversion Task Force, Mr. Ryan helped design the OPTIONS program, a diversion-style program for non-violent criminal defendants who have serious mental illness. It helps individuals by offering assertive case management, while also including medication support and housing. As mentioned above, the Police Executive Research Forum's Consensus Project analyzed and drafted appropriate police response to individuals whose behaviors reflected severe or serious mental illness. The project report was issued in 2002. Mr. Ryan's legal career entails many positions including member of the Mental Health and Mental Retardation Branch Working Group, a short-term committee of the Superior Court's Family Division. He identified and found solutions to problems in the operations of this Division, while also helping to implement the new Family Court. He was also staff attorney for the Mental Health Division at Saint Elizabeths Hospital and most recently, Special Counsel to the Director for the Public Defender Service for the District of Columbia (PDS). Dedication to these organizations shows the commitment and seriousness Mr. Ryan puts into his work and would carry as Family Court Associate Judge.

Receiving a law degree from George Washington University in 1982, Mr. Ryan has been studying and advocating mental health law issues in the District of Columbia area for long time. An Adjunct Assistant Professor at the Georgetown School of Medicine, Mr. Ryan has imparted his education and experience to students and professionals through a numerous amount of lecture and panelist programs. Within his uncompensated appointment, Mr. Ryan initially taught a portion of Psychiatry & The Law as one of several core faculty, and since 1996 has provided clinical courtroom experience and participation in clinical case-conferencing for psychiatry residents and third year medical students. Through these experiences, Mr. Ryan's involvement with inpatient psychiatric services has included lecturing on topics such as standards for civil and criminal commitment and forced medication issues. Knowledge of the substance and quality like that of Mr. Ryan's pertaining to mental issues is valuable and infrequent. He started out, as I did, as a law student in a clinical program helping low-income residents. Mr. Ryan continues to support the District of Columbia Law Students in Court (LSIC) programs as a frequent guest lecturer. District of Columbia LSIC Program director Ann-Marie Y. Hay has said of Mr. Ryan, "*He is so generous with his time when it comes to training law students and he is particularly skillful when it comes to dealing with clients facing mental and emotional challenges.*"

He has also published many mental health articles and was a contributing writer to the *Mental & Physical Disability Law Reporter* from 1993 until 1995. This kind of expertise on mental health issues can be advantageous to the Family Court. As Special Counsel for the Public Defender Service, Mr. Ryan coordinated agency-wide provision of expert witness services and provided administrative oversight to offender rehabilitation divisions. Taking time out from his busy schedule, Mr. Ryan has participated in Trial Advocacy Skills Training in San Francisco, CA, where he helped train poverty lawyers in trial skills.

As the son of a Superior Court Judge, he has grown up with an understanding of the responsibilities that come with the robe. I am confident that while he will honor the Ryan family tradition of Judicial service, I also believe that his Judgeship will be in many ways distinct from his father's, reflecting the values of his generation, and a special understanding of the challenges facing all of us in today's complex and frequently

stressful times.

Mr. Ryan's outstanding work in the legal field, his high standards of conduct and his professionalism display the devotion as well as ambition he has to make a great Court Associate Judge. Although his father is not physically with us here today, he would no doubt be deservedly proud of him. It is clear to me that Mr. Ryan would make a remarkable Family Court Associate Judge of Superior Court.

#### **CONCLUSION**

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

Upon examining the information made available to my office, and having the opportunity to meet each candidate personally, I am confident each will uphold the honor of our justice system. I look forward to their prompt investiture on the Court.

While there is no doubt that if anyone is deserving of the prestige that comes from a Presidential appointment and Senate confirmation, it is these nominees. Yet, I am obligated by the very nature of the proceedings here today to point out all the honor that comes with the ceremony of federal oversight the fact that these nominees and all residents of the District of Columbia lack of autonomy over our judiciary diminishes our collective dignity. As am I not seated with the full rights and privileges of a U.S. Senator, I am not able to cast a vote in favor of any of the nominations. Today I ask that you extend to me a degree of Senatorial courtesy and cast your vote in support of these nominees for the residents of the District of Columbia who do not have anyone in this body who may cast a vote on their behalf.

QUESTIONNAIRE FOR NOMINEES TO THE DISTRICT OF COLUMBIA COURTS  
COMMITTEE ON GOVERNMENTAL AFFAIRS, UNITED STATES SENATE

I. BIOGRAPHICAL AND PROFESSIONAL INFORMATION

1. Full name (include any former names used).  
**Jerry Stewart Byrd**
2. Citizenship (if you are a naturalized U.S. citizen, please provide proof of your naturalization).  
**United States**
3. Current office address and telephone number.  
**Superior Court of the District of Columbia  
Chambers 4450  
500 Indiana Ave., NW, Washington, DC 20001**
4. Date and place of birth.  
**December 11, 1935, Greenville, SC**
5. Marital status (if married, include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).  
**Divorced**
6. Names and ages of children. List occupation and employer's name if appropriate.  
**Jerry Stewart Byrd, Jr., age eighteen**
7. Education. List secondary school(s), college(s), law school(s), and any other institutions of higher education attended; list dates of attendance, degree received, and date each degree was received. Please list dating back from most recent to earliest.  
**Southeastern University, Washington, DC, ASBA (Associate Degree in Business Administration) – April 1975  
Howard University School of Law, Washington, DC, J.D., *cum laude* – June 1964  
Fisk University, Nashville, TN, B. A. *cum laude* in physics, June 1961**
8. Employment record. List all jobs held since college, other than legal experience covered in question 16, including the dates of employment, job title or description of job, and name and address of employer. Please list dating back from most recent to earliest. If you have served in the US military, please list dates of service, rank or rate, serial number, and type of discharge received.  
**Summer legal intern at the Summer Seminar for Student Law Clerks in the Federal Service, sponsored jointly by the Federal Bar Association and the United States Civil Services Commission. Summer 1963.  
Summer counselor and swimming instructor, summer of 1961 and 1962, Phillis Wheatley Community Center, Greenville, SC.**

U.S. Army September 10, 1954 – September 6, 1957: Rank SP3: Serial Number 14  
544 849: Honorable Discharge.

9. Honors and awards. List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.  
**Award for services as a member of the Board of Directors of the Hospitality Community Federal Union – November 2000**  
**Fellowship, Howard University School of Law – 1962 – 1963**  
**Member Beta Kappa Chi Scientific Society – 1961**
- ~~10.~~ Business relationships. List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, or educational or other institution.  
**Vice President, Board of Directors of the Hospitality Community Federal Union, 1995 – 2000.**
11. Bar associations. List all bar associations, legal or judicial-related committees, conferences, or organizations of which you are or have ever been a member, and provide titles and dates of any offices which you have held in such groups.  
**Member, Washington Bar Association**  
**Member, Sigma Delta Tau Legal Fraternity**  
**Member, National Bar Association**  
**Member, American Bar Association and the Special Judges Division of the American Bar Association.**  
**Member, Disciplinary Committee #5, D.C. Bar 1979 - 81**



12. Other memberships. List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, public, charitable, or other organizations, other than those listed in response to Question 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion.

**Vice President, Board of Directors of the Washington Buddhist Vihara Society Inc. 1995 – 2002. The organization does not discriminate nor has it discriminated on the basis of race, sex, or religion.**

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

**Admitted to DC Bar on examination January 1965. Membership active Admitted to the South Carolina Bar on examination April 1965. I have never practiced in South Carolina.**

14. Published writings. List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited.

**None.**

15. Speeches. List the titles of any formal speeches you have delivered during the last five (5) years and the date and place where they were delivered. Please provide the Committee with four (4) copies of any of these speeches.

**None**

16. Legal career (In responding to the following, please include and highlight any experience related to family law).

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

- (1) Whether you served as a law clerk to a judge, and if so, the name of the judge, the court, and the dates of your clerkship;
- (2) Whether you practiced alone, and if so, the addresses and dates;
- (3) The dates, names, and address of law firms, companies, or governmental agencies with which you have been employed.

**After graduating from law school, I obtained a position as a staff attorney with the Regional Advice Branch of the National Labor Relations Board in Washington, DC. I worked there from August 1965 to January 1965. In January 1965, I began working as a staff attorney for the Neighborhood Legal Services Program in Washington, DC. As a staff attorney, I provided legal counseling and representation to indigent litigants in civil, domestic, and juvenile matters. The civil cases were primarily credit collection matters and landlord and tenant cases. The domestic relations matters involved, divorces, child support and paternity cases, and custody matters and a few adoptions.**

In September 1965, I was promoted to managing attorney of the near northeast office of the Neighborhood Legal Services Program. In addition to representing litigants, I also supervised a staff of three to six attorneys, two secretaries, law clerks, a paralegal, and an investigator. I worked at the Neighborhood Legal Services Program from 1965 to 1981, with a break in employment between March 1973 and April 1974. During this period, I engaged in the private practice of law. My practice consisted mostly of domestic relation cases—divorce, child support, custody—and criminal cases.

2. Describe the general character of your law practice, dividing it into periods with dates if its character has changed over the years.  
The general character of my practice was representing litigants and providing legal advice to indigent citizens. In addition, I attended community meetings, organizations, groups, churches, to explain the courts and legal process.
3. Describe your typical former clients and describe the areas of practice, if any, in which you have specialized.  
My typical clients were persons who could now be described as the working poor. The practice ran the gambit of legal matters, with emphasis on consumer credit and housing problems, child support problems, marriage and adoptions, and juvenile concerns.
4. Describe the general nature of your litigation experience, including:
  - (1) Whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your court appearances has varied over time, please describe in detail each such variance and give applicable dates.
  - (2) What percentage of these appearances was in:
    - (a) Federal courts (including Federal courts in D.C.);
    - (b) State courts of record (excluding D.C. courts);
    - (c) D.C. courts (Superior Court and D.C. Court of Appeals only);
    - (d) other courts and administrative bodies.
  - (3) What percentage of your litigation has been:
    - (a) civil;
    - (b) criminal.
  - (4) What is the total number of cases in courts of record you tried to verdict or judgment (rather than settled or resolved, but may include cases decided on motion if they are tabulated separately). Indicate whether you were sole counsel, lead counsel, or associate counsel in these cases.
  - (5) What percentage of these trials was to

- (a) a jury;
- (b) the court (include cases decided on motion but tabulate them separately).

During my career as an attorney for the Neighborhood Legal Services Program and as a private practitioner, I regularly appeared in court. My court appearance averaged about three times per week. About fifty percent of my appearances were related to motions, continuances, and other preliminary matters. About thirty-five percent were nonjury trials and about fifteen percent were jury trials. Fully ninety percent of my litigation was civil, including domestic and juvenile cases. Although, I appeared in United States District Court a number of times, the majority of my litigation experience occurred in the Superior Court of the District of Columbia.

17. Describe the five (5) most significant litigated matters which you personally handled. Provide citations, if the cases were reported, or the docket number and date if unreported. Give a capsule summary of the substance of each case and a succinct statement of what you believe was of particular significance about the case. Identify the party/parties you represented and describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case, (a) the date of representation; (b) the court and the name of the judge or judges before whom the case was litigated; and (c) the name(s) and address(es) and, telephone number(s) of co-counsel and of the principal counsel for the other parties.

Significant litigation matters handled as an attorney.

*Thompson v. Mazo*, 421 F.2d 1156, 137 U.S.App. D.C. 221 (1970), rev'g 245 A.2d 122 D.C.App.1968), a case of first impression at the time. The U.S. Court of Appeals held that a D.C. Statute which required the posting of a money bond before the issue of title could be raised in a landlord and tenant action did not mandate the payment of a lump-sum money bond by a tenant who did not have the ability to pay a lump-sum amount and where the tenant could provide another form of security, such as paying the monthly rent into the registry of the court.

I handled this case from the trial level to the appellate level, starting in the General Sessions Court of the District of Columbia (now the Superior Court) and ending in the U.S. Court of Appeals for the District of Columbia Circuit. I wrote the brief but did not present the oral argument. Attorney Herman Miller, deceased, was opposing counsel.

*Dormu v. Gill*, 277 A.2d 104 (D.C.App.1970). The Court of Appeals for the District of Columbia held that the summary dismissal of a false arrest and false imprisonment case at the pre-trial conference was error where the *pro se* plaintiff did not plead one element of his case and where there were factual disputes. The Court said that the *pro se* plaintiff should have been given an opportunity to supply

a statement of facts that would support the cause of action. I argued the case on appeal. On remand, I handled the jury trial. The jury rendered a verdict for the defendant. The pre-trial judge was Judge Edward Beard, deceased. The trial judge was Judge DeWitt S. Hyde, deceased. Officer Gill and the District of Columbia were represented by the Office of the Corporation Counsel.

Significant litigation matters handled as a judicial officer.

*Neely v. McCray*, 129 Daily Wash. L. Rptr. 2397 (September 26, 2001). The noncustodial parent filed a motion to terminate the child support order because the child was fully employed and emancipated. The Office of the Corporation Counsel did not oppose the motion on substantive grounds but on the ground that the Superior Court did not have continuing, exclusive jurisdiction to terminate the order. The custodial parent and child had moved from the District of Columbia and resided in Maryland, where the noncustodial parent resided also. Since none of the parties lived in the District of Columbia, the Office of the Corporation Counsel argued that the Superior Court lost continuing, exclusive jurisdiction under the Uniform Interstate Family Support Act (Act) and could not terminate the order. After reviewing the history of the Act, I ruled that the Superior Court not only had continuing, exclusive jurisdiction under the Act but also continuing jurisdiction based upon the inherent power of a court to control its orders.

*United States v. Esparza, et al.*, 124 Daily Wash. L. Rptr. 1533 (February 2, 1966). The defendants were arrested and fined for violating the District of Columbia's sexual solicitation statute. At the time of the arrest, the District of Columbia seized and held for forfeiture the motor vehicle in which each defendant was driving. On granting the defendant's motions to return the seized property, I held that forfeiture of the property violated the Excessive Fines Clause of the Eighth Amendment and was prohibited by the Double Jeopardy Clause of the Fifth Amendment.

*District of Columbia, ex rel., K.K. v. W.C.R.*, 116 Daily Wash. L. Rptr. 2197 (August 23, 1998). I ruled that the child support guidelines passed by the Board of Judges of the Superior Court could not overrule case or statutory law (substantive law) and must be applied in conjunction with and subordinate to substance law. The premise was upheld by the District of Columbia Court of Appeals in *Fitzgerald v. Fitzgerald*, 566 A.2d 719 (D.C. 1989), which held that the child support guidelines adopted by the Board of Judges was an attempt to change substantive child support law, and was, therefore, ultra vires. See answer to question 19, infra.

18. Describe the most significant legal activities you have pursued, including significant litigation which did not proceed to trial or legal matters that did not involve litigation. Describe the nature of your participation in each instance described, but you may omit any information protected by the attorney-client privilege (unless the privilege has been waived).

During my early legal career, I represented a number of widows whose

houses were being foreclosed because they had missed payments, sometimes only one, on a second mortgage. The general scenario was that a salesman would visit the widow at her home and induce her to purchase a security system for the house. The sales pitch was that since she was living at home by herself, she needed the system for protection. The security system was a cheap alarm system that was installed by a construction company on the front door and windows. The system generally cost close to \$5,000. The amount was financed over a number of years, usually about five, by a mortgage note on the house. If a first mortgage existed, as it did in many cases, the mortgage note was a second mortgage on the property. The note would be discounted to a financial institution with connections with the construction company. If the workmanship was shoddy, as it often was, and the widow refused to pay, or if one payment was missed, the financial institution as a holder in due course would foreclose. The work of a lifetime would be lost. I, along with other attorneys working with the Neighborhood Legal Service Program, filed suits to stop the foreclosures, participated in community meeting to inform the community of the problem, and negotiated with the financial institution prior to foreclosure to discount the note at a reputable financial institution at a cost consistent with the value of the security system.

19. Have you ever held judicial office? If so, please give the details of such service, including the court(s) on which you served, whether you were elected or appointed, the dates of your service, and a description of the jurisdiction of the court. Please provide four (4) copies of all opinions you wrote during such service as a judge.

In February 1981, I was appointed by the then Chief Judge of the Superior Court, with the consent of the Board of Judges, as a hearing commissioner (now magistrate judges) in the Family Division of the Superior Court. I have the responsibility of conducting child support and paternity hearings and juvenile initial hearings. In June 1985, I began being assigned to all the Divisions of the Court on a rotational basis, along with other hearing commissioner. We presided over the Small Claims Branch of the Civil Division, new with a monetary jurisdiction limit of \$5,000. We also handled civil collection cases, involving most insurance claims and consumer credit contracts. The jurisdictional limit is \$25,000. In the Criminal Division I handled traffic cases, nonjury misdemeanor trials, preliminary hearings in felony cases, and presentments and arraignments in all criminal cases. The Family Division recently became the Family Court. Prior to the change, I conducted hearings in child support and paternity cases, initial hearings and probably cause hearings in abuse and neglect cases, initial hearings in juvenile cases, initial hearings and trials in domestic violence cases, and the issuance of civil protection orders in those cases.

The tenure of office for a magistrate judge is four years. Since 1981, I have been re-appointed four times.

In late September 1997, I resigned my position as a hearing commissioner to accept a position as an administrative law judge with the Office of Hearings and Appeals of the Social Security Administration in Harrisburg, Pennsylvania. After

attending a five-week training course conducted by the Social Security Administration, I took my position as an administrative law judge in Harrisburg. I conducted approximately thirty disability appeals hearings prior to resigning in December 1997. I re-applied for and obtained a position as hearing commissioner, filling the position I had left in September 1997.

1. List all court decisions you have made which were reversed or otherwise criticized on appeal.

*District of Columbia, ex rel., K.K. v. W.C.R.*, 116 Daily Wash. L. Rptr. 2197 (August 23, 1998). I ruled that the child support guidelines passed by the Board of Judges of the Superior Court could not overrule case or statutory law (substantive law) and must be applied by a hearing commissioner in conjunction with and subordinate to substance law. The ruling was predicated on the manner in which the guidelines had been promulgated, not necessarily because of any fundamental disagreement in their purpose and intent. That is, an attempt had been made to change the corpus of this important area of the law by the Board of Judges. Such fundamental changes should have been by the will of the legislature, rather than judge-made "law." The District of Columbia filed a timely review of the decision.

The reviewing judge held that the guidelines were lawfully adopted and superceded both case and statutory law. See order in *District of Columbia, ex rel K. K., a minor, v. W. C. R.*, 117 Daily Wash. L. Rptr. 1373 (Super. Ct. July 5, 1989); also see *G.L.M. v. E.H.S.*, 117 Daily Wash. L. Rptr. 1161 (Super. Ct. June 7, 1989). Some month later, however, the District of Columbia Court of Appeals in *Fitzgerald v. Fitzgerald*, 566 A.2d 719 (D.C. 1989), held that the child support guidelines adopted by the Board of Judges was an attempt to change substantive child support law and that the Board of Judges had no such powers.

A recent study of the Office of Hearing Commissioners/Magistrate Judges in the D.C. Superior Court summarized the cases. See Goodbread, *et al.*, *Report on the Role of D.C. Superior Court Hearing Commissioners as Judicial Officers and Proposal that Their Title Be Changed to "Magistrate Judge"* (Apr. 2001) at p. 50, n.147. Note 147 is attached here as supplement to question 19.

In *District of Columbia, ex rel K.L.H. v. Duncan*, Civil Action No. P1564-86, the respondent, who did not know of the child's existence until he was named as the putative father after another man had been excluded, was adjudicated the father of the minor child some six years after the child's birth. The mother was receiving public assistance on behalf of the child and his two other half-siblings. Based upon the respondent's salary, the amount of support under the guidelines would exceed the amount of the public assistance grant received by the mother for all three children. The respondent said that he was able to care for the child and would provide support directly to the mother for his child now that he was aware of the child's existence. The District of Columbia maintained that such an arrangement would not be possible given the provision of the Deficit Reduction Act of 1984 which prohibits taking one child of a family unit off the welfare grant. The District of

Columbia took the position that the respondent had to pay support to the District pursuant to the guidelines. I declined to do so and the District of Columbia requested a review.

The reviewing judge reversed and remanded for the issuance of a child support order pursuant to the guidelines, suggesting that strict application of the guidelines may be inappropriate in the circumstance of this case. *District of Columbia ex rel. K.L.H. v. Duncan*, 117 Daily Wash. L. Rptr. 21 (Super. Ct. 1989).

20. Have you ever been a candidate for elective, judicial, or any other public office? If so, please give the details, including the date(s) of the election, the office(s) sought, and the results of the election(s).  
**No**
21. Political activities and affiliations.
1. List all public offices, either elected or appointed, which you have held or sought as a candidate or applicant.  
**None**
  2. List all memberships and offices held in and services rendered to any political party or election committee during the last ten (10) years.  
**None**
  3. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity during the last five (5) years of \$50 or more.  
**For the Year 2002**  
**Republican National Committee, Presidential Victory Team \$200.**  
**D.C. Republican Party \$50.**  
**For the Years 1997 – 2001**  
**Contributed approximately \$100 a year to the Republican National Committee.**
22. To your knowledge, have you ever been investigated, arrested, charged, or convicted (include pleas of guilty or nolo contendere) by federal, State, local, or other law enforcement authorities for violations of any federal, State, county, or municipal law, other than for a minor traffic offense? If so, please provide details.  
**No.**
23. Have you or any business of which you are or were a officer, director or owner ever been a party or otherwise involved as a party in any other legal or administrative proceedings? If so, give the particulars. Do not list any proceedings in which you were merely a guardian ad litem or stakeholder. Include all proceedings in which you were a party in interest, a material witness, were named as a co-conspirator or co-respondent, and list any grand jury investigation in which you appeared as a witness.

No.

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

No.

## II. POTENTIAL CONFLICTS OF INTEREST

1. Will you sever all connections with your present employer(s), business firm(s), business association(s), or business organization(s) if you are confirmed?  
**Not applicable. If I am confirmed, I will be confirmed as an associate judge in the same court in which I am a magistrate judge.**
2. Describe all financial arrangements, deferred compensation agreements, or other continuing dealings with your law firm, business associates, or clients.  
**None.**
3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest.  
**Not applicable.**
4. Describe any business relationship, dealing, or financial transaction which you have had in the last ten (10) years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest other than while in a federal government capacity.  
**None.**
5. Describe any activity during the last ten (10) years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of legislation or affecting the administration and execution of law or public policy other than while as a federal government employee.  
**None.**
6. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service as a judge? If so, explain.  
**No.**
7. Explain how you will resolve any potential conflicts of interest, including any that may have been disclosed by your responses to the above items. Please provide three (3) copies of any trust or other relevant agreements.  
**As a judicial officer, I would recuse myself from any case where there is a potential conflict.**
8. If confirmed, do you expect to serve out your full term?  
**I will serve until mandatory retirement age.**

## III. FINANCIAL DATA

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



#### IV. DISTRICT OF COLUMBIA REQUIREMENTS

Supplemental questions concerning specific statutory qualifications for service as a judge in the courts of the District of Columbia pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970, D.C. Code Section II - 150 I (b), as amended.

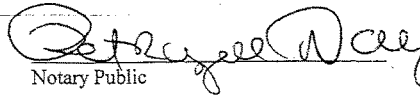
1. Are you a citizen of the United States?  
Yes.
2. Are you a member of the bar of the District of Columbia?  
Yes.
3. Have you been a member of the bar of the District of Columbia for at least five (5) years? Please provide the date you were admitted to practice in the District of Columbia.  
  
Yes. Admitted to practice in the District of Columbia in January 1965.
4. If the answer to Question 3 is "no" --
  1. Are you a professor of law in a law school in the District of Columbia?
  2. Are you a lawyer employed in the District of Columbia by the United States or the District of Columbia?
  3. Have you been eligible for membership in the bar of the District of Columbia for at least five (5) years?
  4. Upon what grounds is that eligibility based?
5. Are you a bona fide resident of the District of Columbia?  
Yes.
6. Have you maintained an actual place of abode in the greater Washington, D.C. area for at least five (5) years? Please list the addresses of your actual places of abode (including temporary residences) with dates of occupancy for the last five (5) years.  
Yes. 2110 T street, SE, Washington, DC 20020.
7. Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nominating Commission?  
No.
8. Have you been a member of either of these Commissions within the last 12 months?  
No.
9. Please provide the committee with four (4) copies of your District of Columbia Judicial Nomination commission questionnaire.  
I submitted my questionnaire to the Nomination Commission about

15 years age. I do not have a copy. I contacted the Nomination Commission and asked the executive director for a copy. I was told that the Commission's records were confidential and that I could not be sent a copy of my questionnaire. I then contacted the General Counsel's Office at the White House to inquire about a copy of the questionnaire. There was no copy there. The Nomination Commission did not submit one. Consequently, I am unable to comply with the request to submit copies of my questionnaire.

AFFIDAVIT

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

SUBSCRIBED and SWORN TO before me this 5<sup>th</sup> day of June 2003.

  
Notary Public

**Petruzzelli Days**  
Notary Public District of Columbia  
My Commission Expires September 14, 2004

## SUPPLEMENT TO QUESTION 19

The first published opinion regarding the child support guidelines was by Commissioner Jerry S. Byrd. District of Columbia ex rel. K.K. v. W.J.D., 116 D.W.L.R. 1741 (Aug. 21, 1987). In that opinion he held that the promulgation of child support guidelines by the Superior Court Board of Judges as a court rule, rather than via legislation, impermissibly changed the method for determining child support, which was rooted in the inherent equitable power of the Court, subject to the sound discretion of the presiding judicial officer in each case. Commissioner Byrd held that "[t]he Board of Judges adoption of the ... Child Support Guideline ... is no different than any other rule of the Superior Court, [and] it is not intended to overrule case or statutory law." While the Superior Court was "free to adopt rules ... as it deems necessary," he wrote, "that freedom is limited to enacting rules which govern procedure." Beyond that, he said, "it is the Court of Appeals ..., not the Superior Court Board of Judges, who may alter, modify or change substantive case law." Even though the Board of Judges has the authority to promulgate guidelines via court rule, Commissioner Byrd concluded that they would not be binding, inasmuch as any such rule still "must be harmonized with the body of case law that has been developed by the Court of Appeals to assure fairness and justice in setting child support awards." *Id.* at 2202. This is because, he ruled, even the then-recently-enacted statute on the jurisdiction of Hearing Commissioners, *see* n.43, *supra*, empowering them in the area of child support law, "requires ... [them] to enter support judgments '... as provided by law [primarily] and [only then] in accordance with [the] guidelines ...'" *Id.* at 2203 (italics in original)(bracketed language added). Commissioner Byrd therefore declined to apply the guidelines because, finding that they (a) were not binding as a court rule and (b) were unfair as applied to that case. *Id.*

In three ensuing published opinions, however, two Judges of the Court reversed Commissioner Byrd's rulings. In G.L.M. v. E.H.S., 117 D.W.L.R. 1161, 1165, 1168 (Jun. 7, 1989), the Judge found that the child support guidelines had been lawfully adopted by the Board of Judges and that Hearing Commissioners did not have authority to enter child support orders except in accordance with the guidelines. *See also* Garland v. Cobb, 117 D.W.L.R. 1365 (Jul. 3, 1989)(Application of the Guidelines by the Commissioners is mandatory under court rule as a proper delegation of authority.). Subsequently, another Judge specifically reversed Commissioner Byrd's ruling in the K.K. case, *supra*. In District of Columbia ex rel. K.K. v. W.C.R., 117 D.W.L.R. 1373 (Jul. 5, 1989), the Judge expressly rejected the Commissioner's premise that the guidelines could only be applied within the context of extant statutory and case law. *Id.* Commissioner Byrd's exercise of discretion in not following the guidelines was reversed on the grounds that the new jurisdictional statute in this area "constitute[d] a specific delegation of authority to the Superior Court to adopt a rule setting forth guidelines." Consequently, the Judge found that "cases which addressed the unguided exercise of discretion are not overruled by the guideline, but they are simply not applicable to decisions made under it." *Id.* Commissioners and Judges were therefore bound by the new rule, he held. *Id.* 1376.

Ultimately, however, the Court of Appeals upheld the rationale set forth in Commissioner Byrd's opinion in K.K., directly addressing the concern that he had raised as to whether guidelines promulgated by rule could displace practices and policies long since established by statutory and case law. In Fitzgerald v. Fitzgerald, 566 A.2d 719 (D.C. 1989), the Court of Appeals noted that the new jurisdictional statute expressly provides that (as Commissioner Byrd had held), "the hearing commissioner shall conduct a hearing on support, make findings, and enter judgment *as provided by law*, and [then] in accordance with guidelines established *by rule of the Superior Court.*" *Id.* 722 (italics in original); *see also id.* 725 ("commissioners would have to 'enter judgment as provided by law' as well as in accordance with the guidelines established by court rule"). Echoing Commissioner Byrd's earlier observation, the Court of Appeals specifically stated that "[w]e find no basis on which to conclude ... that Congress granted the Superior Court authority to change the substantive law regarding child support awards. To assure higher awards and uniformity of awards," it found, "did not necessarily require a new approach to the then-existing substantive child support law, but if it did, ... then a legislative remedy was required." *Id.* 726. The Court of Appeals further specifically held that "[t]o the extent that the Superior Court Board of Judges sought to overturn existing case law as developed by this court, it was granted no such power by Congress." *Id.*; *see also id.* 728 ("The problem with characterizing the Guideline as a Superior Court rule, ... is that such a rule [is limited to procedural application and] cannot curtail substantive rights.")(footnote omitted). Accordingly, the Court of Appeals concluded, "since the Guideline changes substantive law, it is invalid, and we reverse the judgment as it relates to the child support award." *Id.* 732.

Two and a half months after Fitzgerald was handed down, essentially affirming Commissioner Byrd, the District's Child Support Guidelines were appropriately enacted via legislation, effective Dec. 21, 1989.

COMMITTEE ON GOVERNMENTAL AFFAIRS, UNITED STATES SENATE  
QUESTIONNAIRE FOR NOMINEES TO THE DISTRICT OF COLUMBIA  
COURTS

I. BIOGRAPHICAL AND PROFESSIONAL INFORMATION

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

Judith Nan Macaluso (formerly Judy Nan Macaluso, Judy Nan Margolis)

2. Citizenship (if you are a naturalized U.S. citizen, please provide proof of your naturalization).

United States of America

3. Current office address and telephone number.

Hon. Judith N. Macaluso  
Office of the Magistrate Judges  
Superior Court of the District of Columbia  
Suite 4450  
500 Indiana Avenue, NW  
Washington, D.C. 20001  
(202) 879-1189

4. Date and place of birth.

October 19, 1944; Baltimore, MD

5. Marital status (if married, include maiden name of wife, or husband's name).  
List spouse's occupation, employer's name and business address(es).

Married; Vincent Grondin Macaluso; he is retired

6. Names and ages of children. List occupation and employer's name if appropriate.

Joel M. Macaluso, dob 5/7/77, data entry/office assistant, American Psychological Association. Stepchildren: Antoinette G. Macaluso, dob 5/24/53, administrator, SAIC; Corinne J. Macaluso, dob 4/15/55, analyst, U.S. Department of Energy; Adam V. Macaluso, dob 11/6/63, attorney, GEICO.

**7. Education. List secondary school(s), college(s), law school(s), and any other institutions of higher education attended; list dates of attendance, degree received, and date each degree was received. Please list dating back from most recent to earliest.**

Howard University School of Law, 8/72-5/75, J.D. in 5/75

Catholic University School of Law, 5/74-7/74, summer course, no degree

University of Maryland, 9/62-6/66, 5/71-1/72, B.A. in 1/72

Montgomery Blair H. S., Silver Spring, MD, 9/59-6/62, H.S. diploma in 6/62

**8. Employment record. List all jobs held since college, other than legal experience covered in question 16, including the dates of employment, job title or description of job, and name and address of employer. Please list dating back from most recent to earliest. If you have served in the U.S. military, please list dates of service, rank or rate, serial number, and type of discharge received.**

Since graduation from college, all my jobs have been in the field of law and are covered the answer to question 16.

**9. Honors and awards. List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.**

Special Recognition, American Bar Association, Judicial Division,  
National Conference of Specialized Court Judges, August 2002.

Court Critic's Award, 2002 (an unsolicited award bestowed by court-watcher Bob Shaw).

In my 11-year career at the United States Department of Justice, I received 17 awards, including eight Outstanding Performance Ratings; seven Special Achievement Awards (cash awards for sustained superior performance); one Quality Step Increase (accelerated step increase for sustained outstanding

performance); and an Award for Meritorious Achievement for outstanding achievements in asbestos litigation.

In 1985, while employed by the Solicitor's Office, United States Department of Labor, I received a Meritorious Achievement Award.

Special recognition in law school included: Magna cum laude; rank of 2d in graduating class; and American Jurisprudence Awards for Excellent Achievement in the Study of Labor Law, Domestic Relations, Contract Law, Civil Procedure, and Decedents' Estates.

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

I was a partner in JJJ Associates, a partnership that owned two houses for rental and ultimate sale. The partnership existed from 1973 to September 2002.

**11. Bar associations. List all bar associations, legal or judicial-related committees, conferences, or organizations of which you are or have ever been a member, and provide titles and dates of any offices which you have held in such groups.**

I serve on the following committees within the District of Columbia Superior Court: Judicial Education and Training Committee; Pretrial Mental Examination Committee; and Court Interpreters Committee. I also served on the Mental Health and Mental Retardation Working Group, a short-term committee; and on a short-term basis on the Options Program Review Committee (which initiated a diversion-style program for non-violent criminal defendants who have serious mental illness) and Differentiated Case Management Committee (which

concerned, among other issues, incorporating the Options program into courtroom practice).

American Bar Association. I am currently Board Member, District III Representative, and Chair of the Membership Committee of the National Conference of Specialized Court Judges within the Judicial Division. I have previously served as Chair of the Small Claims Court Committee.

American Inns of Court. I am currently Team Leader, William B. Bryant American Inn of Court.

National Association of Women Judges

Women's Bar Association

District of Columbia Bar

Defense Research Institute, 1986-1987 (estimate)

American Immigration Lawyers Association, 1985-1987 (estimate)

In the past (before taking the bench) I was for some years a member of the American Civil Liberties Union.

My recollection is uncertain, but before I became a law student I may have contributed to the National Lawyers Guild and these contributions may have constituted membership.

**12, Other memberships. List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, public, charitable, or other organizations, other than those listed in response to Question 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion.**

Board Member and Secretary, National Alliance for the Mentally Ill -

District of Columbia Chapter (Board Member since 1999; member since 1994)



Chair, CarePoint Advisory Board, District of Columbia Department of  
Mental Health (Chair from Advisory Board's inception in November 2000 to its  
expiration in 2002)

John Eaton Elementary School Home and School Association, 1983-1987

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

United States Supreme Court, 1980

District of Columbia Court of Appeals, 1976

Maryland Court of Appeals, 1975

United States Court of Appeals for the District of Columbia Circuit, 1980

(approximate dates are provided for the United States courts listed below)

United States Court of Appeals for the Second Circuit, 1984

United States Court of Appeals for the Third Circuit, 1985

United States Court of Appeals for the Fourth Circuit, 1977

United States Court of Appeals for the Fifth Circuit, 1985

United States Court of Appeals for the Seventh Circuit, 1984

United States Court of Appeals for the Eighth Circuit, 1986

United States Court of Appeals for the Tenth Circuit, 1984

United States Court of Federal Claims, 1993

**14. Published writings. List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited.**

Four of my opinions have been published in the Daily Washington Law Reporter, as follows:

Williams v. Edmondson & Gallagher Property Services, 126 Daily Wash. L. Rptr. 1385 (D.C. Super. Ct. July 23, 1998);

Wisconsin Avenue Sunoco v. Boone, 126 Daily Wash. L. Rptr. 1729 (D.C. Super. Ct. Sept. 14, 1998);

United States v. Hamilton, 127 Daily Wash. L. Rptr. 1765 (D.C. Super. Ct. Sept. 29, 1999);

Rodriguez v. Sutherlin, 130 Daily Wash. L. Rptr. 281 (D.C. Super. Ct. Feb. 14, 2002).

Other published material is as follows:

“Thirteen Ways to Dissolve a D.C. Corporation: A Guide,” 3 District Lawyer 41 (1978);

Precedents for unrestricted revenue sharing in state-local fiscal relations. In Revenue sharing and its alternatives. U.S. Govt. Print. Off., Wash., D.C., 1967. p. 305-319;

Bibliography of federal grants-in-aid to state and local governments, 1964-1967. U.S. Govt. Print. Off., Wash., D.C. 1970.

**15. Speeches. List the titles of any formal speeches you have delivered during the last five (5) years and the date and place where they were delivered. Please provide the Committee with four (4) copies of any of these speeches.**

I have not given any such speeches.

**16. Legal career (In responding to the following, please include and highlight any experience related to family law).**

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

(1) Whether you served as a law clerk to a judge, and if so, the name of the judge, the court, and the dates of your clerkship;

(2) Whether you practiced alone, and if so, the addresses and dates;

(3) The dates, names, and addresses of law firms, companies, or governmental agencies with which you have been employed.

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

C. Describe your typical former clients and describe the areas of practice, if any, in which you have specialized.

D. Describe the general nature of your litigation experience, including:

(1) Whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your court appearances has varied over time, please describe in detail each such variance and give applicable dates.

(2) What percentage of these appearances was in :

- (a) Federal courts (including Federal courts in D.C.);
- (b) State courts of record (excluding D.C. courts);
- (c) D.C. courts (Superior Court and D.C. Court of Appeals);
- (d) other courts and administrative bodies.

(3) What percentage of your litigation has been:

- (a) civil
- (b) criminal

(4) What is the total number of cases in courts of record you tried to verdict or judgment (rather than settled or resolved, but may include cases decided on motion if they are tabulated separately). Indicate whether you were sole counsel, lead counsel, or associate counsel in these cases.

(5) What percentage of these trials was to

- (a) a jury;
- (b) the court (include cases decided on motion, but tabulate them separately).

**16A(1) Whether you served as a law clerk to a judge, and if so, the name of the judge, the court, and the dates of your clerkship.**

Upon graduation from law school, I served as judicial law clerk to Hon. David L. Cahoon, Chief Judge, Montgomery County Circuit Court, Montgomery County, Maryland, from 1975-1976. A large volume of cases related to family law came before Judge Cahoon during my clerkship. In particular, I was responsible for evaluating for legal sufficiency numerous motions and petitions related to divorce, child support, and guardianship. One of the significant trials Judge Cahoon presided over, for which I provided close support, was a suit for termination of parental rights brought by local foster parents against a young mother who lived in Massachusetts.

**16A(2) Whether you practiced alone, add if so, the addresses and dates.**

From 1976-1978, I was a sole practitioner engaged in the general practice of law in the District of Columbia and Maryland. My office was at 7735 Old Georgetown Road, Bethesda, Maryland. In my practice I represented clients in civil and criminal cases and appeared before appellate, trial, and administrative tribunals. My practice covered a variety of areas, including those related to family law. Most of the family matters involved divorce cases and guardianship matters. Particularly noteworthy was a contested custody proceeding which involved a trial of several days and included presentation of expert testimony.

**16A(3) The dates, names, and addresses of law firms, companies, or governmental agencies with which you have been employed.**

(1) 1997-present--Magistrate Judge, D.C. Superior Court

From 1997 to the present, I have been a Magistrate Judge (formerly called Hearing Commissioner) with the D.C. Superior Court. A Magistrate Judge is a judge of a court of limited jurisdiction. In this capacity, I have presided over hundreds of cases tried to final judgment, as well as handled thousands of pre-trial proceedings. As detailed below, in my five years at the Court I have made significant contributions to the Family, Civil, and Criminal Divisions.

(a) Family Court matters

1. Child Abuse and Neglect

As Magistrate Judge, I have presided over literally hundreds of matters involving allegations of child abuse or neglect. In each case, I was responsible for making the initial decision of whether to permit a child who is the subject of an abuse or neglect petition to remain with its parents, as well as what services would immediately be provided to the child. These decisions, like decisions in such cases made by Associate Judges, involve the gravest considerations of a child's health and safety. The Magistrate Judge makes these decisions at a contested hearing, typically after input from attorneys for both parents, the child, and the District of Columbia; counsel appointed as guardian ad litem; District of Columbia social workers; and fact witnesses who may include police officers.

There is nothing about this responsibility that permits a knee-jerk reaction or predisposition. To remove a child unnecessarily from his or her parents can

have emotionally harmful consequences for the child and can seriously damage the parent/child relationship; to fail to remove a child in danger can result in psychological crippling, physical injury, or even death. I have adjudicated these matters with great attention to the consequences of my decision and with strong awareness that each case is vitally important, and each case rests on its own facts. In no case of which I am aware has a decision of mine led to untoward results.

I bring a particular expertise in mental health to the challenge of determining appropriate placement and services for children. This is an important asset, because it is no exaggeration to say that virtually every case alleging child abuse and neglect concerns a family with at least one member in need of mental health services. Although I am not a degreed mental health professional, this is an area of practice in which I have been involved long and intensively. At the Department of Justice, where I was a trial attorney for twelve years immediately before my appointment as Magistrate Judge, I specialized in mental health issues and was designated a Civil Division resource for other attorneys to consult on psychiatric, psychological, and neuropsychological issues.

At the Superior Court, I have concentrated on mental health issues. Last year, at my request a committee was formed to consider a mental health calendar similar to the Broward County, Florida model. The committee, of which I was a member, traveled to Broward County, studied the operation of their program, and analyzed this alternative. Ultimately, through the initiative of Michael Ryan, the Court adopted a pilot program called Options. I participated as a member of the Options Program Review Committee and the Differentiated Case Management

Committee in implementing this program at the Court. The program's goal is not merely to treat the mentally ill defendant in a humane and just fashion, but also to achieve greater protection to the public through treatment of mentally ill misdemeanants than is achieved through short-term incarceration. I also serve on the Superior Court's Pretrial Mental Examination Committee, which designs and implements Court procedures for persons with serious mental illness. In addition, I represented the Superior Court at the D.C. Department of Mental Health Forensic Mental Health Training Conference, held in June 2002, leading a break-out session on Mental Health Courts.

## 2. Juvenile Delinquency/Child in Need of Supervision Cases

As Magistrate Judge I have presided over scores of hearings in which I have had to decide whether to remove a child alleged to be delinquent or in need of supervision from his or her home, and what immediate services to provide. These decisions are made after a contested hearing with input from attorneys for the District of Columbia, the child, and the parents; counsel appointed as guardian ad litem; District of Columbia social workers; and fact witnesses who may include police officers. In these cases, the Magistrate Judge must consider not only what arrangements are best for the child, but also what arrangements will sufficiently protect the public.

These cases, involving as they do both the welfare of a child and the safety of the public, call for the Court's most serious attention. As with abuse and neglect cases, to remove a child from home and place him or her in an institutional setting can cause serious harm. Yet to fail to do so when this is

needed can harm both the child and the community. I approach these decisions with the utmost care, and I am not aware of any of my decisions that has been judged inappropriate.

Virtually every case of delinquency or need of supervision has attendant mental health considerations. My strong concentration in mental health is an asset in this area.

### 3. Mental Retardation

As Magistrate Judge, I have handled hundreds of review hearings examining the adequacy of care afforded mentally retarded citizens. This is an area in which I have particular concern and interest. I wrote the current edition of the D.C. Superior Court's Mental Retardation Bench Book and am responsible for annual revisions. This Bench Book is relied upon by Associate Judges and Magistrate Judges alike as they conduct hearings under the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978.

As a member of the D.C. Superior Court's Mental Health and Mental Retardation Working Group, I contributed a memorandum of recommendations for improving the Court's supervision of the care afforded mentally retarded individuals. Many of these recommendations have been implemented, including adjusting the calendar to minimize caregiver's time at the Court and maximize their time caring for their clients; improving training offered mental retardation attorneys and increasing involvement in training by Judges, Magistrate Judges, Clerks, and other Court personnel; and greatly enhancing the Advocate Program.



Psychiatric problems are often present among mentally retarded individuals, and the use of psychotropic medication is frequent. Having a strong background in mental health issues and services is an asset in presiding over mental retardation cases.

4. Involuntary Commitment of Mentally Ill Individuals

Family Court Judges preside over cases in which the District of Columbia seeks the involuntary commitment of mentally ill individuals. Please see the discussion above, under "Child Abuse and Neglect Cases," for a detailed description of my strong interest and involvement in this area.

5. Domestic Violence

As Magistrate Judge, I have presided over scores of domestic violence cases that involve a party seeking an emergency temporary protection order or a civil protection order. In considering the scope of civil protection orders, I also consider such associated issues as child custody and visitation, child support, and mandatory treatment programs.

In addition, I have presided over Preliminary Hearings in hundreds of felony domestic violence cases, which include aggravated assault, assault with intent to kill, burglary, felony threats, and assault with a deadly weapon, among other dangerous offenses. In these cases, I determine whether probable cause exists to conclude that the defendant committed the offense and, if so, what conditions of release or incarceration to impose. The Court's decision on conditions of release or incarceration is a judicially challenging one. Not infrequently, the complaining witness tells the Court she no longer needs or wants

protection and manifests an intention to seek the defendant's company even if a stay-away order is in effect. It also commonly occurs that the defendant accused of a violent and serious act against an intimate partner has no prior criminal record, is employed, and supports a family. In scores of cases with such complicated crosscurrents, I have been required to issue orders that are legally permissible under our Bail Reform Act, realistic, and protective of the complaining witness and public and large. I am not aware of any instance in which my order was judged erroneous or led to harmful consequences.

6. Divorce, Child Support, Custody, Spousal Support

As a Magistrate Judge, I have presided over hundreds of child support proceedings and am thoroughly familiar with application of Child Support Guidelines and other doctrines affecting child support. I have also presided over hundreds of uncontested divorces, which involve many issues involved in contested proceedings (such as residency and other jurisdictional requirements, sufficiency of evidence, and grounds for divorce). I have adjudicated temporary custody in scores of cases, in the context of domestic violence proceedings and abuse and neglect proceedings.

9. Paternity

I have presided over hundreds of paternity determinations, both admitted and contested (with DNA evidence).

7. Adoption, Guardianship, and Termination of Parental Rights

My experience in domestic violence cases and in abuse, neglect, and delinquency proceedings has equipped me to be of immediate assistance to the

Family Court in adoption, guardianship, and termination of parental rights proceedings. I am experienced at determining a party's fitness to be a parent and whether services can be provided to keep the family intact--issues that are at the core of adoption, guardianship, and termination proceedings.

(b) Civil Division

For approximately two years of my tenure as Magistrate Judge I presided over Small Claims Court. Although small claims involve matters of \$5000 or less, the cases are much more significant to the parties than the limited dollar amount might indicate. Emotions frequently run high and, because many parties appear pro se, the Court often cannot rely upon attorneys to control parties' behavior or apprise the Court of applicable law. The Small Claims calendar is also an exceptionally busy one, with an average of 80 parties, fourteen motions, and three trials per day.

The quality of my performance in this challenging assignment is reflected by the results of the Court Community Observers Project sponsored by the Council for Court Excellence. In the course of this project, anonymous citizen-observers came unannounced to the courtroom over a three-month period to grade the judge on nine aspects of performance (dignity, politeness, professionalism, control of courtroom, patience, objectivity, time management, respect for litigants and witnesses, and explanation of rulings and proceedings). The Council for Court Excellence rated my overall performance as "Excellent."

Three of my Small Claims Court opinions have been published in the Daily Washington Law Reporter. One is particularly significant: It held that a

towing company could not recover storage charges when it failed immediately to inform a vehicle's owner that his vehicle had been towed. Wisconsin Avenue Sunoco v. Boone, 126 Daily Wash. L. Rptr. 1729 (D.C. Super. Ct. Sept. 14, 1998). Another published opinion held a landlord liable for the negligence of an independent contractor moving company, where the landlord required the tenant to relocate so the landlord could improve the property and where the landlord selected the moving company. Williams v. Edmondson & Gallagher Property Services, 126 Daily Wash. L. Rptr. 1385 (D.C. Super. Ct. July 23, 1998). The third opinion awarded emotional distress damages for breach of a contract to supply music at a wedding reception. Rodriguez v. Sutherlin, 130 Daily Wash. L. Rptr. 281 (D.C. Super. Ct. Feb. 14, 2002).

Finally, I believe I have enhanced the Court's national reputation in this area of the law by being selected Chair of the American Bar Association's Small Claims Court Committee within the Judicial Division.

(c) Criminal Division

For many years, the Court lacked a Bench Book on Preliminary Hearings. Because these hearings involve application of the District's complicated Bail Reform Act, the absence of guidance was often a problem for judges new to the bench or those who had not conducted preliminary hearings for a significant time. To address this problem, I wrote the Court's Preliminary Hearing Bench Book. It has been praised by Felony I judges and others as filling an important gap. I am also responsible for providing yearly updates to the book.

I have had one criminal law opinion published in the Daily Washington Law Reporter. It held that a misdemeanant who returns late to a half-way house may be prosecuted for felony escape. United States v. Hamilton, 127 Daily Wash. L. Rptr. 1765 (D.C. Super. Ct. Sept. 29, 1999).

(2) 1996-1997--Trial Attorney, United States Department of Justice

From 1986-1997, I was a trial attorney in the United States Department of Justice, Civil Division. Most of my work during this eleven-year period involved defending the government in environmental tort cases. This was complex civil litigation, often involving hundreds of plaintiffs who alleged personal injury from exposure to chemicals due to the negligence of the United States. The cases routinely involved challenging issues of case management and complicated scientific issues, such as groundwater hydrology, epidemiology, psychiatry, and medical causation. Our office was in the vanguard of challenges to junk science. I served as lead counsel in several of the more important and controversial cases, with ultimate responsibility for all aspects of litigation handled by the team. For example, I was lead counsel in the highly publicized Fernald School Cases (in which retarded children were given irradiated oatmeal) and the University of Cincinnati Radiation Litigation (in which terminal cancer patients were given potentially lethal doses of whole-body radiation in research that was masked as treatment).

While at the Department of Justice, I also had significant experience defending the United States in contract cases. These were often complicated disputes involving millions of dollars. For example, I successfully defended the

National Park Service's award of the Yosemite National Park concessions contract. This was the costliest contract ever awarded by the Park Service, with over \$1 billion in controversy.

(3) 1985--Immigration Attorney

For nine months in 1985, I was sole associate to Jan M. Pederson, an immigration attorney in Washington, D.C. I was responsible for independently representing clients before the Immigration and Naturalization Service, Department of State, and federal courts. I developed a particular specialty in political asylum cases. I also represented clients in deportation proceedings and in obtaining approximately twenty kinds of specialized visas in the United States and abroad.

(4) 1978-1985--Trial and Appellate Attorney, United States Department of Labor

From 1978-1985 I was a litigation attorney with the Solicitor's Office, United States Department of Labor, handling cases arising under the Mine Safety and Health Act and the Occupational Safety and Health Act. For five of these seven years, I specialized in appellate practice, defending OSHA's health regulations and civil prosecutions in the United States Courts of Appeals. Noteworthy among those cases was my successful defense of OSHA's hearing conservation regulation. This case contained a record of over 40,000 pages and raised more than a score of scientific, procedural, legal, and factual issues. In my last several months at the Department of Labor, I was Acting Counsel for Appellate Litigation in the Occupational Safety and Health Division. In this position, I supervised up to eight attorneys, recommended litigation strategy to the

Associate Solicitor for Occupational Safety and Health and the Assistant Secretary of Labor for Occupational Safety and Health, supervised preparation of all briefs and other litigation documents, and selected and evaluated personnel.

**16B. Describe the general character of your law practice, dividing it into periods with dates if its character has changed over the years.**

For the past 27 years, from my first job as a judicial law clerk to my present job as a Magistrate Judge, I have been engaged in litigation. During the last five years, I have served as a judge of a court of limited jurisdiction in all Divisions of the D.C. Superior Court--Family, Civil, and Criminal. For the eleven previous years, I was a trial attorney with the United States Department of Justice, Civil Division, defending the United States in tort and contract cases that were complex, challenging, and often politically sensitive. In 1985, I was in private practice as an immigration attorney, specializing in political asylum cases. From 1978-1985, I was a trial and appellate attorney with the United States Department of Labor, prosecuting civil cases and defending health and safety regulations under the Occupational Safety and Health Act and the Mine Safety and Health Act. For five of those years, I was exclusively an appellate attorney, and in that capacity I had significant supervisory as well as litigation responsibilities. From 1976 to 1978, I was in general practice as a sole practitioner in the District of Columbia and Maryland.

For details, please see the answer to question 16A, above.

**16C Describe your typical former clients and describe the areas of practice, if any, in which you have specialized.**

For eighteen years, my clients were agencies of the United States Government. For the other three years of my attorney practice, my clients typically were people of modest means who faced a legal crisis, whether in domestic relations, contract, tort, or immigration matters.

As a Magistrate Judge, my clients are the citizens of the District of Columbia, who are entitled to a courteous, respectful, fair, and efficient court system.

The areas in which I have practiced are described fully in the answer to Question 16A, above. Describing my experience in terms of subject areas, my judicial practice has included the many areas included within the Family Court (child abuse and neglect, children in need of supervision, juvenile delinquency, mental retardation, mental illness, domestic violence, divorce, child support, custody, spousal support, paternity, adoption, guardianship, termination of parental rights); small claims court (which encompasses diverse tort and contract issues); subrogation cases with no dollar limit and collection cases with value up to \$25,000; and criminal matters (including pretrial proceedings in a great diversity of misdemeanor and felony matters). My legal practice included divorce, custody, child support, guardianship, criminal law, contracts, negligence, immigration, cases arising under the Federal Tort Claims Act, cases arising under the Occupational Safety and Health Act, and those arising under the Mine Safety



and Health Act. Describing my experience in terms of procedural areas, I have extensive experience in judicial, appellate, and trial practice.

**16D. Describe the general nature of your litigation experience, including:**

(1) Whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your court appearances has varied over time, please describe in detail each such variance and give applicable dates.

(2) What percentage of these appearances was in:

- (a) Federal courts (including Federal courts in D.C.);
- (b) State courts of record (excluding D.C. courts);
- (c) D.C. courts (Superior Court and D.C. Court of Appeals);
- (d) other courts and administrative bodies.

(3) What percentage of your litigation has been:

- (a) civil;
- (b) criminal.

(4) What is the total number of cases in courts of record you tried to verdict or judgment (rather than settled or resolved, but may include cases decided on motion if they are tabulated separately). Indicate whether you were sole counsel, lead counsel, or associate counsel in these cases.

(5) What percentage of these trials was to

- (a) a jury;
- (b) the court (include cases decided on motion but tabulate them separately).

Over the past five years as a Magistrate Judge I have been in court on a daily basis, presiding over family, civil, and criminal matters. All of my appearances in the Superior Court are on the record. With respect to the number of cases tried to judgment, in Small Claims Court, alone, I have presided over approximately 325 trials to judgment.

The number of cases tried to judgment on domestic violence, abuse and neglect, child support, or paternity calendars is very difficult to estimate, but is in the thousands. Many, although not all, of the judgments in these cases are interlocutory in nature, but are appealable to an Associate Judge of the Superior Court.

In my eighteen years as a trial and appellate attorney with the United States Government, 90% of my practice was before federal courts, including those in the District of Columbia; ten percent of my practice was before federal administrative bodies. I appeared in court frequently. The cases I handled were exclusively civil cases and were tried to the court, not a jury. The total number tried to judgment, either before a trial judge or an appellate tribunal, is difficult to estimate, but probably between 75-100. In about 75% of the cases I was the lead counsel.

In my three years in private practice, I appeared in court frequently. About 75% of my practice during those years was before federal administrative bodies. About 20% was before State courts of record outside of the District of Columbia; about 4% was before State administrative bodies outside of the District; and about 1% was before the District of Columbia Superior Court. The number of cases tried was approximately 3; these cases were tried to a judge, not a jury. I was sole counsel for these trials.

**17. Describe the five (5) most significant litigated matters which you personally handled. Provide citations, if the cases were reported, or the docket number and date if unreported. Give a capsule summary of the substance of each case and a succinct statement of what you believe was of particular significance about the case. Identify the party-parties you represented and describe in detail the nature of your**

participation in the litigation and the final disposition of the case. Also state as to each case, (a) the date of representation; (b) the court and the name of the judge or judges before whom the case was litigated; and (c) the name(s) and address(es) and telephone numbers of co-counsel and of the principal counsel for the other parties.

- (1) Wisconsin Avenue Sunoco v. Boone, 126 Daily Wash. L. Rptr. 1729 (D.C. Super. Ct. May 29, 1998)

This case was brought by Wisconsin Avenue Sunoco, trading as Precision Automotive Services, against Jeffrey Boone to recover \$150 in towing fees and \$3186.44 for storage. In April 1997, Mr. Boone's van had been stolen and then towed and stored by Precision pursuant to its contract with the Metropolitan Police Department. Precision made no attempt to determine who owned the van until seven months later. Finally, the company looked in the glove compartment, found documents identifying Mr. Boone as the owner, and contacted him. By that time, more than \$3000 in storage costs had accrued. Mr. Boone refused to pay, saying he had never authorized such costs, they amounted to more than the van was worth, and he could not afford to pay.

Construing the contract between the police department and Precision, I found that the document entitled Precision to recover costs of towing and storage against the owner of a vehicle. The contract also imposed upon a duty upon Precision immediately to notify the owner of vehicles it towed. I found that Precision had violated its contractual duty to notify and held that the company could not use the very contract it had breached as the means to recover storage charges from the vehicle's owner.

The significance of this case, beyond its obvious importance to Mr. Boone, lies in the fact that Precision's attorney at the beginning of trial informed the court that there were "hundreds" of cases like Mr. Boone's in the Small Claims Court system. Following publication of my decision in the Daily Washington Law Reporter, I am not aware of any

instance in which Small Claims Court has been used in an attempt to collect storage fees run up in secret.

Mr. Boone appeared pro se. Counsel for Precision was Jeffrey W. Harab, Attorney at Law, Suite 101, 4600 N. Park Avenue, Chevy Chase, MD 20815, (301) 656-1100.

(2) United States v. Hamilton, 127 Daily Wash. L. Rptr 1765 (D.C. Superior Ct. Aug. 5, 1999)

In this case, the defendant had originally been sent to a halfway house as a result of a 120-day sentence for misdemeanor drug possession. One evening, he returned late from work release. The government sought to prosecute him under D.C. Code § 22-601, a felony escape provision with a maximum of five years' imprisonment. The case raised the issue of whether a misdemeanant halfway house inmate may be prosecuted under the felony escape provision if he merely intends to return late and at no point intends to deprive the Department of Corrections of custody over him for a significant or indefinite period. Construing D.C. Code § 22-601, as well as provisions with which it is in pari materia, I concluded that such an inmate commits felony escape.

The decision was significant because the issue of whether a halfway house inmate commits a felony by returning late had not been addressed by the District of Columbia Court of Appeals or, as far as could be determined, by a written decision of any judge. Moreover, resolution of the issue was not self-evident, particularly in light of the fact that the District of Columbia has a misdemeanor escape statute (D.C. Code § 24-461-70) that specifically applies to misdemeanant halfway house inmates who return late. The opinion has assisted both government and defense counsel by setting forth for the first

time the analysis leading to the conclusion that, harsh as the result may be, Congress intended to give the United States Attorney discretion to prosecute tardiness as a felony.

The United States was represented by Assistant United States Attorney Kristina Ament, Office of the United States Attorney, 555 4th St., NW, Washington, D.C. 20001, (202) 514-6600. Defendant Michael Hamilton was represented by John C. Duru, Attorney at Law, Suite 900, South Building, 601 Pennsylvania Ave., NW, Washington, D.C. 20004, (202) 462-7251.

(3) YRT Services Corp. v. United States, 28 Fed. Cl. 366 (Fed. Cl. 1993)  
(United States Court of Federal Claims, Judge Marian Blank Horn)

The plaintiff, YRT Services Corp. ("YRTSC"), was an unsuccessful bidder on the concessions contract for Yosemite National Park. After losing the bid, YRTSC sought a preliminary injunction to prevent the successful bidder from performing the contract. This case was of great importance to the National Park Service for many reasons. Worth over \$1 billion, this was the largest concessions contract ever awarded by the Park Service. Moreover, it was the first concessions contract awarded under new procedures designed to eliminate a preference for pre-existing contractors from the evaluation process. In addition, the national importance and popularity of Yosemite National Park made it critical to the Park Service to avoid any interruption of concessions services.

I was the sole litigating attorney on behalf of the United States and shouldered an enormous amount of work defending the contract award. Because the case arose as a complaint for preliminary injunction, the process of fact-finding, pleading, discovery, submission of motion papers, argument, and post-argument briefing was condensed into a

two-month period. Ultimately, the United States prevailed, and the contract award was upheld.

Plaintiff YRTSC was represented by Louis D. Victorino, Attorney at Law, Pillsbury Madison & Sutro, Suite 1100 New York Ave., NW, Washington, D.C. 20005, (202) 898-1273. Intervenor Delaware North Corporation (the successful bidder) was represented by Daniel Joseph and Lucy W. Pliskin, Attorneys at Law, Akin Gump Strauss Hauer & Feld, Suite 400, 1333 New Hampshire Ave., NW, Washington, D.C. 20036-1511, (202) 296-1399.

(4) Werlein v. United States, 3-84-996 (D. Minn.) (Judge Robert G. Renner; no reported decision of case that settled in 1992)

In this case, 91 residents of New Brighton, Minnesota who had allegedly been exposed to trichloroethylene (TCE) and other chemicals discharged from a nearby Army plant, sought over \$79 million in damages. Plaintiffs alleged that their exposure, which had been in the parts-per-billion range, produced a plethora of physical and emotional injuries, including hives, cancer, heart disease, digestive ailments, and depression, among many other complaints.

Neutral experts consulted by counsel for the United States concluded that the tiny concentrations to which plaintiffs had been exposed were harmless. A successful outcome for plaintiffs would likely have encouraged numerous non-meritorious suits because military bases have several hundred sites containing TCE and other chemicals in the parts-per-billion range.

I was solely responsible for development of the Government's defense in the areas of toxicology, psychiatry, psychology, and neuropsychology. (I list psychiatry and

psychology separately because the two fields involve different areas of emphasis and require different lines of inquiry.) The case settled during plaintiffs' presentation of their case, but my trial participation was extensive, nonetheless. Plaintiffs' toxicologist testified for five days, including two days of cross examination; plaintiffs' lead psychologist testified for seven days, including three days of cross examination; plaintiffs' supporting psychologists testified for an additional three days, including one day of cross examination. The trial lasted for approximately 1-1/2 months before settling, and on most days when the witnesses for which I was responsible were not on the stand I was at counsel table offering advice and assistance. The settlement was favorable to the United States. The amount paid by the government was insufficient to reimburse plaintiffs' attorneys for their expenses and thus served to discourage future non-meritorious litigation.

Lead counsel for plaintiffs was Jack Vandernorth, Attorney at Law, Briggs & Morgan, 2200 West 1st National Bank, St. Paul, MN 55101, (651) 223-6600.

(5) Forging Industry Association v. Secretary of Labor, 773 F.2d 1436 (4th Cir. 1985) (en banc) (Judges Widener, Hall, Phillips, Murnaghan, Sprouse, Erven, Chapman, and Wilkinson)

This case involved a challenge by the Forging Industry Association to the hearing conservation regulation promulgated by the Occupational Safety and Health Administration. The case was of vital importance to the government because the challenged regulation was designed to protect over 2.2 million workers who were already exposed to levels of noise known to cause hearing loss. Moreover, the regulation was the product of rulemaking proceedings that had taken more than 9 years. For employees to be deprived of the benefit of the regulation and for OSHA to begin the rulemaking

process anew after so many years of effort would have been, from the Agency's point of view, a calamitous result.

I was the sole author of the first 65 pages of the 70-page brief submitted to the Court of Appeals. (Although the brief was thoroughly reviewed, the writing is described fairly as my own.) This was an enormous task. It required mastery of a record extending over nine years and encompassing many thousands of pages, as well as clear communication of scientific, factual, and legal arguments. I also argued the case before the initial panel, consisting of two circuit court judges and a district court judge who sat by designation. This panel split 2-1 against the government, with the district court judge providing the swing vote. I assisted in drafting a petition for rehearing and rehearing en banc, which was granted. The decision by the en banc court unanimously upheld the regulation in all respects. (The circuit judge who had initially voted to invalidate the regulation decided upon reconsideration to uphold it.) In its decision, the court drew heavily upon the Secretary's brief.

Representing the Forging Industry Association was Robert D. Moran, Attorney at Law, Vorys Sater Seymour & Pease, Suite 1111, 1828 L St., NW, Washington, D.C. 20036, (202) 467-8800.

**18. Describe the most significant legal activities you have pursued, including significant litigation which did not proceed to trial or legal matters that did not involve litigation. Describe the nature of your participation in each instance described, but you may omit any information protected by the attorney-client privilege (unless the privilege has been waived).**

The most significant legal activities I have pursued occur every day as I attempt to meet the challenges of being a Magistrate Judge. Examples of these challenges include every case in which a pro se party appears before me, and I must conduct proceedings



that are not only legally correct but are perceived by the party as clear and fair; preliminary hearings in which I decide conditions of release for a defendant and must fashion conditions that recognize the defendant's rights while protecting the community; and domestic violence cases in which the victim opposes ordering the defendant to stay away, and the Court must balance the victim's preferences against the Court's perception of her needs and society's needs.

**19. Have you ever held judicial office? If so, please give the details of such service, including the court(s) on which you served, whether you were elected or appointed, the dates of your service, and a description of the jurisdiction of the court. Please provide four (4) copies of all opinions you wrote during such service as a judge.**

**A. List all court decisions you have made which were reversed or otherwise criticized on appeal.**

In November 1997 I was appointed a Magistrate Judge (then called, "Hearing Commissioner") of the Superior Court of the District of Columbia. I currently serve in that position.

Superior Court Magistrate Judges (as distinguished from Family Court Magistrate Judges) are judges of courts of limited jurisdiction. For many matters, they try the case to final judgment and are reviewed on appeal by the deferential appellate standard. Indeed, Magistrate Judges adjudicate to final judgment approximately one-third of the dispositions handled each year by the D.C. Superior Court. For other matters, Magistrate Judges handle pretrial portions of cases that are within the trial jurisdiction of an Associate Judge.

Matters in which Superior Court Magistrate Judges try the case to final judgment and are reviewed on appeal by the deferential appellate standard include subrogation cases with no dollar limit; collections cases with liquidated damages of \$25,000 or less;

small claims (civil matters seeking \$5000 or less); all criminal traffic offenses, regardless of the period of potential incarceration; misdemeanors prosecuted by the Office of the United States Attorney with potential imprisonment of 180 days or less; misdemeanors prosecuted by the Office of Corporation Counsel with potential imprisonment of 90 days or less; divorces in which the only contested issue is child support; paternity cases in which there is an admissible DNA test (these cases also involve adjudication of child support); child support cases in which neither divorce nor paternity is in issue; domestic violence civil protection orders (which may include custody and child support orders); and annual review hearings for mentally retarded persons.

Matters in which Superior Court Magistrate Judges handle pretrial portions of cases that are within the trial jurisdiction of an Associate Judge include arraignment and presentment, preliminary hearings, and domestic violence petitions for temporary protection orders.

In my tenure as a Magistrate Judge of the Superior Court, I have served in the Family, Civil, and Criminal Divisions and have made significant contributions to each. Please see the answer to Question 16(A)(3), above, for a description of my service in this position.

Four copies of all opinions I have written during my service as Magistrate Judge are provided with this questionnaire.

The only cases in which my decisions have been appealed are Small Claims Court cases. Out of approximately 325 decisions in Small Claims Court trials, my opinion has been reversed five times, as follows:

Gray v. Williams, Sm. Cl. No. 3069-99 (D.C. Sup. Ct. Nov. 11, 2002) (Long, J.);

Slavin v. White, Sm. Cl. No. 01-4625 (D.C. Sup. Ct. May 16, 2002) (Graae, J.);

Davis v. Carr, Civil No. 99-3271 (D.C. Sup. Ct. Mar. 10, 2002) (Burgess, J.);

Haynes v. Potomac Electric Power Co., Sm. Cl. No. 19623-97 (D.C. Sup. Ct. Oct. 20, 1999) (Bowers, J.); and

Burnett v. Alpha S Street Partnership, LLC, No. 98 SC 11575 (D.C. Sup. Ct. May 4, 1999) (Zeldon, J.) (aff'd in part, rev'd in part).

**20. Have you ever been a candidate for elective, judicial, or any other public office? If so, please give details, including the date(s) of the election, the office(s) sought, and the results of the election(s).**

I have never been a candidate for elective, judicial, or any other public office.

**21. Political activities and affiliations.**

**a. List all public offices, either elected or appointed, which you have held or sought as a candidate or applicant.**

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

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

The only public office I have sought is the position of Associate Judge on the D.C. Superior Court. Until 2000 I was a member of the Democratic Party; since then, I have been a member of the Republican Party. I have not been a member of, held an office in, or rendered services to any party or election committee in the last ten years. I do not believe that I have made any politically related contributions of \$50 or more in the past five years.

22. To your knowledge, have you ever been investigated, arrested, charged, or convicted (include pleas of guilty or nolo contendere) by federal, State, local, or other law enforcement authorities for violations of any federal, State, county, or municipal law, other than for a minor traffic offense? If so, please provide details.

No.

23. Have you or any business of which you are or were an officer, director or owner ever been a party or otherwise involved as a party in any other legal or administrative proceedings? If so, give the particulars. Do not list any proceedings in which you were merely a guardian ad litem or stakeholder. Include all proceedings in which you were a party in interest, a material witness, were named as a co-conspirator or co-respondent, and list any grand jury investigation in which you appeared as a witness.

No.

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

No.

## II. POTENTIAL CONFLICTS OF INTEREST

1. Will you sever all connections with your present employer(s), business firm(s), business association(s), or business organization(s) if you are confirmed?

Both my present position of Magistrate Judge and the position I seek of Associate Judge are positions at the Superior Court of the District of Columbia. This makes it impossible to sever connections with my present employer.

2. Describe all financial arrangements, deferred compensation agreements, or other continuing dealings with your law firm, business associates, or clients.

I have no financial involvement or dealings of any kind with a law firm, business associates, or clients.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest.

I have no such relationships that could involve potential conflicts of interest.

4. Describe any business relationship, dealing, or financial transaction which you have had in the last ten (10) years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest other than while in a federal government capacity.

I have had no business relationship, dealing, or financial transaction that could in any way constitute or result in a possible conflict of interest.

5. Describe any activity during the last ten (10) years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of legislation or affecting the administration and execution of law or public policy other than while as a federal government employee.

I have not engaged in any such efforts.

6. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during our service as a judge? If so, explain.

No.

7. Explain how you will resolve any potential conflicts of interest, including any that may have been disclosed by your responses to the above items. Please provide three (3) copies of any trust or other relevant agreements.

I do not have any potential conflicts of interest.

8. If confirmed, do you expect to serve out your full term?

Yes.

### III. FINANCIAL DATA

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

IV. DISTRICT OF COLUMBIA REQUIREMENTS

1. Are you a citizen of the United States?

Yes.

2. Are you a member of the Bar of the District of Columbia?

Yes.

3. Have you been a member of the Bar of the District of Columbia for at least five (5) years? Please provide the date you were admitted to practice in the District of Columbia.

Yes. I was admitted to practice in February 1977.

4. N.A.

5. Are you a bona fide resident of the District of Columbia?

Yes.

6. Have you maintained an actual place of abode in the greater Washington, D.C. area for at least five (5) years? Please list the addresses of your actual places of abode (including temporary residences) with dates of occupancy for the last five (5) years.

2011 Rosemount Ave., NW, Washington, D.C. 20010

7. Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nominating Commission?

No.

8. Have you been a member of either of these Commissions within the past 12 months?

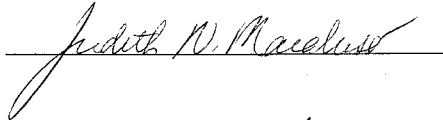
No.

9. Please provide the committee with four (4) copies of your District of Columbia Judicial Nomination Commission questionnaire.


I have submitted such copies with this questionnaire.

**AFFIDAVIT**

Judith N. Macaluso, being duly sworn, hereby states that she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of her knowledge, current, accurate, and complete.

  
\_\_\_\_\_

SUBSCRIBED and SWORN TO before me this 3 day of Feb 2003.

  
\_\_\_\_\_  
Notary Public

PATRICIA FERNANDEZ  
Notary Public District of Columbia  
My Commission Expires June 14, 2005

QUESTIONNAIRE FOR NOMINEES TO THE DISTRICT OF COLUMBIA COURTS  
COMMITTEE ON GOVERNMENTAL AFFAIRS, UNITED STATES SENATE

I. BIOGRAPHICAL AND PROFESSIONAL INFORMATION

1. Full name (include any former names used).  
Joseph Michael Francis Ryan, III
2. Citizenship (if you are a naturalized U.S. citizen, please provide proof of your naturalization).  
I am a citizen of the United States of America.
3. Current office address and telephone number.  
Public Defender Service for the District of Columbia  
633 Indiana Avenue, N.W.  
Washington, D.C. 20004  
202/383-9530
4. Date and place of birth.  
I was born on June 20, 1957 at Georgetown University Hospital in Washington, D.C.
5. Marital status (if married, include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).  
I am married to Catherine Dobbins Ryan who is not employed at this time.
6. Names and ages of children. List occupation and employer's name if appropriate.  
Our children are: 7 years.
7. Education. List secondary school(s), college(s), law school(s), and any other institutions of higher education attended; list dates of attendance, degree received, and date each degree was received. Please list dating back from most recent to earliest.  
National Law Center  
George Washington University  
Attendance: September 1979 to May 1982  
Juris Doctor, May 1982  
  
College of William and Mary in Virginia  
Attendance: September 1975 to May 1979



Bachelor of Arts with Honors in Philosophy, May 1979

Georgetown Preparatory School  
Attendance: September 1971 to May 1975  
High School Diploma, May 1975

8. Employment record. List all jobs held since college, other than legal experience covered in question 16, including the dates of employment, job title or description of job, and name and address of employer. Please list dating back from most recent to earliest. If you have served in the US military, please list dates of service, rank or rate, serial number, and type of discharge received.

For eight days in July/August of 1996, 1998, 2000 and 2002, I have been on the faculty for Benchmark Institute, 431 Alvarado Street, San Francisco, Ca. 94114 — a west coast organization which trains poverty lawyers in trial skills — at their intensive Trial Advocacy Skills Training. This uncompensated position entails eight twelve- to sixteen-hour days of exhaustive training in trial skills, culminating in mock trials at the San Jose, Ca., courthouse.

Other 'employment' in which I have engaged is an uncompensated appointment as an Adjunct Assistant Professor in the Department of Psychiatry at the Georgetown University School of Medicine, 3900 Reservoir Road, N.W. Washington, D.C. 20007. My appointment commenced April 1 of 1994 and is current today. Initially, I taught a portion of Psychiatry & The Law as one of several core faculty, including doctors, lawyers, and judges. As needs at the medical school have changed, requests for my services have waxed and waned. On occasion I have participated in the clinical case conferences series for the inpatient psychiatry service at Georgetown University Hospital. During these conferences I have lectured on topics such as standards for civil and criminal commitment, forced medication issues, and the prediction of future dangerous behavior. In addition, on occasion students accompany me to court to observe first-hand the direct and cross-examination of the expert mental health witness.

From 1993 through 1995, I was a consultant/contributing writer to the Mental & Physical Disability Law Reporter of the American Bar Association, 740 15<sup>th</sup> Street, N.W. Washington, D.C. 20005-1019. In this capacity I wrote and edited synopses of current state and federal cases concerning a variety of mental health issues, including: competence, to stand trial or to waive the insanity defense; Not Guilty By Reason Of Insanity pre- and post-trial proceedings; civil commitment; and release from civil and criminal commitments.

From September of 1983 into January of 1984 I was an uncompensated law clerk and investigator at the Mental Health Division of the Public Defender Service for the District of Columbia, Cottage #2, Saint Elizabeths Hospital, Washington, D.C. 20032. At PDS I researched and wrote on the criminal commitment process and ineffective assistance claims and investigated civil and criminal matters concerning new and ongoing cases.

During law school, I also worked part-time in restaurants. Between September of 1979 and the spring of 1981 I worked as a bartender for RMI Associates, 1144 18<sup>th</sup> Street, N.W., Washington, D.C., and between spring of 1981 and summer of 1982 I worked for Capitol Hill Partnership, 300 Massachusetts Avenue, N.E., Washington, D.C. (To the best of my recollection, these are the names and addresses; I believe these entities are long since defunct.)

9. Honors and awards. List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

I have received numerous letters of commendation and gratitude for the lecturing, training, and presenting I have done over the years (as detailed in the Addendum to my Curriculum Vitae), from sources as diverse as the voluntary Bar's Neglect and Delinquency Practice Institute (several years), the Armed Forces Institute of Pathology/American Registry of Pathology, Forensic Odontology (bitemark identification), the Superior Court Trial Lawyers' Association, the Department for Rights of Virginians with Disabilities in Richmond, Virginia, and D.C. Law Students In Court. Also, on January 2, 1997 I received a Certificate of Appreciation For Outstanding Instructor Support from the Defense Protective Service (Pentagon Police).

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

With the exception of my law firm partnership with J. Patrick Anthony, Esquire (detailed in my response to question no. 16), I have held no such office or position.

11. Bar associations. List all bar associations, legal or judicial-related committees, conferences, or organizations of which you are or have ever been a member, and provide titles and dates of any offices which you have held in such groups.

I am a member of the District of Columbia Bar Association. As yet I have not held any offices in the Bar.

From August 2000 to present I have been the Chairperson of the *Jail Diversion Task Force*, Washington, D.C., a working group comprised of representatives from various criminal justice and mental health agencies and community service organizations formed in early 1998 to address problems relating to people with mental illnesses in the criminal justice system. I was a member of the *Task Force* from April 1998 to August 2000.

Since its inception in April 2001, I have chaired the steering committee of OPTIONS, a collaboration of the Task Force, the District of Columbia Pretrial Services Administration, the Department of Mental Health (DMH), the Corrections Trustee, *et al.*,

which offers assertive case management – including medication support and housing – pretrial to people charged with nonviolent crimes who suffer from serious psychiatric problems.

From September 2002 – Present, and earlier, from February 2001 – April 2001, I have been a member of the Mental Health and Mental Retardation Branch Working Group of the Family Division, now Family Court, D.C. Superior Court, a group which includes the Presiding Judge of the Family Court, Magistrate Judges sitting in Mental Health and Mental Retardation, attorneys representing the District and private practitioners, and is tasked with identifying, and finding solutions to, problems in the operations of the Mental Health and Mental Retardation Branch Clerk's Office of the Superior Court's Family Court as well as the successful implementation of new Family Court.

From 2001 to the present I have been a member of the Advisory Board for the Police Executive Research Forum's *Criminal Justice/Mental Health Consensus Project*, Washington, D.C. We, on the Law Enforcement Track, met in multi-day meetings, May/June, 2001, and January, 2002. With my co-advisory board members -- police chiefs, officers, mental health professionals, and legislators – we analyzed appropriate police response to individuals whose behaviors reflect severe or serious mental illness; and formulated and drafted consensus recommendations regarding training, information management, police response protocols, information sharing, partnership and collaboration, and performance evaluation. The fruit of our labors – the *Criminal Justice/Mental Health Consensus Project* Report – was issued June 11, 2002 and can be found at [www.consensusproject.org](http://www.consensusproject.org).

12. Other memberships. List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, public, charitable, or other organizations, other than those listed in response to Question 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion.

I am a member of the George Washington University Chapter of the American Inns of Court; to my knowledge this organization does not discriminate against anyone on the basis of race, sex, or religion.

I am a member of The Barristers, a social organization for lawyers in the Washington, D.C. metropolitan area, which to my knowledge, has never discriminated against anyone on the basis of race, sex, or religion.

I am a member of the Palisades Citizens' Association, and have been since 1986. When my children attended Francis Scott Key Elementary School, 1994 to 2002, I was a member of the PTA (and from 1997 to 2001, I was the External Affairs Representative for the PTA). I am currently a member of the PTA for Hardy Middle School and the Duke Ellington School for the Arts, but hold no office in either.

While in law school, I was a member of Phi Delta Phi Legal Fraternity, 1980-1982.

In college I was a member of the Pi Kappa Alpha Fraternity, College of William and Mary, from 1976 through 1979 and The F.H.C. Society, College of William and Mary: 1977-1979, President, 1978-1979 (the latter being a teacher/student social fraternity of which Thomas Jefferson had been a member while a student at William and Mary).

None of the foregoing discriminated on the basis of race or religion; the fraternities were, as far as I know, comprised only of males.

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

I was admitted to practice before the bar of the District of Columbia Court of Appeals on June 25, 1984. I was admitted to practice before the bar of the United States District Court for the District of Columbia on December 3, 1984 and the bar of the United States Supreme Court on February 28, 2000.

14. Published writings. List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited.

As reflected in my attached Curriculum Vitae, I was one of the writers and editors of the mental health sections of the Criminal Practice Institute, Trial Manual, Chapter 14, "Representation of Persons in Civil Commitment Proceedings", and Chapter 33, "The Insanity Defense," 23rd Annual through 34th Annual Editions, 1986 to 1997. Further, I was a writer and editor for the civil commitment trial manual produced by the Public Defender Service (PDS) Mental Health Division from 1986 through 1996, Representation of Persons Subject to Civil Commitment Proceedings in the District of Columbia and Post-Commitment Representation of Persons Acquitted By Reason of Insanity in the District of Columbia Courts (First Edition, 1986 through Seventh Edition, 1996). I also contributed to the District of Columbia Practice Manual, Civil Commitment Chapter, First Edition, 1987, Second Edition, 1993.

From 1993 through 1995 I was a consultant/contributing writer to the *Mental & Physical Disability Law Reporter* of the American Bar Association, Washington, D.C.

A significant portion of my remarks at a May 13, 1995 District of Columbia Association of Criminal Defense Lawyers seminar entitled "Creative Trial Defenses" were published in the June 7, 1995 issue of the *BNA Criminal Practice Manual*, Current Reports, Vol. 9, No. 12, pgs. 276-277.

In a non-traditional medium, the materials I prepared for a May 11, 1999 Continuing Legal Education lecture to the Superior Court Trial Lawyers' Association — "Cross-Examining Government Expert Witnesses: Kumho Tire & Police Drug Experts" — have been 'published' on Gideon!, the Electronic Bulletin Board Service found at: <http://www.iblf.com/gideon.htm>.

15. Speeches. List the titles of any formal speeches you have delivered during the last five (5) years and the date and place where they were delivered. Please provide the Committee with four (4) copies of any of these speeches.

I have not delivered any formal speeches during this time period.

16. Legal career (In responding to the following, please include and highlight any experience related to family law).

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

- (1) Whether you served as a law clerk to a judge, and if so, the name of the judge, the court, and the dates of your clerkship;
- (2) Whether you practiced alone, and if so, the addresses and dates;
- (3) The dates, names, and address of law firms, companies, or governmental agencies with which you have been employed.

I graduated from law school in May of 1982. From August of 1982 to August of 1983, I was law clerk to the Hon. Richard B. Latham on the Maryland Ninth Judicial Circuit Court, Montgomery County, Rockville, Maryland. During this period, Judge Latham handled a wide range of trial work, significant criminal and civil rotations, and infrequent appeals from the County District Court, which is not a court of record.

In September of that year I returned to the Mental Health Division of the Public Defender Service [PDS] as a law clerk and did some case investigation as well while studying for the February of 1984 D.C. bar examination.

As 1984 began, I was fortunate to be employed on an interim basis as the only law clerk to the Hon. Bruce S. Mencher, Superior Court of the District of Columbia, for approximately six weeks, from mid-January through February, 1984 (his Honor's law clerk had had to leave prematurely and I was able to fill the gap until the next scheduled clerk could begin). Judge Mencher tried both criminal and civil cases while I was with him. Thereafter I returned to the Mental Health Division of PDS, again clerking and investigating on a volunteer basis.

After being sworn into the D.C. Bar in June of 1984, I registered with the Criminal Justice Act [CJA] Office at Superior Court and began accepting appointments as a solo practitioner to criminal and other cases (including civil commitment cases in the Family Division of the Court), using my home at 2315 40th Street, N.W., Apartment No. 3, Washington, D.C., 20007 as an office. I was sworn into the bar of the District Court for the District of Columbia December 3, 1984, and accepted CJA appointments in that court as well. In late 1984, J.

Patrick Anthony was sworn into the D.C. Bar and he and I practiced together as RYAN & ANTHONY, still using my apartment on 40th Street as our office.

On October 1, 1985 I began practicing at the Mental Health Division of PDS, Saint Elizabeths Hospital, Cottage No. 2, Washington, D.C., 20032. I continued to practice at the Mental Health Division until January of 2002 at which time I accepted a different position with PDS. I moved to our main office, 633 Indiana Avenue, N.W., 20004, where I continue to this day, to become Special Counsel to the Director of PDS. (When I first moved to our main office, my title was Deputy Chief of Legal Services. At some point not long thereafter I was re-designated as a Special Counsel though my responsibilities remained unchanged.)

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

When I was in private practice, during 1984 and 1985, both solo and in RYAN & ANTHONY, I spent practically every day at the courthouse, picking up new Criminal Justice Act [CJA] appointments in criminal cases; to the extent they were available I picked up civil commitment (in the Family Division of the Court) and criminal post-Not Guilty by Reason of Insanity [NGI] release cases under the CJA as well. We also had one or two retained criminal cases during this time as well as a few civil cases.

When I left RYAN & ANTHONY for the Mental Health Division of PDS, I withdrew from retained work and the bulk of my criminal cases which were not related to mental health. At PDS from 1985 through 1990, Ervin Act civil commitment cases, D.C. Code Section 21-501, et seq., all tried in the Family Division of the Court, occupied about seventy percent of my time and post-NGI release hearings, D.C. Code Sections 24-301 (k) & (e), were the remaining thirty percent. The Ervin Act cases generally took place on an expedited basis, beginning with fulsome probable cause hearings, Section 21-525, then moving to administrative hearings before the Superior Court's Commission on Mental Health, Section 21-542, and concluding with a jury trial, Section 21-545. On the other hand, the post-NGI proceedings are not jury-demandable and -- because there is a continuing presumption of dangerousness due to mental illness and the burden is on the defense -- tended to proceed incrementally.

In the early 1990's, the amount of emergency civil admissions to Saint Elizabeths Hospital decreased significantly. (In the mid- to late-1980's the number of emergency admissions per year were in the neighborhood of 1800 to 2000 people; by the early 1990's these numbers settled into the 1200 to 1400 range. In the mid- to late-1980's I represented close to 200 Ervin Act clients per year; since then, during my time at the Mental Health Division, I represented approximately 130 or more such people per annum.) As a result of this change, the character of my practice began to shift: jury trials became less frequent, my post-NGI caseload grew to occupy a larger and larger portion of my time, ultimately accounting for

between sixty and seventy percent of my caseload. The remaining thirty to forty percent was occupied by Ervin Act cases, a few temporary restraining order/preliminary injunction hearings, some expert witness-intensive criminal cases which do not have a mental health component, and an assortment of other PDS cases which piqued my interest or involved a great deal of expert witness testimony (e.g., juvenile transfers and domestic violence/civil protection orders).

As Special Counsel to our agency director, I am charged with coordinating agency-wide provision of expert witness services. This involves individual strategic consultation with trial attorneys, identification of appropriate expert witnesses and development of internal/external training related to appropriate utilization and examination of expert witnesses. I am also responsible for agency efforts with respect to maintenance, expansion and creation of jail diversion programs in the District of Columbia. I collaborate with other criminal justice, mental health/court agencies, as well as the advocate and service provider community. Additionally, I provide administrative oversight of the Mental Health and Offender Rehabilitation Divisions of PDS and participate in the agency Forensic Practice Group. I continue to maintain my own case load of not guilty by reason of insanity clients, some civil clients, function as lead attorney in DNA litigation, as well as serve as senior co-counsel and supervisor for trial attorneys. I represent PDS on outside committees and meetings, am one of the senior editors of the *Criminal Practice Institute Manual (CPI)* and one of the coordinators of the CPI conference. I lecture and train frequently on cross-examination, experts and mental health issues.

- C. Describe your typical former clients and describe the areas of practice, if any, in which you have specialized.

My typical clients have been people at Saint Elizabeths Hospital, a public psychiatric hospital, pursuant to both civil and criminal cases. The civil clients, under the jurisdiction of the Family Court, have been essentially of two sorts as determined by the severity of their situations, either subject to short- or long-term hospitalization.

During my years at the Mental Health Division, I would receive new short-term clients each week; they would be in the emergency detention procedures of the Ervin Act, D.C. Code Sections 21-521, *et seq.*, and have needs, both legal and social, which must be met quickly, efficiently, and humanely. In many instances the resolution of these cases depended as much on addressing the person's social needs as effectively representing them.

The long-term clients remain in the mental health system, either committed and in periodic review (D.C. Code Section 21-546), or post-probable cause and Commission hearing, but still pre-trial. They generally would benefit from different community resources with an eye to facilitating their ultimate outplacement from the institution.

My typical criminal clients were treated at the Hospital's John Howard Pavilion, after having prevailed on a plea of Not Guilty By Reason of Insanity, and were seeking conditional and unconditional releases in both the Superior and District courts pursuant to D.C. Code Sections 24-501 (k) & (e). Their NGIs are generally for very serious crimes, though some are founded on less significant charges.

Common to effectively representing all of the above sorts of clients has been the presentation and cross-examination of expert witnesses, specifically psychiatrists and psychologists. This is the area in which I have specialized, lectured, and presented extensively. Further, my work with psychiatrists and psychologists enabled me to broaden my focus to many other types of expert witnesses. Intensive preparation for the examination of mental health experts led me to develop guidelines for the use of experts generally and a theoretical framework -- for both direct and cross-examination -- in the spirit of Daubert v. Merrell Dow, 509 U.S. 579 (1993), and its progeny.

D. Describe the general nature of your litigation experience, including:

- (1) Whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your court appearances has varied over time, please describe in detail each such variance and give applicable dates.

Throughout my career I have regularly -- at least weekly -- appeared in court, though in the last year my appearances have been less frequent as my caseload has been much lighter and administrative duties have occupied more of my time.

- (2) What percentage of these appearances was in:

- (a) Federal courts (including Federal courts in D.C.);

In the course of my career, approximately three to five percent of my court appearances have been in Federal court, in the United States District Court for the District of Columbia.

- (b) State courts of record (excluding D.C. courts);

With the exception of representing a client alleged to have committed an armed robbery *pro hac vice* in Fairfax County Circuit Court in 1985 prior to coming to the Public Defender Service, I have not practiced outside of the District of Columbia.

- (c) D.C. courts (Superior Court and D.C. Court of Appeals only);

Throughout my career, approximately ninety-five to ninety-seven percent of my court appearances have been in the Superior Court for the District of Columbia.



- (d) other courts and administrative bodies.

I have made no other such appearances.

- (3) What percentage of your litigation has been:  
 (a) civil;  
 (b) criminal.

Over the course of my career, litigation in which I have been counsel is probably evenly split, approximately 50/50 between civil and criminal. All of the civil work has been in the Family Division (and later Family Court) of the Superior Court.

- (4) What is the total number of cases in courts of record you tried to verdict or judgment (rather than settled or resolved, but may include cases decided on motion if they are tabulated separately). Indicate whether you were sole counsel, lead counsel, or associate counsel in these cases.

In the course of my career, I would estimate that I have tried between three hundred fifty to four hundred cases to verdict or judgment. In the vast majority of these cases I was the sole attorney representing my client. In a handful of cases I might have had a co-counsel, junior to myself, who did second-chair duties; there may have been two or three others in which I was one of several counsels splitting the duties, and a handful in which I advised junior lawyers as they prepared and tried the case. The vast majority of these cases have been in the Family Division, later Family Court, of the Superior Court.

- (5) What percentage of these trials was to  
 (a) a jury;

Approximately ten percent of the cases I have tried to verdict were jury trials, and the majority of these were in the Family Division. (In fact, my last jury trial, in May of 2002, was a civil commitment case in the Family Court.)

- (b) the court (include cases decided on motion but tabulate them separately).

The overwhelming majority of my cases have been tried to the bench and I have appeared as sole or chief counsel. A very large percentage have been resolved by motion (e.g., all of the post Not Guilty by reason of Insanity (NGI) cases are the equivalent of codified writs of habeas corpus, 24 D.C. Code Section 501 (k)); thus their resolution is in that sense a resolution by motion, not trial. In addition, I have had bench trials, e.g., a domestic violence prosecution and a stipulated NGI trial, many, many post-NGI release hearings, mental health probable cause

hearings, Mental Health Commission hearings, hearings to end civil commitment, civil motions hearings, criminal motions hearings, occasional temporary restraining order/preliminary injunction hearings, and some juvenile transfer actions. (The mental health, juvenile and restraining order actions were all in the Family Division.)

17. Describe the five (5) most significant litigated matters which you personally handled. Provide citations, if the cases were reported, or the docket number and date if unreported. Give a capsule summary of the substance of each case and a succinct statement of what you believe was of particular significance about the case. Identify the party/parties you represented and describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case, (a) the date of representation; (b) the court and the name of the judge or judges before whom the case was litigated; and (c) the name(s) and address(es) and, telephone number(s) of co-counsel and of the principal counsel for the other parties.

1) In re: Myra DeLoatch, Mental Health No. 755-86 (rev'd 532 A.2d 1343 (D.C. 1987))(Hon. Henry F. Greene, presiding. Representing Myra DeLoatch: J. Michael Ryan. Representing Saint Elizabeths Hospital: Assistant United States Attorney \_\_\_\_\_, Mental Health Division. Dates of hearings: 5/22 & 5/23/86.)

I represented Myra DeLoatch in the Family Division of the Superior Court (but not on appeal). In Ms. DeLoatch's case, I argued against what was at that time the general practice of treating the explicit timetable for the holding of probable cause hearings found in the Ervin Act, D.C. Code Section 21-501, et seq.) as an advisory timetable; in support I cited the clear, mandatory, and jurisdictional language of the statute. The trial court disagreed with my argument. However, when our appellate division argued the case, the District of Columbia Court of Appeals agreed that the time limit language was mandatory and that its breach required dismissal. DeLoatch and its progeny went on to fortify the procedural backbone of the Ervin Act.

Ms. DeLoatch's case was one of several which had been set for probable cause hearings (D.C. Code Section 21-525) on an afternoon. When my client and I appeared as scheduled, the assigned judge noted that other hearings had been requested earlier in time, and that they would be heard first. When it appeared that we would not be heard that day, I convinced the court to certify us to another judge; he certified Ms. DeLoatch and another case. Upon appearing in front of the second judge we were told that the other hearing had been requested earlier and that Ms. DeLoatch would have to wait. When it became clear that our hearing would still not be held that day, I asked to be heard: I explained that we read my client's right to be heard "within 24 hours," D.C. Code Section 21-525, literally, insisted that the statute and Constitution required no less, and requested that another judge and prosecutor be found. Before a trial judge who felt I was elevating form over substance, my motions for a prompt hearing or dismissal were denied. Over my objections the case was continued to the following morning, at which

time I unsuccessfully renewed all of my previous objections and motions and probable cause was found to continue the hold on my client.

On appeal, the PDS appellate division argued, as I had below, the plain meaning of the statute and the court of appeals agreed. DeLoatch then became the touchstone for a line of cases strictly construing Ervin Act time limits: In re Reed, 571 A.2d 801 (D.C. 1990)(in which I was again the trial, but not appellate attorney, the Court of Appeals followed the reasoning of DeLoatch and found the time limit for D.C. Code Section 21-523 filings, as modified by Section 21-528, to mean precisely what it said); In re Strickland, 597 A.2d 869 (D.C. 1991)(affirming Reed and making explicit, that the time limit of Section 21-523 "means exactly seven days from the hour and minute when the order ... was entered."); In re Feenster, 561 A.2d 997 (D.C. 1989)(invoking DeLoatch, demanding analogously strict construction of the case-law designated time limit for the filing of outpatient revocation petitions); In re Barlow, 634A.2d 1246 (D.C. 1993)(in which I was trial, but not appellate counsel, ruling that calling a case to certify it to another judge tolled the statutory time limit).

The particular significance to me of this case is that in taking a stand at the trial level with Ms. DeLoatch, we laid the foundation for a line of cases which helped clarify and strengthen the procedural protections of the Ervin Act.

2) In re: Joseph Richey, Mental Health No. 2129-88 (Hon. Geoffrey M. Alprin, presiding in the Family Division of the Superior Court. Representing Joseph Richey: J. Michael Ryan. Representing the District of Columbia: Deputy Corporation Counsel, now the Hon. Ann O'Regan Keary, Associate Judge, Superior Court for the District of Columbia, 500 Indiana Avenue, N.W., Washington, D.C., 20001 (202/879-1863). Trial Dates: June 17, 1991 - June 28, 1991.)

Joseph Richey is one of the many Streicher v. Prescott, 663 F.Supp. 335 (D.D.C. 1987), class members I was privileged to represent on an individual basis. Mr. Richey was a committed inpatient for 49 years. I defended him in a lengthy, complex re-commitment jury trial which resulted in a verdict that he was not mentally ill. With my assistance, Mr. Richey returned to the hospital as a voluntary patient, and remained there voluntarily for several years until appropriate community facilities became available.

Mr. Richey was committed to Saint Elizabeths Hospital in 1942 at 17 years old. He remained there as an involuntary inpatient for the next 49 years. In 1991 I alone represented Mr. Richey in a two week jury trial during which the defense called one witness, an expert, and the government put on three experts and numerous lay witnesses.

The theory of the defense was that, rather than having a psychotic break after his admission to the Hospital in 1942 as had been diagnosed contemporaneously, Mr. Richey had been sexually assaulted, that the resultant trauma had been mis-diagnosed, and that documented sexual assaults in the '70s and late '80s continued the pre-existent trauma. Of necessity, preparation covered the entire 49 years of extant medical records and

copious in-depth psychiatric/psychological research, as well as preparation of three experts of our own (though I only used one ultimately). This case involved issues as diverse as the admissibility and inadmissibility of certain facets of medical records, the intended and unintended sequelae of psychopharmacological and electro-convulsive therapies, and a failed government attempt to compel my client's testimony in their case-in-chief. Judge Alprin also gave, over objection, some new, innovative jury instructions which I had designed and ruled consistent with the defense position on some quite thorny evidentiary issues.

When the jury reached a verdict in Mr. Richey's favor, he had nowhere to go and few skills to cope with life outside the institution. I assisted him in signing himself back into the hospital as a voluntary patient, D.C. Code Section 21-511, where he remained for several years. During this time I investigated outplacement possibilities and tried unsuccessfully to get him into an appropriate community placement. Finally, in 1999, new hospital administration and staff agreed to attempt a temporary outplacement. This experiment was successful and, beginning in 1999, Mr. Richey moved out and was thriving in the community, no longer on the rolls of the hospital for the first time since 1942.

The particular significance of the Richey case comes from its challenges: the breadth of pre-trial preparation, the complexity of the trial, the emotionally charged overall character of the proceedings, and his final outplacement, eight years after the jury verdict, 57 years after his admission.

3) In re: Michael Floyd, Mental Retardation No. 23-92, (Hon. Pamela Young Diaz, 1/14/93 hearing on Order To Show Cause; Hon. Ronald P. Wertheim, 2/14, 2/17/93 Show Cause hearing, all in the Family Division of the Superior Court. Representing Michael Floyd: J. Michael Ryan. Representing Ms. Terri Floyd-Pope (respondent's mother): John Connelly, 210 G Street, N.E., Washington, D.C. 20002. Representing the District of Columbia at different times: Assistant Corporation Counsels, Linda Dean, Jeanette Michael, Sheila Kaplan and Deputy Corporation Counsel Janet Maher, Mental Health Division, "M" Building, Saint Elizabeths Hospital, Washington, D.C. 20032 (202/645-8400).)

In Mr. Floyd's case, Commissioner Diaz ordered a residential placement in the Mental Retardation system by a date certain; the District failed to comply. At the request of counsel, the Commissioner issued an Order To Show Cause. After evidence and argument, Judge Wertheim found the District in contempt and then discharged the contempt finding only after a Settlement Agreement quite favorable to the respondent and his mother was signed.

Michael Floyd is a severely retarded young man who I represented in the Mental Retardation system since securing his release from Saint Elizabeths on a writ of Habeas Corpus in 1992 (having argued successfully that he was mentally retarded and autistic, not mentally ill). The writ was discharged when his mother petitioned for his mental retardation commitment and the government acceded to temporarily placing him. A

permanent placement was found, but terminated some months later, leaving my client at his mother's house without residential treatment. In the context of Mr. Floyd's commitment rights to habilitation and treatment, the Commissioner set a timetable for residential placement. When the government refused to obey the Commissioner's order ("This nefarious attempt to circumvent the court's order by the District of Columbia government to the detriment of a mentally retarded individual is appalling." Order To Show Cause, January 26, 1994, Hon. Pamela Young Diaz, p. 5), I requested from the Commissioner and was granted an Order To Show Cause why the District should not be held in contempt for failing to place my client in a timely and appropriate fashion. The motions judge found the District in contempt, and later discharged this finding, pre-assessment of damages, in favor of a Settlement Agreement quite advantageous to my client and his mother.

The particular significance of the Floyd case is that, whether the area is mental health or mental retardation, the quid pro quo for loss of liberty through commitment must be appropriate treatment in the least restrictive alternative. Through effective advocacy, I was able to vindicate my client's rights in this regard and secure a fine residential placement which respected and fostered his relationship with his mother.

4) In re: Hua Dong He, Mental Health No. 969-96. (The Hon. George Mitchell, Presiding Judge of the Family Division, Superior Court for the District of Columbia, presiding. Representing Hua Dong He: J. Michael Ryan. Representing the Commission on Mental Health Services: Assistant Corporation Counsel Sharlene Williams, Office of the Corporation Counsel, Mental Health Division, "M" Building, Saint Elizabeths Hospital, Washington, D.C. 20032. (202/645-8400) Date of appointment: November 7, 1996; dates of the hearing: November 15, 18, and 20, 1996.)

Mr. He, who spoke only Cantonese Chinese, was hospitalized in a public mental institution on an emergency basis pursuant to the Ervin Act, the District's civil commitment law, D.C. Code Section 21-521, et seq., largely due to his inability to express himself in English. The hospital insisted that, in the admitted absence of any unequivocally psychotic symptomatology, their diagnosis of a major mental disorder was nonetheless appropriate as based on a telephone report of a Cantonese-speaking psychiatrist from San Francisco, where my client had lived in Chinatown for several years. When I proved that this source in San Francisco was neither a psychiatrist nor a psychologist, and assured the court that I would assist my client in continuing on to New York to live there with his brother, the judge dismissed the case and released my client.

On November 5, 1996 Hua Dong He was admitted to Saint Elizabeths Hospital on an emergency basis by a police officer who said that he had stopped Mr. He in cool early morning hours on the grounds of the Capitol, that my client was wearing no shirt, and had refused a blanket which had been offered to him. The officer wrote that this behavior coupled with my client's lack of communicativeness was indicative of mental illness and that he constituted a danger to himself. The admitting doctor, who later stated that he had

used an interpreter over the phone to conduct the interview, characterized Mr. He as disoriented, confused, and a danger to himself as being "unable to communicate."

After being appointed by the court, I interviewed my client's treating doctor. He said that Mr. He was "isolative, noncommunicative," had very poor hygiene, and had been diagnosed in San Francisco as suffering from a major mental illness involving psychosis. The hospital doctor noted that my client spoke only Cantonese, but said that he had nonetheless used a hospital employee who spoke Mandarin to briefly interview Mr. He, and that the client seemed to understand. I interviewed my client with the assistance of a Cantonese interpreter. My client told me that prior to his admission to the hospital he had flown from San Francisco, intending to meet his brother who lived in New York City, but that he had landed at National Airport in the District by mistake. (He was unsure as to whether he had boarded the wrong plane or gotten off the right one prematurely.) Having no phone number for his brother in New York, no English language skills, and being confused by his whereabouts, Mr. He had spent three days and nights at the airport, eating from the fast-food stands and sleeping in chairs at night. Finally, with his little remaining money he had taken a cab to the District's Chinatown where he tried in vain to find someone who could help him. As he walked farther and farther down H Street, Northwest, he ultimately found himself out of Chinatown and on the Capitol grounds.

Since coming to the hospital no one had spoken to him in his own language. He had not been given a toothbrush, soap, or shampoo. (The ward staff later explained that he hadn't asked them for any so they didn't give him any.) The medical records noted that on admission he had been ordered to be put in leather wrist restraints for at least two days: "unpredictable; unable to communicate (speaks Chinese)." With the assistance of our office social worker we brought a minister from a local Chinese church into the hospital who also interviewed my client in Cantonese; this man noted that Mr. He lacked education and acculturation, had demonstrated behaviors more readily understood in the context of his own culture, and evidenced no obvious mental illness. With the minister we set up a contingent plan for work and housing in the Washington area if my client were released but should decide not to go on to New York.

After two and one-half days of a contentious probable cause hearing in which both my client and the gentleman from the Chinese church testified as detailed above, the hospital doctor still steadfastly maintained that my client was suffering from a major mental illness — in spite of the absence of any symptoms which were not also consistent with non-pathological explanations — basing his opinion on diagnostics obtained in a brief telephone interview with a Cantonese-speaking psychiatrist from San Francisco who claimed to have treated my client for a major mental illness. At my direction, my investigator succeeded in interviewing this "doctor" during a recess, discovering that he was a social worker, and not a psychiatrist or psychologist. Through cross-examination I was able to establish that the diagnosis of the hospital doctor was based in large part on the strength of the other 'doctor's' diagnosis and then introduced my investigator's testimony concerning her telephonic interview. Based on the foregoing and my pledge to assist my client to secure his funds, board the bus to New York and be met by his brother, the court dismissed the case, releasing my client. That evening I put him on a

bus to New York, alerted his brother to his arrival, and confirmed that he had arrived safely later that night.

The particular significance of Mr. He's case is that through the marshaling of community resources and sound interpretive services, we were able to assist the court in clarifying a series of cultural miscues, securing the release of the person, and insuring their safety in reuniting them with family and community.

5) In re: S.M., Juvenile No. 2494-97 (affd, 729 A.2d 326 (D.C. 1999))(Hon. John M. Campbell, presiding. Representing S.M.: J. Michael Ryan, Ottrell Ferrell (202/628-1200). Representing the District of Columbia: Mary R. Pipitone, Esquire (202/727-3400). Dates of hearing: approximately three to four weeks intermittently between March 18, 1998 and May 11, 1998.)

I was lead counsel representing respondent S.M., a fifteen year old charged with first degree murder while armed, at the trial level (not on appeal) in a juvenile transfer action pursuant to D.C. Code Section 16-2307 (a) (1) (1997) in the Family Division of the Superior Court.

S.M. was charged with an execution style murder and the government, contending that there were no reasonable prospects for his rehabilitation, moved that he be tried as an adult. The transfer hearing occupied a total of three to four weeks, included testimony from approximately twenty-seven witnesses (twelve called by the government, fifteen by the respondent), and stretched from March 18, 1998 to May 11, 1998. To provide expert witness support for their assessment that he could not be rehabilitated the government called a clinical psychologist, two probation officers, two clinical social workers, and the Deputy Superintendent of Oak Hill. Through exhaustive pre-expert-qualification phase voir/dire's of each proposed government expert, all but one of the proposed experts failed to qualify. I systematically examined each witness: first to ascertain the source of their claimed expertise; then to test, in the spirit of Daubert v. Merrell Dow, 509 U.S. 579 (1993), whether their opinion rested on a reliable methodological foundation. The last proffered government expert witness, a licensed clinical social worker in charge of treatment teams and social services at Oak Hill, was qualified in a limited fashion. Defense experts testified that there were reasonable prospects for rehabilitation; representatives from at least three different residential programs with secure facilities which agreed to accept S.M. offered evidence. We crafted an aftercare arrangement to keep S.M. in treatment following release from these facilities. The Court, perhaps largely due to the circumstances of the crime charged, found otherwise and ordered that S.M. be transferred to adult court. The PDS appellate division was unsuccessful in the appeal of Judge Campbell's ruling.

The particular significance of this case is that the skills and analytical framework I had developed with mental health experts in civil and criminal proceedings provided a handy template for testing expertise in a very different area. Through the effective use of the law on expert witnesses and extensive pre-qualification voir/dire, unreliable

methodological foundations for the opinions of five prospective expert witnesses were brought to light and these people were not qualified by the court to give opinion evidence.

18. Describe the most significant legal activities you have pursued, including significant litigation which did not proceed to trial or legal matters that did not involve litigation. Describe the nature of your participation in each instance described, but you may omit any information protected by the attorney-client privilege (unless the privilege has been waived).

The most significant legal activities I have pursued are the many, many individual cases in which I represented people who needed a zealous advocate. The nature of my practice has been as an advocate for individuals in specific cases, not, for instance in impact-oriented litigation. The five cases detailed in my response to question number 17 represent cases that were very significant to me, but they also stand for the hundreds of other people I represented in similar cases. In truth, the most significant legal activities of my career have always been the cases of whichever clients on whose behalf I am currently working.

The other significant legal activity I have pursued has been my work on issues involving expert witnesses in the courtroom. For at least the last ten years I have tried to focus on the best ways to present expert witness testimony and the best ways to attack it. I developed this focus largely due to the great amount of time I spent on the testimony of mental health professionals in my cases at the Mental Health Division. I was able to translate insights gained with these types of experts into helpful approaches to the testimony of anyone who would seek to be qualified to offer opinion evidence. My work on expert witnesses was what allowed me to transfer to our main office and become one of the Special Counsels to the Director of the agency. As such, much of my work of late involves assisting our trial attorneys in expert witness issues – from selecting and hiring to preparing qualification voir/dires, direct exams and cross exams – for experts who range in type from mental health to medical examiners and forensic DNA specialists.

19. Have you ever held judicial office? If so, please give the details of such service, including the court(s) on which you served, whether you were elected or appointed, the dates of your service, and a description of the jurisdiction of the court. Please provide four (4) copies of all opinions you wrote during such service as a judge.

I have never held judicial office.

A. List all court decisions you have made which were reversed or otherwise criticized on appeal.

20. Have you ever been a candidate for elective, judicial, or any other public office? If so, please give the details, including the date(s) of the election, the office(s) sought, and the results of the election(s).



In the summer of 1994 I applied to be the hearing commissioner who chairs the Superior Court's Commission on Mental Health. In September of 1997 a different hearing commissioner position was vacated and I applied.

I have sought no other elective, judicial, or other public office.

21. Political activities and affiliations.

- a. List all public offices, either elected or appointed, which you have held or sought as a candidate or applicant.

I have neither sought nor held public office.

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

I am registered as a Democrat in the District of Columbia, however, I have not rendered service to any political party or election committee during the last ten (10) years.

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

I have not made any political contributions to any individual, campaign organization, political party, political action committee, or similar entity during the last five (5) years of \$50 or more.

22. To your knowledge, have you ever been investigated, arrested, charged, or convicted (include pleas of guilty or nolo contendere) by federal, State, local, or other law enforcement authorities for violations of any federal, State, county, or municipal law, other than for a minor traffic offense? If so, please provide details.

With the exception of the following, to my knowledge I have never been investigated, arrested, charged, or convicted (include pleas of guilty or nolo contendere) by federal, State, local, or other law enforcement authorities for violations of any federal, State, county, or municipal law, other than for a minor traffic offense. In January of 1982, I was arrested for driving under the influence of alcohol in Arlington, Virginia. I successfully completed the VASAP pre-trial diversion program and all records concerning this traffic offense have been expunged.

23. Have you or any business of which you are or were a officer, director or owner ever been a party or otherwise involved as a party in any other legal or administrative proceedings? If so, give the particulars. Do not list any proceedings in which you were merely a guardian ad litem or stakeholder. Include all proceedings in which you were a party in interest, a material witness, were named as a co-conspirator or co-respondent, and list any

grand jury investigation in which you appeared as a witness.

To my knowledge, the only proceeding which might qualify is as follows: since my father died July 30, 2002 my stepmother has filed to set aside his will of which I am the only listed beneficiary. This issue is being litigated in Estate No. W-39150, Circuit Court for Montgomery County, Maryland, Rockville, Md.

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

I have never been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, bar or professional association, disciplinary committee, or other professional group.

## II. POTENTIAL CONFLICTS OF INTEREST

1. Will you sever all connections with your present employer(s), business firm(s), business association(s), or business organization(s) if you are confirmed?

I will sever all such connections if confirmed.

2. Describe all financial arrangements, deferred compensation agreements, or other continuing dealings with your law firm, business associates, or clients.

I have no such arrangements or agreements or continued dealings.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest.

I have no investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest.

4. Describe any business relationship, dealing, or financial transaction which you have had in the last ten (10) years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest other than while in a federal government capacity.

I do not believe that I have had any such relationship, dealing, or financial transaction in the last ten (10) years.

5. Describe any activity during the last ten (10) years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of

legislation or affecting the administration and execution of law or public policy other than while as a federal government employee.

Given the unique character of the Mental Health Division of PDS, a small group of lawyers focused on the representation of people alleged to be dangerous to themselves or others due to mental illness, our input – sometimes in the nature of testimony – was invited by the Council for the District of Columbia on issues relating directly to the mental health community. In 1993, at the request of the Council I testified on pending legislation which would have converted the right to treatment for people in Saint Elizabeths Hospital into a preference for treatment. In 1997, 1999 and 2002, when legislation regarding commitment of people with mental retardation found not competent to stand trial in criminal cases was proposed, I was consulted by representatives of the Council, but did not testify. As a private citizen in my capacity as External Affairs representative of the Francis Scott Key Elementary School Parent Teacher Association, on occasion I testified before the Mayor and School Board of the District of Columbia requesting increased funding for public schools in the District of Columbia.

6. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service as a judge? If so, explain.

I have none. I would enjoy continuing being an uncompensated adjunct assistant professor in the psychiatry program at Georgetown's Medical School teaching issues related to law and psychiatry unless it were perceived that this created a conflict of some sort. (Though a conflict would seem unlikely, as I believe some sitting Superior Court judges have the same appointment.)

7. Explain how you will resolve any potential conflicts of interest, including any that may have been disclosed by your responses to the above items. Please provide three (3) copies of any trust or other relevant agreements.

I have no such issues which would yield a potential conflict.

8. If confirmed, do you expect to serve out your full term?

Certainly.

### III. FINANCIAL DATA

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

### IV. DISTRICT OF COLUMBIA REQUIREMENTS

Supplemental questions concerning specific statutory qualifications for service as a judge in the courts of the District of Columbia pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970, D.C. Code Section 11-1501(b), as amended.

1. Are you a citizen of the United States?

Yes.

2. Are you a member of the bar of the District of Columbia?

Yes.

3. Have you been a member of the bar of the District of Columbia for at least five (5) years? Please provide the date you were admitted to practice in the District of Columbia.

Yes. I was admitted to practice before the bar of the District of Columbia Court of Appeals on June 25, 1984. [N.B.: Please note my response to question no. 9 in this series.]

4. If the answer to Question 3 is "no" --

- A. Are you a professor of law in a law school in the District of Columbia?
- B. Are you a lawyer employed in the District of Columbia by the United States or the District of Columbia?
- C. Have you been eligible for membership in the bar of the District of Columbia for at least five (5) years?
- D. Upon what grounds is that eligibility based?

5. Are you a bona fide resident of the District of Columbia?

Yes.

6. Have you maintained an actual place of abode in the greater Washington, D.C. area for at least five (5) years? Please list the addresses of your actual places of abode (including temporary residences) with dates of occupancy for the last five (5) years.

I have lived at 5104 Sherier Place, N.W., Washington, D.C., 20016, since May, 1986.

7. Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nominating Commission?

I am not.

8. Have you been a member of either of these Commissions within the last 12 months?

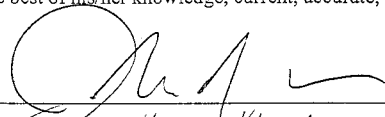
I have never been a member of either.

9. Please provide the committee with four (4) copies of your District of Columbia Judicial Nomination commission questionnaire.

I am here including the four (4) requested copies, but would note that I discovered an error in the original District of Columbia Judicial Nomination commission questionnaire which I filed. Question No. 8 therein which requests the dates of bar admissions reflects a 1994 D.C. Bar admission. This is a typographical error; I was admitted on that date in 1984.

AFFIDAVIT

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

  
SUBSCRIBED and SWORN TO before me this 12<sup>th</sup> day of February 2003.

Michelle A. Bundy  
Notary Public

MICHELLE A. BUNDY  
Notary Public for the District of Columbia  
My commission expires July 14, 2006



Department of the Treasury  
Internal Revenue Service  
PO Box 21218  
Phila. Pa 19114

Date: August 24, 1999 dly

Re: Your inquiry dated May 12, 1998

Taxpayer identification number: 579-62-5504

Tax period: 12/31/95; 12/31/96

Dear Mr. Ryan,

This note is regarding the payment of \$23,316.92  
paid by Capital Title Insurance Agency.

The credit to your account for tax years 1995  
and 1996 was delayed due to the fact the company  
failed to put your SSN on the check, and they  
sent the check to IRS with Form 8288.

Ms Dixon has informed me that form was filed  
in error. Attached are copies of faxes  
sent to Ms Dixon at Capital Title Insurance Co.

We apologize for any inconvenience this has  
caused you. I've sent Ms Dixon a second request  
for correct information today.

Signature	<i>Deanne Palmer</i>	Employee number	2829700 7512
Title:	Tax Examining Asst. Ph# 800-829-0929		

J. MICHAEL RYAN, Esquire  
 5104 Sherrier Place, N.W.  
 Washington, D.C. 20016  
 (O): (202) 383-9530; (H): (202) 244-8442  
 mryan@pdsdc.org

## PROFESSIONAL EXPERIENCE

- Special Counsel to the Director** 2002 - present  
*Public Defender Service for the District of Columbia (PDS)*  
 Recently relocated to main office for newly created management position (initially designated Deputy Chief of Legal Services). Charged with coordinating agency-wide provision of Expert Witness services: individual strategic consultation with trial attorneys, identification of appropriate expert witnesses and development of internal/external training related to appropriate utilization and examination of expert witnesses. Responsible for agency efforts with respect to maintenance, expansion and creation of Jail Diversion programs in the District of Columbia. Collaborate with other criminal justice, mental health/court agencies, advocate and provider community.  
 Provide administrative oversight of the Mental Health and Offender Rehabilitation Divisions. Participate in agency Forensic Practice Group, maintain own case load of not guilty by reason of insanity clients, some civil clients, lead attorney in DNA litigation, as well as serve as senior co-counsel and supervisor for trial attorneys; represent PDS on outside committees and meetings; one of the senior editors of the *Criminal Practice Institute Manual (CPI)* and one of the coordinators of the CPI conference. Lecture and train frequently on cross-examination, experts and mental health issues (see Addendum).
- Staff Attorney** 1985 - 2002  
*Public Defender Service for the District of Columbia*  
*Mental Health Division - Saint Elizabeths Hospital*  
*Litigation:*  
 Sole responsibility in all aspects of litigation for substantial caseload of persons subject to both civil commitment proceedings and criminal release hearings, including numerous jury and bench trials, and multi-expert complex litigation. Emergency detention hearings, administrative hearings before the Mental Health Commission, regular judicial release hearings for persons acquitted by reason of insanity, each requiring preparation of both procedural issues and in-depth analysis of medical and psychiatric records; investigation and preparation of witnesses.  
*General:*  
 Broad experience in examination of psychiatrists, psychologists, and other expert witnesses. Extensive legal, medical and scientific research utilizing various internet sources, and professional literature.
- Chairperson** August 2000 - present  
*Jail Diversion Task Force, Washington, D.C.*  
 As Chair, preside over meetings of the full Task Force (see below), including Pre-Booking, Post-Booking and other subcommittees, and coordinate efforts between participating agencies. Instrumental in development, implementation and ongoing operation of OPTIONS, a collaboration of the Task Force, Pretrial Services, the Department of Mental Health (DMH), the Corrections Trustee, *et al.*, which offers assertive case management – including medication support and housing – pretrial to people charged with nonviolent crimes who suffer from serious psychiatric problems. Due to the success of the pilot, OPTIONS was expanded and refunded for FY '02 and adopted *in toto* by the DMH as of April 1, 2002.

**Member** April 1998 – August 2000  
 Task Force is a working group comprised of representatives from various criminal justice and mental health agencies and community service organizations formed in early 1998 to address problems relating to people with mental illnesses in the criminal justice system. Goal of Task Force is to secure appropriate treatment for people who find themselves in a criminal justice system incapable of addressing their therapeutic needs. Collaborative efforts on the part of all participants have led to great advances toward this goal. Participated in redrafting of MPD General Order covering department contacts with people who may suffer from mental illness and developing eight-month training program used to train 2500 police officers.

**Member** September 2002 – Present  
*Family Division, D.C. Superior Court* February 2001 – April 2001  
*Mental Health and Mental Retardation Branch Working Group*  
 Worked with Presiding Judge of Family Division, Commissioners sitting in Mental Health and Mental Retardation, attorneys representing the District and private practitioners at identifying, and finding solutions to, problems in the operations of the Mental Health and Mental Retardation Branch Clerk's Office of the Superior Court's Family Division. Revived group now focused on successful implementation of new Family Court.

**Advisory Board Member** 2001 - Present  
*Criminal Justice/Mental Health Consensus Project*  
*Police Executive Research Forum, Washington, D.C.*  
 Beginning with May 31 to June 1, 2001, Advisory Board Meeting for Law Enforcement Track, working with police chiefs, officers, mental health professionals, and legislators in analyzing appropriate police response to individuals whose behaviors reflect severe or serious mental illness; formulating and drafting consensus recommendations regarding training, information management, police response protocols, information sharing, partnership and collaboration, and performance evaluation. Next Advisory Board Meeting scheduled for January 9 through 11, 2002.

**Adjunct Assistant Professor** 1994 - Present  
*Department of Psychiatry*  
*Georgetown School of Medicine, Washington, D.C.*  
 From 1996 to present: lecture, provide clinical courtroom experience and participate in clinical case-conferencing for psychiatry residents and 3<sup>rd</sup> year medical students at Georgetown University Medical Center's inpatient psychiatric service involving topics related to the confluence of law and psychiatry on a sporadic basis.  
 During 1994 and 1995, lectured, provided clinical courtroom experience as one of the faculty in Psychiatry & The Law for both the psychiatry residents as well as 4th year medical students.

**Consultant** 1993 - 1995  
*Mental & Physical Disability Law Reporter*  
*American Bar Association, Washington, D.C.*  
 Wrote and edited synopses of current state and federal cases concerning a variety of mental health issues, including: competence - to stand trial or to waive the insanity defense, Not Guilty By Reason Of Insanity pre- and post-trial proceedings, civil commitment and release from civil and criminal commitments.



**Partner** 1984 - 1985  
*Ryan & Anthony, Attorneys At Law, Washington, D.C.*

Specialized in defense of criminal and mental health cases in Superior Court and District Court, including court-appointed, pro bono, and retained.

**CLERKSHIPS**

**Interim Law Clerk** 1984  
*Honorable Bruce S. Mencher*  
*Superior Court for the District of Columbia, Washington, D.C.*

Among other duties covering six weeks, wrote on the topic of legal malpractice.

**Law Clerk/Investigator** 1983 - 1984  
*Public Defender Service for the District of Columbia*  
*Mental Health Division, Washington, D.C.*

**Law Clerk** 1982 - 1983  
*Honorable Richard B. Latham*  
*Circuit Court for Montgomery County, Maryland*

Single law clerk to trial judge on general jurisdiction court.

**ACADEMIC EXPERIENCE**

**Student Attorney** 1981 - 1982  
 District of Columbia Law Students In Court - Criminal Division

**Investigator** 1980 - 1982  
 Public Defender Service for the District of Columbia

**EDUCATION**

**Juris Doctor** May 1982  
 National Law Center of the George Washington University  
 Washington, D.C.

**Bachelor of Arts with Honors in Philosophy** May 1979  
 The College of William and Mary in Virginia  
 Williamsburg, Virginia

**BAR MEMBERSHIPS**

District of Columbia Court of Appeals  
 United States District Court for the District of Columbia  
 United States Supreme Court

**J. Michael Ryan, Esquire**  
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- 2003**  
January 30 **Panelist**, George Washington University Law School, "Interview Skills Panel Discussion - Focus on Public Defenders and Prosecuting Offices."
- 2002**  
November 14 **Presenter**, National Legal Aid and Defender Association, Annual Conference, Milwaukee, Wisconsin, "Science in the Courtroom for the 21st Century: DNA and Other Forensic Science."  
October 24 **Presenter**, new Superior Court Family Court Magistrate Judges' Training, "Mental Health Expert Opinion Evidence & Psychological Testing."  
September 26 **Lecturer**, University of Virginia School of Law, Psychiatry and Criminal Law Class, "Expert Opinion Witnesses: Preparation & Examination."  
August 8 **Guest Lecturer**, George Washington University School of Medicine, on District of Columbia Civil Commitment Law and the Right to Refuse Treatment, to Residents in Medicine, Law & Psychiatry class.  
July 20-24 **Faculty**, National Trial Advocacy Skills Training, Benchmark Institute, Los Gatos, California; lecture, lead workshops and demonstrate full range of trial skills including, inter alia, closing arguments and the cross-examination of expert witnesses.  
July 19 **Lecturer**, Santa Clara County Public Defender, San Jose, Ca., "Mental Health Expert Witnesses: Preparation, Direct & Cross-Examination."  
June 26 **Panelist**, Forensic Mental Health Conference, Government of the District of Columbia, Department of Mental Health, "The District's Current System for the Evaluation and Treatment of Individuals Found Not Guilty By Reason of Insanity: Clinical & Legal Overview."  
**Panelist**, [foregoing], "The District of Columbia's Jail Diversion Initiatives, Including Police Mental Health Training and the OPTIONS Program."  
May 10 **Moderator**, National Association of Sentencing Advocates' 10<sup>th</sup> Annual Conference, panel on "Recent Advances in Assessing Risk for Violence (or Not): Research, Structured Assessment, and the Communications of Findings."  
April 25 **Presenter**, Re-Education Through Labor Study Visit, Peoples Republic of China (PRC), visiting PRC law professors sponsored by Vera Institute of Justice, explaining the founding, structure and operations of the OPTIONS program.  
April 19 **Voting Delegate**, 27th Annual Judicial Conference of the District of Columbia Courts.  
April 18 **Presenter**, Institute of Law, Psychiatry & Public Policy, University of Virginia, Charlottesville, Virginia, Mock Trial, demonstrating the direct and cross-examination of psychologists and psychiatrists in a criminal trial in which criminal responsibility is at issue.

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- March 25 **Panelist**, Symposium on Mental Health Issues in Correctional Institutions, David A. Clarke School of Law, University of the District of Columbia, "Problems and Solutions," discussing, *inter alia*, the OPTIONS program.
- March 8 **Lecturer**, Creative Connections, Washington, D.C., in-service training for case management agency, "The Evolution of Civil Commitment Law in the District of Columbia."
- February 15-17 **Faculty Lecturer**, California Attorneys for Criminal Justice and California Public Defenders Association, Annual Conference, Monterey, Ca., "The State of the Art of Violence Risk Assessments."
- February 14 **Speaker**, California Appellate Project Training Program, San Francisco, Ca., "How to Present or Challenge Mental Health Experts Effectively."
- January 17 **Presenter**, 2002 Neglect Practice Institute, The Bar Association of the District of Columbia: "Direct and Cross-Examination of Mental Health Professionals."
- January 10-11 **Advisory Board Member**, Project Participant, Police Executive Research Forum Criminal Justice/Mental Health Consensus Project, Law Enforcement Track Advisory Board Meeting.
- 2001**
- December 7 **Presenter**, District of Columbia Pretrial Services Agency, 2001 Training Days: "The Impact of Mental Health Issues on the Criminal Justice System."
- November 7 **Lecturer**, *Lawyers for Children America* and Counsel for Child Abuse and Neglect (CCAN) lawyers, Brown Bag Luncheon, "Interviewing and Examining Mental Health Expert Witnesses."
- October 2 **Lecturer**, D.C. Law Students in Court, Civil Division, Strategies for Assisting Psychiatrically Fragile Clients and Witnesses.
- August 8 **Guest Lecturer**, George Washington University School of Medicine, on Civil Commitment Law in the District of Columbia to Residents in Medicine, Law & Psychiatry class; specific topics: Informed Consent and Right To Refuse Treatment, Civil and Criminal.
- July 16 **Participant**, by invitation, Department of Mental Health, 1st Annual Priority Planning Conference for Adult Services.
- July 9 **Participant**, by invitation, Department of Mental Health, 1st Annual Priority Planning Conference for Forensic Services.
- June 21 **Presenter**, "Crisis Intervention in Citizens with Mental Illness: Innovations in Law Enforcement," Promoting Awareness, Communication, and Safety: Creating a Partnership Between the Disability and Law Enforcement Communities.
- May 31- **Advisory Board Member**, Project Participant, Police Executive Research Forum Criminal

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- June 1 Justice/Mental Health Consensus Project, Law Enforcement Track Advisory Board Meeting generating draft recommendations regarding training, response protocols and collaborations and partnerships.
- May 30 **Presenter**, Institute of Law, Psychiatry & Public Policy, University of Virginia, Charlottesville, Virginia, Mock Trial, demonstrating the direct and cross-examination of psychologists and psychiatrists in a criminal trial in which criminal responsibility is at issue.
- April 21 **Trainer**, National Association for Public Interest Law, National Service Legal Corps training, lecturing on "Working Effectively With Clients."
- February 27-  
April 27 **Working Group Member**, Mental Health and Mental Retardation Branch Working Group aimed at identifying, and finding solutions to, problems in the operations of the Mental Health and Mental Retardation Branch Clerk's Office of the Superior Court for the District of Columbia.
- January 22-23 **Participant**, by invitation, Special Task Force on Saint Elizabeths Services Planning.
- January 11 **Lecturer**, D.C. Law Students in Court, Cross-Examination of Experts Generally, Psychiatrists and Psychologists Specifically.
- 2000  
December 7 **Co-Presenter**, District of Columbia Pretrial Services Agency 2000 Training Days: Mental Health Issues in the Criminal Justice System.
- November 18 **Lecturer**, District of Columbia Criminal Practice Institute, in two separate sessions on "Challenging Experts in this Jurisdiction: the Law" and "Competency Issues: Identifying Mental Health Issues at Various Stages of Proceedings."
- October 20 **Lecturer**, Forensic Psychology Training Seminar, Commission on Mental Health Services, Forensic Services Administration, to forensic psychology residents, interns and post-doctoral psychologists, a general introduction to a forensic practice in the D.C. courts, admissibility of expert testimony and the direct and cross-examination of expert witnesses.
- September 19 **Lecturer**, D.C. Law Students in Court, Strategies for Coping with Psychiatrically Fragile Clients and Witnesses.
- September 8-10 **Faculty**, National Seminar on Mental Health and the Criminal Law, Federal Defender Training Group, Administrative Office of the United States Courts, San Francisco, California; lecturing on issues involving examining expert witnesses and researching medical and psychiatric literature.
- July 22-30 **Faculty**, National Trial Advocacy Skills Training, Benchmark Institute, Los Gatos, California; lecture, lead workshops and demonstrate full range of trial skills including, inter alia, closing arguments and the cross-examination of expert witnesses.
- June 17 **Faculty**, PDS Criminal Defender Training Program: Summer Series, "Mental Illness, Mental Retardation, and Competence in Criminal Cases."

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- May 12 **Presenter**, 12th Annual Neglect/Delinquency Practice Institute: "Challenging Psychological Reports."
- April 12 **Mock Trial Judge**, American University, Washington Semester Program, Justice Class.
- March 20 **Lecturer**, Georgetown University School of Law, Criminal Justice Fellows, Cross Examination of Experts Generally, Psychiatrists, Psychologists and Police Drug Experts Specifically.
- March 17 **Panelist**, District of Columbia Commission on Mental Health Services Child and Youth Services Administration and Howard University School of Social Work Conference, "Our Children and Our Families: A Greater Commitment and A New Attitude in the Millenium," lecturing on and demonstrating witness preparation and cross-examination techniques: "The Social Worker as Expert Witness."
- February 10 **Presenter**, Legal Aid Bureau, Metropolitan Maryland Office, CINA [Child In Need of Assistance] Training, Psychiatric Hospitalization of Children, litigation strategies and the use of expert witnesses.
- 1999
- November 20 **Presenter**, Criminal Practice Institute panel on Mental Health Issues Frequently Encountered In Criminal Cases.
- October 28 **Lecturer**, D.C. Law Students in Court, Cross-Examination of Experts Generally, Psychiatrists and Psychologists Specifically.
- May 11 **Lecturer**, D.C. Superior Court Trial Lawyers Association, Continuing Legal Education, "Cross-Examining Government Expert Witnesses with Emphasis on Drug Experts."
- April 21 **Guest Lecturer**, Georgetown University School of Law, Law & Psychiatry Class.
- April 14 **Mock Trial Judge**, American University, Washington Semester Program, Justice Class.
- March 25 **Lecturer**, D.C. Law Students in Court, Cross-Examination of Experts Generally, Psychiatrists and Psychologists Specifically.
- 1998
- July 25 - August 2 **Faculty**, National Trial Advocacy Skills Training, Benchmark Institute, Los Gatos, California; lecture, lead workshops and demonstrate full range of trial skills including, inter alia, closing arguments and the cross-examination of expert witnesses.
- June 18 - 19 **Voting Delegate**, 23rd Annual Judicial Conference of the District of Columbia Courts.
- February 20 **Presenter**, 10th Annual Neglect/Delinquency Practice Institute: Evidence Plenary.
- February 5 **Lecturer**, D.C. Law Students in Court, Cross-Examination of Experts Generally, Psychiatrists and Psychologists Specifically.

**U.S. Senate Committee on Governmental Affairs**  
**Pre-hearing Questions for the**  
**Nomination of J. Michael Ryan, III to be an**  
**Associate Judge, Superior Court of the District of Columbia**

1. The answers to your Questionnaire submitted to this Committee indicate that for the years 1995, 1996 and 1997 you did not file your federal and D.C. income tax returns in a timely fashion. For each year state whether or not you filed extensions on a timely basis, and if not, why not?

My wife and I filed extensions for these years – both federal and D.C. – though ultimately we did not file enough of them. At the time when our 1995 personal income taxes came due in 1996, a new accounting firm had just been retained to handle the finances for my wife's business. On doing so, they informed her that the way the accounting for the business had previously been done and the manner of her compensation would have to be changed significantly. They alerted us that these changes required voluminous paperwork and accounting time, and would quite significantly impact the calculation of our personal taxes. Due to the radical nature of the overhaul, we did not know what information to file for my wife's income.

For tax year 1995 we timely filed extensions to 8/15/96 and then filed again for an extension to 10/15/96. I called the 800 number listed, alerted the Internal Revenue Service (IRS) that we would be delayed in filing our taxes, that we certainly intended to pay all tax due and realized that a penalty would be assessed. As the accounting overhaul process continued, we timely filed extensions for the tax year 1996 return until 8/15/97. Thereafter, I again notified the IRS that our 1996 taxes could not be timely filed. The personal income tax returns for 1995 and 1996 were finally prepared and filed in the Fall of 1997 and required payment of large tax liabilities, the money for which was not readily available to us. We negotiated with the IRS that we would re-finance our house and pay these tax liabilities from the proceeds. These arrangements consumed many hours on the phone over many months, from the Fall of 1996 on through the filing of the returns in November of 1997 and the refinancing in 1998. We did not keep filing requests for extensions but reiterated in each call our intent to file and pay. Our settlement for re-financing finally took place in early July, 1998. This re-financing, which occurred in the midst of a very hectic period of our lives, was understood by us to be satisfying all of our tax liabilities then extant. In the midst of re-financing and settlement, we missed timely filing our 1997 taxes – for which we had filed extensions until August 15 – by thirteen days; when we discovered our error we paid the tax and requested a calculation of penalties and interest. When we received that calculation we paid the amount due.

I take my responsibilities to the government, both legal and ethical, very seriously. I should have filed further extensions but I did not; I did however remain in phone contact until all was filed and paid. I filed and paid everything as expeditiously as I was able. Since this period I have timely satisfied my obligations.

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2. In your pre-hearing interview with Committee staff, you stated your failure to file timely tax returns for 1995 and 1996 was due to accounting problems associated with your wife's business. Could you describe more precisely the nature of the problems and how they related to the untimely filings.

At the time when our 1995 personal income taxes came due in 1996, a new accounting firm had just been retained to handle the finances for my wife's business. On doing so, they informed her that the way the accounting for the business had been previously done and the manner of her compensation would have to be changed significantly. They determined that the accounting method needed to change from accrual to cash and that the compensation needed to change from intermittent to salary. They alerted us that these changes required voluminous paperwork and accounting time, and would quite significantly impact the calculation of our personal taxes, especially since our only source of income aside from my Public Defender Service salary was whatever compensation she received from her business. Our filings were delayed until the information relating to my wife's income could be generated.

3. Your written response to the Committee Questionnaire stated that you did not actually file your 1995 and 1996 D.C. tax returns until 1999. Given that you were working with the tax authorities over a fairly lengthy period of time to clear up your tax problems, how do you account for the lengthy delay in filing these taxes?

We did indeed work closely with the IRS throughout this period; our federal tax obligations were the focus of these efforts, largely because that was where most of the money would be due and because we knew that once the federal returns were done, the D.C. ones would be able to be completed expeditiously. It is my recollection that when the 1995 and 1996 federal returns were filed in 1997, the D.C. returns for those years were ready to be filed as well. Indeed, we both believed that we had filed them at that time. However, in June of 1999 I discovered our unfiled 1995 and 1996 D.C. tax returns, inadvertently placed in a folder relating to the IRS in our files. We immediately filed them at that time. In spite of the many difficulties we were going through in this period, the misplacing and failure to file was an inexcusable oversight.

4. Could you elaborate on the reasons for your failure to file your 1997 tax returns on a timely basis.

We timely filed a request for an extension from 4/15/98 to 8/15/98. In the July refinancing settlement we took care of our outstanding IRS debts from tax years 1995 and 1996. This was a very hectic time for our family with bringing the tax problems to a close, refinancing the house, sick family members and traveling. Our 1997 taxes were timely prepared and ready to be filed. We intended to file them at the same time we cleared up the 1995 and 1996 returns in July; we thought that we had done so; the

omission to do so was inadvertent. In going through our papers thereafter, we found and filed the 1997 return 13 days beyond the extension on August 28, 1998.

5. For the years 1995 to 1999, did you use an accountant to prepare your taxes? If so, who was your accountant?

Edward Abramson, Abramson and Associates, Washington, D.C.

6. If you changed accountants during this period, could you explain the basis for your action?

We changed accountants immediately prior to this period. The accountant who had been handling the accounting work for my wife's business as well as our personal taxes was an old college friend. At a time when his accounting practice was becoming less of a professional focus for him, my wife's business – which was experiencing growth – needed more, not less, accounting attention, and she wanted someone based in the District of Columbia as well.

7. In a typical case, a taxpayer who has engaged an accountant provides the accountant with relevant information in advance of April 15. The accountant then prepares the tax returns with input from the client and sends them to the client to send to the IRS. Is this the procedure you used with your accountant? If not, describe the procedure you used in preparing to file your 1995, 1996 and 1997 federal and D.C. tax returns.

Information relevant to my own income (i.e., my salary from Public Defender Service) was readily available and duly provided to the accountant prior to April 15 each year. It was the information relating to my wife's income which was unavailable until the accountant finished the overhaul of her business' accounting in the Fall of 1997.

8. For each of the years 1995, 1996, and 1997, in what month did you provide your accountant with the relevant tax information he or she needed to prepare your returns?

I believe that the accountant was provided with relevant tax information relating to my income in a timely fashion each year for our joint return, usually at some point in March is my recollection. The holdup was never my uncomplicated tax information – essentially the documents reflecting my salary and withholdings for the previous year – it was the information relating to my wife's compensation which was unavailable. This latter information was unavailable until the accountants finished their work in late 1997 at which time we filed the returns for 1995 and 1996. The information regarding my wife's compensation for tax year 1997 was available from the accountants in June of 1998 or thereabouts and the 1997 return was thereafter completed for filing.



9. During the time you were negotiating with the IRS to pay your 1995 and 1996 taxes, were you represented by an accountant and/or counsel? If yes, please state the name(s) of your representative.

I was not represented by an accountant or by counsel in negotiations with the IRS during this period.

10. In your pre-hearing interview with Committee staff, you stated that, when you refinanced your primary residence to pay your taxes, the title company was responsible for sending the pay-off check to the IRS. From what source did the title company receive its instructions for sending the check to the IRS? Were you aware of what the instructions were?

Louis Patierno from Carteret Mortgage had helped us obtain the loan and it was my understanding that he had instructed the title company to send the check for the full payoff amount as calculated that day to the IRS. This was later confirmed by the title company at settlement.

11. Were you represented by counsel during the refinancing process?

No, I was not.

12. Was your accountant involved in the refinancing process? If yes, in what way?

No, the accountant was not involved in the refinancing process.

13. Did you receive copies of the settlement documents after the closing? Did your accountant and/or attorney receive the documents?

We did receive some copies of settlement documents after closing. None were provided to any accountant or attorney.

14. If you or your representatives received copies of the settlement documents, was a copy of the settlement check sent to the IRS included among those papers?

No copy of the settlement check which had been sent to the IRS was included in the papers provided to us.

15. If you did receive a copy of your settlement check sent to the IRS, did you notice that your name and social security number were not written on the check? If you did, were you concerned about those omissions?

No copy of the settlement check which had been sent to the IRS was included in the

papers provided to us. My understanding from the IRS was that it was not the absence of our names – they were on the check – but rather the absence of the social security number which kept it from being credited.

16. You note that the settlement check was credited to your IRS account in August of 1999. When, if at all, did you receive notice and/or a release from the IRS?

The only notice I received was the correspondence – which was generated at my request – from IRS Tax Examining Asst. Diane Galm who notified me when I inquired that the check had not been credited because a social security number had not been included but that it would be immediately credited. (Please see attached 8/24/99 correspondence.)

17. When the payment was made in July, 1998, did you expect to receive confirmation from the IRS?

No, to the best of my recollection, I did not expect to receive confirmation of the payment having been made.

18. Did you or your counsel and/or accountant make any inquiry(ies) with the settlement company or the IRS as to the receipt of the check, and if so, when? If you did inquire, what triggered the inquiry(ies)?

In August of 1999 when I became a candidate for judicial nomination, I consulted the IRS to make certain that my accounts with them had been settled. IRS Tax Examining Asst. Diane Galm notified me then that the check had not been credited because a social security number had not been included. (Please see attached 8/24/99 correspondence.) It was immediately thereafter credited without additional penalty or interest.

19. In August 1999, when you were credited with paying your back federal taxes, had you discovered and filed your 1995 and 1996 D.C. tax returns?

Yes. In June of 1999 I discovered our unfiled 1995 and 1996 D.C. tax returns, inadvertently placed in a folder relating to the IRS, in our files. We immediately filed them at that time.

20. In August 1999, before the settlement check was sent to the IRS, approximately how much did you owe the IRS in back taxes, interest and penalties? Please provide a breakdown of what you owed.

The check was received by the IRS on 7/2/98. In 1999 it was finally credited, nunc pro tunc, to the time of its receipt by the IRS without additional penalties or interest being generated by the year it had been in the possession of the IRS, albeit not credited to our account. The amount we had owed and paid was \$23,316.92. Of that, tax year 1995 was

\$13,080.95 (of which \$1,971.90 was late filing penalty, \$762.58 was penalty for late payment, and \$1,392.63 was the interest assessment) and tax year 1996 was \$10,235.97 (\$701.73 late filing, \$272.89 late payment, and \$427.50 interest).

21. Do you believe that your failure to file your 1995 and 1996 city taxes was related to the late crediting of your settlement check?

No they were unrelated events.

22. In your pre-hearing interview with Committee staff, you indicated that you believed it was appropriate to treat your domestic worker as an independent contractor for tax purposes, as it was your understanding that other of the worker's employers were doing so. According to an opinion letter from your attorney that you provided to Committee staff, however, it appears that you did not provide a Form 1099 to the IRS reporting your payments to the worker. Is this correct? If so, and if you believed that the worker was appropriately treated as an independent contractor, why did you not file any Form 1099 with the IRS?

Thank you for this opportunity to clarify my responses. All business relating to this lady was initiated, undertaken and continued by my wife. She hired the lady, worked out compensation, benefits, leave, etc. I was not involved in this process at all. I certainly take responsibility for our omissions in this regard, but in truth, I was not involved. To the best of my recollection, I assumed -- but never investigated or inquired -- that we were meeting our responsibilities at that time. When I became a candidate for judicial nomination, I inquired regarding this lady's employment status relating to us. It was then that I assumed -- without researching the issue myself -- that she might qualify as an independent contractor. To be safe though, I then sought the opinion of counsel previously forwarded. I later learned that we had not filed Form 1099s or any other forms with the IRS. We thereafter met our obligations and continue to do so.

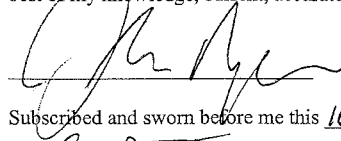
23. Following controversy over a presidential nominee's failure to pay taxes for a domestic employee, Congress passed the Social Security Domestic Employment Reform Act of 1994, which sought, among other things, to simplify and clarify the obligations to pay social security and other taxes on behalf of domestic workers. Did the controversy of the nominee and passage of this law cause you to re-examine whether you were obligated to pay taxes on behalf of your domestic employee? When did you first seek a legal opinion as to the appropriate tax treatment of the domestic worker?

At the time of its passage, the act did not cause me to re-examine my obligations. My wife had been and continued to be in charge of this aspect of our family's life; she always did our bills and checkbook and kept the house functioning. When I became a candidate for judicial office, I took a careful look at this issue, ultimately solicited an opinion from counsel in September of 1999 and thereafter met my legal obligations.

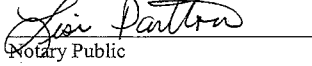
I do take these legal and ethical obligations seriously. On discovering our error, we rectified it and continue to meet these obligations.

**AFFIDAVIT**

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



Subscribed and sworn before me this 16<sup>th</sup> day of June, 2003.

  
Notary Public

**LISA PARTLOW**  
Notary Public District of Columbia  
My Commission Expires September 30, 2004

QUESTIONNAIRE FOR NOMINEES TO THE DISTRICT OF COLUMBIA  
COURTS COMMITTEE ON GOVERNMENTAL AFFAIRS, UNITED STATES  
SENATE

I. BIOGRAPHICAL AND PROFESSIONAL INFORMATION

1. Full name (include any former names used).  
Fern Flanagan Saddler (as of September 16, 2000)  
Fern Leslie Renee Flanagan (birth name)
2. Citizenship (if you are a naturalized U.S. citizen, please provide proof of your naturalization).  
United States of America citizen
3. Current office address and telephone number.  
Superior Court of the District of Columbia  
Chambers of the Magistrate Judges  
500 Indiana Avenue, Northwest  
Suite 4450  
Washington, D.C. 20001  
(202) 879-4854
4. Date and place of birth.  
May 17, 1955  
Baltimore, Maryland
5. Marital status (if married, include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).  
Married September 16, 2000  
Paul Harvey Saddler  
Ordained Minister  
  
Executive Director  
Shaw Community Ministry, Inc.  
1718 7th Street, Northwest  
Washington, D.C. 20001  
  
Youth Pastor  
Plymouth Congregational United Church of Christ  
5301 North Capitol Street, Northeast  
Washington, D.C. 20011

6. Names and ages of children. List occupation and employer's name if appropriate.

Not applicable

7. Education. List secondary school(s), college(s), law school(s), and any other institutions of higher education attended; list dates of attendance, degree received, and date each degree was received. Please list dating back from most recent to earliest.

Georgetown University Law Center  
 600 New Jersey Avenue, Northwest  
 Washington, D.C. 20001  
 August 1976-May 1979  
 Juris Doctor (J.D.) degree received May 1979

Wellesley College  
 106 Central Street  
 Wellesley, Massachusetts 02181  
 August 1972- June 1976  
 Bachelor of Arts (B.A.) degree received May 1976

Trinity College  
 300 Summit Street  
 Hartford, Connecticut  
 August 1974-May 1975  
 No degree was received because this was a Junior Year Exchange Program.

Western High School  
 4600 Falls Road  
 Baltimore, Maryland 21209  
 September 1969- June 1972  
 high school diploma awarded June 1972

8. Employment record. List all jobs held since college, other than legal experience covered in question 16, including the dates of employment, job title or description of job, and name and address of employer. Please list dating back from most recent to earliest. If you have served in the US military, please list dates of service, rank or rate, serial number, and type of discharge received.

Office Assistant/ Counselor  
 Physicians Weight Loss Center  
 Elton Road  
 Silver Spring, Maryland  
 February 1987 - May 1987

Telephone Solicitor  
 Time Life Libraries, Inc.  
 5151 Wisconsin Avenue, Northwest  
 Washington, D.C. 20016  
 August 1979 - September 1979

Federal Intern (Counselor)  
 General Services Administration  
 18th & F Streets, Northwest  
 Washington, D.C. 20405  
 June 1977- September 1977

Federal Intern (Counselor)  
 General Services Administration  
 18th & F Streets, Northwest  
 Washington, D.C. 20405  
 June 1976 - September 1976

9. Honors and awards. List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

National Honor Society (Western High School, Baltimore, Maryland)

Scholarship to Wellesley College

South Manor Neighborhood Association 1999 Grassroots Honoree

Certificate of Appreciation from the Judicial Council of the Washington Bar Association

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

None

11. Bar associations. List all bar associations, legal or judicial related committees, conferences, or organizations of which you are or have ever been a member, and provide titles and dates of any offices which you have held in such groups.

National Association of Women Judges (NAWJ) (1991- Present)  
 Director/President of District 4 (District of Columbia, Maryland and Virginia)

(October 2000- April 2002)  
Vice President (1998-October 2000)  
Treasurer (1996-1998)

The Judicial Council of the Washington Bar Association

Greater Washington Area Chapter, Women Lawyers Division of the National Bar Association (GWAC) (1984 - Present)  
Member, Board of Directors (1990-1999)  
Chair, Employment & Professional Development Committee (1990-1999)

Charlotte E. Ray American Inn of Court (1995-2000)  
President (May 1999 - June 2000)

The Washington Bar Association

The Women's Bar Association

The Bar Association of the District of Columbia

The Federal Bar Association

The Asian and Pacific American Bar Association

The District of Columbia Bar Mandatory Continuing Legal Education Task Force

12. Other memberships. List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, public, charitable, or other organizations, other than those listed in response to Question 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion.

Washington Wellesley College Club (1976 - Present)

National Council of Negro Women, Inc. (1994 - Present)

Alpha Kappa Alpha Sorority, Inc. (AKA), XI Omega Chapter, Washington, D.C. (April 1992 - Present)

Plymouthite Club, Plymouth Congregational United Church of Christ, Washington, D.C. (1987-1998)

Assistant Recording Secretary (September 1992 - June 1994)

Vice President (September 1990- June 1992)

Treasurer (September 1988- June 1990)



Board of Trustees, Plymouth Congregational United Church of Christ (October 1988-October 1996)

Young Adult Fellowship, Plymouth Congregational United Church of Christ (1989 -1997)  
President (October 1992 - June 1994)

W. Henry Greene Friends of Music Society, Plymouth Congregational United Church of Christ (1991- Present)  
Vice President (1998-Present)

South Manor Neighborhood Association (1987-Present)

None of the above-noted organizations formerly discriminated or currently discriminates on the basis of race, sex or religion.

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

District of Columbia Court of Appeals  
(June 16, 1980)

Court of Appeals of Maryland  
(June 4, 1986)

Supreme Court of the United States of America  
(February 21, 1984)

United States Court of Appeals for the District of Columbia Circuit  
(July 30, 1980)

United States Court of Appeals for the Fourth Circuit  
(November 19, 1980)

United States District Court for the District of Columbia  
(July 7, 1980)

United States Court of Claims  
(July 14, 1980)

United States Court of Military Appeals  
(June 26, 1980)

14. Published writings. List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited.

“Representation Of An Uncooperative Client”, District Lawyer, January/February 1986.

15. Speeches. List the titles of any formal speeches you have delivered during the last five (5) years and the date and place where they were delivered. Please provide the Committee with four (4) copies of any of these speeches.

None

16. Legal career.

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

- (1) Whether you served as a law clerk to a judge, and if so, the name of the judge, the court, and the dates of your clerkship;

Not applicable

- (2) Whether you practiced alone, and if so, the addresses and dates;

Not applicable

- (3) The dates, names, and address of law firms, companies, or governmental agencies with which you have been employed.

Law Clerk  
Food Research and Action Center (FRAC)  
2011 Eye Street, Northwest  
Washington, D.C. 20006  
May 1978 - September 1979

Law Clerk  
Williams & Lally  
1430 K Street, Northwest  
Washington, D.C. 20005  
September 1979 - October 1979

Associate Attorney  
Mitchell, Shorter & Gartrell  
508 Fifth Street, Northwest  
Washington, D.C. 20001  
October 1979 - January 1984

Assistant Bar Counsel  
Office of Bar Counsel  
515 Fifth Street, Northwest  
Suite 127  
Washington, D.C. 20001  
February 1984 - January 1988

Senior Staff Attorney  
District of Columbia Court of Appeals  
500 Indiana Avenue, Northwest  
Sixth Floor  
Washington, D.C. 20001  
January 19, 1988 - July 1, 1990

Acting Chief Deputy Clerk  
District of Columbia Court of Appeals  
500 Indiana Avenue, Northwest  
Sixth Floor  
Washington, D.C. 20001  
July 2, 1990 - January 31, 1991

Magistrate Judge (formerly "Hearing Commissioner")  
Superior Court of the District of Columbia  
Chambers of the Magistrate Judges  
500 Indiana Avenue, Northwest  
Suite 4450  
Washington, D. C. 20001  
February 1991 - Present

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

The general character of my law practice since 1980 has been as follows:

(October 1979- February 1984)

**General Law Practice: Civil, Family, Criminal & Probate Practice in Local & Federal Trial Courts and Local & Federal Appellate Courts/Administrative Agency Litigation**

MITCHELL, SHORTER & GARTRELL  
508 Fifth Street, Northwest  
Washington, D.C. 20001  
Associate Attorney

Civil and Family Practice

(e.g., cases involving breach of contract, medical malpractice, entertainment law, general tort law, personal injury law, landlord/tenant matters, small claims, divorces and support matters)

- \* conducted initial interview of clients
- \* evaluated cases; determined the merits of claims; advised clients of options and alternatives
- \* negotiated settlements and prepared settlement agreements
- \* drafted various pleadings and motions and argued motions before the court
- \* participated in various phases of the discovery process (e.g., represented clients at depositions; deposed witnesses; and prepared interrogatories, request for production of documents, and request for admissions)
- \* represented clients at pretrial and settlement conferences and at trials
- \* prepared legal memoranda and legal documents

Criminal Practice

- \* drafted and argued various pre-trial motions in the Superior Court of the District of Columbia and the United States District Court for the District of Columbia
- \* represented clients at arraignments, preliminary hearings, status hearings, trials (jury and non-jury), sentencing, probation revocation hearings, mental competency hearings and Grand Jury proceedings in local and federal courts
- \* obtained discovery and negotiated plea offers

Probate Practice

- \* prepared wills and other legal documents
- \* represented fiduciaries in estates, guardianships, and conservatorships

Administrative Agency Practice

- \* represented clients before federal and local agencies (e.g., United States Department of Labor, District of Columbia Office of Workers Compensation, United States Social Security Administration, District of Columbia Bureau of Traffic Adjudication)

Appellate Practice

- \* identified appellate issues and prepared appellate briefs
- \* argued before various appellate courts (e.g., United States Courts of Appeals for the Fourth Circuit and United States Courts of Appeals for the District of Columbia Circuit; and the District of Columbia Court of Appeals)

( February 1984- January 1988)

**Prosecutorial Litigation Involving Disciplinary Matters and Ethical Violations By  
Members of the District of Columbia Bar**

OFFICE OF BAR COUNSEL  
515 Fifth Street, Northwest  
Suite 127  
Washington, D.C. 20001  
Assistant Bar Counsel

- \* reviewed complaints of alleged professional misconduct by members of the Bar to decide which complaints should be investigated
- \* gave informal opinions to members of the Bar and the public on matters of professional ethics
- \* initiated and conducted investigations pertaining to alleged professional misconduct by members of the District of Columbia Bar, including interviewing complainants, respondents and other persons
- \* prosecuted disciplinary proceedings before hearing committees, the Board on Professional Responsibility and the District of Columbia Court of Appeals
- \* prepared motions, findings, recommendations, briefs, legal memoranda and, as appropriate, made oral presentations to hearing committees, the Board on Professional Responsibility and the District of Columbia Court of Appeals
- \* published article "Representation of an Uncooperative Client", District Lawyer, Jan./Feb. 1986
- \* appeared as a guest lecturer on legal ethics at Georgetown University Law Center, Howard University Law School, and the George Washington University National Law Center, and at various bar association meetings

(1988-1991)

Appellate Work/Administrative/Managerial Role

DISTRICT OF COLUMBIA COURT OF APPEALS

500 Indiana Avenue, Northwest

Sixth Floor

Washington, D.C. 20001

Senior Staff Attorney

January 1, 1988-July 1, 1990

- \* supervised three staff attorneys, three motions law clerks and summer law clerks in the disposition of substantive motions placed on the motions calendar
- \* reviewed legal memoranda for accuracy and persuasiveness
- \* provided guidance on how substantive and procedural motions are to be addressed
- \* assisted judges in the review of motions
- \* prepared dispositional orders for approval of judges, the Chief Deputy Clerk and Clerk of the Court
- \* handled motions and cases requiring immediate action by judges, and supervised supporting staff needed to assist in the disposition of motions
- \* served as Executive Secretary to the court's Committee on the Unauthorized Practice of Law
- \* served on the court's Rules Committee which drafts and/or reviews proposed rules for the Superior Court and the District of Columbia Court of Appeals
- \* assumed the responsibilities of the Clerk of the Court and the Chief Deputy Clerk in their absence

DISTRICT OF COLUMBIA COURT OF APPEALS

Acting Chief Deputy Clerk

July 1990-December 1990

- \* supervised the senior staff attorney, staff attorneys and law clerks

- \* supervised the case management teams which are responsible for processing procedural and substantive motions, making recommendations thereon and screening cases
- \* monitored the court's caseload and dockets, including daily court filings
- \* directed early review and screening of all new cases for possible early disposition or potential problems
- \* assisted the Chief Judge in preparing the court's calendar
- \* assisted in the general administration of the Clerk's Office
- \* directed the appointment of counsel under the Criminal Justice Act and maintained a current list of attorneys for appointment purposes
- \* responded to correspondence received by and referred to the Clerk's Office (e.g., correspondence received from inmates at Lorton Reformatory regarding the status of their appeals)
- \* assumed other duties as assigned by the Clerk of the Court
- \* served as Acting Clerk of the Court in his absence

( February 1991-Present)

**Judicial**

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
500 Indiana Avenue, Northwest  
Chambers of the Magistrate Judges  
Suite 4450  
Washington, D.C. 20001  
Magistrate Judge (formerly "Hearing Commissioner")

**Criminal Division**

- \* determine conditions of release pursuant to the provisions of Title 23 of the District of Columbia Code (relating to criminal procedure)
- \* conduct hearings on pretrial motions and issue orders (e.g., motions to



suppress evidence on Fourth Amendment grounds; motions to suppress statements; motions to suppress eyewitness identifications; etc.)

- \* preside over non-jury criminal trials involving traffic offenses and offenses against the District of Columbia (e.g., indecent exposure, indecent proposal, breach of peace, etc.)
- \* preside over non-jury misdemeanor trials (e.g., shoplifting, taking property without right, soliciting for prostitution)
- \* conduct proceedings involving guilty pleas of defendants
- \* sentence defendants following convictions
- \* render decisions and held hearings on post-conviction motions (e.g., motions to seal arrest records)
- \* conduct post-conviction proceedings (e.g., probation revocation hearings)
- \* appoint attorneys to cases under the Criminal Justice Act (CJA) and review CJA vouchers to determine the appropriateness of requested fees

#### Civil Division

- \* preside over pretrial proceedings and trials in the Small Claims and Conciliation Branch
- \* preside over trials and scheduling conferences for the newly established Civil Calendar 18 (Collections and Subrogation Cases) This calendar involves all civil actions in which the complaint seeks collection of a liquidated debt of \$25,000 or less, or recovery, as subrogee, of damages of \$25,000 or less. Collection and Subrogation cases represent a substantial portion of the Civil Division cases.
- \* conduct hearings and issued orders following hearings on pretrial and post-judgment motions and enter orders thereon (e.g., motions to dismiss, motions or summary judgment, motions to quash a writ of attachment, etc.)
- \* conduct ex parte proof of damages hearings following the entry of a default against a party
- \* help litigants to mediate disputes

Family Division

- \* preside over hearings involving the establishment or enforcement of child support obligations and modification of existing child support orders; make findings and enter judgments in accordance with the Child Support Guidelines in the District of Columbia
- \* preside over trials to establish paternity
- \* conduct proceedings and issue orders in cases involving mentally disabled individuals (e.g. conducted court reviews, mandated by D.C. Code §6-1951, to determine if the mentally disabled individual has benefited from a habilitation program and whether continued residential habilitation is necessary for the habilitation program)
- \* Upon request, perform civil marriage ceremonies in the District of Columbia
- \* preside over uncontested divorce hearings and hearings involving legal separations and to the extent permissible help to mediate divorce disputes
- \* preside over initial hearings involving juveniles alleged to be delinquent (i.e. charged with criminal offenses) including conducting probable cause hearings when detention is requested, or setting conditions of release
- \* preside over initial hearings for cases involving children alleged to be neglected or abused by their parent or custodian including conducting probable cause hearings and making decisions about the placement of those children, services to be rendered, and resources to be given to the family
- \* preside over neglect and abuse status hearing calendars to help resolve status hearing pretrial issues of placement of children and to expeditiously resolve case management issues such as discovery, service or absent parent or custodians and the social worker required case plan.

- C. Describe your typical former clients and describe the areas of practice, if any, in which you have specialized.

Typical former clients at the law firm of Mitchell, Shorter & Gartrell were from the Washington, D.C. metropolitan area from various socio-economic backgrounds. I represented clients in many types of criminal, civil, family, and probate matters in local and federal courts, and handled many types of administrative agency matters.

In the criminal area, I typically represented clients in cases involving traffic and other District of Columbia offenses and many types of misdemeanors and felony matters in local

and federal courts.

In the family area, I represented clients in domestic relations matters, including contested and uncontested divorces, paternity matters, and child support and custody matters.

In probate matters I represented guardians and conservators of wards and personal representatives of decedent's estates. I also helped to prepare wills and other legal documents.

In the civil area, I typically represented clients at all stages of litigation in matters including, but not limited to, personal injury cases, medical malpractice cases, and breach of contract cases.

All of my other legal positions after working for the firm of Mitchell, Shorter & Gartrell have involved working for institutions like the Office of Bar Counsel and the District of Columbia Courts.

D. Describe the general nature of your litigation experience, including:

- (1) Whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your court appearances has varied over time, please describe in detail each such variance and give applicable dates.

As a litigator at the law firm of Mitchell, Shorter & Gartrell from 1980 to 1984, I appeared in court quite frequently (i.e. on almost a daily basis)

As an Assistant Bar Counsel for the Office of Bar Counsel, I frequently represented the Office of Bar Counsel before three-member Hearing Committees at trial-like hearings involving alleged ethical violations by attorneys. Hearing Committees make findings and recommendations to the Board on Professional Responsibility. The District of Columbia Court of Appeals ultimately determines the appropriate sanction against attorneys in cases where the Board on Professional Responsibility recommends public discipline. I frequently argued Bar Counsel's position before those tribunals.

As a Senior Staff Attorney and Acting Chief Deputy Clerk at the District of Columbia Court of Appeals and as a Magistrate Judge at the Superior Court, I have worked at the District of Columbia Courts on a daily basis.

- (2) What percentage of these appearances was in:

- (a) Federal courts (including Federal courts in D.C.);

About 5% of the cases that I handled were in the United States District Court for the District of Columbia and/or the United States Courts of Appeals for the District of Columbia Circuit or the United States Court of Appeals for the Fourth Circuit.

- (b) State courts of record (excluding D.C. courts);

None

- (c) D.C. courts (Superior Court and D.C. Court of Appeals only);

About 93% of my appearances have been in the Superior Court of the District of Columbia and/or the District of Columbia Court of Appeals.

- (d) other courts and administrative bodies.

About 2% of my appearances were before other courts and administrative bodies.

- (3) What percentage of your litigation has been:

- (a) civil;  
(b) criminal.

At the law firm of Mitchell, Shorter & Gartrell, about 40% of the litigation I handled was criminal and approximately 35% was civil.

- (4) What is the total number of cases in courts of record you tried to verdict or judgment (rather than settled or resolved, but may include cases decided on motion if they are tabulated separately). Indicate whether you were sole counsel, lead counsel, or associate counsel in these cases.

At the law firm of Mitchell, Shorter & Gartrell, I tried about 25 cases or more to verdict, including cases decided on motion. Of those 25 cases, about 10 cases were tried to verdict or judgment and the remaining were decided on motion. In about 30% of these cases I was sole counsel. In the remaining cases I was co-counsel with one of the partners of the firm.

- (5) What percentage of these trials was to

- (a) a jury;

At the firm of Mitchell, Shorter & Gartrell, about 30% of the trials I handled were jury trials. I tried one case as sole counsel before a jury. For the remaining jury trials, I was co-counsel with one of the partners of the firm.

- (b) the court (include cases decided on motion but tabulate them separately).

About 70% of the cases that I handled at Mitchell, Shorter & Gartrell were court trials.

Since 1988 I have worked at either the District of Columbia Court of Appeals as a Senior Staff Attorney and Acting Chief Deputy Clerk, or at the Superior Court of the District of Columbia as a Magistrate Judge. Consequently, I have first-hand, in-depth knowledge of the court system from both a trial and appellate perspective. As a Magistrate Judge, I have presided on almost a daily basis over thousands of non-jury Civil, Criminal, Family and Domestic Relations matters, including hundreds of trials.

17. Describe the five (5) most significant litigated matters which you personally handled. Provide citations, if the cases were reported, or the docket number and date if unreported. Give a capsule summary of the substance of each case and a succinct statement of what you believe was of particular significance about the case. Identify the party/parties you represented and describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case, (a) the date of representation; (b) the court and the name of the judge or judges before whom the case was litigated; and (c) the name(s) and address(es) and, telephone number(s) of co-counsel and of the principal counsel for the other parties.

- (1) In the Matter of Dovey J. Roundtree  
503 A.2d 1215 (D.C. 1985)

Following disciplinary proceedings against her, Dovey J. Roundtree was suspended from the practice of law for a year and a day by the District of Columbia Court of Appeals, effective November 14, 1983. After the period of suspension ended, Ms. Roundtree filed her Petition for Reinstatement to the Bar of the District of Columbia on January 23, 1985, pursuant to the District of Columbia Court of Appeals Rule XI, §21 (5). A hearing on Ms. Roundtree's petition for reinstatement was held on February 20, 1985 before a Hearing Committee comprised of Earl Silbert, Esquire, Chairman, Christopher Reuss, Esquire, and Ms. Hannah J. Kaiser. Ms. Roundtree was represented by Ruth R. Banks,

Esquire, and I represented the Office of Bar Counsel. The current address and telephone number of opposing counsel Ruth R. Banks are: Rental Housing Commission, 941 North Capitol Street, Northeast, Suite 9200, Washington, D.C. 20002, (202) 442-9519. I also represented the Office of Bar Counsel at subsequent proceedings before the Board on Professional Responsibility and the District of Columbia Court of Appeals.

Ms. Roundtree was eventually reinstated to the practice of law in the District of Columbia. Although Bar Counsel did not oppose Ms. Roundtree's reinstatement to the Bar, this case is significant because it set a precedent in the District of Columbia regarding the standards and criteria for reinstatement to the District of Columbia Bar.

- (2) District of Columbia v. Herbert Murphy  
Superior Court of the District of Columbia  
Criminal No. 1865-80

In this case I represented Mr. Herbert Murphy, one of four co-defendants charged with keeping for sale, and sale of alcoholic beverages without a license in violation of D.C. Code §25-109(a). Each of the other co-defendants had his or her own counsel. The District of Columbia was represented by Assistant Corporation Counsel Howard Horowitz. His current address and telephone number are: 12 Richview Court, Rockville, Maryland 20854, (301) 424-7666.

The four-day jury trial in this matter began on May 19, 1981, before the late Honorable William S. Thompson. The case involved many pretrial motions, including a motion to suppress evidence and various trial motions, including a motion for judgment of acquittal. At the conclusion of the motion for judgment of acquittal, that I made on behalf of Mr. Murphy the court requested a memorandum of law on the issue of aiding and abetting. The motion for judgment of acquittal was denied. At the conclusion of the entire trial, however, the jury acquitted my client of all charges.

This case is significant to me because it was my first jury trial.

- (3) United States v. Hargrove, et al.  
647 F.2d 411 (1981)

In this case, five co-defendants were convicted of possession of and distribution of cocaine. My law firm represented co-defendant Paulette Ashton. Counsel for the other co-defendants were R. Kenneth Mundy, Robert W. Mance, Christopher M.

Hopkins, Stewart C. Economou, and Thomas J. Bepko. Leonie M. Brinkema appeared on behalf of the United States Attorney's Office. Ms. Brinkema is now the Honorable Leonie M. Brinkema, United States District Court Judge for the Eastern District of Virginia. Her address and telephone number are: Albert B. Bryan Courthouse, 401 Courthouse Square, Alexandria, Virginia 22314, (703) 299-2116.

I represented Ms. Ashton in her appeal before the United States Court of Appeals for the Fourth Circuit. My representation included helping to prepare the joint appellate brief and presenting the oral argument before the appellate court. Many issues were raised by appellants on appeal, including whether evidence should have been suppressed on Fourth Amendment grounds, whether the trial court committed error during voir dire of the jury, and whether the federal officers and local police violated 18 U.S.C. § 3109 by failing to knock and announce themselves before they executed a search warrant.

This case is significant to me because it was my first oral argument before the United States Court of Appeals for the Fourth Circuit.

- (4) Frances Washington v. Sandra A. Roberson, et al.  
United States District Court for the District of Columbia  
Civil Action No. 83-1789

Bernadette Gartrell and I represented the plaintiff in this personal injury/automobile accident case. Bernadette Gartrell tried the case before the jury, with the Honorable Barrington Parker presiding. Opposing counsel was Joseph Cunningham. His current address and telephone number are: 1600 Wilson Boulevard, Suite 905, Arlington, Virginia 22209, (703) 294-6500.

I conducted all pretrial discovery in the case which included taking depositions, and preparing interrogatories, request for admissions, and request for production of documents. I also attended all pretrial proceedings in the case.

- (5) In the Matter of Theodore Hadzi-Antich  
497 A.2d 1062 (D.C. 1985)

In this case a complaint was lodged against Respondent Hadzi-Antich by a Dean and Professor of Law at Southern Methodist University School of Law (SMU Law School) after the law school discovered that Respondent submitted a resume containing several misrepresentations when he applied for a teaching position there. On April 16, 1984, a petition formally charging Respondent with a violation of Disciplinary Rule 1-102 (A)(4) was filed by the Office of Bar Counsel alleging that Respondent violated that disciplinary rule when he submitted a false and

misleading resume to SMU Law School.

A hearing was held on May 24, 1984, before a Hearing Committee. Respondent appeared *pro se*. In an opinion dated September 6, 1984, the Hearing Committee found that Respondent violated Disciplinary Rule 1-102 (A)(4) by submitting the false resume and recommended that Respondent be publicly censured for his misconduct.

Respondent sought a review of the Hearing Committee's report and recommendation with the Board on Professional Responsibility. Following a hearing, the Board issued an opinion adopting the Hearing Committee's recommendation of public censure. On March 11, 1985, Respondent noted exceptions to the Board's recommended sanction of public censure and filed an appeal with the District of Columbia Court of Appeals. The District of Columbia Court of Appeals upheld the decision of the Board on Professional Responsibility.

I successfully represented the Office of Bar Counsel before the Hearing Committee, the Board on Professional Responsibility, and the District of Columbia Court of Appeals.

18. Describe the most significant legal activities you have pursued, including significant litigation, which did not proceed to trial, or legal matters that did not involve litigation. Describe the nature of your participation in each instance described, but you may omit any information protected by the attorney-client privilege (unless the privilege has been waived).

The most significant legal activities I have pursued have often included significant litigation that did not proceed to trial, or legal matters that did not involve litigation. At the law firm of Mitchell, Shorter & Garrell, I was often involved in handling many pretrial matters, including conducting discovery, negotiating settlements in cases and preparing dispositive motions. These activities have been extremely helpful to me as a Magistrate Judge because they have exposed me to methods of resolving many pre-trial disputes without court intervention..

In addition to my other duties as an Assistant Bar Counsel, I was often called upon to give attorneys non-binding, informal oral opinions about their ethical responsibilities. I have also been invited to give oral presentations to bar associations and to local law school classes about ethics and professional responsibility. Knowing the ethical and professional responsibilities of attorneys has been very helpful in my career, especially as a Magistrate Judge because ethical issues sometimes arise in court.

My work in the District of Columbia Court of Appeals did not involve litigation on my part, but it has proven to be invaluable to me as a Magistrate Judge. By



having the opportunity to review decisions and rulings of trial court judges, I have gained a keen understanding of issues that can arise in the trial court and a good understanding of what constitutes reversible error by the trial court.

Further, my participation in various bar associations and on many court committees of the District of Columbia Court of Appeals and the Superior Court of the District of Columbia have helped to improve my legal skills and knowledge and have allowed me to contribute in a very to significant way to improving the District of Columbia Courts. In the District of Columbia Court of Appeals, I served on the Rules Committee, and served on the court's Committee on the Unauthorized Practice of Law. In the Superior Court of the District of Columbia, I have served on the Judicial Education and Training Committee; the Benchbook Committee; and the Neglect and Abuse Calendar Task Force. All of these committees help to promote and improve judicial knowledge, skills, and efficiency; and/or help to improve the efficient operation of the court system, thus promoting public confidence in the court system.

19. Have you ever held judicial office? If so, please give the details of such service, including the court(s) on which you served, whether you were elected or appointed, the dates of your service, and a description of the jurisdiction of the court. Please provide four (4) copies of all opinions you wrote during such service as a judge.

In February 1991, I was appointed a Magistrate Judge of the Superior Court of the District of Columbia and I have served in that capacity for the past 11 years. The Superior Court of the District of Columbia is the trial court of general jurisdiction over virtually all local legal matters. The court consists of divisions which provide for all local litigation functions including criminal, civil, family, probate, tax, and landlord and tenant. Associate Judges and Magistrate Judges of the Superior Court rotate to each division on a scheduled basis as assigned by the Chief Judge of the Superior Court.

I have rotated among the Criminal, Civil, and Family Divisions of the Superior Court and have presided over thousands of matters in each of those divisions. In the Criminal Division, I have set bonds and conditions of release at arraignments and presentments; presided over preliminary hearings to determine probable cause and conditions of release for criminal defendants; conducted pretrial and post-trial hearings and trials for non-jury misdemeanors, and conducted non-jury trials and other proceedings involving traffic offenses and offenses prosecuted by the Office of Corporation Counsel.

In the Civil Division, I have presided over pretrial proceedings, trials, and post-trial proceedings in the Small Claims and Conciliation Branch (for claims of \$5000

and under). I have presided over scheduling conferences, motions hearings, trials, and post-trial proceedings in collection and subrogation cases in which the complaint seeks \$25,000 or less. That calendar is known at the Superior Court as Civil Calendar 18. I was the second judge to preside over that calendar which was established in 1993 to help reduce the backlog of civil cases and to promote the efficient and expeditious resolution of cases.

In the Family Division, I have presided over hearings concerning commitment and admissions of mentally disabled persons to residential facilities. I have presided over motions hearings and trials regarding the adjudication of paternity; and motions hearings and trials involving child support and uncontested divorces.

Further, I have conducted thousands of initial probable cause and detention hearings involving juveniles charged with criminal offenses, alleged to be delinquent, or in need of supervision. Following probable cause hearings, I have made critical decisions about whether to release a juvenile back into the community or whether to detain a juvenile at a Youth Shelter House or at a secure facility such as Oak Hill. I have also made critical decisions about what conditions of release or detention should be ordered for the juvenile or his or her family. Such conditions often include, but are not limited to, stay-away, no-contact orders; mental health services; curfew restrictions; mandatory school attendance; mandatory drug testing; and participation in intensive supervision or monitoring services while in the community.

In the Family Division, I have also frequently presided over the initial hearings involving children alleged to be abused and neglected by their parents or custodians. When removal of the child or children from the parent or custodian is requested by the Office of Corporation Counsel, I have conducted probable cause and evidentiary hearings and have had to make critical placement decisions about the child. I have also had to order critical services for the child and his or her family.

Upon the request of the then Chief Judge and Presiding Judge of the Family Division, I presided over a pilot Neglect and Abuse Status Hearing Calendar for almost two years, beginning in January 2000. The calendar was designed to efficiently and expeditiously resolve many pretrial issues in most neglect and abuse cases. I frequently made extremely important decisions regarding the placement of children and services for the child or family. I also resolved pretrial issues such as service of process upon an absent parent; set important dates in the case such as the next court hearing; and set deadlines, such as deadlines for discussing proposed stipulations, filing of dispositive motions, completing discovery, and for the assigned social worker to file a written case plan in the case.

The matters over, which I have presided, involve many of the same areas of law

which Associate Judges of the Superior Court handle. Also, Magistrate Judges, like Associate Judges, are bound by the Code of Judicial Conduct for District of Columbia Courts. I believe I have rendered well-reasoned decisions in thousands of cases with very thoughtful consideration of the facts and merits of each case, the rules of evidence, and the applicable law.

Fellow members of the Bench, members of the Bar, and many litigants, have often expressed their respect and appreciation for my outstanding judicial temperament even in bitterly contested cases in criminal, civil, and family matters that often affect the liberty and financial interests of the parties. I consistently am able to maintain proper courtroom demeanor and decorum while at the same time maintaining patience and tolerance towards all litigants.

During my service as a Magistrate Judge, I have issued thousands of written orders in the Criminal, Civil, and Family Divisions of the Superior Court of the District of Columbia. Like other Magistrate Judges, I usually have very voluminous court calendars. Therefore, in the interest of time, the more formal decisions I have rendered in cases were made orally on the record in court before the parties.

- A. List all court decisions you have made which were reversed or otherwise criticized on appeal.

In the Superior Court of the District of Columbia, a party cannot appeal a Magistrate Judge's decision directly to the District of Columbia Court of Appeals. A party must first seek a review of a final order or judgment before an Associate Judge of the Superior Court of the District of Columbia.

Associate Judge Michael L. Rankin reversed my ruling in the following case:

Jacqueline Hayes v. Carefree Car Protection  
Small Claims Number 24260-91

20. Have you ever been a candidate for elective, judicial, or any other public office? If so, please give the details, including the date(s) of the election, the office(s) sought, and the results of the election(s).

I have never been a candidate for elective, judicial, or any other public office.

21. Political activities and affiliations.

- a. List all public offices, either elected or appointed, which you have held or sought as a candidate or applicant.

None

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

None

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

None

22. To your knowledge, have you ever been investigated, arrested, charged, or convicted (include pleas of guilty or nolo contendere) by federal, State, local, or other law enforcement authorities for violations of any federal, State, county, or municipal law, other than for a minor traffic offense? If so, please provide details.

No

23. Have you or any business of which you are or were a officer, director or owner ever been a party or otherwise involved as a party in any other legal or administrative proceedings? If so, give the particulars. Do not list any proceedings in which you were merely a guardian ad litem or stakeholder. Include all proceedings in which you were a party in interest, a material witness, were named as a co-conspirator or co-respondent, and list any grand jury investigation in which you appeared as a witness.

Yes.

John S. Fortt v. Plymouth Congregational United Church of Christ  
Superior Court of the District of Columbia  
Civil Action Number 1047-90

The minister sued the congregation of Plymouth Congregational United Church of Christ after a majority of the congregation voted to terminate his contract. In order to sue the congregation, the minister was required to name the members of the Board of Trustees as defendants. I was sued in my fiduciary capacity along with the other members of the Board of Trustees. The case was settled and dismissed with prejudice on June 16, 1992.

Michael Sindram v. Daisy Bailey, et al.  
The Circuit Court for Maryland for Montgomery County  
Case Number: 0602002188392

Michael Sindram, a litigant in the Small Claims and Conciliation Branch in the

Superior Court of the District of Columbia, sued the courtroom clerk and several Hearing Commissioners. The case was dismissed with prejudice on December 31, 1992 against defendants Bailey, and Hearing Commissioners Treanor, Stevenson and Flanagan.

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

No

## II. POTENTIAL CONFLICTS OF INTEREST

1. Will you sever all connections with your present employer(s), business firm(s), business association(s), or business organization(s) if you are confirmed?

Yes. However, I am currently a Magistrate Judge at the Superior Court of the District of Columbia and have served in that capacity for the past 11 years. If confirmed as an Associate Judge, I will be at the Superior Court of the District of Columbia. I agree, however, to sever any connections with the Office of the Magistrate Judges that would violate the Code of Judicial Conduct for District of Columbia Courts, create a potential conflict of interest, create the appearance of impropriety, or be inappropriate for an Associate Judge.

2. Describe all financial arrangements, deferred compensation agreements, or other continuing dealings with your law firm, business associates, or clients.

None

3. Indicate any investments, obligations, liabilities, or other relationships that could involve potential conflicts of interest.

None

4. Describe any business relationship, dealing, or financial transaction which you have had in the last ten (10) years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest other than while in a federal government capacity.

None

5. Describe any activity during the last ten (10) years in which you have engaged for

the purpose of directly or indirectly influencing the passage, defeat, or modification of legislation or affecting the administration and execution of law or public policy other than while as a federal government employee.

None

6. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service as a judge? If so, explain.

No

7. Explain how you will resolve any potential conflicts of interest, including any that may have been disclosed by your responses to the above items. Please provide three (3) copies of any trust or other relevant agreements.

Not applicable

8. If confirmed, do you expect to serve out your full term?

Yes

### III. FINANCIAL DATA

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

### IV. DISTRICT OF COLUMBIA REQUIREMENTS

Supplemental questions concerning specific statutory qualifications for service as a judge in the courts of the District of Columbia pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970, D.C. Code Section II - 1501 (b), as amended.

1. Are you a citizen of the United States?

Yes

2. Are you a member of the bar of the District of Columbia?

Yes

3. Have you been a member of the bar of the District of Columbia for at least five (5) years? Please provide the date you were admitted to practice in the District of Columbia.

Yes. I was admitted to the District of Columbia Bar on June 16, 1980.

4. If the answer to Question 3 is "no" --

- A. Are you a professor of law in a law school in the District of Columbia?
- B. Are you a lawyer employed in the District of Columbia by the United States or the District of Columbia?
- C. Have you been eligible for membership in the bar of the District of Columbia for at least five (5) years?
- D. Upon what grounds is that eligibility based?

5. Are you a bona fide resident of the District of Columbia?

Yes

6. Have you maintained an actual place of abode in the greater Washington, D.C. area for at least five (5) years? Please list the addresses of your actual places of abode (including temporary residences) with dates of occupancy for the last five (5) years.

Yes. I have resided in the District of Columbia since 1976. Since October 1984, I have resided at 5525 New Hampshire Avenue, Northeast, Washington, D.C.

7. Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nominating Commission?

No

8. Have you been a member of either of these Commissions within the last 12 months?

No


9. Please provide the committee with four (4) copies of your District of Columbia Judicial Nomination commission questionnaire.

**AFFIDAVIT**

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

  
\_\_\_\_\_

SUBSCRIBED and SWORN TO before me this 31 day of July 2002

  
\_\_\_\_\_  
Notary Public

APPOLLO CAMERON  
NOTARY PUBLIC DISTRICT OF COLUMBIA  
My Commission Expires June 15, 2005



Re: Magistrate Judge Fern Flanagan Saddler

**Supplemental Responses to Questionnaire for  
Nominees to the District of Columbia Courts  
Committee on Governmental Affairs,  
United States Senate**

**I. Biographical and Professional Information**

17. On February 8, 1991, I was appointed a Magistrate Judge (formerly Hearing Commissioner) of the Superior Court of the District of Columbia and I have served in that capacity for the past twelve years. The Superior Court of the District of Columbia is the trial court of general jurisdiction over virtually all local legal matters. The court consists of several divisions, including the Criminal, Civil, Family, and Probate Divisions. Associate Judges and Magistrate Judges of the Superior Court rotate to each division on a scheduled basis as assigned by the Chief Judge of the Superior Court of the District of Columbia. I have rotated among the Criminal, Civil and Family Divisions of the Superior Court. I have presided over thousands of matters in each of those divisions. For over a year, I have been assigned to the Family Division where I have presided over initial hearings in juvenile delinquency cases. Below are some significant matters that I have personally handled as a Magistrate Judge over the past twelve years:

- (1) United States of America v. Darryl Donnell Turner  
Criminal Case Number F-724-98

In this case, the defendant Darryl Donnell Turner was charged in a ten-count indictment with several counts of first degree sexual abuse, first degree felony murder, and first degree murder. The case involved the rapes and murders of several women in the District of Columbia. This case was a high-profile case and received quite a bit of media attention. As a Hearing Commissioner, I presided over the presentment portion of the case on January 30, 1998. After hearing arguments from defense counsel and the Assistant United States Attorney, I found probable cause to believe that

Re: Magistrate Judge Fern Flanagan Saddler

the defendant committed the offenses as charged and I ordered the defendant held without bond pursuant to D.C. Code §1325(A). Subsequent proceedings were handled by other judges. I have learned that on October 2, 2001, defendant Turner was convicted after a lengthy trial of one count of first-degree premeditated murder, two counts of first-degree felony murder, one count of second-degree murder and two counts of first-degree sexual abuse.

The name, current address, and telephone number of defense counsel at the presentment are as follows:

Laura L. Rose, Esquire  
Public Defender Service  
633 Indiana Avenue, N.W.  
Washington, D.C. 20004  
(202) 645-7746

The name, current address, and telephone number of the person who represented the government as an Assistant United States Attorney are as follows:

Mary Incontro, Esquire  
Associate Deputy Attorney General  
Office of the Deputy Attorney General  
United States Department of Justice  
950 Constitution Avenue, N.W.  
Washington, D.C. 20530  
(202) 514-3052

(2) In Re J.K.

Case Number J-1718-01

In this case in the Family Court, J.K., a juvenile, was charged with kidnapping a young lady in violation of D.C. Code § 22-2001. This case was certified to me on January 21, 2003 for the purpose of conducting a probable cause hearing. Following a probable cause hearing on January 22, 2003 and after hearing arguments on behalf of defense counsel and the Corporation Counsel's Office, I found probable cause to believe that Respondent J.K. committed the offense of kidnapping. Associate Judge Robert E. Morin has presided over subsequent proceedings.

Re: Magistrate Judge Fern Flanagan Saddler

I have conducted thousands of probable cause hearings in the Juvenile Branch. The charges in this case were unusual in comparison to the offenses that typically come before the Juvenile Branch.

Before contacting defense counsel, please contact the following person:

Julia Leighton, Esquire  
General Counsel for the  
Public Defender Service  
633 Indiana Avenue, N.W.  
Washington, D.C. 20004  
(202) 626-8428

The name, address, and telephone number of defense counsel are follows:

Reginald Williamson, Esquire  
Public Defender Service  
633 Indiana Avenue, N.W.  
Washington, D.C. 20004  
(202) 824-8757

The name, address, and telephone number of the Assistant Corporation Counsel are as follows:

James Toscano, Esquire  
Assistant Corporation Counsel, D.C.  
Juvenile Section  
441 Fourth Street, N.W.  
Suite 450 North,  
Washington, D.C. 20001  
(202) 727-6348

(3) In Re S.J.

Case Number J-1837-02

In this case the juvenile S.J. was charged with murder, carrying a dangerous weapon (knife), and possession of a prohibited weapon. On October 28, 2002, I presided over the initial hearing in this case which included conducting the probable cause hearing and making a determination as to

Re: Magistrate Judge Fern Flanagan Saddler

whether the juvenile should be released or detained pending further proceedings in the case. After conducting an evidentiary hearing, considering all relevant factors about the juvenile, and hearing argument from all concerned parties, I securely detained the juvenile at the Oak Hill facility. This was high-profile case which received some media attention. Subsequent proceedings in the case were handled by Associate Judge Ramsey Johnson. This case is pending trial on March 31, 2003.

Before contacting defense counsel, please contact the following person:

Julia Leighton, Esquire  
General Counsel for the  
Public Defender Service  
633 Indiana Avenue, N.W.  
Washington, D.C. 20004  
(202) 626-8428

The name, address, and telephone number of defense counsel are as follows:

John W. Anderson, Esquire  
Public Defender Service  
633 Indiana Avenue, N.W.  
Washington, D.C. 20004  
(202) 824-8740

The name, address, and telephone number of the Assistant Corporation Counsel are as follows:

James Toscano, Esquire  
Assistant Corporation Counsel, D.C.  
Juvenile Section  
441 Fourth Street, N.W.  
Suite 450 North,  
Washington, D.C. 20001  
(202) 727-6348

Re: Magistrate Judge Fern Flanagan Saddler

(4) In the Matter of Marie Randall

Case Number MR 524-82

D.C. Code §7-1301.02 et seq. (2001) establishes a comprehensive system of diagnosis, placement, services, and judicial oversight for mentally retarded citizens of the District of Columbia. The statute seeks to ensure that residents of the District of Columbia shall have all the civil and legal rights enjoyed by all other citizens. In 1982, the respondent Marie Randall, a mentally retarded citizen of the District of Columbia, was committed to a facility run by the District of Columbia Department of Human Services. Since that time there have been annual reviews of her commitment by various judicial officers of the Superior Court of the District of Columbia, as required by statute.

In this case I presided over a hearing on December 3, 2002 concerning the annual review of the commitment of Marie Randall, pursuant to D.C. Code §7-1304.11 (2001). At the hearing, I heard testimony regarding respondent's residential placement status; her day placement; her independent living skills; her medical, dental and health status; and her financial status. I reviewed respondent's assessments, evaluations, and her Individual Habilitation Plan. After the hearing and upon consideration of the documents filed, the testimony presented and the representations of counsel, I issued findings of facts, including findings that through receipt of the programs and services that have been provided, and the progress that she has made, the respondent has benefited from the habilitation provided. All parties agreed and I found that continued residential habilitation is necessary for implementation of Ms. Randall's Individual Habilitation Plan. I also found that Ms. Randall continued to receive habilitation in the least restrictive environment as defined in D.C. Code §7-1305.03. I concluded that the requirements of D.C. Code §7-1302 et seq. (2001), for review and

Re: Magistrate Judge Fern Flanagan Saddler

continuation of Ms. Randall's commitment, have been fulfilled in this matter. I ordered that Ms. Randall continue in her commitment and that the matter be scheduled for an annual review on December 2, 2003.

The name, address, and telephone number of counsel that represented Marie Randall are as follows:

Johnny Riddick, Esquire  
505 Capitol Court, N.E.  
Suite 100  
Washington, D.C. 20002  
(202) 371-1933

I have heard hundred of matters in the Mental Retardation Branch. I believe that this case, like the others I have heard, is significant. It involved a comprehensive hearing for Ms. Randall and explored many aspects of her health and well-being. It involves a member of a population (i.e. a mentally retarded citizen) that, without court oversight, could be vulnerable to mistreatment and neglect.

**III. Financial Data**

4. Profile a description of any fiduciary responsibility or power of attorney which you held for or on behalf of any other person.

My 89-year old mother, Marjorie Brooks Flanagan, passed away on September 13, 2002. Consequently, I no longer serve as her co-guardian and co-conservator.

February 21, 2003  
Date

Fern Flanagan Saddler  
Fern Flanagan Saddler