

I think we can conclude now, but let me just, from my perspective at least, put one cap on this whole issue of the Lloyd's of London and the issue of whether or not there was any ethical breach.

I would like to ask unanimous consent that the statute in question be entered in the record at this point, the statute referred to by Senator Specter, 28 U.S.C. 455.

[The statute follows:]

UNITED STATES CODE—TITLE 28

JUDICIARY AND JUDICIAL PROCEDURE

§ 455. Disqualification of justice, judge, or magistrate

(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or is a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Is acting as a lawyer in the proceeding;

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

(c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(d) For the purposes of this section the following words or phrases shall have the meaning indicated:

(1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation;

(2) the degree of relationship is calculated according to the civil law system;

(3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(4) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:

(i) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

(e) No justice, judge, or magistrate shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

(f) Notwithstanding the preceding provisions of this section, if any justice, judge, magistrate, or bankruptcy judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that he or she individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the justice, judge, magistrate, bankruptcy judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

The CHAIRMAN. Let me say, at least this one Senator's view of how this plays out. It seems to me there are two distinct questions. The first question is: Up until this point in your judicial career, have you engaged in any activity at any time that is in any way in conflict with the judicial canons of ethics and/or the statute that I referenced that would lead any reasonable person or reasonable persons to conclude that there was an ethical breach?

For five out of the six scholars in this area we have spoken to, some better known and respected than others, clearly from their perspective, the answer is no, you have not violated any ethical norm, written or spoken.

Second, based on all the testimony here, and the cases I have read that you have acted on, I think it is beyond any question that you have acted ethically.

The second issue is a tougher and less clear issue, and that is, what do you do as a Supreme Court Justice from this moment on or as a circuit court judge from this moment on in matters relating to insurance cases which, somewhere through the ether, could even affect a potential holding? And I think this is a case of first instance in that, to the best of my knowledge, because of your investments and your wife's investments and your wife's country of origin, England, you are for a whole range of reasons the first person before us invested as a Name in Lloyd's of London.

You said in the late 1980's you wanted out but because of the mechanisms that control Lloyd's of London and how that operation works you were not able to do that. What do you do from this point on? It seems to me that that comes down to a question of the extent of your potential liability as an investor, as a so-called Name in Lloyd's of London. And we have had from various sources, respected sources, estimates that range from as low as \$37,000 to as much as unlimited liability. And the probable area is something closer to the potential maximum—that is in the \$100,000 range. But the truth is we are never going to be able to nail that down with absolute certainty. The liability goes back to the 1980's. You would think after 8, 9, 10 years you would begin to get a picture of what that liability might be. If it was going to be as horrific as some have suggested, we might be able to get a picture.

I do not think anyone can say but the good Lord with absolute certainty what that potential liability is. And I want to emphasize to you what Senator Simon said. I for one am enthusiastic about your nomination because I believe your judicial philosophy and your character is beyond reproach, and your judicial philosophy is