S. HRG. 108–492

# CONFIRMATION HEARING ON THE NOMINATION OF CLAUDE A. ALLEN, OF VIRGINIA, TO BE CIRCUIT JUDGE FOR THE FOURTH CIRCUIT; AND MARK R. FILIP, OF ILLINOIS, TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS

## HEARING

BEFORE THE

## COMMITTEE ON THE JUDICIARY
## UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

OCTOBER 28, 2003

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**TUESDAY, OCTOBER 28, 2003**

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
*Washington, DC.*

The Committee met, pursuant to notice, at 9:43 a.m., in room SR–325, Russell Senate Office Building, Hon. Orrin G. Hatch, Chairman of the Committee, presiding.

Present: Senators Hatch, Sessions, Craig, Cornyn, Leahy, Kennedy, Feingold, and Durbin.

## OPENING STATEMENT OF HON. JOHN CORNYN, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator CORNYN. This hearing of the Senate Judiciary Committee will now come to order. Senator Hatch, the Chairman of the Committee, will be here shortly, but has asked me to convene the hearing until he is able to arrive here. And, of course, I will make a short statement and then turn the floor over to Senator Leahy, the ranking member, before we then go to our two distinguished colleagues from the State of Maryland.

Today the Committee has the privilege of considering the nominations of two outstanding lawyers for the Federal bench. Claude Allen is the nominee for the U.S. Circuit Judge for the Fourth Circuit, and Mark R. Filip is nominee for the Northern District of Illinois. I commend President Bush for nominating each of these nominees and look forward to hearing their testimony.

Now, just so everyone is aware, the Senate is scheduled to take a vote at 10:30. Accordingly, we will have to take a short break in the hearing at that time, and we will resume immediately following that vote.

The first nominee from whom we will hear is Claude Allen, who currently serves as Deputy Secretary at the U.S. Department of Health and Human Services. As you know, the Fourth Circuit covers the States of Virginia, North Carolina, South Carolina, Maryland, and West Virginia. Virginia's two distinguished Senators, Senator Warner and Senator Allen, will be here with us shortly to introduce Secretary Allen, a fellow Virginian. Also here before us

today are the two distinguished Senators from Maryland, Senator Sarbanes and Senator Mikulski.

Let me explain briefly why I believe we are here in this posture and why we are proceeding in this manner with this hearing.

On April 23, 2003, White House Counsel Alberto Gonzales wrote to the Senators from Virginia, North Carolina, and Maryland about the status of the then four vacancies on the Fourth Circuit. He noted that while geographic balance is not established in the law or binding on the President or Senate, a State's percentage of overall population in a circuit or the percentage of a circuit's caseload arising from a State within a circuit is generally a rough baseline for assessing the geographic allocation of seats within a circuit.

Based on these rough baseline criteria, Judge Gonzales explained that, as of the date of his letter, of the 15 authorized seats on the Fourth Circuit, the rough baseline criteria would allocate North Carolina four or five judges, when it, in fact, had zero judges; Virginia had three judges when it ought to have had four or five; and Maryland had two judges, roughly in line with its allocation of two or three.

Judge Gonzales' letter went on to say that President Bush intended to nominate two judges to the Fourth Circuit, one each from the two States that remain underrepresented—North Carolina and Virginia. I am happy to report that the Senate confirmed one of these nominees, Judge Allyson Duncan from North Carolina, so that North Carolina's Fourth Circuit now stands at three, not four.

President Bush nominated Secretary Allen to this Fourth Circuit judgeship on April 28, 2003, and Secretary Allen, when confirmed, will properly increase Virginia's representation to four on the Fourth Circuit, in line with its percentage of population and caseload within the circuit.

So while the concerns of my colleagues from Maryland are honest and no doubt will be clearly articulated here today, the President did not act, in my opinion, improperly in nominating Secretary Allen. I think it would be inappropriate to hold up Secretary Allen's nomination any further, especially given that he has the full support of his home State Senators, our colleagues from Virginia.

I expect we will hear more about Secretary Allen's qualifications from his two home State Senators, so I will not go into any more detail at this time about his experience in both State and Federal Government and his excellent academic credentials.

At this time I would like to turn the floor over to the ranking member, Senator Leahy, for any statement he would care to make.

## STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Senator LEAHY. Well, thank you, Mr. Chairman.

I am not used to having hearings in this room. I do appreciate the convenience insofar as my office is just a few feet from here.

For over 200 years, advice and consent has helped to temper partisan politics in the judicial nomination process. It has protected the courts and the American people from single-party domination, and it has helped ensure that those who become Federal judges are fair judges who reflect mainstream legal thought. The result has

been a Federal bench that has served us extraordinarily well over the course of our Republic.

I am concerned that the history of the 108th Congress is a history of changed practices and broken rules. During the past 9 months, we have seen the systemic and systematic dismantling of the rules that have been followed by both Democratic and Republican majorities to protect us all. I am afraid my friends on the other side of the aisle are rushing to confirm ideological nominees that do not reflect the mainstream values of the American people. To do this, they have had to discard many of the protections that have historically helped to ensure a fair judiciary.

The Chairman has changed, for example, the blue slip policy so that even a negative blue slip from home State Senators is not enough to stop a nominee. The rule used to be, of course, that no judge would move out of this Committee if the Chair knew that the nomination was opposed by both home State Senators. And when this rule was used to block President Clinton's nominees, it was followed very stringently by the Republicans. It was always, always respected if the home State Senators said they did not want one of President Clinton's nominees.

Indeed, it was extended even so that if a single Republican Senator from a circuit, not even from the State of the Senator, objected, it was sufficient to make sure there was no hearing and no vote.

Now, this was the tradition followed for 6 years by my friends on the other side of the aisle during the Clinton administration. In fact, it was used so that they blocked 60 of President Clinton's nominees, blocked them if even one Republican Senator objected. Now, of course, that was dropped immediately when President Bush took office. So I worry that the rules have been changed, and I am concerned that we are not following the practice which has served this country very well.

Today, we are dismantling another critical part of the judicial nomination process, and that is having a hearing on Claude Allen of Virginia. Virginia is currently represented by two Republican Senators, both of whom support this nominee. I should say at the beginning both of whom are close friends of mine, and both are Senators I respect greatly. I refer to them as my Senators away from home during those few days of the week that I live in Northern Virginia when we are in session. I respect their views. When I was Chairman of this Committee, I worked with them to expedite and actually move their recommended nominees quickly, sometimes ahead of others. Roger Gregory was confirmed to the U.S. Court of Appeals for the Fourth Circuit, Henry Hudson was confirmed to the U.S. District Court for the Eastern District of Virginia, and Timothy Stanceau to the Court of International Trade, all supported by Senator Warner and Senator Allen. And this year we cooperated in filling a second vacancy in the district courts of Virginia with the confirmation of Glen Conrad to the Western District. So we have worked very hard to make sure there are no current vacancies at all on the Federal courts in Virginia—none—even though when there had been nominees of President Clinton's held up for some of those vacancies.

We worked well to fill vacancies all over the Fourth Circuit, not just in Virginia. Of the five circuit court nominees President Bush has sent to the Senate, three have been confirmed to date: Roger Gregory, Dennis Shedd from South Carolina, and Allyson Duncan from North Carolina. Now, I mention those three because when President Clinton nominated three African-Americans for that same circuit, because one Republican Senator objected they were never given a hearing. Two, Judge James Beaty and Judge James Wynn, were never even given a hearing. The third, Judge Andre Davis, a Marylander, was given the same treatment. And I was proud that we did a lot better for the Fourth Circuit when I was Chairman.

Now, working with this administration has not been so simple for the Maryland Senators. Senator Sarbanes and Senator Mikulski are two of the most respected members of the Senate. They are known nationally for their hard work and the enormous respect not only the people of Maryland have for them but around the country. The seat for which Mr. Allen has been nominated is a Maryland seat. All the history shows that. It was last held by Judge Francis Murnaghan of Baltimore. He was a brilliant and compassionate jurist, and I will leave it to my colleagues from Maryland to say more about them.

Now, in the year 2000, President Clinton nominated another Marylander, Andre Davis, an African-American district court judge from Baltimore, to fill Judge Murnaghan's seat. The Republicans, because apparently one Republican somewhere, not even from Maryland, objected, they did not act on the nomination. Actually, they claimed the Fourth Circuit did not need any more judges, even though there were five vacancies on the 15-judge circuit. Of course, as soon as President Bush was elected, they suddenly decided they needed those five judges.

Now, the White House did originally recognize that Judge Murnaghan's seat was rightfully a Maryland seat. After the name of a non–Marylander was floated and rejected by the Maryland Senators, they then decided, well, let's switch it and do it—I believe they nominated somebody that wasn't even a member of the bar in Mary, and they switched it to a Virginia seat. So now we have a Virginian who works in D.C., who used to be a member of the staff of a Republican Senator from North Carolina, being nominated to fill a circuit seat from Maryland.

I think he could not be more different than the predecessor. Claude Allen is a conservative political operative with little litigation experience. He has practiced law for a total of six and one-half years. That is a lot less than the 12 years recommended as an absolute minimum by the American Bar Association. In fact, he is among the more than two dozen judicial nominees from this administration with "not qualified" or partially "not qualified" ratings.

I have more I will say about him later which I will put in the record, but when you look at the record of people nominated by both Republican and Democratic Presidents for this seat, they have been among the most outstanding people. But to have somebody who has had virtually no litigation experience, virtually not experience practicing law, to a court one step below the U.S. Supreme

Court to fill a Maryland seat and somebody who has absolutely no connection with Maryland I think is a bridge too far.

I will put my whole statement in the record.

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

Senator CORNYN. Thank you, Senator Leahy.

Just perhaps because my statement really did not anticipate necessarily some of the remarks that you made, let me just point out for context and completeness: In a letter of July 17, 2003, by Judge Gonzales, the White House Counsel, to Senators Sarbanes and Mikulski, the most recent Census Bureau information as of July 2002 put Maryland's population at 20 percent of the Fourth Circuit, whereas Virginia's population was 27 percent. Moreover, September 2002 data from the Administrative Office of the U.S. Courts indicated that Maryland's caseload made up 16.7 percent of the circuit's cases, whereas Virginia's caseload was 34.8 percent of the circuit's cases.

So according to the White House perspective, it is entirely appropriate for four or five seats to be allocated to Virginia and two or three seats to be allocated to Maryland.

When President Clinton nominated, then recess-appointed Judge Gregory of Virginia to fill a North Carolina vacancy, he did not attempt to justify either action on the basis of objective criteria. He simply did what he believed he had the political muscle to do, and he did it. And the record from that time lacks any statements by our colleagues on the other side of the aisle of concern or outrage over what was obviously a shifting of a seat from a severely underrepresented State, North Carolina, to a slightly better represented State. Maybe even more important, despite all of these procedural concerns, President Bush renominated Judge Gregory. He was not filibustered, and he today sits on the Fourth Circuit Court of Appeals.

We are holding this hearing today to get views with respect to this nomination. That is the purpose of the hearing. We know what the White House's view is. The concerns of my colleagues from Maryland, both of whom I respect, we all respect, no doubt will be clearly expressed here today as well. On the other hand, Secretary Allen has the full support of his home State Senators, our colleagues from Virginia.

At this time we will turn to the senior Senator from Maryland for any comments he would care to make. Thank you, Senator Sarbanes, for being here with us.

## STATEMENT OF HON. PAUL S. SARBANES, A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator SARBANES. I appreciate this opportunity to appear before the Committee. At the outset I want to say that the year I finished law school, I clerked in the Fourth Circuit for Judge Morris Soper. That experience has had a lasting impact upon me, and I regard it as one of my most serious responsibilities to provide the best advice I can with respect to nominees to sit on the Federal bench.

Judge Soper was nominated by President Harding to be a Federal district judge and then nominated by President Hoover to go on the Fourth Circuit. He served for 40 years on the Federal bench.

I went to be his law clerk near the end of his service to the Nation. He was one of the most distinguished and respected judges in the Federal court system, and he had a profound effect upon me. His portrait, in fact, sits on a table in my office and has been there ever since I was his law clerk.

Judge Soper was a fierce believer in "Equal Rights Under Law," the motto chiseled above the Supreme Court, and was a leader in the Fourth Circuit in seeking to implement that principle. The library at Morgan State University, a historic black college and university, is named after Judge Soper, who for many years was Vice Chairman of its Board of Trustees. So I want the Committee to understand, I come today with very deeply felt feelings about the importance of the Federal bench and about our responsibilities as Members of the United States Senate, with an advise and consent constitutional obligation, to carry out that responsibility in a way that will sustain and enhance the excellence and integrity of our Federal bench.

Now, Mr. Chairman, I have distributed a memorandum of the Maryland judges who have served on the U.S. Court of Appeals for the Fourth Circuit ever since the nine judicial circuits were established in 1891. It is a very distinguished list, and I want to mention a couple of these judges just to underscore the quality of the people that Maryland has sent to the Fourth Circuit to sit on this bench. Consider, for example, Judge Simon Sobeloff, nominated by President Eisenhower. Judge Sobeloff had been the City Solicitor of Baltimore, the U.S. Attorney for the District of Maryland. He had been Chief Judge of the Maryland Court of Appeals. He had been Solicitor General of the United States and was nominated to go on the Fourth Circuit.

I have already mentioned Judge Soper. Judge Murnaghan, the empty seat for which this nomination has been made, was a leading practitioner at the bar for many years, President of the Baltimore City School System, Chairman of the Charter Revision Commission for the City of Baltimore, and a Chairman of numerous civic and cultural organizations, the Walters Art Museum, the Baltimore Museum of Art, the Johns Hopkins University, on and on.

In fact, when Judge Murnaghan was nominated, the Baltimore Sun in an editorial about him said, and I quote, "Frank Murnaghan is acknowledged by judges and fellow lawyers alike as the foremost of this generation at the bar and is among the finest two or three lawyers Maryland has lately produced."

Upon his death, the Sun noted, "Judge Murnaghan was one of the most admired figures in the legal establishment for his urbane scholarship, legal knowledge, and public spirit." And I could go through the rest of the list of these fine Maryland Judges.

Again and again, Maryland has sent to the Fourth Circuit people of outstanding merit and outstanding quality. We have done well by the Fourth Circuit, and we are proud of those who have served on that court from our State.

Now, we come before you today because the administration is seeking to shift a seat that should be a Maryland seat to another State. Plain and simple. Maryland has 20 percent of the population of this circuit. There are 15 authorized judges. Twenty percent of 15 is three. Right on the mark.

Furthermore, the seat that came vacant, for which this nominee has been placed before you, was held by a Marylander. A Marylander had those three seats. And, obviously, we feel very keenly that Maryland should continue to have three seats on the Fourth Circuit. We have a great legal tradition in our State. Some of the outstanding lawyers going back to colonial America were Marylanders. And that tradition has been sustained down through the years.

The Maryland State Bar wrote to President Bush after this nomination was made in opposition to it on the grounds that a Maryland lawyer should be nominated to fill this judicial vacancy.

Now, we have had a back-and-forth with White House Counsel Gonzales, and I think it probably serves a purpose if I take just a moment or two to enlighten the Committee about that, because I think it bears on the situation we find ourselves in here this morning.

When this nomination was made, we wrote to Counsel Gonzales, and we also sent a copy to Chairman Hatch and Senator Leahy. And we noted that in making this nomination, the administration was shifting a seat that has been traditionally allocated to Maryland to Virginia, that this ran directly counter to the principles for the allocation of seats that Counsel Gonzales had enunciated in a recent memorandum. In fact, the administration claimed that it would seek geographical balance so that the State has a number of judges sitting in that State corresponding to the State's percentage of the overall population of the circuit, and they pointed out that in the Fourth Circuit we were significantly out of balance. And he indicated that President Bush intended to nominate individuals to Fourth Circuit vacancies in a manner that will bring the circuit closer to geographic balance.

Traditionally, the standard has been population. Now they are trying to introduce the standard of the number of appeals that come up from the State. I don't understand that standard. It, in effect, says if there is more reason to think there are mistakes on the part of the Federal district bench so more appeals are taken, or if you have a more litigious bar—something I know this Committee has some concern about—that, therefore, you ought to get more judges on the appeals court. If one starts thinking about it, I think there are serious flaws in that criteria.

In any event, the traditional criteria has been population. On that criteria, Maryland would have three seats. The vacancy that exists here was held by a Marylander. The appointment of a Marylander would keep us at three.

Now, one final point which underscores the seriousness of this. We have tried to work with the administration on their nominees to the Federal bench. We have had some success. Senator Mikulski and I have appeared before you to speak in favor and endorse all three of the nominees that President Bush has made to the Federal district court in Maryland: William Quarles, Richard Bennett, and Roger Titus. This Committee reported all three out unanimously. Two were confirmed by the Senate and are now sitting, and the third is pending on the Senate calendar, and we expect his confirmation in the near future. So we have shown, I think, an ability

to work with the administration to try to move the process forward and place people on the Federal bench.

We encountered a difficulty on the Fourth Circuit. The administration at one point approached us and wanted to nominate "for the Maryland seat" someone who was not even a member of the Maryland Bar—38 years old, very bright, but not the sort of stature, both professionally and in the community, that I think is a prerequisite to go on the Federal bench. And these names we have put before you, if you look through them and what they have done, clearly demonstrate that we have succeeded time after time in drawing to the Federal bench men and women of stature, men and women of seasoned experience, men and women who have handled important, responsible positions in public life.

We want to maintain that standard and that tradition, and we do not think that the White House Counsel, when they encounter resistance to someone they want to place on the bench who falls short of that standard, should then take the seat and move it to some other State. And we intend, I certainly intend, to oppose this effort with all the strength that I can muster. And I urge the Committee not to allow this gross departure from practice to take effect.

Thank you very much.

Senator CORNYN. Thank you, Senator Sarbanes.

Senator Mikulski, we will be pleased to hear from you next.

## STATEMENT OF HON. BARBARA MIKULSKI, A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator MIKULSKI. Good morning, Mr. Chairman and members of the Committee. I want to thank the Committee for the opportunity to testify today on the nomination of Mr. Claude Allen. I will not repeat the arguments made by Senator Sarbanes, but to really though affirm the need to advocate very strongly that this seat should be a Maryland seat.

We feel that an injustice has been done to the State of Maryland in selecting a Virginian to occupy a Maryland seat on the Fourth Circuit Court of Appeals. So I am here today to oppose the nomination of Mr. Claude Allen. This is a Maryland seat, and a Maryland lawyer should be nominated for it. I have very serious concerns about Mr. Claude Allen's qualifications to represent Maryland. Mr. Allen does not and cannot adequately represent Marylanders.

This injustice hurt Maryland's representation on the Court of Appeals. Thousands of cases are going to be decided by this court, cases that affect the very lives of every Marylander. They impact Maryland business, Maryland education, workers' rights, our Bay, our environment. Our Federal Court of Appeals are so often the court of last resort. If Maryland loses this seat, they lose a voice.

Mr. Allen's nomination penalizes by taking one of its three seats away. There is no justification for taking this seat, especially when balance dictates that the State with 20 percent of the population should have 20 percent of the seats. That is common sense. That is fairness. That means three of the 15 judges.

This particular Maryland seat is no ordinary seat. It was occupied Judge Francis Murnaghan since its creation in 1979. Our Senate tradition is for a vacancy to be filled by a person of the same State. The Murnaghan seat brings with it an incredible legacy of

distinguished scholarship and legal experience to that seat. The Clinton White House recognized it as a Maryland seat when they nominated Judge Andre Davis, a distinguished lawyer who clerked for Judge Murnaghan. The Bush administration recognized it as a Maryland seat when they sent us two previous candidates, but they had little or no connection to Maryland. One was not even a member of the Maryland Bar. In both cases Senator Sarbanes and I had to object to such an important position going to someone with little or no ties to Maryland including not even being a member of the Maryland Bar.

Now we feel that the administration is playing bait and switch, trying to switch the seat to Virginia because Senator Sarbanes and I have raised concerns about the people that President Bush has tried to nominate for this seat. The administration claims that it needs to move the seat to geographically balance the Court of Appeals. That is unfounded. It is not Maryland's representation that needs adjustment. If the administration truly wants geographical balance they would look for opportunities to ensure that Maryland, which is possibly the only State in balance on the Fourth Circuit, stays in balance. They should nominate a Maryland lawyer because we are entitled to fair and balanced representation. If Mr. Allen were confirmed, then Virginia could have five seats, dwarfing the representation of Maryland, which has the third largest population in the Fourth Circuit, and push us down to two seats.

I would like to bring to the Committee's attention that the Maryland Bar opposes the Allen nomination on the grounds that I have stated. There are 30,000 practicing lawyers in our home State of Maryland. It is unacceptable that this administration could not find one well-qualified lawyer to appoint to this prestigious court. They found three well-qualified lawyers for the District Court, Judge Quarles, Judge Bennett, and hopefully soon, Judge Titus, all exceptional nominees who represent the type of nominees the administration could have chosen to fill the Murnaghan seat. Any one of those nominees has more legal experience than the current nominee before you. Why did the administration not look to one of those?

We understand that the administration has consulted, because of the significant Democratic representation in Congress, we understand the administration has consulted with Governor Ehrlich on the three District Court nominations. We have no objection to that, and in fact, Governor Ehrlich and his adviser, Mr. Jervis Finney, an outstanding lawyer, a rock-rib Republican, a former U.S. Attorney, is the advisor to Governor Ehrlich on these matters. That is how we got Quarles, Bennett and Titus. We have the people. Why not give us the opportunity? Because we believe that we could support this.

Our opposition here is not based on party. It is based on representing our State and seeing that our State is represented on the Court of Appeals. I repeat, this is not about party. We have voted for Republican nominations at the District Court, at the Fourth Circuit. I voted for Judge Niemyer, an outstanding member of the Fourth Circuit. When I voted for Judge Diana Mott, I was not even sure what her political party affiliation was. We go for the best, but

when we go for the best, we go for a Marylander, and this is why we are so adamant today.

When I review the nominees for Federal courts, I consider legal competency, the highest integrity, a dedication to protecting core constitutional values, and in this case being from my own State.

What causes me concern about this nomination is other qualifications about this nominee. I will not go into my flashing yellow lights about other qualifications to this nominee. Suffice to say that these are raised in the Sun paper editorial today, and I ask unanimous consent that this be placed into the record.

Senator CORNYN. Without objection.

Senator MIKULSKI. But dear Committee members, I really urge you to request that the administration withdraw the nomination of Mr. Allen. He is here today with his family. They seem like a wonderful family. I believe there are other places in this administration that Mr. Allen could serve his President and serve the Nation. I ask the withdrawal of this nomination before the Committee, or then to oppose it.

Senator CORNYN. I would like to thank both of our colleagues from Maryland for forcefully stating their views on this difficult subject. We are also honored to have the two Senators from the Commonwealth of Virginia here, who perhaps have a different perspective on this.

I would like to at this time recognize the senior Senator, Senator Warner.

## PRESENTATION OF CLAUDE A. ALLEN, NOMINEE TO BE CIRCUIT JUDGE FOR THE FOURTH CIRCUIT, BY HON. JOHN WARNER, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator WARNER. Members of the Committee, first may I say to my two distinguished colleagues that we have served here a long time together, and you fully recognize that there are really two boxing rings. The Executive Branch is where this decision was made with respect to the nomination, and I would hope that you would take the same vigor and ardor that both of you have expressed here and box it out there. Do not bring it to the boxing ring in the Senate where the match is over purely this man's qualifications, not the allocation between the several States for the seats on a Circuit, whether it is the Fourth Circuit or wherever it may be. It seems to me that this great Nation was set up with three coequal branches of the Government. The Executive Branch made this decision to send this nominee here, not the Senate. Now it is up to us to examine him purely on the basis of his qualification and give him a fair chance to be judged by the full Senate. So I say that most respectfully.

Senator MIKULSKI. Would the Senator yield for a minute?

Senator WARNER. Certainly.

Senator MIKULSKI. Senator, we understand that there are several boxing weights or boxing areas. We have tried to work with the administration. We have stated this case forcibly to them. We have asked them to consult with the Maryland Bar. We have asked them to follow the same process that gave us Judges Bennett and Quarles and hopefully Titus.

Senator WARNER. I do not question that you fought a strong battle there, but my point is you lost, and now we are in another arena, and this gentleman should be judge purely on the basis of his potential and the suitability to take on a judicial position.

Senator SARBANES. We do not intend to lose in this arena.

Senator WARNER. I do not doubt that you can place obstacles. Is it a sense of fairness to an individual person though? That is my concern.

Senator SARBANES. We have a deep concern about a sense of fairness to the State of Maryland and to the legal profession in our State, and in holding White House counsel to his own criteria. His own criteria was that he was going to try to seek greater geographical balance in the Fourth Circuit, and he is violating that in the most flagrant way. The administration has not only reduced Maryland's representation, but of course, Virginia has now gotten a fifth nominee to the Fourth Circuit, so significantly raising Virginia's seats. I like Virginia and I have had a wonderful working relationship with the Senator from Virginia, and I want to underscore that. Over the years there is no question about that, and we seek to have mutual respect, but we think that the White House has very badly treated our State.

Senator WARNER. Do what you can with respect to the White House but not to this innocent individual who comes up here with a distinguished record to offer himself for further public service. The whole procedure about the judicial nominations, I think all of us are of the opinion that somehow we have got to improve it, because we have to think about the human dignity of the people who are willing to come forward, whether it is a Republican nominee from a Republican President or a future nominee from another President.

You fight this out in the Executive Branch, the allocation among the several circuits of the seats. I will not take further time. I will try and deliver my statement here, and ask that the entire statement be put into the record.

Senator CORNYN. Without objection.

Senator WARNER. This is a fine individual. I have known him for some time. The interesting thing is he has served all three branches, speaking of branches, of the Federal Government, and held key positions in Virginia State Government as well, eminently qualified. His first experience with the Federal Government came with the Legislative Branch. After he graduated with a B.A. in political science from the University of North Carolina, he worked on the United States Foreign Relations Committee right here in the U.S. Senate, as deputy director of the Minority Staff and as Press Secretary. After leaving the Senate he went on to earn a law degree from Duke University. Upon graduation he was a law clerk for Hon. David Sentelle of the United States Circuit Court of Appeals for the District of Columbia. I might add that this humble Senator likewise was a law clerk on that Court before this gentleman was born, but I know the Court very well.

Subsequent to completing his Federal clerkship, Mr. Allen practiced law for 4 years with the firm of Baker and Botts, an internationally known firm. In 1995 he departed and went into the Attorney General's Office in the Commonwealth of Virginia and was

promoted to the Deputy Attorney General. I say that, Mr. Sessions, you are familiar with that office, and to rise to the post of deputy you have to have some sound credentials. Then in 1998 he was selected by our Governor to serve as the Secretary of Health and Human Resouces in the Commonwealth of Virginia.

Secretary Allen served as Virginia's Secretary of Health and Human Resources until 2001 when he was nominated by President Bush to serve as Deputy Secretary of Health in the U.S. Department of Health and Human Services. The Senate confirmed, I repeat, confirmed this eminent American for Secretary by voice vote on May 26, 2001.

It is important to note that this was not the first time Secretary Allen had received Senate confirmation. Earlier he was nominated by President Clinton and confirmed by the Senate for a position on the African Development Foundation. Twice the Senate has rendered advice and consent favorably.

So I suggest, most respectfully to my colleagues, to my good friends of Maryland, let us judge him on his merits and go into the arena of the Executive Branch if we wish to slug out the number of seats on the various circuits.

I thank my colleagues.

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

Senator CORNYN. Thank you, Senator Warner.

Senator Allen, we would be pleased to hear from you.

## PRESENTATION OF CLAUDE A. ALLEN, NOMINEE TO BE CIRCUIT JUDGE FOR THE FOURTH CIRCUIT, BY HON. GEORGE ALLEN, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator ALLEN. Thank you, Mr. Chairman. I am very pleased to join with my colleague, Senator Warner, in support of Claude Allen to this position on the Fourth Circuit Court of Appeals.

Since I am going second with my introduction Senator Warner has already covered some of the remarks I wished to make. I will not tread on them again, and will ask that my full statement be made part of the record.

Senator CORNYN. Without objection.

Senator ALLEN. Let me share with you all on the Committee my views. I will not get into a running debate other than to say I was listening to my colleagues from Maryland, and in issues like the Chesapeake Bay and the laws of the Fourth Circuit, federal laws apply in Virginia as well as Maryland. Virginia cares a great deal about the Chesapeake Bay, and it is actually one of the great partnerships with Virginia and Maryland in trying to upgrade the aquatic quality of the Chesapeake Bay.

But on the criteria of competence integrity, and the proper judicial philosophy, I find that Claude Allen, from my experiences working with him, is eminently qualified to serve in this position on the Fourth Circuit Court of Appeals. As Senator Warner said, he has served in every branch of Government, including various Executive Branch positions.

Let me share with you my views when I was serving as Governor of the Commonwealth of Virginia. As you know, Mr. Chairman, being Attorney General, and Senator Sessions, having served in a

similar position, states are constantly getting challenged on a variety of areas from people who do not like the changes you are making. I was very honored and fortunate as Governor to have Claude Allen serving most capably in a position of leadership as Deputy Attorney General. In that position, he was specifically working with members of my Cabinet, namely the Secretary of Health and Human Resources. In this position, he was vitally instrumental in warding off a lot of lawsuits and challenges in the implementation of Virginia's very ambitious and comprehensive welfare reform law. We passed it in 1995, well over a year and a half before the Federal law was passed, and there were challenges in a variety of Federal Courts. Fortunately we had Claude Allen, not just as a leader in the Attorney General's office, but as a leader making sure that our laws, which have been very successful over the years, were kept in place. Obviously these laws reflect the will of the people of Virginia. This gets also to my philosophy that judges ought to be interpreting and administering the law, not inventing or writing the law.

After that great work and leadership as Deputy Attorney General, then Governor Gilmore, my successor, came in and appointed him to be in his Cabinet as Secretary of Health and Human Resources. In this position, he continued the implementation of welfare reform as well as many other aspects of Virginia Government. The Secretary of Health and Human Resources in Virginia has very diverse responsibilities and is in charge of 13 agencies and 15,000 employees. Claude Allen showed great management in this position, and therefore, President Bush ultimately, when he came into office, wanted to bring him to the Federal level.

Another matter arose toward the end of my term as Governor of Virginia. There was a despicable and deplorable rash of church burnings focused on African-American churches. These were truly deplorable actions. During this time, Claude Allen worked with former Virginia Governor, Doug Wilder, to bring about a dialogue in our Commonwealth of Virginia to combat these hateful acts.

As Senator Warner mentioned, Claude Allen has been confirmed twice by the Senate, one nomination under President Clinton when served on the Board of Directors for the African Development Foundation. In that role he worked on various issues including the development of micro businesses for women in Africa, the care for orphans affected by HIV/AIDS, and adding an economic focus on the HIV crisis in Africa. He was, as Senator Warner mentioned, alos confirmed in May 2001 as Deputy Secretary for Health and Human Services, a position he currently holds.

Claude Allen has worked on issues dealing with health disparities in minority communities as well as the issues of bioterrorism, homelessness and HIV/AIDS, both in our Nation and abroad. He has, in my view, an outstanding record of commitment to positive youth development in our Commonwealth of Virginia, as well as across the Nation. He has been active in Virginia's Right Choices for Youth Program, which promotes healthy behaviors among young people in an effort to have them live up to their fullest potential.

He does have with him family members, and I would like for you all to recognize his family members who are here with him today.

His wife, Jan; his son Alexander, who is 11-years-old; Mildred, Secretary Allen's sister; Tom, his brother-in-law who is Mildred's husband; Karla Ballard, his niece; and Carolyn Ballard, his sister-in-law. Also here is a good friend and a supporter of Claude Allen, a man who has his own independent way of looking at matters, and that is Paul Gillis, who is a former State President of the Virginia State Conference of the NAACP.

Mr. Chairman, members of the Committee, Secretary Allen is an outstanding nominee. I am confident that he will honorably and fairly adjudicate cases on appeal to the Fourth Circuit. Members of this Committee, it is my sincere pleasure to present and to support this well-qualified nominee and outstanding person. He is a true Virginian. We are proud of that as well. I respectfully request you all to move as expeditiously as possible in bringing his nomination to the floor for a vote.

I thank you, Mr. Chairman, and all the members of the Committee.

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

Senator CORNYN. Thank you very much, Senator Allen. I would like to express our appreciation on behalf of the Committee to all our colleagues from Maryland Virginia for your introduction.

To remind the Committee, we have a vote posted at 10:30 on the confirmation of Governor Leavitt to be Administrator of the EPA, and my hope is that we can go ahead and ask Senator Durbin and Senator Fitzgerald to make any introductory comments they would care to make on the third panel member, Mark R. Filip, to be the U.S. District Judge for the Northern District of Illinois, so that when we come back we can proceed first with Mr. Allen and then with Mr. Filip.

Senator Durbin.

Senator DURBIN. Mr. Chairman, if you would not mind, I would like to ask my colleague, Senator Fitzgerald to go first since he nominated Mr. Filip, a nomination I totally support, but I would like him to introduce him.

Senator CORNYN. Very well. Senator Fitzgerald, we would be delighted to hear from you.

**PRESENTATION OF MARK R. FILIP, TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS, BY HON. PETER FITZGERALD, A U.S. SENATOR FROM THE STATE OF ILLINOIS**

Senator FITZGERALD. Thank you, Mr. Chairman, and members of the Committee. I appreciate the opportunity to be here today and introduce to the Committee a very fine, young, but already very experienced and sharp lawyer from Chicago named Mark R. Filip.

Mark is current a partner at Skadden Arps, specializing in complex commercial litigation in Chicago. He also does some criminal defense work. He is a graduate of the Harvard Law School, magna cum laude, and he also served on the Harvard Law Review. Before going to Harvard he had a scholarship, a Marshall Scholarship to study law at Oxford University. He has had two judicial clerkships. He clerked for Stephen F. Williams of the D.C. Circuit, and then clerked for Supreme Court Justice Antonin Scalia.

Before going to Skadden Arps he was an Assistant U.S. Attorney in the Northern District of Illinois, and while he was an Assistant U.S. Attorney he won the Justice Department's award for superior performance as an Assistant U.S. Attorney.

He is currently involved teaching at the University of Chicago Law School. He is currently lecturing there, and previously he was an adjunct professor at Northwestern School of Law. The American Bar Association has rated Mark Filip "well qualified."

I have to say that I appreciate Senator Durbin's support for the nominee. I know that Senator Durbin interviewed Mr. Filip for a long time and had a good meeting with him.

We are pleased to have Mark Filip here today, and Mark just nodded his head. He is sitting between his parents who have made it all the way from Park Ridge, Illinois, Rose and Robert Filip. If you want to stand up and just be recognized. Thank you.

I understand that Mark's wife, Beth, along with her parents are on their way from Chicago, and they will be in town a little bit later today. They have four boys, Matthew, Charlie, Tommy and Joseph, and I guess they are growing up like my son is, and the way I grew up and the way Mark grew up, very disappointed Chicago Cubs fans.

[Laughter.]

Senator FITZGERALD. They had a great disappointment the other day when the Cubs failed to make it into the World Series.

Mr. Chairman, I appreciate their being here. I appreciate your attention. Mark is a superior lawyer who has already made a significant mark in the legal community in Chicago and really around the Nation, and I expect that he will provide distinguished service to the Northern District of Illinois.

Again, I would like to thank my colleague, Senator Durbin.

With your consent, Mr. Chairman, I would like to be able to introduce a full statement of my remarks into the record.

Senator CORNYN. Certainly, without objection.

Senator FITZGERALD. Thank you.

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

Senator CORNYN. Thank you very much, Senator Fitzgerald.

Senator Durbin, would you care to make any remarks at this time?

Senator DURBIN. Very briefly.

## PRESENTATION OF MARK R. FILIP, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS, BY HON. RICHARD J. DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator DURBIN. Thank you, Chairman Cornyn, and I want to thank my colleague, Senator Fitzgerald.

I think what we have been able to achieve in Illinois despite our obvious political differences may be a benchmark or guide for some other States. We really have come up with bipartisan nominees. We have a process where the Senator from the President's party appoints three, and then the other Senator appoints the fourth, and we have not run into any difficulties with this all the way through, and we have I think come up with some outstanding

nominees who have not had any problem once they have arrived in the Senate. Circuit level, District Court Level. It can be done, ladies and gentlemen, despite all of the things that you hear to the contrary. And Mark Filip is a good illustration of how it can be done. I commend Senator Fitzgerald for nominating him.

I had a chance to meet with Mark in my office in Chicago. We sat down and talked about his background. I was nervous about some of his background and wondered is this person going to be moderate, centrist and the like, and I came away with a very positive impression.

Mr. Chairman, I think one of the most important things that I read was from an attorney who had been a defense counsel when Mark was a prosecutor, and we asked him what he thought about Mark Filip as a judge. He said as follows: "One of the fairest, most even-keeled, thoughtful prosecutors I've gone up against. Would make a wonderful judge because he understands the human condition and the principle that everyone deserves their day in court. Could you ask for more?"

I think that is the kind of fitting testimony from the other side in a case from a counsel who really understands that you can be fair and balanced, and Mark Filip has been.

I only found one question mark in his entire background, and it was a Law Review article that he had written back in law school in his callow youth relative to legislative history and how it was to be used, and we talked about it at length and Mark Filip sent me a letter explaining his thoughts on that issue. I would like to ask unanimous consent, Mr. Chairman, if that letter that Mr. Filip sent me might be made part of this permanent record.

Senator CORNYN. Certainly, without objection.

Senator DURBIN. I stand in full support of his nomination, and he is going to be a great District Court Judge. Thank you.

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

Senator CORNYN. Thank you very much, Senator Durbin, and I would like to congratulate you and Senator Fitzgerald for working together, and hopefully we can see more of that happen in the future, but we know that these nominations are sometimes contentious, but we can always hope.

We have a vote posted on the confirmation of Governor Leavitt for Administrator of the Environmental Protection Agency, so we are going to recess briefly so we can go vote, and we will come immediately back here. Senator Hatch, Chairman of the Committee, will then take the helm at that time.

Senator LEAHY. Mr. Chairman?

Senator CORNYN. Senator Leahy.

Senator LEAHY. Mr. Chairman, before we leave I should note, so there is no confusion, the Roger Gregory seat, that was one of the unallocated seats and it did go to Virginia. It was after President Clinton had tried for years to nominate people from North Carolina, and one Senator objected so they did not get hearings. He then nominated Roger Gregory for the unallocated seat, and he was strongly supported by both Senator Allen and Senator Warner.

Senator CORNYN. Thank you, Senator Leahy.

We will stand in recess temporarily until after the vote, and Senator Hatch will then bring us back into session.

[Recess 10:40 a.m. to 11:17 a.m.]

Chairman HATCH. As I understand it, we may be able to resolve the Filip matter in a short period of time, so why do we not do that?

Do either of you have any questions for Mr. Filip? Mr. Filip, why do you not take the chair and let us—anybody have any questions?

Senator DURBIN. Mr. Chairman, I know that you were detained with other Committee hearings, but Senator Fitzgerald and I have both expressed our strong support of this nominee. He has an extraordinary background. One of the things we were hoping, that his wife and father-in-law would be able to join the rest of his family here at this moment for the hearing. I thank you, Mr. Chairman, for allowing him to be considered at this moment. I do not know if he would like to introduce his family and perhaps make a short statement, but that would be appropriate I think at this moment.

**STATEMENT OF MARK R. FILIP, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS**

Mr. FILIP. Thank you very much, Senator, and thank you, Mr. Chairman. It is my great honor and pleasure to appear before you this morning, and I want to thank Senator Fitzgerald for initially recommending me, and the President for nominating me, and in particular thank both Senator Fitzgerald and Senator Durbin for the courtesy and thorough job that they did in evaluating my background, and the great sense of fairness that they showed toward me, and I am very grateful.

I would like to also introduce if I might, please, my family. First my wife Beth.

Chairman HATCH. Happy to have you here.

Mr. FILIP. Who I had the good fortune to meet when we were both back in college age, and it has definitely been the best thing that has ever happened to me, and has been a great partner in—for my in my life, and has done a wonderful job with our four sons.

I would like to also, please, introduce my mother and father, Rose Filip and Bob Filip.

Chairman HATCH. We are delighted to have you here. You have to be very proud of your son.

Mr. FILIP. And also my father-in-law, Terry Moritz.

Chairman HATCH. We are glad to have you here as well.

Mr. FILIP. We are very blessed all four grandparents living right in the area where we live, and our kids spend an awful lot of time with each of them, and it is really a great fortune for them and for everyone.

So thank you all very much. I'm happy to answer any questions if there are any, and if not, I am very, very grateful for all the kindness and courtesy everyone has shown all of us.

[The biographical information of Mr. Filip follows:]

QUESTIONNAIRE FOR NOMINEES REFERRED TO THE
UNITED STATES SENATE COMMITTEE ON THE JUDICIARY

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Mark Robert Filip.

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

Office: 333 W. Wacker Drive, Suite 2100, Chicago, Illinois, 60606; (312) 407-0700. Residence: Winnetka, Illinois.

3. Date and place of birth.

June 1, 1966; Chicago, Illinois.

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

I am married to Bethann Frances Moritz Filip (nee Moritz). My wife is not employed outside the home. She is working full-time raising our children.

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

Harvard Law School, Cambridge, MA (September 1990 to June 1992), J.D., *magna cum laude*, June 1992.

University of Oxford, Christ Church College, Oxford, England (September 1988 to June 1990), Honors B.A. in Law, First Class Honors, June 1990.

University of Illinois, Urbana-Champaign, IL (August 1984 to June 1988), B.A. in Economics and B.A. in History, *summa cum laude*, June 1988.

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Employment (all dates approximate):

Skadden Arps Slate Meagher and Flom (Illinois)
333 W. Wacker Drive, Suite 2100
Chicago, Illinois 60606
Partner, April 2001 to present.
Counsel, May 2000 to March 2001.
Associate, September 1999 to May 2000.

United States Attorney's Office
219 S. Dearborn, 5th Floor
Chicago, Illinois 60604
Assistant United States Attorney,
Criminal Division, February 1995 to August 1999.

University of Chicago Law School
1111 E. 60th Street
Chicago, Illinois 60637
Lecturer in Law, March 1999 to present.

Northwestern University School of Law
357 E. Chicago Avenue
Chicago, Illinois 60611
Adjunct Professor, 1998-1999.

Kirkland & Ellis
200 E. Randolph
Chicago, Illinois 60601
Litigation Associate, August 1994 to February 1995.

Chambers of Hon. Antonin Scalia
United States Supreme Court
One First Street, N.E.
Washington, D.C. 20543
Judicial Law Clerk, August 1993 to July 1994

Chambers of Hon. Stephen F. Williams
United States Court of Appeals, D.C. Circuit
333 Constitution Avenue, N.W.
Washington, D.C. 20001
Judicial Law Clerk, August 1992 to August 1993

United States Department of Justice
Office of Solicitor General
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Intern, June 1992 to August 1992

Sidley & Austin (now Sidley Austin Brown & Wood)
10 S. Dearborn
Chicago, Illinois 60603
Returning Summer Associate, August 1992.

United States Department of Justice
Criminal Division, Public Integrity Unit
1400 New York Avenue, N.W. (Bond Building)
Washington, D.C. 20005
Summer Intern, July 1991 to August 1991.

Wachtell Lipton Rosen & Katz
51 W. 52nd Street
New York, NY 10019
Summer Associate, June 1991 to July 1991

United States Attorney's Office
219 S. Dearborn
Chicago, IL 60606
Summer Intern, June 1990 to August 1990

Professor Charles Fried
Harvard Law School
Cambridge, MA 02138
Research Assistant, Fall 1990 to Spring 1992.

Sidley & Austin (now Sidley Austin Brown & Wood)
10 S. Dearborn
Chicago, Illinois 60603
Summer Associate, June 1989 to September 1989.

Michael J. Curry Internship Program
Office of Governor James R. Thompson
100 W. Randolph
Chicago, Illinois 60601

Summer Intern (Curry Program), June 1988 to August 1988.

Non-Paid Organizations/Positions

University of Illinois Alumni Association
University of Illinois
1401 W. Green Street, Suite 227
Urbana, Illinois 61801

Since approximately 1996, I have served as a board member of the University of Illinois Urbana-Champaign Alumni Council. I served as chair of the Council from 2000-2002. In connection with my service on the Council, I have also served as a board member of the University of Illinois Alumni Association.

Harvard Law Society of Illinois

In 1996, I was asked to join the board of the Harvard Law Society of Illinois, which is the local chapter of the Harvard Law School alumni group. I served as president of the Society in 2000-01, and previously served as vice-president (1999-2000) and secretary (1998-99).

Office of the Middlesex County, Massachusetts, District Attorney
Cambridge, Massachusetts 02141

During my final year of law school (1991-92), I worked without pay and for academic credit at the Office of the Middlesex County, Massachusetts, District Attorney. I worked as a "student assistant district attorney" helping to prosecute and process small criminal cases.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

I have never served in the military.

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

Post-Graduate Scholarship: George C. Marshall Scholarship,

United Kingdom Marshall Aid Commemoration Trust (for post-graduate studies after college).

College Scholarships: I received various scholarships and fellowships in college, including: a National Merit Scholarship (paid for by Jewel Food Corporation); academic and amateur athletic scholarship, University of Illinois, Avery Brundage Scholarship & Trust; Phi Beta Kappa Outstanding Student Fellowship; and the Class of 1941 Scholarship (awarded to two juniors at the University of Illinois at Champaign). I also was named to Bronze Tablet, the University of Illinois's highest academic honor, and was a member of various other honorary societies (e.g., Phi Beta Kappa).

Harvard Law School: At Harvard, I received a Joseph A. Sears prize after finishing the 1990-91 academic year as one of the two students with the highest grade point averages. I also was named to the *Harvard Law Review* for 1991-92, and served as one of its editors.

U.S. Attorney's Office in Chicago: I received various commendations from various law enforcement authorities while serving as an Assistant United States Attorney. These included the U.S. Department of Justice's "Director's Award" for superior performance as an Assistant United States Attorney. I also received the Chicagoland Chamber of Commerce''s 1999 Excellence in Law Enforcement Award, along with fellow prosecutors and law enforcement officers, in connection with the *United States v. Edward Jackson, et al.* prosecution discussed in response to Question 18.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Harvard Law Society of Illinois
In 1996, I was asked to join the board of the Harvard Law Society of Illinois, which is the local chapter of the Harvard Law School alumni group. I served as president of the Society in 2000-01, and previously served as vice-president (1999-2000) and secretary (1998-99).

Harvard Law School Chapter, Federalist Society
While in law school, I was a member of the Harvard Chapter of the Federalist Society, and served as one of the chapter's vice-presidents my final year (1991-92).

White Collar Criminal Law Committee, American Bar Association
I was asked in 2002 if I would serve as one of the midwest co-chairs of the White Collar Criminal Law Committee of the American Bar Association. I agreed to serve with a former colleague from the U.S. Attorney's Office in Chicago, who is now a partner at another Chicago firm, in 2003-04.

Chicago Inn of Court (professional bar society in Chicago)
Member, approximately 1997 to present.

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

I do not believe I am active in other organizations that lobby before public bodies (unless one of the organizations listed above – e.g., the ABA – lobbies in some form or fashion). If such lobbying efforts exist, I have never participated in them.

Other involvements:

Member, Sharing Committee, Saints Faith Hope and Charity Roman Catholic Church, Winnetka, Illinois: My family and I are parishioners at Saints Faith Hope and Charity Roman Catholic Church in Winnetka, Illinois, and have been since approximately 1998. We also have been involved in the Sharing Committee there, whose activities include various charitable campaigns and fundraisers (food drives, clothing drives, tuition fundraisers) for sister parishes and food pantries in other parts of the Chicago archdiocese. Prior to 1998, we attended church and were parishioners at St. Andrew's Roman Catholic Church in Chicago.

Member, Economics Club of Chicago (civic group), March 2000 to present.

Since 2001, I have served as a member of the Marshall Scholarship selection committee in Chicago, which evaluates applicants from the Midwestern part of the United States.

11. Court Admission: List each state and court in which you have been admitted to practice including dates of admission and any lapses in membership. Please explain the reason for any lapse of membership.

Bar Member, State of Illinois - February 1995 to present.

Bar Member, United States District Court, Northern District of Illinois, General & Trial Bars – February 2000 to present.
Bar Member, United States Court of Appeals, 7th Circuit - December 1995 to present.
Bar Member, United States Court of Appeals, 11th Circuit - February 2001 to present.
Bar Member, State of Pennsylvania, May 1993 to present. Voluntary inactive status June 1993 to present (never practiced there; never subject to any allegation of impropriety or misconduct there).

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Note, Why Learned Hand Would Never Consult Legislative History Today, 105 Harv. L .Rev. 1005 (1992).

Case Comment, The Supreme Court 1990 Term: *Chambers v. Nasco*, 105 Harv. L. Rev. 349 (1991).

I also have taught a seminar in advanced federal criminal procedure variously at the University of Chicago Law School and the Northwestern University School of Law during the past several years. I have provided a copy of the syllabus from this year's class. I wrote the syllabus along with Ryan Stoll — a former colleague from the U.S. Attorney's Office in Chicago and current partner of mine at Skadden Arps — when we taught the class together. (This is the first year I have taught the class alone; I previously always team-taught the class).

I have not given speeches about legal policy or constitutional law.

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

I am in good health. My last physical was in approximately November 2000.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have never served as a judge.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

I have never served as a judge.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

I have never held federal, state, or local public office.

17. Legal Career:

(a) Describe chronologically your law practice and experience after graduation from law school including: (1) whether served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk; (2) whether you practiced alone, and if so, the addresses and dates; (3) the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

(1) I served as a judicial law clerk from 1992-93 for the Honorable Stephen F. Williams, Circuit Court Judge, United States Court of Appeals for the D.C. Circuit. I served as a judicial law clerk from 1993-94 for the Honorable Antonin Scalia, Associate Justice, United States Supreme Court.

(2) I never practiced alone.

(3) Law Firms:

From September 1999 to the present, I have been with Skadden Arps, Slate Meagher & Flom (Illinois), 333 W. Wacker Drive, Suite 2100, Chicago, Illinois 60606. I was an associate from September 1999 to May 2000, a counsel from May 2000 to March 2001, and have been a partner since April 2001.

From August 1994 to February 1995, I was a litigation associate at Kirkland & Ellis, 200 E. Randolph, Chicago, Illinois 60601.

For a week or two in August of 1992, I worked as a "returning summer associate" at Sidley & Austin (now Sidley Austin Brown & Wood) in Chicago, 10 S. Dearborn, Chicago, Illinois 60603. I had previously worked as a summer associate at the firm during the summer of 1989 when I was in law school.

Government Offices:

From February 1995 to August 1999, I worked at the U.S. Attorney's Office in Chicago, 219 S. Dearborn, 5th Floor, Chicago, Illinois 60604. I was an Assistant United States Attorney in the Criminal Division.

I was a summer intern at the United States Department of Justice, Office of Solicitor General, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530, from approximately June 1992 to August 1992.

(b) (1) What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years? (2) Describe your typical former clients, and mention the areas, if any, in which you have specialized.

(1) At Skadden Arps, I have principally represented American publicly held companies in commercial litigation. I also have performed internal investigations for corporations, and have done some criminal defense work. At Kirkland and Ellis, I was a young attorney helping to represent American publicly held companies in commercial litigation.

At the United States Attorney's Office, I spent virtually 100% of my time prosecuting federal criminal offenses on trial and on appeal in the federal courts in Chicago.

(2) As mentioned, at law firms, I have typically worked for American corporations and their subsidiaries in commercial litigation. My work has involved representations in both the trial and appellate courts. At the United States Attorney's office, I specialized in the prosecution of white collar and violent crimes; I also spent a significant amount of time representing the United States in appellate litigation in the United States Court of Appeals for the Seventh Circuit.

(c) (1) Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates. (2) What percentage of these appearances was in (a) federal courts; (b) state courts of record; (c) other courts. (3) What percentage of you litigation was (a) civil; (b) criminal. (4) State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel. (5) What percentage of these trials was: (a) jury; (b) non-jury.

(1) During the time I worked at Kirkland & Ellis (1994-95), I rarely appeared in court, if at all. When serving as an Assistant United States Attorney (1995-99), I appeared in court frequently–typically on multiple occasions each week and often daily. I was in court for many reasons–trials, appellate arguments, motion hearings, etc. At Skadden Arps (1999-present), I have appeared in court occasionally, given the relative infrequency in which commercial litigation matters require court hearings.

(2) Virtually 100% of my work at each stage of my legal career has been in the federal trial courts and circuit courts of appeal. I have rarely, if ever, appeared in a state court (except when serving as a "student assistant district attorney"during law school – see response to Question 6, above)), and I do not believe I have ever appeared in another type of court.

(3) While working in law firms, virtually 100% of my court appearances have related to civil matters (i.e., every court appearance other than those made in connection with *pro bono* criminal cases). At the United States Attorney's office, virtually 100% of my court appearances related to criminal matters (i.e., every court appearance other than those made in *habeas corpus* proceedings or extradition cases, which are civil matters).

(4) I tried approximately twelve jury trials at the U.S. Attorney's Office. All cases at the U.S. Attorney's Office in Chicago (at least at that time) were tried by at least two prosecutors (large cases sometimes had three prosecutors), who divided up the witness examinations and arguments equally. I also participated in numerous contested evidentiary proceedings and sentencings in the U.S. District Courts as an Assistant United States Attorney.

At Skadden Arps, I have had various contested evidentiary and legal hearings in civil matters – principally in connection with breach of trust litigation, bankruptcy confirmation litigation, and other civil litigation relating to Washington Group International, Inc. – a large engineering and construction company headquartered in Boise, Idaho, that reorganized in 2001-02. There were many attorneys from Skadden Arps who worked on Washington Group's reorganization and related litigation; I was the lead litigation partner and, along with some of my other partners, handled the company's litigation in court.

At Skadden Arps, I also have appeared in court on occasion in connection with pro bono criminal representations.

(5) All of the trials (100% of the trials) in which I participated were jury trials. In the civil litigation for Washington Group discussed immediately above, a United States Bankruptcy Court was the factfinder.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case: (a) the date of the representation; (b) the name of the court and the name of the judge or judges before whom the case was litigated; and (c) the individual name, addresses, and telephone numbers of co-counsel and principal counsel for each of the other parties.

*United States v. James E. Washington, et al.*: James E. Washington was the first defendant in the Northern District of Illinois against whom the government elected to invoke 18 U.S.C. 3559(c), which provides for a mandatory life sentence for violent felons who have previously been convicted of two serious violent felonies. Mr. Washington had previously murdered a teenage robbery victim, and, after his release from prison, Mr. Washington was convicted of the attempted murder and robbery of his own father. Mr.

Washington became involved in the federal criminal justice system after he started recruiting homeless men to commit bank robberies at his direction. Mr. Washington was convicted by jury of involvement in three bank robberies. On appeal, Mr. Washington alleged that 18 U.S.C. 3559 was unconstitutional on various grounds. I represented the United States on appeal before the United States Court of Appeals for the Seventh Circuit, which rejected the constitutional challenges to the statute.

I initiated the case and oversaw the investigation, and then served as one of the two Assistant United States Attorneys who tried the case for the federal government. My co-counsel was Sheila Finnegan, now a partner at Mayer Brown Rowe & Maw, 190 S. La Salle Street, Chicago, IL 60603, (312) 782-0600. Mr. Washington was represented by Frank Lipuma, 33 N. Dearborn, Suite 600, Chicago, IL 60602, (312) 551-9112. I worked on the case from the Spring of 1995 through the Spring of 1997, and worked on it again during *habeas corpus* proceedings in the Fall of 1998. The case was tried before the Hon. Charles P. Kocoras, Chief Judge, United States District Court for the Northern District of Illinois.

Opinions in the Case: *United States v. Washington*, 109 F.3d 335 (7th Cir. 1997) (Judges Easterbrook, Ripple, and Manion affirming conviction and sentence and rejecting various constitutional challenges to 18 U.S.C. 3559); *United States v. Washington*, No. 98 C 5062, No 95 CR 302, 1999 WL 59974 (N.D. Ill. Feb. 3, 1999) (Kocoras, J.).

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*United States v. Phillip Ishola, et al.*: Phillip Ishola and eighteen codefendants were charged with various offenses in connection with a large-scale international heroin importation conspiracy that operated in Thailand, Nigeria, England, and the United States. All of the defendants who were apprehended (a couple remained fugitives) were convicted by guilty plea or trial. I joined the prosecution team shortly after the initial arrests, and assisted Assistant United States Attorneys Patrick Layng and George Jackson (who were the prosecutors during the investigation stage). I assisted in the government's defense of the lawfulness of the wiretaps, search warrants, and arrests, which were subjected to various statutory and constitutional challenges. I also was involved in negotiating various plea agreements. Patrick Layng and I prepared the case for trial – which ultimately, after numerous guilty pleas – involved only one defendant. U.S. District Judge Harry Leinenweber presided over the jury trial.

Assistant United States Attorneys Layng and Jackson can be reached at 219 S. Dearborn, 5th Floor, Chicago, IL 60604, (312) 353-5300. There were numerous defense attorneys in the case, including Scott Frankel, Frankel & Cohen, 77 W. Washington, Suite 1720, Chicago, IL 60602 (312) 759-9600; and Jim Graham, 53 W. Jackson Blvd., Suite 703, Chicago, IL 60604 (312) 922-3777. I worked on the case from the Fall of 1996 through the Summer of 1997.

Opinions in the Case: *United States v. Phillip Ishola, et al.*, No. 96 CR 523, 1996 WL 197461 (N.D. Ill. Apr. 19, 1996) (Leinenweber, J.); *United States v. Akanni Hamzat, et al.*, 217 F.3d 494 (7th Cir. 2000) (Judges Diane Wood, Posner, and Bauer affirming convictions and sentences).

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*United States v. Thomas J. Maloney, et al.*: Thomas Maloney and his codefendant were variously convicted of racketeering, extortion, and obstruction of justice in connection with a series of judicial bribes. Mr. Maloney was a criminal judge in the Circuit Court of Cook County who was convicted of accepting bribes to fix various types of cases, including murder cases. I served as the lead attorney on appeal after joining the U.S. Attorney's Office in 1995, after Mr. Maloney's trial took place. The appeal was complicated by allegations of serious prosecutorial misconduct leveled against one of the trial attorneys. The allegations related to purportedly undisclosed benefits given to members of the El Rukn street gang who were cooperating witnesses in this and other cases, and the allegations had previously resulted in reversals of numerous convictions of other defendants in various narcotics and gang-related prosecutions. The appeal raised the disclosure/misconduct allegations, as well as various other claims of error concerning jury instructions, evidentiary rulings, and RICO issues.

I argued the case on appeal in the United States Court of Appeals for the Seventh Circuit, which affirmed the conviction 2-1. I also helped to write the government's response to Mr. Maloney's petition for certiorari that he filed in the U.S. Supreme Court.

The prosecutor most familiar with my work is Barry Rand Elden, 219 S. Dearborn, Chicago, IL 60604, (312) 353-5300. Scott Mendeloff, now at Sidley Austin Brown & Wood, 10 S. Dearborn, Chicago, IL 60603, (312) 853-7000, also was extensively involved in the preparation of the government's brief on appeal. Opposing counsel were Jeffrey Cole and Andrew Staes of Cole & Staes Ltd., 321 S. Plymouth Court, Chicago, IL 60604, (312)

697-0200. I worked on the case from April 1995 through the Summer of 1996.

Relevant Opinions in the Case: *United States v. Thomas Maloney*, 71 F.3d 645 (7th Cir. 1995) (Judges Cummings and Eschbach affirming convictions, and Judge Ripple dissenting); *Thomas Maloney v. United States*, 519 U.S. 927 (1996) (denying certiorari).

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*United States v. Edward Jackson, et al.*: Edward Jackson and six other Chicago police officers from the Austin Police District were variously convicted of racketeering, extortion, bribery, narcotics trafficking, and firearms offenses relating to acts of police corruption. The defendants released police intelligence to members of street gangs, protected narcotics operations and purported narcotics operations being run by undercover law enforcement agents, and robbed homes and drug houses. Members of Chicago street gangs who conspired with the officers also were prosecuted and convicted.

I was involved in the case from its early stages. Along with Assistant United States Attorney Brian Netols, the senior prosecutor on the case, we supervised and helped to plan the investigation, which included undercover FBI operations and numerous court-approved wiretaps. We also conducted plea negotiations and interviews of defendants and numerous civilian witnesses, some of whom were immunized pursuant to court order and forced to testify before the grand jury. Along with our colleague Ryan Stoll, we presented the case to the jury at trial. The lead undercover officer in the case received the FBI's highest award for bravery in the line of duty, and each of the prosecutors received the U.S. Department of Justice's "Director's Award" for Superior Performance as an Assistant United States Attorney.

The case was tried before U.S. District Judge Ann Williams in Chicago; after Judge Williams was elevated to the Seventh Circuit, Chief Judge Charles Kocoras assumed responsibility for the case. Co-counsel were Assistant United States Attorney Brian Netols, 219 S. Dearborn, Chicago, IL 60604, (312) 353-5300; and Ryan Stoll, now a partner at Skadden Arps Slate Meagher & Flom (Illinois), 333 W. Wacker Drive, Suite 2100, Chicago, IL 60606, (312) 407-0780. There were numerous defense lawyers involved in the case, including: Robert Clarke, 10 S. La Salle Street, Suite 3710, Chicago, IL 60603, (312) 332-3101; Stephen Broussard, 5140 S. Hyde Park Blvd., Chicago, IL 60615, (773) 924-9260; and Stan Hill, 10 S. La Salle Street,

Suite 1301, Chicago, IL 60603, (312) 917-8888. I worked on the prosecution of this case from the Spring of 1996 to the Summer of 1999, when I left the U.S. Attorney's Office.

Relevant Opinions in the Case: *United States v. Young*, No. 96 CR 815, 1997 WL 321754 (N.D. Ill. June 10, 1997) (Williams, J.) (bail ruling); *United States v. Crittleton*, No. 96 CR 815, 1997 WL 797661 (N.D. Ill. Dec. 24, 1997) (bail ruling); *United States v. Jackson, et al.*, No. 96 CR 815, 1998 WL 149582 (N.D. Ill. March 23, 1998) (Williams, J.) (denying severance and suppression motions); *United States v. Jackson, et al.*, No. 96 CR 815, 1998 WL 149586 (N.D. Ill. March 24, 1998) (Williams, J.) (ruling on pretrial motions); *United States v. Ramos*, No. 96 CR 815, 1998 WL 155932 (N.D. Ill. April 3, 1998) (Williams, J.) (ruling on pretrial motions); *United States v. Jackson, et al.*, No. 96 CR 815, 1998 WL 187003 (N.D. Ill. April 15, 1998) (Williams, J.) (ruling on pretrial motions); *United States v. Jackson, et al.*, No. 96 CR 815, 1998 WL 187285 (N.D. Ill. April 15, 1998) (Williams, J.) (ruling on pretrial motions); *United States v. Ramos*, No. 96 CR 815, 1998 WL 214737 (N.D. Ill. April 27, 1998) (denying defendant's motion to revoke proffer agreement); *United States v. Moore & Young*, No. 96 CR 815, 1998 WL 265077, (N.D. Ill. May 15, 1998) (pretrial rulings); *United States v. Jackson*, 2000 WL 174284 (N.D. Ill. Nov. 28, 2000) (Williams, J.) (denying defendants' motions for new trial and/or judgment of acquittal).

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*United States v. Shawntell Curry, et al.*: Shawntell Curry and four coconspirators committed a series of armed robberies of banks and motels in the Chicago suburbs during 1996 and 1997. I was involved in this case throughout the investigation and trial phases, and was the lead prosecutor during the investigation and plea negotiations. Along with my colleague, Assistant United States Attorney Bennett Kaplan, I tried the case before U.S. District Judge Charles Norgle. Defendant Shawntell Curry, the only defendant who went to trial, was convicted of all but one charge, and he received a sentence of some twenty-five years' imprisonment. The investigation also led to the prosecution of related crack cocaine dealing in the south suburbs of Chicago.

Bennett Kaplan can be reached at Mayer Brown Rowe & Maw, 190 S. La Salle Street, Chicago, IL 60603, (312) 782-0600. Mr. Washington was represented at trial by Frank Lipuma, 33 N. Dearborn, Suite 600, Chicago, IL 60602, (312) 551-9112. I worked on the case from February 1997 to August

1999, although I was not particularly involved in the case at the appellate level.

Opinion in the Case: *United States v. Shawntell Curry*, 187 F.3d 762 (7th Cir. 1999) (Judges Posner, Easterbrook, and Diane Wood affirming conviction).

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*United States v. Palumbo Brothers, Inc., et al.*: Palumbo Brothers, Inc., and related corporate defendants were road construction companies owned and controlled by the Palumbo family. These corporations, along with various Palumbo family members, their employees, and an Illinois Department of Transportation inspector, were indicted for racketeering and acts of fraud directed against state and local governments, trade unions, and company employees.

I joined the prosecution team after the indictment issued and, along with Assistant United States Attorneys John Podliska and John Newman, who had led the investigation for many years, worked on the government's pretrial motions and responses to the defendants' pretrial motions. United States District Judge Elaine Bucklo subsequently dismissed approximately 70% of the indictment after concluding that, as a matter of law, the racketeering and labor fraud charges were preempted by other federal legal regimes, including federal labor laws.

I was appointed to be the government's lead appellate counsel, and argued the government's appeal of the indictment dismissal in the United States Court of Appeals for the Seventh Circuit. The Seventh Circuit reversed the District Court's ruling and reinstated the indictment. Subsequent to the reversal, the defendants pleaded guilty to various charges. I was not extensively involved in plea discussions, principally because I was working on the *Jackson* prosecution described above.

Co-counsel in the case included: Assistant United States Attorneys Barry Rand Elden, John Newman, and John Podliska, all at 219 S. Dearborn, 5th Floor, Chicago, IL 60604, (312) 353-5300. There were numerous defense attorneys involved in the case, including James Streicker, Cotsirilos Tighe & Streicker, Ltd., 33 N. Dearborn, Suite 600, Chicago, IL 60602, (312) 263-4670; and Robert Michels, Winston & Strawn, 35 W. Wacker Drive, Chicago, IL 60601 (312) 558-5255. I also worked and interacted with Professor Robert Blakey, Notre Dame Law School, Notre Dame, Indiana 46556, (219) 631-5717; and with Marc Martin, 53 W. Jackson Blvd., Suite 1400, Chicago,

IL 60604 (312) 408-1111. Professor Blakey and Mr. Martin briefed and argued the case for various defendants on appeal. I worked on the Palumbo case from the Spring of 1997 through the Spring of 1998.

Relevant Opinions in the Case: *United States v. Palumbo Brothers, Inc., et al.*, No 96 CR 613, Docket Entry 172, Mem. Op. (Aug. 21, 1997) (Bucklo, J.) (dismissing most of indictment); *United States v. Palumbo Brothers, Inc., et al.*, No. 96 CR 613, 1997 WL 643618 (Oct. 9, 1997) (Bucklo, J.) (denying government's motion for reconsideration of dismissal order); *United States v. Palumbo Brothers, Inc., et al.*, 145 F.3d 850 (7th Cir. 1998) (Judges Bauer, Coffey, and Rovner reversing the District Court and reinstating the indictment in the entirety).

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*United States v. Bruce Farley, et al.*: Illinois State Senator Bruce Farley, Illinois State Representative Miguel Santiago, and officials at the Cook County Treasurer's Office were variously charged with fraud, tax offenses, and obstruction of justice in connection with an alleged ghost-payrolling scheme. All but Representative Santiago pleaded guilty to various offenses, and Representative Santiago was acquitted following a jury trial. One of the defendants, then-Cook County Treasurer Edward Rosewell, died prior to his conviction becoming final. As I understand it, his conviction therefore was vacated as a matter of law upon his death.

I joined the prosecution team after the case was investigated and indicted. I participated, along fellow Assistant United States Attorneys Jon Bunge and Bennett Kaplan, in the pretrial phases of the case and took the guilty plea from Mr. Farley. Kaplan, Bunge, and I tried the case against Representative Santiago before U.S. District Judge Joan Gottschall.

Co-counsel were Bennett Kaplan, Mayer Brown Rowe & Maw, 190 S. La Salle Street, Chicago, IL 60603, (312) 782-0600; and Jon Bunge, Kirkland & Ellis, 200 E. Randolph Drive, Chicago, IL 60601, (312) 861-2256. There were several defense attorneys in the case, but the lead trial attorneys for Representative Santiago were Edward Genson, Genson & Gillespie, 53 W. Jackson Blvd., Suite 1420, Chicago, IL 60604 (312) 726-9015; and Marc Martin, 53 W. Jackson Blvd., Suite 1400, Chicago, IL 60604 (312) 408-1111. Senator Farley, who pleaded guilty shortly before trial, was represented by Thomas M. Breen, Thomas M. Breen & Associates, 53 W. Jackson Blvd., Suite 1460, Chicago, IL 60604, (312) 360-1001. I worked on the case from the summer of 1998 to the Spring of 1999.

Opinions in the Case: *United States v. Bruce Farley, et al.*, No. 97 CR 441, 1997 WL 695680 (N.D. Ill. Oct. 31, 1997) (Gottschall, J.); *United States v. Bruce Farley, et al.*, No. 97 CR 441, 1998 WL 684220 (N.D. Ill. Sept. 11, 1998) (Gottschall, J.)

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*United States v. Jesse Evans*: Mr. Evans was a Chicago alderman who was convicted in 1997 of racketeering (including acts of extortion, bribery, mail fraud, and official misconduct), filing false tax returns, and obstruction of justice. I was asked by the lead trial attorney, Assistant United States Attorney David Rosenbloom, to handle the case on appeal. I served as lead attorney on appeal and argued the case in the Seventh Circuit, where Mr. Evans unsuccessfully alleged that his constitutional rights were violated during jury selection. David Rosenbloom is most familiar with the case as co-counsel: Mr. Rosenbloom is currently a partner at McDermott, Will & Emery, 227 W. Monroe Street, Chicago, IL 60606, (312) 984-7759. Mr. Evans was represented on appeal by Professor Richard Kling of the Chicago-Kent College of Law, 565 W. Adams Street, Chicago, IL 60661, (312) 906-5050. I worked on the case during the Summer and Fall of 1998.

Relevant Opinion: *United States v. Jesse Evans*, 192 F.3d 698 (7th Cir. 1999) (Judges Coffey, Easterbrook, and Diane Wood affirming conviction).

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*Washington Group International Litigation*: Along with a team of other attorneys from Skadden Arps, I represented Washington Group International, Inc., in litigation regarding its corporate reorganization and issues that related to the corporate reorganization. The litigation occurred in federal bankruptcy court in Nevada as well as in federal district court in Nevada.

There were various parts to the litigation. The first involved a suit filed by Mitsubishi and Mitsubishi Heavy Industries of America (collectively, Mitsubishi) against Washington Group, in which Mitsubishi alleged that Washington Group had violated provisions of the New York Lien Law as well as various trust doctrines in its handling of various monies relating to two large power plant projects in Massachusetts; Mitsubishi alleged that Washington Group owed it approximately $190 million as a result of the claimed violations. I led the litigation effort on behalf of Washington Group and argued the summary judgment motion that led to dismissal of the case by the Hon. Gregg Zive, United States Bankruptcy Judge, District of Nevada. Mitsubishi appealed Judge Zive's ruling to the Hon. Roger L. Hunt, United

States District Judge, District of Nevada. The appeal was withdrawn as part of a broad, global settlement, discussed below.

The other main parts of the litigation all related to Washington Group's corporate reorganization and related disputes that stemmed from Washington Group's corporate acquisition in 2000 of Raytheon Engineers & Constructors, International, from Raytheon Company. Washington Group contended that it was the victim of fraud in connection with this acquisition, a charge Raytheon vigorously disputed. The two parties (Washington Group and Raytheon) became enmeshed in various litigation disputes in which the parties variously claimed hundreds of millions and billions of dollars in recoveries from each other. These disputes were eventually resolved following litigation before Judge Zive as part of a global settlement that was part of Washington Group's reorganization. I served as the lead litigation partner from Skadden Arps in connection with that litigation. The litigation relating to Washington Group's reorganization confirmation also involved various objectors and objections to the reorganization plan – the most significant being M.D. Sass Corporate Resurgence Partners, L.P., and Durham Asset Management Corporation (collectively, Resurgence), two secured creditors of Washington Group. Judge Zive rejected all of the various objections to confirmation, and Resurgence as well as another unsecured creditor took appeals from Judge Zive's Confirmation Order, both of which were rejected on appeal by Hon. Roger L. Hunt, United States District Judge, District of Nevada. I worked on the case from May of 2000 to January of 2003.

There were hundreds of attorneys involved in the cases and in the corporate reorganization. Principal co-counsel were: Jennifer A. Smith, Lionel Sawyer & Collins, 1100 Bank of America Plaza, 50 W. Liberty Street, Reno, Nevada 89501, (775) 788-8666; Tim Pohl, Skadden Arps Slate Meagher & Flom (Illinois), 333 W. Wacker Drive, Chicago, IL 60606, (312) 407-0700; and David Kurtz, now a managing director with Lazard Frères & Co. Investment Bank, 200 W. Madison Street, Suite 2200, Chicago, Illinois 60606 (312) 407-6615. The opposing counsel with whom I interacted most included: Patrick Murphy (lead counsel for the unsecured creditors committee), Murphy Sheneman Julian and Rodgers, 101 California Street, 39th Floor, San Francisco, California, 94111, (415) 398-4700; Julia Frost-Davies (counsel for Raytheon), Bingham McCutchen LLP, 150 Federal Street, Boston, Massachusetts 02110, (617) 951-8422; P. Sabin Willett (counsel for Raytheon), Bingham McCutchen LLP, 150 Federal Street, Boston, Massachusetts 02110, (617) 951-8775; Richard H. Epstein (counsel for Mitsubishi), Sills Cummis Radin Tischman Epstein & Gross, One Riverfront Plaza, Newark, New

Jersey, (973) 643-7000; and David M. Stern (counsel for Resurgence), Klee Tuchin Bogdanoff & Stern LLP, 1880 Century Park East, Suite 200, Los Angeles, California 90067, (310) 407-4025.

Relevant Opinions in the Case: *In re Washington Group International, et al.*, BK-N-01-31627 (Bankr. D. Nev.) (Zive, J.) (Docket No. 693, June 20, 2001) (granting summary judgment to Washington Group on Mitsubishi claims); *In re Washington Group International, et al.*, BK-N-01-31627 (Bankr. D. Nev.) (Zive, J.) (Docket No. 820, June 13, 2001) (transcript of summary judgment proceeding and findings of Judge Zive relating to order listed immediately above regarding Mitsubishi claims); *In re Washington Group International, et al.*, BK-N-01-31627 (Bankr. D. Nev.) (Zive, J.) (Docket No. 3169, December 21, 2001) (findings of fact and conclusions of law regarding confirmation of second amended joint plan of reorganization of Washington Group International, Inc., et al., as modified); *In re Washington Group International, et al.*, BK-N-01-31627 (Bankr. D. Nev.) (Zive, J.) (Docket No. 3170, December 21, 2001) (order confirming second amended joint plan of reorganization of Washington Group International, Inc., et al., as modified); *Consorcio DSD/Somor v. Washington Group International, et al. (In re Washington Group International, et al.)*, CV-N-02-0032 & 0083 (RLH), Docket No. 76 (D. Nev., October 18, 2002) (Hunt, J.) (dismissing appeal from confirmation as equitably moot); *M.D. Sass Corporate Resurgence Partners, L.P., et al. v. Washington Group International, et al. (In re Washington Group International, et al.)*, CV-N-02-0044 (RLH), Docket No. 63 (D. Nev., October 23, 2002) (Hunt, J.) (dismissing appeal from confirmation as equitably moot); *Consorcio DSD/Somor v. Washington Group International, et al. (In re Washington Group International, et al.)*, CV-N-02-0032 & 0083 (RLH), Docket No. 85 (D. Nev., January 7, 2003) (Hunt, J.) (denying motion for reconsideration).

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*In re Managed Care Multidistrict Litigation*, MDL No. 1334 (S.D. Fla., Moreno, J.): I have been one of three partners from Skadden Arps who has represented Health Net, Inc. (f/k/a Foundation Health, Inc.) and various of its subsidiaries in a series of cases that have been filed against Health Net and most of the other members of the managed care industry (Aetna, United HealthCare, etc.). The Judicial Panel on Multidistrict Litigation has consolidated the cases for coordinated pretrial proceedings in the United States District Court for the Southern District of Florida. The cases allege that the delivery and operation of managed health care in the United States violates many state and federal statutes, both as to the physicians who practice under

managed care arrangements and as to those persons insured under managed care programs such as PPOs and HMOs.

I have been involved principally in the briefing in the cases – at the motion to dismiss stage, and also in relation to the class certification issues. I also have been involved in two interlocutory appeals that the case has generated – the first relating to arbitration issues, and the second relating to the propriety of class certification of a nationwide class of physician-plaintiffs. I also have been involved, with my colleagues from Skadden Arps and other counsel for Health Net, in advising our client and in developing our client's overall legal strategy. I have worked on this litigation from Spring of 2000 to the present.

There have been several dozen, if not hundreds, of attorneys involved in the case. The plaintiffs and defendants typically deal with each other through liaison counsel that the court appointed to speak on behalf of the groups, so I have never communicated with any of the dozens of lawyers representing the plaintiffs. There are also dozens, if not hundreds, of attorneys who are representing the defendant companies. The co-counsel I have interacted with most include: Edward Soto, Weil Gotshal & Manges, 701 Brickell Avenue, Miami, Florida 33131, (305) 577-3177 (counsel for United HealthCare); Richard J. Doren, Gibson, Dunn & Crutcher, 333 S. Grand Avenue, Los Angeles, Los Angeles, California 90071, (213) 229-7038 (counsel for Aetna); and William E. Grauer, Cooley Godward LLP, 4401 Eastgate, San Diego, California 92121 (858) 550-6050 (counsel for Pacificare).

Relevant Opinions in the Case: *In re Managed Care Litigation*, No. MDL 1334, 132 F.Supp.2d 989 (S.D. Fla. 2000) (granting motions to compel arbitration in part, and denying motions in part), *aff'd sub nom., In re Humana Inc. Managed Care Litigation*, 285 F.3d 971 (11th Cir. 2002), *cert. granted in part sub nom., Pacificare Health Systems, Inc. v. Book*, 123 S.Ct. 409 (U.S. Oct. 15, 2002), and *rev'd in part sub nom., Pacificare Health Systems, Inc. v. Book*; 123 S.Ct. 1531 (U.S. April 7, 2003); *In re Managed Care Litigation*, No. MDL 1334, 135 F.Supp.2d 1253 (S.D. Fla. 2001) (granting in part and denying in part motions to dismiss); *In re Managed Care Litigation*, No. MDL 1334, 143 F.Supp.2d 1371 (S.D. Fla. 2001) (granting in part motion to compel arbitration and modifying in part prior order); *In re Managed Care Litigation*, No. MDL 1334, 2001 WL 1400245 (S.D. Fla. May 9, 2001) (order lifting stay of discovery); *In re Managed Care Litigation*, No. MDL 1334, 150 F.Supp.2d 1330 (S.D. Fla. 2001) (granting in part and denying in part motions to dismiss); *In re Managed Care Litigation*, No. MDL 1334, 2001 WL 664391 (S.D. Fla. June 12, 2001) (order staying

certain discovery); *In re Managed Care Litigation*, No. MDL 1334, 185 F.Supp.2d 1310 (S.D. Fla. 2002) (granting in part and denying in part motions to dismiss); *In re Managed Care Litigation*, No. MDL 1334, 2002 WL 1359736 (S.D. Fla. March 25, 2002) (order certifying question for interlocutory review petition); *In re Managed Care Litigation*, No. MDL 1334, 2002 WL 1359734 (S.D. Fla. June 11, 2002) (order denying plaintiffs' and defendants' motions for reconsideration); *In re Managed Care Litigation*, No. MDL 1334, 209 F.R.D. 678 (granting class certification as to physicians; denying class certifications as to subscribers) (S.D. Fla. 2002), *interlocutory review granted sub nom. Aetna, Inc. et al. v. Klay, et al.*, No. 02-90032-B (11th Cir. November 20, 2002).

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

Because I have worked in the litigation area both while serving as an Assistant United States Attorney and while in private practice, most of my legal efforts have related to filed cases — whether on behalf of the federal government, law firm clients, or *pro bono* clients. Those activities are discussed extensively in other responses, so I will focus my answer on non-litigation activities and/or matters that did not progress to trial.

From time to time in private practice, I advise corporations concerning general legal issues — for example, issues relating to potential corporate mergers, acquisitions or transactions, such as questions about how a transaction might be structured to best protect the company against litigation risks. I also have done internal investigations for corporations. In addition, I have done criminal defense work for an individual associated with a corporate client which has not resulted in any public action in the case. I also was one of dozens of attorneys from Skadden Arps who represented Enron and its subsidiaries in connection with various governmental investigations of its conduct. I principally worked on issues relating to pension and ERISA matters.

I also have taught seminars at the University of Chicago Law School and at the Northwestern University School of Law over the past several years. These seminars have looked at legal issues raised by the prosecution and defense of complex federal criminal cases.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

If and when confirmed, I will resign my partnership in Skadden Arps Slate Meagher & Flom. I then will receive my interests in vested retirement funds, pension funds, and firm receipts for 2003. I have no other prior business relationships, former clients, etc., that will result in other payments.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I will resolve potential conflicts of interest by following the dictates of applicable federal statutes and canons of judicial ethics – *e.g.*, 28 U.S.C. § 455. If confirmed, I believe the most likely instances where recusal will be required are cases in which former partners of mine were involved while I was with Skadden Arps Slate Meagher & Flom.

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

I have taught at two Chicago law schools (adjunct professor, Northwestern University School of Law, 1998-1999; lecturer in law, University of Chicago Law School, 1999 - present). At each school I have taught seminars that examine legal issues involved in the prosecution and defense of complex federal criminal cases. If confirmed, I will attempt to teach as an adjunct professor, while serving as a judge, consistent with applicable regulations governing such teaching commitments (e.g., approval of the Chief Judge).

4. List sources and amounts of all income received during the calendar year

exceeding $500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See attached Net Worth Statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I worked for a few days in November of 2000 as a volunteer Republican election monitor in Broward County, Florida, in connection with the 2000 Presidential election. I worked with local officials and with Democratic volunteer counterparts in the effort to manually recount ballots there.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Skadden Arps encourages its attorneys to be involved in pro bono representations, and I have been actively involved in pro bono work since arriving here. In 2000, my first full year at the firm, I devoted approximately 141 hours to pro bono work; in 2001, approximately 148 hours; and in 2002, approximately 260 hours.

My pro bono work has been focused in three main areas: indigent criminal defense work; a pro bono Supreme Court brief that argued in favor of the constitutionality of "Megan's Laws," which allow for community notification regarding convicted sex offenders; and the representation of a state inmate in Illinois who alleged that Cook County law enforcement officers subjected him to unlawful use of force and thereby violated his constitutional rights.

My pro bono criminal defense work has principally been done through the Federal Defender Office in Chicago, which represents indigent criminal defendants, subjects, and witnesses in federal criminal cases in Chicago. Although the office has several full-time employees, outside attorneys (often, but not always, former Assistant United States Attorneys from Chicago) also respectively serve certain days each month as the "duty attorney" taking on representation of new clients who contact the office to seek legal representation on that particular day. As a "duty day attorney," I have taken on representations of a variety of indigent individuals accused of diverse crimes, including financial frauds, narcotics offenses, and other crimes. When I first started working with the Federal Defender program, I involved more junior attorneys at Skadden Arps in the cases, to help with research and to help prepare briefs. As those attorneys have gained experience, I have tried to allow them to take more central roles in the representations and to appear in court on behalf of our clients.

My second area of pro bono involvement involved the drafting of an amicus brief, along with other colleagues at Skadden Arps, in *Connecticut Dept. of Public Safety, et al. v. Doe, et al.* (No. 01-1231). That case examined (and rejected certain challenges to) the constitutionality of so-called "Megan's

Laws," which are designed to protect children against convicted sex offenders through community notification. (*See Connecticut Dept. of Public Safety, et al. v. Doe*, 123 S.Ct. 1160 (U.S. March 5, 2003)). We assisted the Center for the Community Interest, a non-profit group headquartered in New York City, in the preparation of the brief.

My third area of pro bono involvement concerns the representation of a state inmate, James T. Lockhart, who alleged that he was unlawfully beaten by Cook County law enforcement officers in a racial incident. I received this representation as the result of a court appointment by the Hon. Elaine Bucklo of the United States District Court for the Northern District of Illinois. I was involved supervising junior attorneys who took a number of depositions in the case, and also oversaw the preparation of various court filings. I also was involved in the negotiation of a settlement in the case.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates – through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?

To my knowledge, I do not belong to such an organization and never have.

In the interests of completeness, please know that in college at the University of Illinois, I belonged to the local chapter of a national social/residential fraternity. Although the chapter had a diverse membership (e.g., along racial and religious lines), there were no women members. There were approximately twenty-five social/residential sororities on campus, which were, to my knowledge, exclusively female.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

There is no such selection committee in Chicago, to my knowledge. In connection with the nomination, I spoke with United States Senator Peter Fitzgerald, as well as with his Chicago Chief of Staff, concerning the United

States District Court position. I also interviewed with attorneys from the White House Counsel's Office. I was also interviewed by the Department of Justice and the FBI prior to being nominated.

4. Has anyone involved in process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question. If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism." The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include: (a) a tendency by the judiciary toward problem-solution rather than grievance-resolution; (b) a tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals; (c) a tendency by the judiciary to impose broad affirmative duties upon governments and society; (d) a tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and (e) a tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

With regard to the issues posed above, I believe that each of the three branches of our federal government has its own province. The province of the federal judiciary, and in particular the inferior federal courts, is to follow the statutory and precedential law set forth by Congress and superior courts. In this regard, application of precedential requirements concerning standing and ripeness helps to ensure that the judiciary does not usurp the prerogatives of the legislative and executive branches. By faithfully applying statutory and precedential law, the inferior federal courts help to provide stability and coherence to the law, to ensure that all litigants are treated in an even-handed and fair manner, and to preserve policy making authority for the legislative and executive branches.

AO-10
Rev. 1/2001

# FINANCIAL DISCLOSURE REPORT
## FOR NOMINEES

*Report Required by the Ethics in Government Act of 1978, (5 U.S.C. App., §§101-111)*

| 1. Person Reporting (Last name, first, middle initial) | 2. Court or Organization | 3. Date of Report |
|---|---|---|
| FILIP, MARK R. | District Court - Northern District of Illinois | April 30, 2003 |

| 4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) | 5. Report Type (check appropriate type) | 6. Reporting Period |
|---|---|---|
| U.S. District Judge Nominee | XX ___ Nomination, Date 04/28/03<br>___ Initial ___ Annual ___ Final | January 1, 2002 to March 31, 2003 |

| 7. Chambers or Office Address | 8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. |
|---|---|
| 333 W. Wacker Drive, Suite 2100<br>Chicago, IL 60606 | Reviewing Officer _____ Date _____ |

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

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

| POSITION | NAME OF ORGANIZATION/ENTITY |
|---|---|
| ___ NONE (No reportable positions.) | |
| PARTNER | SKADDEN ARPS SLATE MEAGHER & FLOM (ILLINOIS) AND AFFILIATES |
| TRUSTEE | TRUST NO. 1 |
| TRUSTEE | TRUST NO. 2 |

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

| DATE | PARTIES AND TERMS |
|---|---|
| ___ NONE (No reportable agreements.) | |
| 2003 | SKADDEN ARPS PARTNERSHIP REVENUES - IF CONFIRMED, I WILL RESIGN MY PARTNERSHIP IN SKADDEN ARPS. I THEN WILL RECEIVE MY INTERESTS IN VESTED RETIREMENT FUNDS, 401(K) ACCOUNT, AND FIRM RECEIPTS FOR 2003. INTEREST IN FIRM RECEIPTS WILL DEPEND ON HOW LONG I WORK IN 2003 AND FIRM REVENUES AND EXPENSES DURING RELEVANT PORTION OF 2003. |

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

| DATE | SOURCE AND TYPE | GROSS INCOME |
|---|---|---|
| ___ NONE (No reportable non-investment income.) | | |
| 2001 | SKADDEN ARPS SLATE MEAGHER & FLOM (ILLINOIS) AND AFFILIATES | $ 501,000 |
| 2002 | SKADDEN ARPS SLATE MEAGHER & FLOM (ILLINOIS) AND AFFILIATES | $ 940,000 |
| 2003 | SKADDEN ARPS SLATE MEAGHER & FLOM (ILLINOIS) AND AFFILIATES | $ 152,000 |
| 2001 | UNIVERSITY OF CHICAGO LAW SCHOOL (LECTURER IN LAW) | $ 3,000 |
| 2002 | UNIVERSITY OF CHICAGO LAW SCHOOL (LECTURER IN LAW) | $ 3,000 |

| FINANCIAL DISCLOSURE REPORT | Name of Person Reporting | Date of Report |
|---|---|---|
| | MARK R. FILIP | APRIL 30, 2003 |

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

| SOURCE | DESCRIPTION |
|---|---|
| ☐ NONE (No such reportable reimbursements.) | |
| EXEMPT | EXEMPT |

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

| SOURCE | DESCRIPTION | VALUE |
|---|---|---|
| ☐ NONE (No such reportable gifts.) | | |
| EXEMPT | EXEMPT | $ |
| | | $ |
| | | $ |
| | | $ |

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

| CREDITOR | DESCRIPTION | VALUE CODE* |
|---|---|---|
| ☐ NONE (No reportable liabilities.) | | |
| NONE | | |

Value Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000 N=$250,001-$500,000
O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,00
P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

FINANCIAL DISCLOSURE REPORT

| Name of Person Reporting | Date of Report |
|---|---|
| MARK R. FILIP | APRIL 30, 2003 |

## VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

| | A Description of Assets (including trust assets) *Place "(X)" after each asset exempt from prior disclosure* | B Income during reporting period (1) Amt. Code1 (A-H) | B (2) Type (e.g., div., rent or int.) | C Gross value at end of reporting period (1) Value Code2 (J-P) | C (2) Value Method Code3 (Q-W) | D Transactions during reporting period (1) Type (e.g., buy, sell, merger, redemption) | D If not exempt from disclosure (2) Date Month-Day | D (3) Value Code2 (J-P) | D (4) Gain Code1 (A-H) | D (5) Identity of buyer/seller (if private transaction) |
|---|---|---|---|---|---|---|---|---|---|---|
| | NONE (No reportable income, assets, | | | | | | | | | |
| 1 | NORTHERN TRUST ACCOUNTS | C | INT. | N | T | EXEMPT | | | | |
| 2 | TRUST NO. 1 | A | DIV. | J | T | EXEMPT | | | | |
| 3 | Disney Holding Co. Stock(DIS) | | | | | | | | | |
| 4 | Northern Stock Index Fund | | | | | | | | | |
| 5 | TRUST NO. 2 | A | DIV. | J | T | EXEMPT | | | | |
| 6 | Disney Holding Co. Stock (DIS) | | | | | | | | | |
| 7 | Northern Stock Index Fund | | | | | | | | | |
| 8 | SKADDEN ARPS 401(K) ACCOUNT | A | DIV. | K | T | EXEMPT | | | | |
| 9 | AET Equity Index I | | | | | | | | | |
| 10 | AET Bond Index II<br>AET Federal Income Fund II | | | | | | | | | |
| 11 | AXP Federal Income Fund Y<br>AET U.S. Govt. Securities II | | | | | | | | | |
| 12 | Dodge & Cox Stock Fund | | | | | | | | | |
| 13 | SKADDEN ARPS RETIREMENT PLAN | NONE | | K | T | EXEMPT | | | | |
| 14 | EAI SMEF | | | | | | | | | |
| 15 | Chartwell Investment Partners<br>Hedge Fund of Funds | | | | | | | | | |
| 16 | Artisian Int'l Fund<br>Lazard Int'l Fund | | | | | | | | | |

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

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: MARK R. FILIP

Date of Report: APRIL 30, 2003

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

| | A. Description of Assets (including trust assets) *Place (X) after each asset exempt from prior disclosure* | B. Income during reporting period (1) Amt. Code1 (A-H) | B. Income during reporting period (2) Type (e.g., div., rent or int.) | C. Gross value at end of reporting period (1) Value Code2 (J-P) | C. Gross value at end of reporting period (2) Value Method Code3 (Q-W) | D. Transactions during reporting period (1) Type (e.g., buy, sell, merger, redemption) | D. Transactions during reporting period If not exempt from disclosure (2) Date: Month-Day | (3) Value Code2 (J-P) | (4) Gain Code1 (A-H) | (5) Identity of buyer/seller (if private transaction) |
|---|---|---|---|---|---|---|---|---|---|---|
| | NONE (No reportable income, assets, or transactions) | | | | | | | | | |
| 7 | Templeton Int'l Fund | | | | | | | | | |
| 8 | Mellon Capital Management Asset Allocator | | | | | | | | | |
| 9 | MSIF Core Fixed Income Income Research & | | | | | | | | | |
| 0 | Management Fixed Income | | | | | | | | | |
| 1 | SKADDEN ARPS CAPITAL ACCOUNT | NONE | | M | T | EXEMPT | | | | |
| 2 | SKADDEN ARPS PENSION PLAN: | NONE | | K | T | EXEMPT | | | | |
| 3 | Income Research Management Fixed Income | | | | | | | | | |
| 4 | MSIF Core Fixed Income U.S. Treasury Strips | | | | | | | | | |
| 5 | Mellon Capital Management Asset Allocator | | | | | | | | | |
| 6 | Artisian Int'l Fund Lazard Int'l Fund | | | | | | | | | |
| 7 | Templeton Int'l Fund Lighthouse Diversified Fund | | | | | | | | | |
| 8 | Ivy-Maplewood Assoc. EAI SMEF | | | | | | | | | |
| 9 | Chartwell Investment Partners | | | | | | | | | |
| 0 | | | | | | | | | | |
| 1 | | | | | | | | | | |
| 2 | | | | | | | | | | |
| 3 | | | | | | | | | | |

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

2 - Value Codes: J=$15,000 or less; K=$15,001-$50,000; L=$50,001-$100,000; M=$100,001-$250,000 (See Col. C1, D3) N=$250,001-$500,000; O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000; P4=More than $50,000,000

3 - Value Method Codes: Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash Market (See Col. C2) U=Book value; V=Other; W=Estimated

| ANCIAL DISCLOSURE REPORT | Name of Person Reporting | Date of Report |
|---|---|---|
| | MARK R. FILIP | APRIL 30, 2003 |

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

POSITIONS (CONTINUED FROM PAGE 1)

| | | |
|---|---|---|
| 4. | BOARD MEMBER | UNIVERSITY OF ILLINOIS ALUMNI ASSOCIATION |
| 5. | CHAIR | UNIVERSITY OF ILLINOIS, URBANA-CHAMPAGN ALUMNI COUNCIL (2002 Only) |
| 6. | LECTURER IN LAW | UNIVERSITY OF CHICAGO LAW SCHOOL |
| 7. | CO-CHAIR, MIDWEST | WHITE COLLAR CRIMINAL LAW COMMITTEE - AMERICAN BAR ASSOCIATION |

AGREEMENTS (CONTINUED FROM PAGE.1)

| | |
|---|---|
| 2003 | SKADDEN ARPS RETIREMENT PLAN - NO CONTROL, MONEY INACESSIBLE UNTIL AGE 55 |

NON-INVESTMENT INCOME (CONTINUED FROM PAGE 1)

| | | |
|---|---|---|
| 2003 | UNIVERSITY OF CHICAGO LAW SCHOOL (LECTURER IN LAW) | $6,000 |

CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is rate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met cable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in pliance with the provisions of 5 U.S.C. app., § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

ature Mark R. Filip Date May 8, 2003
(With Permission for Extension)

E: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE JECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. App., § 104.)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the
United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

Mark R. Filip
Nominee for U.S. District Cou
Northern District of Illinois

# FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

| ASSETS | | LIABILITIES | |
|---|---|---|---|
| Cash on hand and in banks | 214K | Notes payable to banks-secured | 0 |
| U.S. Government securities-add schedule | 0 | Notes payable to banks-unsecured | 0 |
| Listed securities-add schedule | 0 | Notes payable to relatives | 0 |
| Unlisted securities--add schedule | 0 | Notes payable to others | 0 |
| Accounts and notes receivable: | 0 | Accounts and bills due | 0 |
| Due from relatives and friends | 0 | Unpaid income tax | 0 |
| Due from others | 0 | Other unpaid income and interest | 0 |
| Doubtful | 0 | Real estate mortgages payable-add schedule | 637K |
| Real estate owned-add schedule | 910K | Chattel mortgages and other liens payable | 0 |
| Real estate mortgages receivable | 0 | Other debts-itemize: | |
| Autos and other personal property | 125K | Visa Card | 10K |
| Cash value-life insurance | 0 | Car Loan | 10K |
| Other assets itemize: | | | |
| Skadden Arps Equity Account | 243K | | |
| 401(K), IRAs & Keogh & Pension Accts | 85K | | |
| Trust Accounts | 1K | Total liabilities | 657K |
| | | Net Worth | 921K |
| Total Assets | 1,578K | Total liabilities and net worth | 1,578K |
| CONTINGENT LIABILITIES | | GENERAL INFORMATION | |
| As endorser, comaker or guarantor | 0 | Are any assets pledged? (Add schedule) | No |
| On leases or contracts | 0 | Are you defendant in any suits or legal actions? | No |
| Legal Claims | 0 | Have you ever taken bankruptcy? | No |
| Provision for Federal Income Tax | 0 | | |
| Other special debt | 0 | | |

Mark R. Filip
Nominee for U.S. District Court
Northern District of Illinois

REAL ESTATE SCHEDULE

Real Estate Owned

Residence (four bedroom home, Winnetka, Illinois): $910,000.

Real Estate Mortgages Payable

First mortgage on residence: $637,000.

Chairman HATCH. I know quite a bit about you, Mr. Filip, and I have no questions.

Does anybody have any questions?

Senator DURBIN. Mr. Chairman, I was fortunate enough to have a lengthy conversation with Mr. Filip in my office. We had gone through a number of questions, and I am totally satisfied he is going to be an excellent Federal judge, and I support his nomination.

Chairman HATCH. Well, that is an excellent tribute to you, Mr. Filip. So with that, we will excuse you and your family, and we will put you on the next markup we can get you on, and hopefully we will put you out and get you confirmed before the end of this year. I am sure with the help of both of your Senators we will have a good opportunity to do that.

Mr. FILIP. Thank you, sir, very much.

Chairman HATCH. Thank you all for being here. Glad to meet all of you.

Mr. Allen, we will put you in the chair. I apologize for not being able to be here right at the beginning because I had my Governor Leavitt up for the EPA Administrator on the floor, and I had to make a set of remarks and also watch the final remarks of others today. So I apologize to you.

I have known you for a long time, think a great deal of you.

We will turn to Senator Feingold.

Senator FEINGOLD. Thank you. Congratulations on your appointment.

Mr. ALLEN. Thank you, Senator.

Senator FEINGOLD. Mr. Allen, you have been quite involved in setting our Government—

Chairman HATCH. Excuse me, Senator. We need to swear Mr. Allen in.

Do you solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you God?

**STATEMENT OF CLAUDE A. ALLEN, NOMINEE TO BE CIRCUIT JUDGE FOR THE FOURTH CIRCUIT**

Mr. ALLEN. I do.

Chairman HATCH. Go ahead.

Senator FEINGOLD. Mr. Allen, you have been quite involved in setting our Government's HIV/AIDS policy, as I understand it. Is that right?

Mr. ALLEN. That is correct, Senator.

Senator FEINGOLD. In January of this year you were quoted in a story on National Public Radio saying the following about Uganda, a country in sub–Saharan Africa that has been, as we all know, hit very hard by this terrible disease. You said, quote, "It's the only country in Africa that has had a positive increase in its life expectancy, and that's because they focused on young people remaining abstinent until they were married. And that in itself translated into a reduce infection rate that allowed that country to have its HIV rate drop dramatically over the course of 5 or 6 years." End of quote.

I certainly agree that there is a lot to be learned from the Ugandan example, but I also want to quote you something that Sophia

Mukasa Monico, a leading Ugandan AIDS activist, formerly of TASO, the ground-breaking AIDS support organization, what she told me at a Foreign Relations Committee hearing in May. She said, quote, "As a Ugandan I am deeply concerned when I hear people taking a single element of our successful national program like abstinence out of context and ascribe all achievements to that one element. All three elements must be implemented together for prevention to work," unquote.

By all three we obviously know she was talking about the ABCs of AIDS prevention: abstinence, being faithful to one partner, and using a condom. In fact, she went on to talk about elements of Ugandan effort even beyond the ABCs, such as empowering girls and women in Ugandan society as additional important elements of a program to prevent the spread of HIV/AIDS.

So let me ask you this: why did you suggest that only one intervention, abstinence until marriage programs for youth, was responsible for Uganda's prevention success? And do you agree that if the government's focus is solely on abstinence it would be less effective in preventing HIV/AIDS than if it implements a more comprehensive prevention strategy that includes but is not limited to abstinence?

Mr. ALLEN. Senator, thank you for your interest in the area of HIV/AIDS. It is something that I have spent much of my career focusing on, and specifically the efforts in Uganda.

Sir, I believe that the NPR interview you're referring to, I have always mentioned in my discussions of Uganda their complete model, which includes A, B and C, the A clearly focusing on abstinence for young people, which has actually reduced their HIV infection rate among young women by more than 50 percent. I focus on the B, which means being faithful to one's companions, one's relationships, and that also has produced in Uganda a very unique situation, in fact showing the HIV infection rate reduced among men because it reduced their partners. And also the importance of the C, sir, and the C being the use of condoms for the prevention of HIV/AIDS, recognizing that they're highly effective in preventing the transmission of HIV, but must less effective in terms of preventing the transmission of other sexually-transmitted diseases.

I sort of stick with what President Museveni and First Lady Museveni have always talked about in terms of the Ugandan experience, and it is one that is comprehensive. It is one that recognizes the importance of using traditional and important cultural aspects of society to address the growing need, and try to stem the tide of HIV in Africa and elsewhere.

Senator FEINGOLD. I appreciate your recognition of all these elements, and so let me just continue. One of the concerns about this issue is whether there would be an attempt by some to manipulate or politicize the issue, and I think we would all agree, given how awful this epidemic is, the stakes are too high to let that happen. So I am concerned about your comments on this subject that could appear to misrepresent the facts, and I want to ask you about another quote.

You testified at a House hearing in March on the administration's AIDS' policy in Africa as follows. Quote: "I know you'll be hearing later this morning about Uganda and their successful use

of the ABC program of prevention. The A is for abstinence for young people. The B is for being faithful in mutually monogamous relationships, and the C is for condom use in high-risk populations with the knowledge that condoms are highly effective in preventing HIV infection and gonorrhea in men, but not as effective with all sexually-transmitted diseases, which is related to what you just said." End of quote.

I know you have traveled to Uganda and you have significant experience in this area, so I assume you did choose these words carefully. Is it your view that the C in Uganda's ABC program refers to condom use by high-risk populations but not by the general population of sexually active adults and teens?

Mr. ALLEN. Senator, I believe the statement you're referring to in which—certainly I have focused on the ABCs in the Uganda model. The Uganda model is much more comprehensive. It focuses on condom use across a broad spectrum, but their focus has been on high-risk populations, namely populations in which you have transients along the borders where there are wars that are taking place. You find that soldiers will come back. In areas where there is poverty and drought, you find that oftentimes women, in seeking to provide for themselves and their families, will resort to commercial sex work. And so the C, it focuses not just on the high-risk population, but that is where the concentration has been. It focuses across the board for those who engage in sexual activity with not having a partner that they have been faithful to, and without knowing the status of the other individual.

Senator FEINGOLD. Fair enough. But with regard to Uganda and then in general, you would not limit the use of condom use in AIDS prevention just to the high-risk population?

Mr. ALLEN. Senator, that's correct. I would not limit the use to high-risk populations, but I would also add the information to understand the effectiveness of condoms in those populations.

Senator FEINGOLD. Fair enough, and I do think the quote that I read could lead to the misleading impression that it was more narrow, and I appreciate the fact that you have clarified that and conceded the greater significance of the C part of the ABC, that it is not just limited to one population.

Mr. ALLEN. Thank you, Senator.

Senator FEINGOLD. Let me move to another question related to HIV/AIDS. When HHS Secretary Tommy Thompson spoke at the Global AIDS Conference in Barcelona in 2002, he was met with protest over the U.S. policy on AIDS from both U.S. and foreign groups. Reportedly, as a result of those protests, Indiana Congressman Mark Souder demanded an audit of several well-respected federally funded AIDS service organizations, including AIDS Project Los Angeles, New York Gay Men's Health Crisis on the grounds that some of their members had participated in the demonstration.

When you were asked about the audit, it was reported that you stated that the audits were routine, but you also said that protestors should, quote, "think twice before preventing a cabinet-level official from bringing a message of hope to an international forum," unquote.

Sir, did you have any role at all in ordering these audits, and were the audits actually routine, or were they initiated as a result of the protests and Representative Souder's request?

Mr. ALLEN. Senator, let me thank you for the question again about what happened in Barcelona at the International AIDS Conference. It was a conference that brought the world together to talk about trying to find solutions to a disease that is devastating the world. And I was there. I was present at that time. And, sir, I think the context in which you're referring to—there have been several aspects of audits. There have been several aspects of department review of programs. What I was referring to specifically there are several things, and I want to kind of unpack your question because it covers a number of issues.

First, the Department, as a routine basis, reviews the funds from various programs. We have conducted a review of funds in terms of bioterrorism. We do that across the board in terms of the Ryan White program, HIV programs, as a part of our responsibility. Those audits were ongoing. They were activities the Inspector General had been undertaking in their annual plan for reviewing programs and how they use funds. That is one aspect of it.

In terms specifically of audits that were requested, we received a letter indeed at the Department, the Inspector General received a letter requesting that specific audits be done. That letter requested that—the Inspector General undertook those reviews consistent with her obligations and responding to Congressional inquiries.

And lastly, in terms of my statement at the Barcelona conference, what I was referring to there was very specific. When you have a high-ranking U.S. official at an international conference, it is very inappropriate to prevent the individual from bringing what we believe is a true message of hope. This administration has provided millions of dollars, in fact the largest contributor of any nation, to try to address and redress HIV and its impact around the world, and to prevent Secretary Thompson, a man of great compassion and great passion about this issue from speaking at an international conference, certainly brought the wrong attention to this country and our efforts. My thoughts, however, and my comments were not means as a threat. I did not order anything in terms of an audit and did not participate in any audit activities.

Senator FEINGOLD. So you did not order the audit as requested by Representative Souder; is that right?

Mr. ALLEN. No, sir. That was a request that was made directly to, I believe, the Secretary and the Inspector General.

Senator FEINGOLD. I certainly agree with your characterization of Secretary Thompson. We are very proud of him in the State of Wisconsin. But let me just ask you generally, do you think it is appropriate for a Government official to threaten Government action against critics who are exercising their right to free speech?

Mr. ALLEN. Not at all. I think threats of any kind—I think a Government official should deal with all individuals, organizations, with the utmost respect, allowing them to express their views. And in fact, in that very situation, Senator, not only even after these groups prevented the Secretary from speaking at an international forum, we met with them. We pulled them into a room together to

discuss ways that we could work together, both internationally, and most importantly domestically, because HIV/AIDS is devastating our country as well. There are women, children and men throughout this country who are dying of this disease, particularly in the African–American community. We know that black women, Latino women, are 82 percent of the cases of HIV/AIDS in this country. 72 percent of the cases of children with HIV/AIDS are African–American and Latinos. And so when we speak, we must speak together.

But we will have differences, and we need to resolve those differences in an amicable way. So I in no way believe that Government officials should threaten, but rather we should use the power of our office to persuade and to win over friends, and that's what I've tried to do throughout my career, and that's what I would try to do should this Committee and the Senate afford me the opportunity to be a judge on the Fourth Circuit, United States Court of Appeals.

Senator FEINGOLD. Thank you, Mr. Allen.

Thank you, Mr. Chairman, for the extra time.

Chairman HATCH. Thank you, Senator. We appreciate it. We had set that clock at 7 minutes so I gave you until 10 minutes. We will give the same amount of time to Senator Durbin.

Senator Durbin.

Senator DURBIN. Thank you, Mr. Chairman.

Mr. Allen, thank you for joining us today.

Mr. Chairman, I would like at this point, with your permission, to insert into the record letters that have been received in relation to the nomination of Mr. Allen to the Fourth Circuit Court of Appeals.

Chairman HATCH. Without objection, they will be put in the record.

Senator DURBIN. Thank you, Mr. Chairman.

I would like to ask Mr. Allen about one in particular. I believe that Mrs. Michele Finn is in the audience today, is she? Yes.

Mr. Allen, we all read the headlines today in Florida about the Schiavo case, and it brings to mind the terrible situation which faces families when it comes to the last—the end of life, the last moments of life. We try to construct ways to deal with this humanely and sensibly, and it is my understanding that in Mrs. Finn's case that in 1996, if I am not mistaken, her husband was involved in a very serious automobile accident, and as a result was left in a permanent vegetative state. He had left express instructions with Mrs. Finn that his life was not to be continued by extraordinary means. It is my understanding that beyond the treating physician, Mrs. Finn found two other doctors who gave her the sad news that there was no hope that her husband would recover. Under Virginia law she was given the authority, as the legal guardian of her husband, to make this sad and painful decision about withdrawing artificial means of life support. It is true that there were some members of her family who did not agree with that decision, but she felt that she was abiding by her husband's wishes, complying with the law, and making this painful decision that had to be made.

Her letter tells a very troubling story about your role in this emotional family decision. It tells of your resistance to her making this decision. It tells of actions taken by you in your capacity with the State of Virginia to send investigators to the nursing home where her husband was being cared for in an effort to try to discredit some of the things that she had said publicly about his treatment and his prospects of recovery. This dragged on, if I am not mistaken, for almost a full month, when it had reached a point where everyone had agreed there was no place to turn.

Mr. Allen, I read this, and I am curious as to what was motivating you to inject yourself personally into this painful family decision. Ultimately the Virginia Supreme Court stopped your efforts and said, no, she has the right under the law to make this family decisions. Some have suggested it was part of some political agenda, and I hope that was not the case. But Mrs. Finn has come forward with the letter today and really questions whether, based on her experience with you under that most painful situation, that you have what it takes to take on this critical Federal Circuit judgeship.

Why did you not follow Virginia law, allow Mrs. Finn to make this family decision, stand by the doctors who were treating her poor husband? Why did you feel obligated to drag this out with your own investigations and your own personal involvement?

Mr. ALLEN. Senator, I thank you for the question. I believe that end-of-life decisions are often very difficult to make for families, are very painful to make. My role in Virginia as Secretary of Health and Human Resources, my obligation under the laws of Virginia and under the U.S. laws in terms of our dealings with the Centers for Medicare and Medicaid Services as it dealt with patients who were in nursing home facilities was simply ministerial. My role in this situation was very minimal. In fact, I received a phone call, as I would normally do in my Department, that said that there was a patient who was in a nursing home, considered in a persistent vegetative state, and there was a concern that this patient's rights were being denied. I took the steps that were required by me to instruct the agency that oversees our nursing homes to handle it in a routine manner.

That was about the extent of my involvement until I got a call 1 day from Mrs. Finn, Michele Finn, who requested that I instruct the Governor and requested of the Governor that he not get involved in the case. My role in the Hugh Finn situation in Virginia was very minimal. In fact, sir, I do not know the basis upon which Mrs. Finn forms her opinions of me, but I will assure you that in this situation my role was very minimal, in simply passing information to the Governor for his consideration. At that point my role ended. I was not involved in the litigation. I was not involved in any of the proceedings that took place in this matter.

And with regards to the Supreme Court, Senator, I want to draw your attention to—it was a unanimous decision of the Supreme Court that held that Mrs. Finn had the right under the Health Care Decisions Act to make the decision that she did. That Supreme Court also noted, however, that it was important and it was right for the Governor to seek redress in the courts because the Health Care Decisions Act of Virginia as unclear in the matter.

Senator DURBIN. Let me ask you—

Mr. ALLEN. If I may continue?

Senator DURBIN. Sure.

Mr. ALLEN. As a result of that, the Supreme Court of Virginia said that the Governor took the right steps that he felt his obligation was to the citizens of the Commonwealth, to protect them regardless of their circumstances, and that's what the Governor did.

So not withstanding that the Court concluded that indeed the Health Care Decisions Act allowed Mrs. Finn to take the action she did, it noted that the Governor acted rightfully in executing his responsibilities as the Chief Executive Officer of the State.

Senator DURBIN. If I might ask you this. You have described your role as ministerial. My understanding of that word is that it suggests relatively little involvement on your part, merely following the administrative procedures as set down. So you were saying that you had no personal role in the decision by the Commonwealth of Virginia to intervene in this case to block Michele Finn from deciding to take her husband off life support?

Mr. ALLEN. Yes, Senator, That is correct.

Senator DURBIN. You had no role in that. Did you have any role in sending nurses to investigate false claims about her late husband's treatment at the nursing home?

Mr. ALLEN. I did not, sir. That would be the role of the Director for the Medical Assistance Services Department of the Commonwealth of Virginia, which was an agency that reported to me, but their activities were routine in sending out—when a patient in Virginia, whether it be in a nursing home, an adult care facility, a facility under which the Centers for Medicare and Medicaid Services expends funds, we have an obligation to investigate, and that agency did that.

Senator DURBIN. And you never personally contacted any family members of the Finn family to persuade them to keep their appeal open on this case?

Mr. ALLEN. No, sir. My contact with family members came as a result of family members contacting my office, the Governor's office, could not reach the Governor's office—

Senator DURBIN. You never tried to persuade them to keep their appeal open when Michele Finn had made her decision?

Mr. ALLEN. Senator, I did not, no.

Senator DURBIN. Let me ask you a couple other questions if I might. You worked for Senator Helms and were involved in a controversial campaign of his in 1984. You made some statements during the course of that campaign that I would like for you to explain to me if you might. One of them related to homosexuals. Less than a month before the election you were quoted by the Greensboro News Record that Senator Helms' opponent, Governor Hunt, was vulnerable because of his links, quote, "with the queers," close quote. You went on to say, quote, "We could expound"—referring to the Hunt campaign—quote, "We could expound on and undertake a campaign against Jim Hunt's connections with the homosexuals, the labor union connection, the radical feminist connection, the socialist connection." And then you went on to say, "We could go back and do the same thing with the queers."

Could you explain to me what you meant by that remark?

Mr. ALLEN. Senator, I do. I remember that very distinctly, that situation, because I believe if you read in that same article, you will read further, my response to that when the reporter stated that I used that term, used the word "queers." Again, 20 years ago, when I was the press secretary in the Helms campaign, that reported called and was asking questions about, and actually was making statements about what was being said about Senator Helms and his supporters throughout the campaign. I think there were words used like "fanatic," "radical," any kind of pejorative words that could be used. My statement at that time was, "This is ridiculous. We should not be engaging in any ad hominem attacks."

And because I had a relationship with this reporter throughout that time, I shared with him that this is silly. I said, I have been on the campaign for 2 years and I have seen a lot of very strange, abnormal, out-of-the-ordinary individuals and groups working across the campaign, sir. And in fact I did use the word "queer." I used the word "queer" in my mind, I think at the time in the dictionary it was described as odd, out-of-the-ordinary, unusual. I did not use the word as a pejorative. I did not use the word to denigrate any individual or any group. Again, 20 years ago that was a statement that I made.

Senator DURBIN. Let me ask you this question. In a follow-up interview with the Dome, you stated that the remark was quote, "an indiscretion," close quote. Now, that seems inconsistent with what you have just said, that you just were referring to odd people. So what is it?

Mr. ALLEN. Senator, if you go back again and look at the exact article that you're referring to that you have before you, in that article you will find that when the reporter called me back to say, "Did you know that you used the word 'queer'?" I was shocked by it and in fact—

Senator DURBIN. Why were—

Mr. ALLEN. Sir, if I may—

Senator DURBIN. Why were you shocked if it just meant an odd person?

Mr. ALLEN. Because he interpreted it a different way, and when he came back to me he said, "Did you know you used this word?" And in fact, in the article that sits before you that you're reading from, you will see in that exact article, before it even went to press, I extended an apology if anybody was offended by the word that I used.

Senator DURBIN. Do you think Federal Judges today should use the word "queer" in normal conversation in relation to a group of people in America?

Mr. ALLEN. Senator, again, I did not use the word "queer" in relation to a group of American—and America.

Senator DURBIN. Do you think Federal Judges should use the word "queers" just—

Mr. ALLEN. Senator, I don't believe that we should use words that are pejorative in nature, that denigrate any individual.

Senator DURBIN. Do you think that is pejorative and denigrates a person, the word "queer?"

Mr. ALLEN. In the terms that you're—the connotation that you're giving to it, Senator, I believe that is a pejorative, and it's a word

that should not be used. It's a word that I do not use. It's a word that as a judge I think would be inappropriate to use to characterize an individual or group.

Senator DURBIN. Mr. Allen, what should we teach our children about those who are homosexual and lesbian, people of different sexual orientation?

Mr. ALLEN. Senator, I don't know how to answer that question, but I can tell you what I teach my children.

Senator DURBIN. That is all I am asking.

Mr. ALLEN. And my son is sitting here with me today. I brought him here for the very reason that I believe that we should be teaching our children that they should be part of a society that has treated me with great kindness, that has afforded me tremendous opportunities to sit here before you today to be considered to be a judge. I think I teach my children, my wife and I, to have respect and treat people with the very same dignity that they want to be treated with.

You see, my son knows his heritage. He knows that his great-grandfather was one of 25 children, lived to be 114 years old, the first child in his family not to be born a slave. My son knows his heritage, and that is what we teach our children, is how to respect and afford every person the equal dignity that they deserve.

Senator DURBIN. Do you understand how some people in America might take your use of this word "queers" as being negative to denigrate them and not respectful?

Mr. ALLEN. Senator, absolutely, and that is the exact reason why the time that I used the word, I sought to correct the record so that it would not be understood to denigrate any individual or any group.

Senator DURBIN. So then let's talk about another, if I might, Mr. Chairman, if I might ask you about the Martin Luther King holiday. Senator Helms, whom you worked for at the time, initiated a filibuster to stop the Martin Luther King holiday. What was your opinion of that filibuster and Dr. Martin Luther King's contribution to America?

Mr. ALLEN. Senator, I appreciate your question regarding Dr. Martin Luther King. He has been a hero for me and my family, my generation. In fact, I believe that, again, if you look back at the record, you will see during the time that that holiday was being decided and voted on, it was the most difficult day for me in my life, because here was someone that I had grown up respecting, deeply respecting for his contribution to American society, for fighting for the civil rights not just of black people in this country but of all people in this country, and, in fact, it was such a difficult time that I left. I left the campaign that day because I was deeply impacted by what was going on here in Washington.

And so, sir, my view of that day, my view of what was going on was one that was deeply conflicting for me because at the time that I was working there, I had a great respect for Dr. Martin Luther King and continue to have an abiding respect for him and his work and look forward to always have the opportunity to teach my children about what he has taught America and the world about peace, about resolving conflict peacefully, and about the importance of the dignity of individuals.

Senator DURBIN. May I call your attention to the News and Observer, Raleigh, North Carolina, December 25th—it is hard to read, but it appears to be 1983. And here is what the reporter said. The reporter's name, Rob Christiansen. This is an article about your relationship with Senator Helms and his agenda. "Allen said he shared those reservations about the King holiday and believes Helms was unfairly criticized. Allen said there is ample documentation that key King advisers were members of the American Communist Party. Allen said there are other prominent blacks more deserving of a national holiday, such as track star Jesse Owens, educator George Washington Carver, and abolitionist Frederick Douglass."

Did you say those things?

Mr. ALLEN. Senator, I do not see—I don't have the article before me that you're referring to, but I'd note that particularly in the article that you're referring, I don't think it's quoting me as saying anything to that effect. But let me make sure that I clarify for the record what my view was and is about the Martin Luther King holiday and about the other individuals that you mention there.

I believe that Dr. King deserved a holiday. I believe that Dr. King has worked tirelessly in his lifetime for this country. I believe that the Martin Luther King, Jr., Center for Creative Non–Violence continues that work today. That's why I've worked with them in many areas.

In terms of Jesse Owens and others, I assume—I believe that my comment would be that there are many African Americans, including Jesse Owens, including others, who have contributed not just to African-American culture, sir, but to American culture, and that those individuals would be deserving of attention as well. So, sir, I do not have the ability because I don't have the context before me—

Senator DURBIN. If I could ask one last question, Mr. Chairman, this will be the last in this round.

Do you still believe that key advisers to Dr. Martin Luther King were members of the American Communist Party?

Mr. ALLEN. Senator, I believe that the factual record indicates that there were associates of Dr. Martin Luther King who were members of the American Communist Party. However, notwithstanding that, that says nothing about the contribution that Dr. King has made to our society. We know that during that time there were people on all sides and many people in this country who were members of the American Communist Party. But that does not necessarily mean that Dr. King was.

Chairman HATCH. Thank you, Mr. Allen. Just one question, and I want to turn to Senator Sessions because he has to preside over the floor and would like to say a few things or ask a few questions.

With regard to the use of that term, if I interpreted you correctly, you are saying by today's standards that is a bad term under all circumstances.

Mr. ALLEN. I would say that, yes, sir.

Chairman HATCH. Twenty years ago, you did not mean it that way.

Mr. ALLEN. That's correct, Senator. I did not.

Chairman HATCH. You clarified that in the article—

Mr. ALLEN. I clarified that.

Chairman HATCH. —or the interview whether it was—whether he put all of your remarks in the article or not, you clarified it?

Mr. ALLEN. That's correct, Senator.

Chairman HATCH. That is what I got out of all that, and I agree, today it would be a very pejorative term. And to many back then it would be. But that is not the way you meant it.

Mr. ALLEN. That's correct, Senator.

Chairman HATCH. Let me turn to Senator Sessions, and then I would like to ask some questions.

**STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA**

Senator SESSIONS. Thank you, Mr. Chairman. I got to know Secretary Allen when we had a problem in Alabama with health care in the rural areas of the State, African-American majority in many of the counties, and the health care system that was working there was not working. And there was concern over the quality of health care and financial management and some decisions had to be made. And we were concerned as to whether or not in making some changes we would have periods of time in which there would be no health care in the region, that people who were depending on those clinics wouldn't get health care.

Now, I asked you to help. You said you would. You said you would come to Alabama. You came and spent 2 days, and we traveled through towns of 100 and 250 and small towns, and we visited clinics and we talked to people. And you made a commitment that we would not see a degradation of health care, and I want to thank you for that personal commitment to poor people in Alabama who had no, I guess, power to claim or demand anything, but you responded. Thank you for that.

Mr. ALLEN. Thank you, Senator. It was a privilege to travel with you during that time.

Senator SESSIONS. And we fixed the problem, I think.

Mr. ALLEN. Indeed we did, and that's part of what I've tried to make my career in the executive branch, sir, doing, is trying to solve problems, ensure that people of all backgrounds, regardless of race, regardless of ability to pay, receive quality health care. And, Senator, your leadership in that and partnership with the executive branch to accomplish that was a tremendous opportunity and I thank you for it.

Senator SESSIONS. Well, thank you. I don't usually have the Principal Deputy Secretary, Tommy Thompson's right-hand man, saying, "I will leave Washington and come down and travel with you and see firsthand this problem," and that was something I really appreciated and will not forget.

I just want to say, with regard to your background, I think it is extraordinary. You have State, local, and Federal experience. You have served on the Foreign Relations Committee staff here, as a press secretary in one of the most contentious, toughest campaigns America has seen, and you were young and a press secretary then. That was before you went to law school, was it not?

Mr. ALLEN. That is indeed correct, Senator.

Senator SESSIONS. I guess they teach you to be more careful with your language when you go to law school. As a matter of fact, I had a little meeting with my staff yesterday about—I said getting speeches and remarks past me is difficult because I have been to law school and they teach you to be so persnickety about what you say.

But I am looking at your background. Here you went to the University of North Carolina, one of the great universities in America, and got your B.A. there. You went on in 1990, later, after working in Washington, and got your law degree at Duke, one of the great law schools in America, got your LL.M. in international and comparative law at Duke University. And I think that is a tremendous academic background. You clerked on a court of appeals, which is—would you explain to us, please, Mr. Allen, how when you clerk on a court of appeals, what kind of experience that gives you and insight that gives you to be a court of appeals judge?

Mr. ALLEN. Thank you, Senator, for the opportunity to do so. The D.C. Circuit Court of Appeals is the U.S. Federal court of appeals that sits under the Supreme Court that handles the D.C. Circuit. The cases that come before that court are some of the most complex in the country, in large part because it is largely the administrative docket. It handles the Federal Energy Regulatory Commission, all the agency appeals that would come there, and so it has a heavy administrative docket that I had worked on for Hon. David B. Sentelle.

We also would handle your civil cases, your criminal cases, and so it was a broad exposure to the many opportunities addressing complex litigation questions that came before the court.

Senator SESSIONS. And that judge you worked for was a court of appeals judge, the same position you are being nominated for.

Mr. ALLEN. That is correct.

Senator SESSIONS. And you sat basically at his right hand, heard the arguments, helped prepare briefs, do research, and were familiar with the entire panoply of issues that would come before you as a circuit judge.

Mr. ALLEN. That is correct, Senator.

Senator SESSIONS. And also let me point out for the record—and I think most lawyers know—being selected as a clerk for a court of appeals judge is a great honor. It is hard enough to be a clerk for a Federal district judge, but to be selected as a clerk for a court of appeals judge says a great deal about your legal ability, your law school record, your integrity and work ethic, or you wouldn't have been selected. Maybe you don't want to comment on that, but very, very few lawyers are selected to be clerks for the courts of appeals in the United States and even fewer for the Supreme Court. And not many get selected as clerks for Federal district judges because all of those are premier legal appointments for top graduates of top law schools.

Then you went on with Baker and Botts, an attorney for them, which is one of the great law firms, I guess, in the world. You were counsel to the Office of Attorney General in Virginia, a Deputy Attorney General. When I was Attorney General of Alabama, my deputies were the key people that I depended on. They did the legal

work in the office. They briefed me, and I didn't put somebody in as a deputy that I didn't trust.

What kind of matters did you have under your portfolio there, Mr. Allen?

Mr. ALLEN. Thank you, Senator. In the Attorney General's Office, as the deputy I headed the civil litigation division, which meant that I had a staff of 75 attorneys and staff who handled all the civil matters for the Commonwealth of Virginia. We handled real estate cases, employment cases. We handled the energy utility cases, consumer protection issues, and other civil litigation issues. And so it was the largest division of the Office of the Attorney General that I was charged with overseeing and working in those cases.

We also handled a lot of elections law issues and reapportionment cases, cases that would impact the rights and obligations of the Commonwealth of Virginia.

Senator SESSIONS. Well, I think that is an important position. There is no doubt about it. The civil litigation involved millions and millions of dollars, and the experience you get as an Attorney General is important for a court of appeals judge, in my view, because so many of the issues that bubble up to the courts of appeal that have such impact involve the States and governmental agencies. So that is a good background. In addition to your private practice, you were Secretary of Health and Human Resources in the Office of Governor of Virginia, in his Cabinet, and Deputy Secretary, really the principal senior deputy, for the U.S. Department of Health and Human Services serving at the right hand of former Governor and now Secretary Tommy Thompson.

I would just say one thing about—and I have got to run and preside in the Senate. I wish I could be with you longer because I really respect you and I appreciate your leadership. When Mr. Gregory was appointed by President Clinton to the Fourth Circuit, Senator Helms was not happy about that. He thought it was a North Carolina seat. They had gone to zero judges from North Carolina, as I recall. It is zero now, maybe, unless they count you. You could claim two States, perhaps. So we went all through that. But everybody knew that the President had no legal requirement to appoint anybody from a State, and judges on circuit courts of appeals do not represent States. They represent the United States of America, is who they represent. They speak for the Constitution and the Federal laws, and, in fact, we have created Federal courts, as the Constitution did, to try to make sure that you do not have home cooking, that they represent a fair group of referees that are not part of the local milieu that wouldn't give people from different States an unfair ruling—to give a fair ruling.

So it is not as if you are there to represent a State, but as part of history and tradition, usually judges come from each State on a proportional basis, and that is how that goes. The fact is we are out of sync in the Fourth Circuit. Virginia is underrepresented in the court, and so is North Carolina. And I think this is not an extreme thing by the President. He discussed that. He wrote letters about it explaining what he was doing, Mr. Gonzales did, and I hope that our Senators from Maryland will understand that this is not an affront to Maryland, but it is a situation in which the President has some leeway to appoint from what States he wants, and

he tries to respect the interest of various States, but ultimately his appointment, other than that one has to be from each State—that is by law. I just think that we need to work our way through this. I respect their concerns, but I really do believe Maryland is not going to get shortchanged in it. They were certainly supportive, as I recall, of Mr. Gregory when President Clinton nominated him in what was perceived to be a North Carolina seat and supported him when President Bush nominated him.

Thank you, Mr. Chairman. I hate to run back to the floor, but I am due to preside.

Chairman HATCH. Well, thank you, Senator. We appreciate it.

Before I turn to Senator Craig, let me just ask you a couple of questions. The Hugh Finn situation was raised, and I think we ought to set that record as clear as we can. You received a complaint from the State representatives and from some of Hugh Finn's family members about the care he was receiving at the nursing home at which he was hospitalized, and you referred those complaints to the Governor, as I understand it. Is that right?

Mr. ALLEN. I referred to the Department of Medical Assistance Service, which was the agency that was required to undertake any investigation, but also forwarded it to the Governor because of the significance of the case.

Chairman HATCH. Did you draft any of the Governor's briefs in the case?

Mr. ALLEN. No, Mr. Chairman.

Chairman HATCH. Were you named as a defendant in Michele Finn's motion for sanctions against the Governor's office for its role in the case?

Mr. ALLEN. No, Mr. Chairman.

Chairman HATCH. Did the Virginia Supreme Court decide that sanctions were warranted against the Governor's office for conduct in the case?

Mr. ALLEN. It did not, Mr. Chairman.

Chairman HATCH. Okay. In fact, didn't the Virginia Supreme Court specifically say that the Governor's interpretation of the Virginia Health Care Decisions Act, which was the controlling statute in this case, was reasonable at the time because the court itself had not authoritatively construed the relevant provisions of the statute?

Mr. ALLEN. Yes, Mr. Chairman.

Chairman HATCH. Entirely apart from the legal issue in this case, let me just note that the material this Committee has received indicate to me that there were serious disputes amongst Hugh Finn's family members about how terminal his condition was and whether his feeding tube should be removed. I understand that the State introduced evidence that 43 percent of patients diagnosed as being in a persistent vegetative state are diagnosed wrongly. Is that right?

Mr. ALLEN. I understand that is correct, Senator.

Chairman HATCH. Is it also true that it was a serious dispute among various family members?

Mr. ALLEN. That was very clear, yes, sir.

Chairman HATCH. And, further, didn't Michele Finn's sister and mother in addition to Hugh Finn's brothers, mother, and father

plead with the Governor to get involved in this case to save Hugh's life even after they had agreed to drop their personal legal actions against Michele?

Mr. ALLEN. Yes, Mr. Chairman.

Chairman HATCH. Ed Finn, one of Hugh's brothers, wrote a letter to the editor of the Washington Post after that newspaper had editorialized in favor of his wife's decision to remove Hugh's feeding tubes. Let me quote briefly from that letter, which I think is very powerful: "The Post said that reason as well as the law prevailed when the courts turned away Virginia Governor James Gilmore's attempts to block removal of my brother's feeding tube. I often wish I had the omniscience of the press so I could pass such judgments and know all things. I don't. But I, nonetheless, applauded the actions of Governor Gilmore because I believe he acted out of human compassion. The part of my family that capitulated to the will of Hugh's legal guardian, his wife, Michele, still does not agree with her. We feel that she unnecessarily took a life and took it by a method that was far from merciful."

Finally, Governor Gilmore received the following handwritten letter from Hugh's mother after Hugh's death by starvation, which took 10 days, as I understand. "I am writing to thank you for coming forward and trying to save my son's life. I realize it took courage on your part, and you were always subject to ridicule. We know you did not do this for political purposes, but only to help save a life and to help our family. We are very grateful to you and are sorry for any problems that this has caused you."

Were you aware of that?

Mr. ALLEN. Yes, I was, sir.

Chairman HATCH. Okay. Well, I don't think it is fair to try and find some fault on your part with regard to this very, very sensitive and difficult set of problems.

Now, Secretary Allen, you have served in all three branches of the Federal Government, as well as the executive branch of the State Government. You now manage a budget of over $400 billion as Deputy Secretary of HHS. Your academic credentials include a law degree as well as a Master of Law degree from a very good law school, Duke University, one of the finest law schools in the Nation.

Now, let me ask you, what would your grandfather—Grandpa Ray you referred to—who I understand died when he was 114 years of age and was the first in his family who was not born a slave. What would he tell us about you if he were here today and we asked him whether you were prepared to be a Federal appellate judge?

Mr. ALLEN. Mr. Chairman, I want to thank you for that comment and thank you for acknowledging my family and its heritage. My grandfather had a significant impact on my life. Because of the hardships that he grew up in—he was a sharecropper, he raised 13 children, and he didn't harbor a hateful bone in his life, in his body. He cared about people. He reached out to people. And my grandfather would say, "A job well done, my grandson." He would say to continue serving our Nation and serving and giving back to those who I've received from. And so I am very honored to be nominated by the President, to lay my credentials for this Committee

and this body, and to have an opportunity to bring some pride to my family, for them to be pleased to know that a young man who grew up in this city in a two-bedroom apartment could 1 day sit before the people of this country and serve them in a public office and be entrusted with the opportunity to do justice for others, I think my Granddad would be very honored and very proud.

Chairman HATCH. I think he is, between you and me.

Now, Secretary Allen, among the many important issues you have dealt with directly during your tenure at HHS is Project Bio–Shield, which I understand you are working to implement. Can you explain what that program is and the progress you and HHS are making towards it completion?

Mr. ALLEN. Thank you, Mr. Chairman. Project Bio–Shield is a result of the events of post–9/11/2001, a date that we'll all remember in this country. As we surveyed the role of the public health community, we surveyed and understood the preparation that this Nation has, we realized there were some significant gaps—significant gaps in preparing us to respond to not only bioterrorist events but other events that impact our society that can have a public health impact. And so Project Bio–Shield is a multimillion-dollar initiative sponsored by the President and supported by the Congress that is calling for the Department to advance the research necessary to produce antidotes, to produce vaccines, for example, to produce a next-generation smallpox vaccine, to produce a vaccine to fight anthrax, botulinum toxin, many agents that we don't know, or to produce a vaccine to combat the plague, a 14th century disease that we often think is not one that anybody would relish contracting, but can be weaponized and used against this country.

And, indeed, as a part of the Department, it is a privilege to uphold the oath that I took as the Deputy Secretary, and that was to defend the Constitution of the United States against enemies, foreign and domestic, and that's what we believe Project Bio–Shield would give us an opportunity to do. And so we are grateful for the support of the Congress, the appropriations to do that, and the National Institutes of Health, the Food and Drug Administration, the Centers for Disease Control, the Defense Department, and many other partners are working on this together to try to make America a safer place.

Chairman HATCH. Well, thank you. I will reserve and submit questions in writing, further questions.

Senator Craig from Idaho.

**STATEMENT OF HON. LARRY E. CRAIG, A U.S. SENATOR FROM THE STATE OF IDAHO**

Senator CRAIG. Thank you very much, Mr. Chairman.

Secretary Allen, it is enjoyable for me to sit here and get to know you better simply by listening, because while I knew of you, I had not had an opportunity to review your background and your experience, your education, your training. It is broad, extensive; for your age it is phenomenal. And I congratulate you on your successes.

Senator Sessions a few moments ago talked about circuit courts and why they were established. He used a unique phrase, basically to disallow "home cooking." In other words, the guardians of the Constitution, to make sure that State courts, in essence, or even

district courts did not necessarily misinterpret or misuse the Constitution or interpret it in a way that it was not intended to be. So your job is an important one. It is a critical one to our country, and I congratulate you on your nomination.

Let me for just a few moments probe your thought processes, your thinking, and how you might function as judge. What do you think the most important attributes of a judge are, and in this case, a circuit judge?

Mr. ALLEN. Senator Craig, thank you for the question. I believe that it is very clear that a candidate for whether it be the circuit court or the district court needs to be an individual, man or woman, who has the academic preparation, has the professional preparation to undertake a seat on the court to which he or she was nominated, but also, must also possess the integrity, possess the ability to listen carefully and intently, to empathize with those who come before him or her in the court on which they sit, but also should have a commitment to upholding the Constitution of the United States and the laws interpreting that Constitution by the Supreme Court or a superior court in that case for the district court. And so those would be some of the characteristics that I believe that a judge for any court should possess before taking that office.

Senator CRAIG. Do you possess them?

Mr. ALLEN. Senator, I would lay my credentials before you and allow you to be the judge of that. But I do believe that I have prepared for such an opportunity to serve and would be honored to do so.

Senator CRAIG. Probably all of us in our growing up, if you will, look at others, use them as examples of people we would like to be like, or certainly those within our profession that we would like to achieve to equally. Is there a member of the bench, living or dead, whom you admire?

Mr. ALLEN. Senator, I would do great injustice if I didn't mention the judge for whom I clerked. The Honorable David B. Sentelle, who sits on the D.C. Circuit, would be one.

I have great respect for all of the Justices of the Supreme Court and members who serve in the judiciary.

Senator CRAIG. All of them?

Mr. ALLEN. All of them, because each—

Senator CRAIG. All right.

Mr. ALLEN. Because each individual there—

Senator CRAIG. I don't necessarily agree with all of them. I might respect them, but I have got a lot of trouble with some of them.

Mr. ALLEN. Exactly. I believe that while you can disagree with them, I think we should all have a respect, a healthy respect for the authorities over us. And those would includes our Justices and judges who serve in this land because each of them have had to work to come to a place where this body has deemed them ready to serve and give back in public service. And so, yes, I have many that I would say that I look to, but I respect all of them for the work that they've undertaken to achieve where they are.

Senator CRAIG. Say there is no clear precedent in a case that you are reviewing and listening. To what source, then, do you turn for

guidance in rendering a decision that you may ultimately have to make?

Mr. ALLEN. Senator, you would turn to the Constitution first and foremost. That is the oath that we would take, is to uphold and defend the Constitution. But we would also look to the precedents of the United States Supreme Court, and in this case would also, as I would be considered for the Fourth Circuit Court of Appeals, I would like to circuit precedents in that regard as well.

Senator CRAIG. If the Supreme Court reached a decision that you believed was fundamentally erroneous, would you follow that precedent or apply your own judgment to the issues of law placed before you?

Mr. ALLEN. As a judge who would be serving on an intermediary court, it would be my obligation to follow the precedents set by the United States Supreme Court.

Senator CRAIG. You view that as your compass?

Mr. ALLEN. Absolutely.

Senator CRAIG. Well, we hope that the bit of a squabble that is going on at this moment between the States of Virginia and Maryland can be resolved. I understand how important positions like that which you have been nominated to are to all of us. And we are constantly reminded—I am in my State—of the importance of the circuit and the decisions made. I am disadvantaged, though. I reside in the Ninth Circuit, the most dysfunctional circuit in the Nation. So our Supreme Court Justices speak to that, and we feel very handicapped there and are trying to resolve that and reshape it a bit. I think you will be serving in a different circuit, but you would serve us well in the Ninth with your background and experience.

Mr. Chairman, let me return to the questioning to you. And I look forward to supporting you.

Chairman HATCH. Thank you so much, Senator.

Mr. Allen, I have known you for a long time. I have a lot of respect for you and I am very proud of you and your family and your friends who are here. I hope we can resolve these problems. I am certainly trying, because I would like to see you serve in this position. You are doing a great job down there at HHS, and I respect and appreciate that you job you are doing. I thought you did a good job in the State as well, in the State of Virginia. So you qualify for this position, and I will do everything I can to see that you get into this position.

But right now, it is bollixed up because of the problems that have been raised, but I will be working hard to try and resolve it. How is that?

Mr. ALLEN. Thank you, Mr. Chairman.

Chairman HATCH. Well, since nobody else is here and everybody has had an opportunity who wanted to ask questions, we will recess until further notice. Thank you for being here, and I will do my very best to get you through.

Mr. ALLEN. Thank you, Mr. Chairman.

Chairman HATCH. Thanks so much.

[Whereupon, at 12:17 p.m., the Committee was adjourned.]

[The biographical information of Mr. Allen follows:]

[Questions and answers and submissions for the record follow.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

**Claude Alexander Allen**

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

**Residence: Vienna, Virginia**

**Office Address:**

**U.S. Department of Health & Human Services**
**200 Independence Avenue, S.W., Room 614-G**
**Washington, DC 20201**

3. Date and place of birth.

**October 11, 1960, Philadelphia, Pennsylvania**

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

**Married to Jannese Mitchell Allen (formerly Jannese Viola Mitchell). Occupation: homemaker.**

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

**University of North Carolina at Chapel Hill, August 1978- May 1982. Bachelor of Arts in Political Science and Linguistics. Degrees received May 1982.**

**Duke University School of Law, May 1987 – May 1990. Juris Doctorate and LL.M. (Masters of Law) in International and Comparative Law. Degrees received May 1990.**

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Employment Record: All Paid Positions

| | |
|---|---|
| June 2001 – present<br>Deputy Secretary | US Department of Health & Human Services<br>200 Independence Ave., S.W.<br>Washington, DC 20201 |
| January 1998 – June 2001<br>Secretary of Health and<br>Human Resources | Office of the Governor<br>202 N. 9th Street, Suite 622<br>Richmond, VA 23218 |
| June 1997 – January 1998<br>Deputy Attorney General<br>Civil Litigation Division | Office of the Attorney General<br>700 E. Main Street<br>Richmond, VA 23219 |
| March 1995 – June 1997<br>Counsel to the Attorney General | Office of the Attorney General<br>700 E. Main Street<br>Richmond, VA 23219 |
| September 1991 – March 1995<br>Attorney | Baker & Botts, L.L.P.<br>The Warner<br>1299 Pennsylvania Ave., N.W.<br>Washington, DC 20004 |
| August 1990 – August 1991<br>Judicial Clerk | The Honorable David B. Sentelle<br>U.S. Court of Appeals for the<br>District of Columbia Circuit<br>333 Constitution Ave., N.W.<br>Washington, DC 20001 |
| August 1989 – May 1990<br>Legal Researcher | Duke University School of Law<br>Towerview & Science Drives<br>Durham, NC 27708 |
| August 1989 – May 1990<br>Law Clerk | Petree Stockton, L.L.P.<br>4101 Lake Boone Trail, Suite 400<br>Raleigh, NC 28607 |
| June 1989 – July 1989<br>Law Clerk | Baker & Botts, L.L.P.<br>The Warner<br>1299 Pennsylvania Ave., N.W.<br>Washington, DC 20004 |

| | |
|---|---|
| May 1989 – June 1989<br>Law Clerk | Baker & Botts, L.L.P.<br>800 Trammell Crow Center, Suite 800<br>Dallas, TX 75201 |
| June 1988 – July 1989<br>Law Clerk | Maupin Taylor Ellis & Adams<br>3200 Beechleaf Court<br>Raleigh, NC 27604 |
| January 1987- May 1987<br>Deputy Director, Minority Staff | US Senate Foreign Relations Committee<br>Washington, DC 20510 |
| January 1985 – January 1987<br>Press Secretary/Professional Staff | US Senate Foreign Relations Committee<br>Washington, DC 20510 |
| November 1984 – January 1985<br>Press Director | Jefferson Marketing<br>3825 Barrett Drive<br>Raleigh, NC 27609 |
| January 1983 – November 1984<br>Press Secretary | Jesse Helms for Senate Committee<br>3325 Executive Drive<br>Raleigh, NC 27611 |
| May 1982 – November 1982<br>Press Secretary | Bill Cobey for Congress Committee<br>Chapel Hill, NC 27514 |

Boards: All Volunteer Positions

| | |
|---|---|
| October 1988 - June 2001<br>Board of Directors, Member | Caramore Community, Inc.<br>550 Smith Level Road<br>Carrboro, NC 27510 |
| October 1999 - present<br>Board of Directors, Member | Peacemaker Ministries, Inc.<br>1537 Avenue D, Suite 352<br>Billings, MT 59102 |
| January 2001 - May 2001<br>Board of Directors, Member | African Development Foundation<br>1400 Eye Street, N.W., Tenth Floor<br>Washington, DC 20005 |
| October 2002- present<br>Board of Trustees, Member | Ambleside School<br>1700 Reston Parkway, Suite A<br>Reston, Virginia 20194 |

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

**None.**

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

**None.**

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

**None.**

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

**African Development Foundation**
**Board of Directors, Member**
**1400 Eye Street, N.W., Tenth Floor**
**Washington, DC 20005**

**Peacemaker Ministries, Inc.**
**Board of Directors, Member**
**1537 Avenue D, Suite 352**
**Billings, MT 59102**

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

| | |
|---|---|
| **Virginia State Bar** | **Admitted October 11, 1995** |
| **D.C. Bar** | **Admitted July 10, 1992** |
| **Pennsylvania Bar** | **Admitted December 11, 1991. Voluntary inactive status because no longer practice in jurisdiction.** |

| | |
|---|---|
| **Supreme Court of Virginia** | **Admitted October 30, 1995** |
| **U.S. Supreme Court** | **Admitted September 12, 1997** |
| **U.S. Court of Appeals for the District of Columbia Circuit** | **Admitted January 19, 1992** |
| **U.S. Court of Appeals for the Fourth Circuit** | **Admitted September 27, 1994** |
| **Eastern District of Virginia** | **Admitted December 18, 1995** |
| **Western District of Virginia** | **Admitted June 24, 1997** |

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

**Letter to the Editor, *Richmond Times Dispatch*, October 5, 1998**
**Editorial, *Richmond Times Dispatch*, April 2, 2000**
**Letter to the Editor, *Roanoke Times*, February 12, 2001**
**Editorial, *Richmond Times Dispatch*, April 29, 2001**

**Speeches attached.**

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

**Excellent Health. Last physical exam December 2002.**

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

**None.**

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed

were not officially reported, please provide copies of the opinions.

**Not Applicable.**

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

**Deputy Secretary of Health and Human Services. June 6, 2001 – present. Appointed by President George W. Bush.**

**African Development Foundation, Board of Directors, Member, January 2001 - May 2001. Appointed by President William J. Clinton.**

**Secretary of Health and Human Resources, Commonwealth of Virginia, January 18, 1998 – June 4, 2001. Appointed by Governor James S. Gilmore, III.**

**Deputy Attorney General, Civil Litigation Division, Office of the Attorney General, Commonwealth of Virginia, June 1997 – January 1998. Appointed by Attorney General James S. Gilmore, III.**

**Counsel to the Attorney General, Office of the Attorney General, Commonwealth of Virginia, March 1995 – June 1997. Appointed by Attorney General James S. Gilmore, III.**

17. Legal Career:

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

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

**Judicial Clerk, The Honorable David B. Sentelle, United States Court of Appeals for the District of Columbia Circuit, August 1990 – August 1991.**

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

**No.**

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with

which you have been connected, and the nature of your connection with each;

**Office of the Attorney General, Commonwealth of Virginia, 700 East Main Street, Richmond, Virginia 23219. Counsel to the Attorney General, March 1995 – June 1997; Deputy Attorney General for the Civil Litigation Division, June 1997 – January 1998.**

**Baker & Botts, The Warner, 1299 Pennsylvania Avenue, N.W., Washington, DC 20004. Associate Attorney from September 1991 – March 1995.**

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

**As an Associate Attorney at Baker & Botts, I had a general litigation practice with particular focus on government contracts and appellate practice. I also worked on international and legislative matters. September 1991 - March 1996.**

**As Counsel to the Attorney General, I advised the Attorney General on legal matters involving and affecting the interests of the Commonwealth of Virginia, including elections, health, education, and administrative law matters. March 1996- May 1998.**

**As the Deputy Attorney General for the Civil Litigation Division, Commonwealth of Virginia, I managed 75 lawyers and staff in handling the Commonwealth's civil litigation activities including real estate, elections, labor/employment, consumer protection, insurance, and other related areas. March 1996 - January 1998.**

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

**At Baker & Botts, my typical clients were government contractors, Fortune 500 companies, and international interests. I specialized in government contract litigation before the Boards of Contract Appeals and federal appellate courts.**

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

**Occasionally appeared in court as an Associate Attorney with Baker & Botts, and as Deputy Attorney General.**

2. What percentage of these appearances was in:

(a) federal courts;
(b) state courts of record;
(C) other courts.

**80% Article III federal court. 20% Federal Boards of Contract Appeals.**

3. What percentage of your litigation was:
(a) civil;
(b) criminal.

**100% civil litigation.**

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

**Seven to ten cases tried to judgement rather than settled. I was chief counsel on one case, and associate counsel on others.**

5. What percentage of these trials was:
(a) jury;
(b) non-jury.

**One case decided by a jury.**

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

***Lyn A. Campbell v. Southeast Emergency Physicians Group*, 51 F.3d 265 (4th Cir.1996). I represented plaintiff in contract interpretation of employment contract. Jury awarded plaintiff $129,000 for breach of his employment contract by defendant. 4th Circuit Court of Appeals affirmed jury award. Lead counsel in**

**District Court before Judge Albert V. Bryan, Jr. Argued case before 4th Circuit Court of Appeals on January 30, 1995, before Judges Ervin, Motz, and Phillips.**

**Co-counsel:**
**Stephen L. Teichler**
**Duan Morris L.L.P.**
**1667 K Street, N.W.**
**Washington, DC 20006-1608**
**(202) 776-7830**

**Opposing Counsel:**
**Alfred F. Belcoure, II**
**Montedonico, Hamilton & Altman**
**5454 Wisconsin Avenue #1300**
**Chevy Chase, MD**
**(301) 652-7332**

***Steven J. Abraham v. PWG Partnership Group*, 93-1704, On petition for writ of certiorari to the Supreme Court of New Mexico. Co-counsel representing respondents PWG Partnership Group. Drafted brief of Respondent in opposition to petition for certiorari with co-counsel. Case involved competing claims to ownership of the lessee's interest in federal oil and gas leases. Supreme Court denied certiorari. Brief filed May 18, 1994.**

**Co-counsel:**
**Steven R. Hunsicker**
**Baker & Botts, L.L.P.**
**The Warner**
**1299 Pennsylvania Avenue, N.W.**
**Washington, DC 20004**
**(202) 639-7700**

**J.E. Gallegos**
**David Sandoval**
**Gallegos Law Firm, P.C.**
**460 St. Michaels Drive # 300**
**Santa Fe, NM 87501**
**(505) 983-6686**

**Opposing Counsel:**
**Thomas R. Hartnett**
**4900 Thanksgiving Tower**
**1601 Elm Street, Dallas Texas 75201**
**(214) 742-4655**

*South Dakota Public Utilities Commission v. FERC*, No. 91-798, On petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit. Co-counsel representing producer intervenors in opposition to petition for certiorari. Drafted brief with co-counsel. Case involved question whether the U.S. Court of Appeals for the D.C. Circuit properly sustained the factual findings of the Federal Energy Regulatory Commission based upon the proper application of state contract law. January 17, 1992.

Co-counsel:
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Washington, DC 20006-1608
(202) 776-7830

C. Roger Hoffman
Douglas W. Rasch
Exxon Corporation
P.O. Box 2180
Houston, Texas 77001
(713) 656-1691

*Moon v. Meadows*, 952 F. Supp. 1141 (E.D. Va. 1997), *aff'd sub nom. Meadows v. Moon*, 117 S.Ct. 2501 (1997) (mem.) and *Harris v. Moon*, 117 S. Ct. 2501 (1997) (mem.). Directed litigation team representing named defendant and Commonwealth of Virginia. Case involved challenge by residents of Virginia's Third Congressional District to the Commonwealth's first majority-minority congressional district (Rep. Bobby Scott D-VA). Directed litigation team throughout proceedings. Three-judge panel of the District Court ruled that the Third District was an unconstitutional racial gerrymander and violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The Supreme Court affirmed without opinion.

Co-counsel:
James S. Gilmore, III (former Attorney General)
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1200 19th Street, N.W., Suite 500
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(202) 955-9660

David E. Anderson (former Chief Deputy Attorney General)
David E. Anderson and Associates
3420 Pump Road
Richmond, VA 23233
(804) 364-3755

**Gregory E. Lucyk (former Senior Assistant Attorney General)**
**Chief Staff Attorney**
**Virginia Supreme Court**
**100 North 9th Street**
**Richmond, VA 23219**
**(804) 786-5254**

**Francis Snead Ferguson**
**James Walter Hopper**
**Mary Elizabeth Shea**
**Rita Marie Sampson**
**Office of Virginia Attorney General**
**700 E. Main Street**
**Richmond, VA 23219**
**(804) 786-2071**

**Opposing Counsel:**
**Stephen A. Katsurinis**
**McGuire Woods**
**1050 Connecticut Avenue, N.W.**
**Suite 1200**
**Washington, DC 20036**
**(202) 857-2912**

**Paul Loy Hurd**
**1126 Plaza Blvd.**
**Monroe, LA 71201**
**(318) 323-3838**

***Planned Parenthood v. Camblos*, 155 F.3d 352 (4th Cir. 1998), *cert. denied*, 1999 U.S. Lexis 1062 (Feb. 22, 1999). Represented defendant Commonwealth Attorney and Commonwealth of Virginia. Co-counsel on case and argued before Judge Turk, US District Court for the Western District of Virginia. Case involved challenge to Virginia's parental notice statute. District Court enjoined implementation of statute, the Fourth Circuit Court of Appeals vacated injunction and held statute with bypass procedures to be constitutional.**

**Co-counsel:**
**Richard Cullen (former Attorney General)**
**McGuire Woods**
**One James Center**
**901 East Cary Street**
**Richmond, VA 23219**
**(804) 775-1009**

**William H. Hurd, Solicitor General, Commonwealth of Virginia**
**Siran Faulders**
**Garland L. Bigley**
**Alison P. Landry**
**Brian M. McCormick**
**Rita R. Woltz**
**Daniel J. Poiner**
**Office of the Attorney General**
**700 E. Main Street**
**Richmond, VA 23219**
**(804) 786-7700**

**Opposing Counsel:**
**Karen Raschke**
**Center for Reproductive Health**
**Richmond, VA 23219**
**(804) 272-5818**

***Edmonds v. Clarkson*, 996 F. Supp. 541 (E.D. VA 1998), 210 F.3d 361 (4th Cir. 2000), *cert. denied*, 1999 U.S. LEXIS 6770 (Oct. 10, 2000). Co-counsel representing Commonwealth of Virginia in opposing federal constitutional claim of a state judge who resigned his office during judicial disciplinary investigation where plaintiff failed to raise claims during judicial inquiry. Directed litigation team throughout litigation. June 19, 1997.**

**Co-counsel:**
**Gregory E. Lucyk (former Senior Assistant Attorney General)**
**Chief Staff Attorney**
**Virginia Supreme Court**
**100 North 9th Street**
**Richmond, VA 23219**
**(804) 786-5254**

**Edward Meade Macon**
**Mary Elizabeth Shea**
**Office of the Attorney General**
**700 E. Main Street**
**Richmond, VA 23219**
**(804) 786-7700**

**Additional Co-Counsel:**
**Abram William VanderMeer, Jr.**
**222 Central Park Avenue**
**Virginia Beach, VA 23462**
**(757) 492-6274**

**Opposing Counsel:**
**Luther C. Edmonds, *Pro Se***
**3500 Virginia Beach Blvd.**
**Virginia Beach, VA 23452**
**(757) 431-3705**

***Cox v. Saunders (In re Sargent)*, 136 F.3d 349 (4th Cir. Feb. 13, 1998), *cert. denied*, 1998 U.S. Lexis 5389 (Oct. 5, 1998). Co-counsel representing Commonwealth of Virginia and Assistant state attorney general opposing motion to sanction attorney for fair argument requesting dismissal of prisoner's civil rights suit under three strike's rule of the Prison Litigation Reform Act.**

**Co-counsel:**
**Richard Cullen (former Attorney General)**
**McGuire Woods**
**One James Center**
**901 East Cary Street**
**Richmond, VA 23219**
**(804) 775-1009**

**Neil A.G. McPhie (Senior Assistant Attorney General)**
**William Gatling Atkinson**
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**700 E. Main Street**
**Richmond, VA 23219**
**(804) 786-2071**

**Opposing Counsel:**
**Steven H. Goldblatt**
**Georgetown University Law Center**
**600 New Jersey Avenue, N.W.**
**Washington, DC 20001**
**(202) 662-9000**

***Coyne Beahm, Inc. v. U.S. FDA*, 966 F. Supp. 1374 (M.D. N.C. 1997). Co-counsel representing Commonwealth of Virginia. Filed brief *amicus curiae* challenging FDA regulation of tobacco products. District Court held that FDA had jurisdiction to regulate tobacco products pursuant to the Food, Drug and Cosmetic Act. October 31, 1996.**

**Co-counsel:**
**William H. Hurd, Solicitor General, Commonwealth of Virginia**
**Office of the Attorney General**
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**(804) 786-2071**

**Opposing Counsel:**
**Eric M. Blumberg**
**Deputy Chief Counsel**
**Food and Drug Administration**
**Room 6-57**
**5600 Fishers Lane**
**Rockville, MD 20857**

***GTE South Inc. v. Morrison*, 6 F. Supp.2d 517 (E.D. VA 1998). Co-counsel representing Commonwealth of Virginia defending actions of the State Corporation Commission calculation of wholesale discount rates under the Telecommunications Act of 1996. Directed litigation team throughout proceedings. District Court held that State Corporation Commission's actions were not arbitrary and capricious. September 11, 1997.**

**Co-counsel:**
**Gregory E. Lucyk**
**Chief Staff Attorney**
**Virginia Supreme Court**
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**Richmond, VA 23219**
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**Alice Ann Berkebile**
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**(804) 367-8600**

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**Wilma R. McCarey- (last known address)**
**AT&T Communications of Virginia, Inc.**
**Oakton, VA**

**Jodie L. Kelley (last known address)**
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**Washington, DC**

**Opposing Counsel:**
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**Paul T. Cappuccio (last known address)**
**Kirkland & Ellis**
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**Theodore C. Hirt**
**U.S. Department of Justice**
**20 Massachusetts Ave., N.W., Room 7106**
**Washington, DC 20530**

**Robert William Jaspen**
**Senior Staff Counsel**
**U.S. Fourth Circuit Court of Appeals**
**600 East Main Street, Suite 2200**
**Richmond, VA 23219**
**(804) 916-2900**

***Tauber v. Commonwealth of Virginia*, 255 Va. 445, 299 S.E. 2d 839 (Va. 1998). Co-counsel representing Attorney General of Virginia in action asserting jurisdiction over assets located in Virginia held by trustees in the dissolution of a foreign charitable trust. Directed litigation team throughout proceedings. Circuit Court of Alexandria imposed a constructive trust over assets. Virginia Supreme Court affirmed trial court and held that Attorney General and the Commonwealth's Attorney had authority to bring action.**

**Co-counsel:**
**Richard Cullen (former Attorney General)**
**McGuire Woods**
**One James Center**
**901 East Cary Street**
**Richmond, VA 23219**
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**Frank Seales, Jr. (former Assistant Attorney General)**
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**Marc E. Bettius**
**Lawrence H. Herman**
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**Richmond, VA 23219**
**(804) 786-2071**

**Opposing Counsel:**
**Gaspare J. Bono**
**McKenna Long & Aldridge**
**1900 K Street, N.W.**
**Washington, DC 20006**
**(202) 496-7211**

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

**During the summer of 1996, when African American churches were burned in cities and towns across the South, I worked for Attorney General James S. Gilmore, III to organize Southern Attorneys General to work together to prevent these criminal activities, investigate any church burning in their respective jurisdictions, and prosecute those who perpetrated such violence against houses of worship. On behalf of Attorney General Gilmore, I organized a National Summit at Howard University School of Divinity where nine Attorneys General, faith community representatives, civil rights leaders, and other corporate and community leaders gathered to discuss and develop strategies to combat church burning and other crimes against the faith community. Attorney General Gilmore, subsequently, proposed legislation in the Virginia General Assembly criminalizing the burning of a house of worship. Additionally, I worked with the Attorney General to urge**

**insurance companies to cover losses incurred by houses of worship that were victims of arson. Consequently, church arson victims received payment for their losses.**

**Additionally, during my tenure at the Virginia Office of the Attorney General, I worked with others in the Attorney General's Office and the Virginia Secretaries of Public Safety, and Health and Human Resources to launch Virginia's Weed-And-Seed Program and other public safety programs to protect Seniors from consumer fraud and crimes against their persons and property.**

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

**None.**

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

**Should a potential conflict of interest arise, I will take whatever action necessary to resolve the conflict in favor of removing any appearance of conflict or impropriety consistent with the Judicial Code of Ethics. I not aware of any categories of litigation or financial arrangements that are likely to present potential conflicts of interest during my initial service in the position to which I have been nominated.**

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

**No.**

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

**U.S. Department of Health and Human Services, 2002 salary $145,000.00;**
**U.S. Department of Health and Human Services, 2003 salary $41,151.00.**

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

**A completed financial net worth statement is attached.**

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars

of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

**Yes.**

| | |
|---|---|
| **January 1983 – November 1984**<br>**Press Secretary** | **Jesse Helms for Senate Committee**<br>**3325 Executive Drive**<br>**Raleigh, NC 27611** |
| **May 1982 – November 1982**<br>**Press Secretary** | **Bill Cobey for Congress Committee**<br>**Chapel Hill, NC 27514** |

**FINANCIAL STATEMENT**

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

| ASSETS | | | | LIABILITIES | | | |
|---|---|---|---|---|---|---|---|
| Cash on hand and in banks | | 48 | 000 | Notes payable to banks-secured | | | |
| U.S. Government securities-add schedule **US Savings Bonds** | | 9 | 500 | Notes payable to banks-unsecured | | | |
| Listed securities-add schedule | | | | Notes payable to relatives | | | |
| Unlisted securities--add schedule | | | | Notes payable to others | | | |
| Accounts and notes receivable: | | | | Accounts and bills due | | 12 | 800 |
| Due from relatives and friends | | 3 | 000 | Unpaid income tax | | | |
| Due from others | | | | Other unpaid income and interest | | | |
| Doubtful | | | | Real estate mortgages payable-add schedule | | | |
| Real estate owned-add schedule | | 25 | 000 | Chattel mortgages and other liens payable | | | |
| Real estate mortgages receivable | | | | Other debts-itemize: | | | |
| Autos and other personal property | | 8 | 000 | | | | |
| Cash value-life insurance | | 18 | 000 | | | | |
| Other assets itemize: | | | | | | | |
| Retirement | | 65 | 000 | | | | |
| | | | | | | | |
| | | | | Total liabilities | | 12 | 800 |
| | | | | Net Worth | | 167 | 300 |
| Total Assets | | 180 | 100 | Total liabilities and net worth | | 180 | 100 |
| CONTINGENT LIABILITIES | | | | GENERAL INFORMATION | | | |
| As endorser, comaker or guarantor | | | | Are any assets pledged? (Add schedule) | | | No |
| On leases or contracts | | | | Are you defendant in any suits or legal actions? | | | No |
| Legal Claims | | | | Have you ever taken bankruptcy? | | | No |
| Provision for Federal Income Tax | | | | | | | |
| Other special debt | | | | | | | |

**Real Estate Owned**

Undeveloped Land. Raleigh, North Carolina. Value: $25,000

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

**Worked for a disadvantaged DC resident who sued for improper worked done on her home. Devoted 70-80 hours on case over 3 years.**

**Represented indigent client in estate probate dispute. Devoted approximately 30-40 hours to case.**

**DC Bar Association Council for the Elderly Law Program. Drafted trust and estate documents for senior citizens. Devoted 100+ hours on approximately 10 cases.**

**Provided pro bono services to the International Committee for Human Rights in connection with elections in the Western Sahara. Devoted 50-60 hours to project.**

**Serve on the Board of Peacemaker Ministries, Inc. which provides mediation, conciliation, and arbitration services. Devote 40-50 hours a year as a Board Member and as a mediator, conciliator, or arbitrator.**

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

**No.**

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from

beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

**No. I was interviewed by the White House Office of Presidential Personnel, the White House Office of Counsel to the President, Department of Justice, and the Federal Bureau of Investigations. Nominated on April 28, 2003.**

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

**No.**

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

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

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

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

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

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

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

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

**A strong judiciary is vital to our system of government. Independent judges are a necessary component of this system of shared government with Legislative,**

**Executive, and Judicial branches. Doubtless independent judges are obliged to protect minority rights from encroachments by the majority. Protecting the rights of individuals and the Constitution, however, must be accomplished within the bounds established by the Constitution, laws enacted that are consistent with the Constitution, and Supreme Court precedents.**

**The Constitution provides checks and balances to prevent abuse of power by any branch of government. The Judiciary's power rests in its ability to interpret the Constitution and laws enacted by Congress, and execution of the law by the Executive. Courts must exercise their power of judicial review in a manner consistent with their constitutional mandate and resist the temptation to legislate in the absence of legislation, or exceed their authority by exercising undue oversight of the Legislative and Executive branches of government. Elected officials, not judges, enact and execute laws. Consequently, a judge should not impose his/her policy preferences for that of a legislative or executive body but rather, should apply the law and the Constitution.**

**The Judiciary's power to protect and explain the Constitution depends to a great extent on the court's credibility. When a judge overreaches beyond the Constitution and laws to impose their preferred policies, the court's credibility is diminished and ultimately, the court's ability to protect core Constitutional rights is weakened.**

**Because Article III judges enjoy lifetime tenure, it is even more critical that they be diligent to exercise their power cognizant of the far-reaching impact they have on our system of government and of the limits of their power.**

)-10 (
w. 1/2002

# FINANCIAL DISCLOSURE REPORT

## Nomination Report

*Government Act of 1978, as amended (5 U.S.C. App. Sec. 101-111)*

| | | |
|---|---|---|
| **Person Reporting** *(Last name, first, middle initial)*<br>llen, Claude A. | **2. Court or Organization**<br>U.S. Court of Appeals, 4th Cir | **3. Date of Report**<br>04/28/2003 |
| **Title** *(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)*<br>.S. Circuit Judge (Nominee) | **5. Report Type (check type)**<br>X Nomination, Date 04/28/2003<br>Initial Annual Final | **6. Reporting Period**<br>/ /<br>to<br>/ / |
| **. Chambers or Office Address**<br>)epart. of Health & Human Serv<br>)00 Independence Ave, S.W.<br>Washington, DC 20201 | **8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.**<br>**Reviewing Officer** **Date** | |

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

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

| | POSITION | NAME OF ORGANIZATION / ENTITY |
|---|---|---|
| ☐ | **NONE** (No reportable positions.) | |
| 1 | Membe, Board of Directors | Peacemaker Ministries, Inc. |
| 2 | Member, Board of Directors | Ambleside School |
| 3 | | |

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

| | DATE | PARTIES AND TERMS |
|---|---|---|
| X | **NONE** (No reportable agreements.) | |
| 1 | | |
| 2 | | |
| 3 | | |

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

| | DATE | SOURCE AND TYPE | GROSS INCOME (yours, not spouse's) |
|---|---|---|---|
| X | **NONE** (No reportable non-investment income.) | | |
| 1 | | | |
| 2 | | | |
| 3 | | | |
| 4 | | | |

NCIAL DISCLOSURE REPORT Allen, Claude A. 04/28/2011

**REIMBURSEMENTS -- transportation, lodging, food, entertainment.**

*les those to spouse and dependent children. See pp. 25-27 of Instructions.)*

| | SOURCE | DESCRIPTION |
|---|---|---|
| NONE (No such reportable reimbursements) | | |
| Exempt | | |

**GIFTS**

*udes those to spouse and dependent children. See pp. 28-31 of Instructions.)*

| | SOURCE | DESCRIPTION | VALUE |
|---|---|---|---|
| NONE (No such reportable gifts) | | | |
| Exempt | | | |

**LIABILITIES**

*des those of spouse and dependent children. See pp 32-33 of Instructions.)*

| | CREDITOR | DESCRIPTION | VALUE CODE* |
|---|---|---|---|
| NONE (No reportable liabilities) | | | |
| | United States Senate Federal Credit Union | Loan | J |

L CODES: J=$15,000 or less K=$15,001-$50,000 L=$50,001 to $100,000 M=$100,001-$250,000 N=$250,001-$500,000
O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

NANCIAL DISCLOSURE REPORT Allen, Claude A.

(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)

**II. Page 1 INVESTMENTS and TRUSTS – income, value, transactions**

| A. Description of Assets (including trust assets) *Place "(X)" after each asset exempt from prior disclosure.* | B. Income during reporting period (1) Amount Code (A-H) | B. (2) Type (e.g., dividend, rent or interest) | C. Gross value at end of reporting period (1) Value Code (J-P) | C. (2) Value Method Code (Q-W) | D. Transactions during reporting period (1) Type (e.g., buy, sell, partial sale, merger, redemption) | If not exempt from disclosure (2) Date: Month-Day | (3) Value Code (J-P) | (4) Gain Code (A-H) | (5) Identity of buyer/seller (if private transaction) |
|---|---|---|---|---|---|---|---|---|---|
| NONE (No reportable income, assets, or transactions.) | | | | | | | | | |
| 1 U.S. Senate Federal Credit Union (Money Market Account) | B | Interest | L | T | Exempt | | | | |
| 2 Nationwide Life Insurance Company | A | Dividend | J | T | Exempt | | | | |
| 3 Fidelity Variable Ins. Products VIP Contrafund | | | | | | | | | |
| 4 Fidelity Variable Ins. Products VIP Equity-Income | | | | | | | | | |
| 5 Fidelity Variable Ins. Products VIP Growth | | | | | | | | | |
| 6 State Street Global Fund (S&P 500 Fund) | | | | | | | | | |
| 7 Van Eck Worldwide Ins.Trust Worldwide Emerging Market Fun | | | | | | | | | |
| 8 Neuberger Berman Advisors Mgt.Trust AMT Ltd. Maturity | | | | | | | | | |
| 9 Alger American Fund Small Capitalization Portfolio | | | | | | | | | |
| 10 Gartmore Variable Insurance Trust GVIT Equity 500 | | | | | | | | | |
| 11 Nationwide Life Annuity Company | A | Dividend | J | T | Exempt | | | | |
| 12 Scudder Variable Life Investment Fund Growth and | | | | | | | | | |
| 13 Dreyfus Variable Investment Fund Dreyfus Growth & Income | | | | | | | | | |
| 14 PIMCO Advisors VIT OpCap Equity Portfolio | | | | | | | | | |
| 15 Gartmore Variable Ins. Trust Gartmore GVIT Nationwide Fund | | | | | | | | | |
| 16 Gartmore Variable Ins. Trust GVIT Equity 500 Index Fund | | | | | | | | | |
| 17 Ohio National Financial Services | A | Dividend | J | T | Exempt | | | | |

1 Inc/Gain Codes: A=$1,000 or less B=$1,001-$2,500 C=$2,501-$5,000 D=$5,001-$15,000 E=$15,001-$50,000
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

2 Val Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000 N=$250,001-$500,000
(Col. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
(Col. C2) U=Book Value V=Other W=Estimated

(includes those of spouse and dependent children See pp. 34-57 of Instructions.)

**Page 2 INVESTMENTS and TRUSTS -- income, value, transactions**

| A. cription of Assets luding trust assets) ice "(X)" after each asset mpt from prior disclosure. | B. Income during reporting period (1) Amount Code (A-H) | B. (2) Type (e.g., dividend, rent or interest) | C. Gross value at end of reporting period (1) Value Code (J-P) | C. (2) Value Method Code (Q-W) | D Transactions during reporting period (1) Type (e.g., buy, sell, partial sale, merger, redemption) | If not exempt from disclosure (2) Date Month-Day | (3) Value Code (J-P) | (4) Gain Code (A-H) | (5) Identity of buyer/seller (if private transaction) |
|---|---|---|---|---|---|---|---|---|---|
| NONE (No reportable income, assets, or transactions.) | | | | | | | | | |
| Janus Aspen Series Retirement Shares (Balanced | | | | | | | | | |
| Federated Investment Counseling (Blue Chip) | | | | | | | | | |
| Janus Aspen Series Retirement Shares | | | | | | | | | |
| Legg Mason Fund Advisor, Inc. (Equity Portfolio) | | | | | | | | | |
| Ohio National Investments, Inc. (Bond Portfolio) | | | | | | | | | |
| RS Investment Management, L.P. (Capital Growth | | | | | | | | | |
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| 4 | | | | | | | | | |

:/Gain Codes: A=$1,000 or less B=$1,001-$2,500 C=$2,501-$5,000 D=$5,001-$15,000 E=$15,001-$50,000
ol. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

il Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000 N=$250,001-$500,000
ol. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

il Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
ol. C2) U=Book Value V=Other W=Estimated

**II. ADDITIONAL INFORMATION OR EXPLANATIONS.**
*icate part of report.)*

ANCIAL DISCLOSURE REPORT Allen, Claude A. 04/28/2003

**CERTIFICATION**

I certify that all the information given above (including information pertaining to my spouse and minor or pendent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any formation not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which ve been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 d Judicial Conference regulations.

Signature Claude A. Allen Date 05/6/03

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

**FILING INSTRUCTIONS**

**Mail original and three additional copies to:**

**Committee on Financial Disclosure**
**Administrative Office of the United States Courts**
**One Columbus Circle, N.E.**
**Suite 2-301**
**Washington, D.C. 20544**

# QUESTIONS AND ANSWERS

November 12, 2003

The Honorable Orrin G. Hatch
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Mr. Chairman,

Enclosed please find my responses to the written questions of Senators Leahy, Kennedy and Durbin regarding my judicial nomination. Thank you very much for your time and assistance in this matter.

Sincerely,

Claude A. Allen

cc: The Honorable Patrick J. Leahy
Ranking Member

**Responses of Claude A. Allen to the Written Questions from Senator Richard Durbin**

1. At your hearing, I asked you about the Hugh Finn matter. You stated that your role in this matter was "very minimal" and "simply ministerial."

A. You testified at your nomination hearing: "I received a phone call, as I would normally do in my Department, that said that there was a patient who was in a nursing home, considered in a persistent vegetative state, and there was a concern that this patient's rights were being denied." Who placed this phone call to you? When did the phone call take place? Was it before or after the August 21, 1998 letter that was sent to you from Delegate Bob Marshall? As Secretary of Health and Human Resources, was it customary for you to receive phone calls regarding allegations of the denial of patients' rights? If not, what did you mean by testifying that "I received a phone call, as I would normally do in my Department"?

**ANSWER: I did not personally speak to the caller who registered the complaint about Mr. Finn's care. My reference to receiving a phone call was to my Office and not to me personally. I subsequently was notified of the call after it was received. I have no recollection of the caller's identity or the specific date and time of the call or its proximity to State Delegate Bob Marshall's August 21, 1998 letter. It was not unusual for the Office of the Secretary of Health and Human Resources to receive phone calls or letters regarding allegations of the denial of a patient's rights or care. The Virginia Health and Human Resources Secretariat had management responsibility for all state health care related agencies including, but not limited to, the Department of Health, the Department of Health Professions, the Department of Medical Assistance Services, and the Department for Rights of Virginians with Disabilities.**

B. You also testified: "My contact with family members came as a result of family members contacting my office." Other then Michele Finn, which Finn family members contacted you? Were the contacts by phone or by letter? If they were by phone, how many conversations did you have and what was the nature of the conversations?

**ANSWER: I remember personally receiving a number of calls from Mr. Finn's family in which they expressed opposition to Michelle Finn's desire to remove Mr. Finn's food and hydration tubes and their desire for Governor Gilmore to intervene**

**on behalf of Hugh Finn. These calls included Hugh Finn's parents and two of his brothers. Additionally, I spoke with Michelle Finn's sister, Elaine Glazier. As best as I can recall, I spoke with each Finn family member once and Elaine Glazier several times. I did not initiate any of the telephone calls. I do not remember the specifics of each conversation other than that I expressed compassion for the difficult circumstances the family was dealing with and they expressed their concern for Hugh Finn, their opposition to Michelle Finn's actions, and their desire for Governor Gilmore to intervene on Hugh Finn's behalf. My response was that I would convey their concerns to the Governor.**

C. You testified that you had no role in sending nurses to investigate false claims about Hugh Finn's treatment at the nursing home. When I asked you whether you had any role, you testified: "I did not, sir. That would be the role of the Director for the Medical Assistance Services Department of the Commonwealth of Virginia, which was an agency that reported to me." Did the Director for the Medical Assistance Services Department seek authorization from you to proceed with any aspects of this investigation? If so, which aspects? Did the Director ever seek authorization from you to proceed with investigations regarding allegations of patient abuse? If so, what types of investigations needed your authorization and what types did not?

**ANSWER: The Director did not seek nor was he required to seek authorization from me for any of the actions taken by the Department of Medical Assistance Services. Federal and state law authorized the investigation of abuse allegations.**

D. Marie Saul, a utilization review nurse in the Virginia Department of Medical Assistance Services, submitted an affidavit that Finn family members relied on in attempting to reopen the Hugh Finn case in late September 1998. What role if any did you play in reviewing and authorizing this affidavit, and making it available to Finn family members?

**ANSWER: I do not remember playing any role in authorizing or reviewing the above referenced affidavit, nor do I recall playing any role in making it available to the Finn family.**

E. During the course of its Hugh Finn investigation in September 1998, how frequently did the Department of Medical Assistance Services update you on its visitations and findings? Did this frequency represent a departure from normal updates you would receive regarding allegations of nursing home patient abuse?

**ANSWER: I do not remember the frequency of the updates. Since the Governor's Office was directly involved in this issue, I may have received more updates than**

**usual, but I do not remember the frequency. I do remember receiving Marie Saul's utilization review which I forwarded to the Governor's Office.**

F. You testified that your role was very minimal "in simply passing information to the Governor for his consideration." Please describe the contacts that you had with the Governor or members of his staff about the Hugh Finn case. What if any opinions did you render to the Governor's office on how to proceed with the Hugh Finn matter?

**ANSWER: I contacted the Governor's Office to forward the comments I received from Michelle Finn as well as the rest of the Finn family. Additionally, upon receiving Marie Saul's utilization review of Hugh Finn's condition, I forwarded it to the Governor's Office. To my recollection, the Governor's Office of General Counsel was involved in working with the Virginia Attorney General's Office on the matter. I do not remember rendering any specific opinions to the Governor's Office. Instead, my Office merely forwarded relevant information as it was received.**

G. In his August 21, 1998 letter to you, Delegate Marshall wrote: "I am asking you to immediately direct the resources of your department to investigating this matter in depth." Was the Hugh Finn case given more thorough treatment and consideration than other allegations as a result of Delegate Marshall's request? Please explain. Whatongoing communications did you have with Delegate Marshall regarding the Finn matter after receiving his letter?

**ANSWER: Any allegation of abuse of a patient in a long-term care facility would be investigated thoroughly by the appropriate agency as required under federal and state law. When a member of the legislative branch, however, requested action by an executive branch agency, it sometimes resulted in additional work being done to satisfy the legislator's request. To my knowledge, the Hugh Finn case was not given any more attention than other matters raised by legislators.**

**I may have spoken with Delegate Marshall and a member of my staff may have spoken with Delegate Marshall. If we did speak, I cannot recall the specifics of the conversation. To my knowledge my office did not have ongoing communications with Delegate Marshall after receiving his August 12, 1998 letter.**

2. At your nomination hearing, you testified that when you used the term "queers" in an October11, 1984 interview with the Greensboro News & Record, you were referring not to gay people but rather to "very strange, abnormal, out-of-the ordinary individuals and groups working across the campaign." Please explain which individuals and groups

working on or for the Jim Hunt campaign you believed were "very strange, abnormal, [and] out-of-the-ordinary"?

**ANSWER: The article in question was based on a press conference that Governor Jim Hunt had given the day prior where he described connections Senator Helms's had to groups that the Governor viewed as "radical right." This was a very heated campaign in which individuals on both sides of the campaign were polarized by the issues. My statement was to point to the fact that just as groups who supported Senator Helms could be termed "radical" by Jim Hunt supporters and the Democratic party, groups who supported Governor Hunt could be termed "radical" by Jesse Helms' supporters and the Republican party at that time. I had no specific individuals or groups in mind when I responded to the question on behalf of the Helms Campaign. My statement was made to illustrate the futility of engaging in political banter regarding supporters of the two candidates given the national attention generated by this campaign in 1984.**

3. In this same article you were quoted as saying: "We could expound on and undertake a campaign against Jim Hunt's connections with the homosexuals, the labor union connection, the radical feminist connection, the socialist connection."

   A. What connections did Mr. Hunt have with "homosexuals"? Please explain.

   **ANSWER: As noted above, the article in question was based on a press conference that Governor Hunt had given the day prior where he described connections Senator Helms's had to groups that the Governor viewed as "radical right." In the article, Governor Hunt was quoted as calling Senator Helms's supporters "a nationwide network of right-wing extremists." Just as this was political rhetoric in the heat of a campaign, my reference to the Governor's supporters was political rhetoric.**

   B. What connections did Mr. Hunt have with "radical feminists"? Please explain.

   **ANSWER: Please see response to question 3.A.**

   C. What connections did Mr. Hunt have with "socialists"? Please explain.

   **ANSWER: Please see response to question 3.A.**

4. Senator Helms' 1984 campaign was explicit in its attacks on the gay community. In one Helms mailing, he described a gay rights rally as follows: "They spilled out into the streets, waving protest signs proclaiming 'GAY rights are HUMAN rights' . . . (Incidentally, do you resent—as I do—the corrupting of the word 'gay'? These people are

NOT 'gays,'—they are HOMOSEXUALS.)" Did you have any involvement in the writing or review of this letter? If so, please explain.

**ANSWER: No, I did not.**

5. You are on the Board of Directors of Peacemaker Ministries, a conflict resolution organization. On the organization's website, there is a section entitled "Women & Conflict" which makes certain statements about women.

   A. The website states that "women easily give up on people when wrongs occur and relationships become rocky." Do you agree with this statement? Please explain.

   **ANSWER: No. It is inappropriate to make broad generalizations about women, minorities, or any other group of people. Furthermore, it is not appropriate to denigrate any group of people. We should have respect and treat people with the very same dignity with which one would want to be treated.**

   B. The website states that "Instead of showing grace through loving confrontation and forgiveness, women regularly 'move on' to new relationships." Do you agree with this statement? Please explain.

   **ANSWER: No. Please see response 5A.**

   C. The website states that "Women are quick to be catty, petty, and competitive." Do you agree with this statement? Please explain.

   **ANSWER: No. Please see response 5A.**

   D. The website states that "women are often trapped in adolescent games of competition and gossip." Do you agree with this statement? Please explain.

   **ANSWER: No. Please see response 5A.**

6. In a December 25, 1983 article in the Raleigh News & Observer, you were quoted as saying: "I view that issue [abortion] as one that very adversely affects blacks nationwide. You look at what it is doing to the black population in this country, and to me it appears to be genocide."

   A. Do you believe that abortion is a form of genocide? Please explain.

**ANSWER: While it was my practice not to express any personal views during my tenure as Press Secretary for the 1984 Helms' Campaign, my concern was for the health of African American women and the disproportionate number of abortions performed on African American women. The above referenced response was provided in the context of Senator Helms' campaign twenty years ago and is nothing more than hyperbole.**

B. Do you believe that the Constitution encompasses a right to privacy? What is the basis for your belief?

**ANSWER: The Constitution encompasses a right to privacy as interpreted by numerous Supreme Court decisions including, but not limited to, Griswold v. Connecticut, Roe v. Wade, and Casey v. Planned Parenthood of Southeastern Pennsylvania. If confirmed, I would apply these decisions faithfully.**

C. Do you believe that the right to privacy encompasses access to contraception and protection of a woman's right to choose to terminate a pregnancy?

**ANSWER: The Supreme Court has held that the right to privacy encompasses, among other things, access to contraception and the right to terminate a pregnancy in decisions including, but not limited to, Griswold v. Connecticut, Roe v. Wade, and Casey v. Planned Parenthood of Southeastern Pennsylvania. If confirmed, I would apply these decisions faithfully.**

D. Do you personally believe that Roe v. Wade was correctly decided?

**ANSWER: The Supreme Court's decision in Roe v. Wade is controlling authority for all lower federal courts including the United States Court of Appeals for the Fourth Circuit. Should I be fortunate enough to serve as a member of the Fourth Circuit, this is the law which I will be duty bound to apply. As a nominee for an inferior court, it would be inappropriate for me to second-guess the Supreme Court's decision in this case or any other case.**

7. At your nomination hearing, I read you a portion of a December 25, 1983 article in the Raleigh News & Observer stating that "Allen said he shared those [Helms'] reservations about the King holiday and believes Helms was unfairly criticized. Allen said there is ample documentation that key King advisers were members of the American communist party." Yet you testified at your hearing that "I believe that Dr. King deserved a holiday."

A. Was the article's description of your position inaccurate or did you change your opinion since 1983 about whether there should be a King federal holiday? Please explain.

**ANSWER: It was my practice not to express any personal views during my tenure as Press Secretary for the 1984 Helms Campaign. The article's description of my position in terms of my personal views on a King federal holiday was inaccurate. I supported a King federal holiday in 1983 and continue to support it today. The December 25, 1983 article reflects in large part the writer's paraphrase of our conversation rather than direct statements from me. Throughout the campaign, I endeavored to articulate the positions and views of the campaign and not my own. In this regard, aside from expressing the personal anguish I experienced during the debate of the holiday, I sought not to inject my personal views on this or any other issues. During my years of public service at both the state and federal levels since 1984, I have worked to honor the King Holiday, but also to further Dr. King's true vision of a "beloved society." In this regard, I represented Governor Gilmore and the Commonwealth of Virginia at an historic gathering in Atlanta with Mrs. Coretta Scott King and the Martin Luther King, Jr. Center for Creative Non-Violence to work on increasing the impact of the King Holiday, Dr. King's philosophy, and year round activities based upon Dr. King's teachings. I also worked to obtain public and private sector support to modernize the Martin Luther King Center's information technology that led to more public access of Dr. King's writings and the Center's activities. I worked with Governor Gilmore to honor Dr. King and Mrs. King in Virginia through numerous other activities during my tenure as Secretary of Health and Human Resources, the highlight of which included working with Governor Gilmore to declare a separate state holiday honoring Dr. King. Prior to 2000, Virginians celebrated a combined holiday honoring Robert E. Lee, Stonewall Jackson, and Dr. King. Governor Gilmore issued a proclamation to honor Dr. King and his work on behalf of all Americans with his own day of recognition. As Virginia's Secretary of Health and Human Resources, I worked with the Martin Luther King Family Life Center in Norfolk, Virginia to bring Martin Luther King, III to speak at the inaugural Right Choices for Youth Conference in 1999. Hence, my record of support for a national holiday honoring Dr. King has been longstanding. Moreover, my work with the King Center, and King family members, and as a speaker at King Holiday events also have been extensive.**

B. In what ways do you believe that Senator Helms was unfairly criticized with respect to the King holiday? Please explain.

**ANSWER: At the time of the article and the debate over the King holiday, Senator Helms and others who opposed the holiday were dismissed summarily as racists or opposing the holiday on racial grounds rather than for the reasons expressed by Senators during the congressional debates. Such allegations, without evidence of racial animus, were not only unfair but were divisive and did little to resolve the debate.**

8. The December 25, 1983 article also stated that "Allen said that there are other prominent blacks more deserving of a national holiday, such as track star Jesse Owens, educator George Washington Carver, and abolitionist Frederick Douglass." At your hearing, you testified that these three individuals have contributed not only to African-American culture but also to American culture and "would be deserving of attention as well." Do you believe today that Owens, Carver, and Douglass are more deserving of a national holiday than King? Did you have this belief in 1983? Please explain.

**ANSWER: In the December 25, 1983 article to which you refer, please note that I was not quoted as saying that track star Jesse Owens, educator George Washington Carver, or abolitionist Frederick Douglass were more deserving of a national holiday than Dr. Martin Luther King, Jr. This was the writer's interpretation of our discussion. While I believe that Owens, Carver, Douglass, and other men and women who have contributed to the advancement of civil rights of Americans are deserving of national recognition, this is not a substitute for recognizing the contributions of Dr. King that merited a national holiday in his honor. The point I was making 20 years ago was that at that time there was a national effort to recognize the contribution of African Americans to the civil rights struggle in America. This effort was concurrent with the effort to have a national civil rights holiday in addition to a national holiday in honor of Dr. King. My comments regarding other prominent African Americans were in reference to and in the context of both of these efforts.**

9. According to the December 25, 1983 article, you agreed with Senator Helms' opposition to extending the Voting Rights Act of 1965, and believed that the law was unfair because it applied only to the South. Do you continue to have these beliefs about the Voting Rights Act? Please explain.

**ANSWER: I did not then and do not now oppose the extension of the Voting Rights Act of 1965. My concern in 1983 was that in discussing the extension of the Voting Rights Act, it should be applied evenly across the country to protect the voting rights of minorities throughout the United States and not just to those living in southern states. Given that we were taking the opportunity to discuss extending the Voting Rights Act, it was my feeling that we should engage in extending it across America. Indeed, at the time I discussed this issue, I noted that states like Massachusetts had one of the lowest African American voter**

**participation rates in the U.S. and therefore, African Americans could benefit from having Massachusetts under the same scrutiny as those southern states and subdivisions covered by the Voting Rights Act of 1965.**

10. You have given speeches to the Federalist Society. Do you agree with the following statement from that organization's mission statement: *"Law schools and the legal profession are currently strongly dominated by a form of orthodox liberal ideology which advocates a centralized and uniform society.* " Why or why not?

**ANSWER: I have no personal knowledge of the specific foundation or basis from which the Federalist Society forms the above referenced mission statement. I have not formed an opinion regarding whether law schools are generally dominated by a particular ideology. Moreover, during my attendance at Duke University Law School from 1987 to 1990, I do not believe Duke promoted a particular liberal or conservative ideology.**

**With regards to the Federalist Society's mission statement reference to lawyers, I disagree with the notion that the legal profession is dominated by a particular ideology. In my experience, legal professionals are a diverse and varied group.**

11. According to the March 2003 New York Times Magazine, Judge Luttig of the 4th Circuit told a reporter that he thinks the politics surrounding judicial appointments makes judges hyperconscious of their political sponsors. According to Judge Luttig: "Judges are told, 'You're appointed by us to do these things.' So then judges start thinking, Well, how do I interpret the law to get the result that the people who pushed for me to be here want me to get?" Judge Luttig concluded: "I believe that there's a natural temptation to line up as political partisans that is reinforced by the political process." Mr. Allen, do you agree with these comments of Judge Luttig?

**ANSWER: I am not personally aware of the factual basis of Judge Luttig's opinion nor am I familiar with the context in which Judge Luttig made those remarks. In my personal experience as a judicial nominee, however, I have received no such political directives nor have I ever attempted to align myself with particular political views in order to obtain a judicial nomination. In my opinion, to the extent any such influence is implicit or explicit in the nomination process, I would view it as a breach of my judicial obligations to succumb to such pressure.**

12. On September 22, 2003, you represented the Department of Health and Human Services at a press briefing to discuss the President's faith-based initiative and the Compassion Capital Fund (CCF), in particular. I believe that there is an important role for the federal government to play in encouraging religious organizations to do more for the good of society. At the same time, I am troubled by the grants the Department of Health and Human

Services has awarded through the CCF. Over the past two years, the CCF has awarded 81 grants totaling $56.9 million to help build the capacity of faith-based and community organizations to enable them to provide increased services to low-income and other vulnerable populations. However, I have heard complaints that all of the faith-based organizations have been Christian organizations.

A. How many of the 81 grants were awarded to religious organizations?

**ANSWER: Overall**

**Please allow me to clarify that in my official capacity as Deputy Secretary of the Department of Health and Human Services I speak often on behalf of the Department and its various agencies. While I spoke at the above referenced press briefing, the Department's Administration for Children and Families (ACF) was responsible for evaluating and selecting Compassionate Capital Fund grantees. I provide you with the following information about the grantees, which is also publicly available through, among other things, the HHS website, at *www.hhs.gov*.**

**In 2003, the ACF made 83 grants under the Compassionate Capital Fund. Of which, ACF awarded 34 grants to faith-based organizations, 31 grants to community-based organizations, and 18 grants to community-based organizations having a faith-based organization partner. Please note that it was difficult to classify a grantee as faith-based or community-based because of the following: (1) there is no self-identification required in the application; (2) the federal government has not defined what constitutes a faith-based organization; (3) it is very difficult to judge on name alone; and (4) thus, any judgment is highly subjective and subject to error.**

**Breakdown**

**Of the 83 grants, 21 were continuation awards to intermediary organizations, 10 were new intermediary awards, and 52 were mini-grant awards directly to faith-and community-based organizations.**

**Of the 21 continuing intermediaries, ACF awarded 9 grants to faith-based organizations, 8 grants to community-based organizations and 4 grants to community-based organizations having a faith-based organization partner.**

**Of the 10 new intermediaries, ACF awarded 4 grants to faith-based organizations, 3 grants to community-based organizations, and 3 grants to community-based organizations having a faith-based organization partner.**

**Of the 52 mini-grants, 21 were faith-based organizations, 20 were community-based organizations, and 11 were community-based organizations having a faith-based organization partner.**

B. What was the amount of each of those grants?

**ANSWER: Compassionate Capital Continuing Intermediaries.**
**Total Grants: 21. Total Grant Award: 24,773,117 in FY'02 and 23,406,110 in FY'03**

| AppName | State | FY '02 Award | FY'03 Award |
|---|---|---|---|
| United Way of Massachusetts Bay | MA | 2,000,000 | 2,000,000 |
| JVA Consulting, Inc. | CO | 1,008,547 | 1,008,547 |
| Christian Community Health Fellowship | IL | 1,128,330 | 1,128,330 |
| The National Center for Faith-Based Initiative | FL | 700,000 | 525,000 |
| Montana Office of Rural Health | MT | 614,555 | 614,555 |
| Associated Black Charities, Inc. | MD | 1,500,000 | 1,500,000 |
| Clemson University | SC | 1,033,431 | 792,350 |
| Southeast Asia Resource Action Center | DC | 682,240 | 682,240 |
| Community Technology Centers' Network (CTCNET) | MA | 1,499,770 | 1,499,770 |
| Emory University | GA | 1,499,999 | 1,487,530 |
| Operation Blessing International | VA | 500,000 | 500,000 |
| Mennonite Economic Development Associates | PA | 1,000,000 | 1,000,000 |
| Nueva Esperanza, Inc. | PA | 2,466,406 | 2,466,470 |
| University of Nebraska | NE | 1,160,742 | 1,171,742 |
| CJH Educational Grant Services, Inc. | NC | 1,508,987 | 1,116,440 |
| Institute for Youth Development | VA | 2,500,000 | 2,500,000 |
| Catholic Charities of Central New Mexico | NM | 1,000,000 | 875,000 |
| Northside Ministerial Alliance | MI | 1,000,000 | 750,000 |
| Volunteers of America, Inc. | VA | 699,159 | 524,639 |
| University of Hawaii | HI | 600,000 | 600,000 |
| SVDP Management, Inc. | CA | 673,041 | 663,497 |

**Compassionate Capital New Intermediaries.**
**Total Grants: 10. Total Grant Award: $5,600,000**

| AppName | State | Amount |
|---|---|---|
| Citizens Committee for New York City | NY | 312,348 |
| Foundation for Community Empowerment | TX | 578,892 |
| Greater Minneapolis Council of Churches | MN | 532,000 |
| Holy Redeemer Institutional Church of God in Christ | WI | 626,598 |
| Kentucky River Foothills Development Council, Inc. | KY | 511,298 |
| Louisana Association Nonprofit Organizations | LA | 401,022 |
| National Center for Neighborhood Enterprise | DC | 498,403 |
| Northwest Leadership Foundation | WA | 740,438 |
| United Way of Tucson & Southern Arizona | AZ | 686,982 |
| We Care America, Inc. | DC | 712,020 |

**Compassionate Capital Mini-Grant program:**
**Total Grants Awards: 52 Total Grant Amount $2,586,532.**

| AppName | State | Amount |
|---|---|---|
| Access to Racial and Cultural Health Institute, Inc. | VI | 50,000 |
| Big Brother Big Sister of Southeast Alaska | AK | 49,907 |
| Big Brothers, Big Sisters of Montana | MT | 50,000 |
| Boys and Girls Aid Society of Oregon | OR | 49,716 |
| Breaking Free, Inc. | MN | 50,000 |
| Care Alliance | OH | 50,000 |
| Center for Family Health, Inc. | MI | 50,000 |
| Christ Ecumenical Center | IL | 50,000 |
| Christ Lutheran Church | PA | 50,000 |
| Citizens for Affordable Homes | NV | 48,084 |
| City Gate, Inc. | DC | 50,000 |
| Community Housing Services, Inc. | CO | 50,000 |
| Conta Costa Opportunity West | CA | 50,000 |
| Cornerstones of Care | MO | 50,000 |
| Council of Churches of Greater Bridgeport | CT | 50,000 |
| Delaware Ecumenical Council on Children and Families | DE | 50,000 |
| Emmanuel Gospel Center, Inc. | MA | 50,000 |
| Episcopal Social Services, Inc. | KS | 50,000 |
| Georgia Legal Services Program, Inc. | GA | 50,000 |
| Groundwork Incorporated | NY | 49,913 |
| Hartford Action Plan on Infant Health | CT | 50,000 |

| | | |
|---|---|---|
| Hawaii Pro Bono Attorney Referral Project | HI | 50,000 |
| Hazard Perry County Community Ministries, Inc. | KY | 50,000 |
| Housing Options for the Mentally Ill | IL | 50,000 |
| Interfaith Hospitality Network of Colorado Springs, Inc. | CO | 50,000 |
| The Dream Program | VT | 47,195 |
| Joy Corporation of Baton Rouge | LA | 50,000 |
| Lao Family Community of MN, Inc. | MN | 50,000 |
| Lee County Family Resource Center | AR | 48,185 |
| Montgomery S.T.E.P. Foundation | AL | 50,000 |
| Multifaith Works | WA | 50,000 |
| Opportunities Industrialization Center of Greater Milwaukee | WI | 50,000 |
| Riverside Coalition of Common Ground | CA | 50,000 |
| Rural Human Services, Inc. | CA | 49,430 |
| Saint Gregory Community Center Council Inc. | MI | 50,000 |
| Salem Leadership Foundation | OR | 48,876 |
| St. Clair Children's Advocacy Center, Inc. | AL | 50,000 |
| St. Paul AME Church | IA | 50,000 |
| St. Paul's Episcopal Church | VA | 50,000 |
| Steppingstone Music Opportunities d.b.a. The Sad Café | NH | 48,648 |
| Tedford Shelter, Inc. | ME | 49,984 |
| Telamon Corporation | NC | 50,000 |
| The Center for Drug Free Living, Inc. | FL | 50,000 |
| The Philadelphia Youth Network, Inc. | PA | 50,000 |
| The Source: A Boys and Girls Club | SD | 50,000 |
| Thunderbird Challenge, Inc. | OK | 50,000 |
| Trinity Church, Inc. | FL | 50,000 |
| Washington County Comm. Action Council, Inc. | MD | 47,000 |
| We're Reaching Out | KY | 50,000 |
| West Islip Youth Enrichment Services, Inc. | NY | 50,000 |
| World Vision | WA | 49,584 |
| Stopover Services of Newport County, Inc. | RI | 50,000 |

C. Is it accurate that all of the religious organizations were Christian organizations?

**ANSWER: Again, it is difficult to determine the number of Christian organizations, whether they are intermediaries or sub-awardees, as (1) there is no self-identification required in the application; (2) it is very difficult to judge on name alone; and (3) thus, any judgment is highly subjective and subject to error. The name of the applicant was the sole basis for determining whether an applicant was a faith-based, Christian, non-Christian, or community-based organization. As such, I am unable to provide you with a definitive answer.**

**Based on names alone, it appears that all of the faith-based intermediaries have a Christian affiliation.**

**The intermediaries are authorized to issue sub-awards to smaller organizations, in order to help support start-up and operational costs. More than 500 sub awards have been made, totaling more than $10 million. About 50 percent of the sub-awards were made to faith-based organizations, and 50 percent were made to community-based organizations. While Christian organizations received the majority of the faith-based sub-awards, Jewish and Buddhist organizations were recipients as well.**

D. Over 500 organizations applied for grants through the CCF in 2002. How many non-Christian organizations applied for a grant?

**ANSWER: As noted above, it was difficult to determine the number of Christian or non-Christian organizations, whether they be intermediaries or sub-awardees, as (1) there is no self-identification required in the application; (2) it is very difficult to judge on name alone; and (3) thus, any judgment is highly subjective and subject to error. The name of the applicant was the sole basis for determining whether an applicant was a faith-based, Christian, non-Christian, or community-based organization.**

**After an initial screening to determine the eligibility of the applicants, in 2002, ACF reviewed 340 of the 354 applications submitted. Approximately 67 percent of these organizations were community based and 33 percent were faith based. Of the community-based organizations, approximately 50 percent had faith-based partners. Only 3 percent of the faith-based organizations were non-Christian.**

E. Do you believe it is appropriate for the federal government to award grants solely to organizations of one particular faith?

**ANSWER: Government should never favor one organization over another on the basis of faith. The Compassionate Capital Fund program used a competitive review process to award applicants. Such reviews were based solely on the basis of the applicant's ability to demonstrate that it could perform the service needed.**

13. Last year, the CCF awarded Operation Blessing, International a three-year continuing grant of $500,000 per year. This organization was created and is run by Pat Robertson who, just a month before the CCF grants were announced, said, "To think that this [Islam] is a peaceful religion is fraudulent." He even went so far as to declare that the Prophet Muhammad was "a killer." Do you believe it is appropriate for the federal government to provide direct funding to an organization whose leader has made statements inconsistent with President Bush's frequent admonition that our war on terror is not a war on Islam?

**ANSWER: I am not familiar with this statement or the context in which it was made. I believe it is wrong and divisive to make broad and generalized comments about any religion.**

14. In examining the specific details of how the President is implementing his faith-based initiative, I am concerned that the good intentions behind this proposal may lead to troubling, unintended consequences.

A. Do you believe faith-based organizations that receive federal funds should be able to use any part of those funds for religious worship, instruction, or proselytization? Please explain where you would draw the line, if at all.

**ANSWER: No. Faith-based organizations should take steps to ensure that their inherently religious activities, such as religious worship, instruction, or proselytization, are separate - in time or location - from the government-funded services that it offers. For example, if a church receives Federal money to help unemployed people improve their job skills, it may conduct this program in a room in the church hall and still have a bible study taking place in another room in the same hall (but no Federal money can be used to conduct the bible study). Or a faith-based social service provider may conduct its programs in the same room that it uses to conduct religious activities, so long as its government-funded services and its religious activities are held at different times.**

**The Department of Health and Human Services and its agencies complies with Executive Order 13279 and Department regualtions governing the use of program dollars. The**

**following examples are illustrative and not exhaustive of the rules, regulations, guidelines, or policies pertaining to federal grant programs.**

**Executive Order 13279. The Executive Order provides in Section 2(f) that "faith-based organizations that receive Federal financial assistance may use their facilities to provide social services supported with Federal financial assistance without removing or altering religious art, icons, scriptures, or other symbols from these facilities."**

**Substance Abuse Mental Health Services Administration ("SAMHSA"): 42 USC 290KK-2: No funds provided under a designated program shall be expended for sectarian worship, instruction, or proselytization.**

**SAMHSA: 42 USC 300x-57(a)(2): No person shall on the ground of sex . . . or on the ground of religion, be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity funded . . . under this title.**

**42 USC 290kk-1(f)(4): a religious organization that is a program participant shall not in providing program services or engaging in outreach activities under designated programs discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.**

**SAMHSA: 42 USC 290cc-33(a)(2) - no person shall on the ground of sex or religion be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under . . . this title.**

**HHS has several non-discrimination provisions that prohibit discrimination against beneficiaries on the basis of religion. The Head Start section is 42 USC 9849: The Secretary shall not provide financial assistance for any program, project, . . . unless the grant or contract . . . provides that no person with responsibilities in the operation thereof will discriminate with respect to any such program, project, . . . because of race, . . .or beliefs.**

B. Do you believe faith-based organizations that receive federal funds should be required to abide by state and local laws, specifically those related to health and safety standards and employment discrimination? Please explain.

**ANSWER: To my knowledge, there is no general Federal law that prohibits faith-based organizations that receive Federal funds from hiring on a religious basis. Nor does the Civil Rights Act of 1964, which applies regardless of whether an organization receives Federal funds, prohibit faith-based organizations from hiring on a religious basis. This Act protects**

**Americans from employment discrimination based on race, color, religion, sex, national origin, age, and disability. Yet, the Civil Rights Act also recognizes the fundamental rights of faith-based organizations to hire employees who share their religious beliefs.**

**State and local laws may place conditions on the receipt of government funds. For example, some employment laws may prohibit discrimination on the basis of religion. Some of these laws may exempt religious organization, while others may not. Should I be confirmed as a judge, I would apply the law and the Supreme Court precedent interpreting federal law.**

C.. Do you believe faith-based organizations that receive federal funds should be able to discriminate against beneficiaries or potential beneficiaries of a social service on the basis of religion?

**ANSWER: No. *See, e.g.* SAMHSA: 42 USC 290cc-33(a)(2) - no person shall on the ground of sex or religion be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under . . . this title.**

**If a faith-based organization accepts Federal money, it may not discriminate against a person seeking help who is eligible for the service. In addition, as noted above, a faith-based organization may not require those they serve to profess a certain faith or participate in religious activities, in order to receive services it provides for the Federal government.**

15. The Civil Rights Act of 1964 prohibits most public and private employers with 15 or more employees from discriminating in their employment practices on the basis of race, color, national origin, sex, and religion. However, religious employers have an exemption with respect to religious discrimination, which was expanded in 1972 and currently states: "This subchapter shall not apply ..... to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities." Although I support this right of religious organizations to use religious criteria in hiring people to carry out their religious work, it is unsettled whether this exemption applies to positions funded with federal funds. Do you believe faith-based organizations that receive federal funds should be able to discriminate against employees or potential employees on the basis of religion, if the position will be funded with federal funds? Please explain.

**ANSWER: If I am fortunate enough to be confirmed as a Fourth Circuit Judge, I would address this issue like any other that comes before the court by following the Constitution, Supreme Court and Fourth Circuit precedent, as well as other relevant laws enacted by Congress. Given the potential for this particular issue to come before the Court to which I**

**have been nominated, it would be inappropriate for me to provide a specific opinion or to speculate on a specific outcome in this matter.**

**Responses of Claude Allen to Written Questions**
**Submitted by Senator Edward M. Kennedy**

1. As you no doubt are aware, some of the members of the American Bar Association's Standing Committee on the Federal Judiciary concluded that you were "not qualified" for a life-time appointment to the Fourth Circuit Court of Appeals.

   a. Please share with the Committee any insights you have about why some attorneys in your community would suggest that you are "not qualified" to be a federal judge on the court of appeals.

**ANSWER: A substantial majority of the ABA committee found that I am "qualified" to be a federal judge on the court of appeals based upon their review of legal skills, professional experience, and temperament. Because I am not familiar with the few attorneys to whom you refer, it would be presumptuous to attempt to offer any insight into their reasons for suggesting that I am "not qualified" to be a federal judge on the court of appeals.**

   b. According to your Senate questionnaire, you have tried only one case as lead counsel. How many witnesses did you examine during that trial? Did you present opening statement and closing argument in the case? How many, if any, other attorneys worked on the trial?

**ANSWER: In my questionnaire response, I limited my response to those cases in which I was involved in the federal court system (Article III courts). My response does not fully represent my litigation experience in that it does not reflect the work I have done in the government contracts area in which much of my litigation experience was gained in practice before the courts of contract appeals or administrative proceedings. In Lyn Campbell v. Southeast Physicians Group, I examined approximately 10 witnesses during the trial. I presented the opening statement in the case. One other attorney worked on the trial. I drafted the pleadings and argued the case before the Fourth Circuit Court of Appeals. Additionally, in Planned Parenthood v. Camblos, on a motion for a temporary injunction, I worked with a team of 5-6 attorneys with the Office of the Attorney General. I was the co-lead counsel on this matter and shared the oral argument with a co-Deputy Attorney General in the US District Court for the Western District of Virginia.**

   c. In you questionnaire, you state that you were involved in seven to ten cases that were tried to judgment. Please state the exact number of cases you tried, the name of each case, and the role you played in each trial (*i.e.*, how many witnesses you examined; which, if any of the pre-trial and post-trial briefs you drafted; and whether you presented an opening statement or closing argument at trial). In addition, please indicate whether B of the seven to ten cases you

worked on that were tried to judgment B you were *not* involved in any of these cases during the actual trials.

**ANSWER: In my questionnaire response, I limited my response to those cases in which I was involved in the federal court system (Article III courts). My response does not fully represent my litigation experience in that it does not reflect the work I have done in the government contracts area in which much of my litigation experience was gained in practice before the courts of contract appeals or administrative proceedings. Moreover, my litigation practice primarily consisted of appellate work. Hence, many of the cases on which I worked involved researching and drafting pleadings for cases in the U.S. Supreme Court, the U.S. Courts of Appeals, and the U.S. District Courts. The vast majority of cases I worked on either settled, or were resolved on the pleadings, or without oral argument.**

**As an associate attorney at Baker & Botts, L.L.P. my trial experience was gained primarily through work on government contracts bid protest litigation before the boards of contract appeals. I have not maintained any records regarding the specifics of this work but can respond generally.**

**My litigation practice involved procurement or bid protests before the General Services Board of Contract Appeals, Armed Services Board of Contract Appeals, Postal Service Board of Contract Appeals, Housing and Urban Development Board of Contract Appeals, and the U.S. Court of Appeals for the Federal Circuit. In all cases, I drafted pleadings including pre-trial and post-trial briefs as part of a litigation team. In 5 cases, I participated substantially in the discovery process, deposing witnesses, and preparing interrogatories. In 3 cases, I participated at trial before Administrative Law Judges by examining witnesses. These cases were tried to judgment. In no cases, did I present the opening or closing arguments.**

**In Campbell v. Southeast Emergency Physicians Group, I worked with one other attorney in trying the case before the U.S. District Court for the Eastern District of Virginia. I drafted the pleadings including pre-trial and post-trial briefs, conducted discovery, presented the opening argument at trial, and examined about 10 witnesses. On appeal to the U.S. Court of Appeals for the Fourth Circuit, I drafted the pleadings and argued the case before the Court.**

**As Deputy Attorney General for the Civil Litigation Division in the Office of the Attorney General, I supervised 75 attorneys and staff in the conduct of litigation involving the Commonwealth of Virginia before state and federal courts. The cases in which I participated most significantly and directly include:**

*Moon v. Meadows*, 952 F. Supp. 1141 (E.D. Va. 1997), *aff'd sub nom. Meadows v. Moon*, 117 S.Ct. 2501 (1997) (mem.) and *Harris v. Moon*, 117 S. Ct. 2501 (1997) (mem.). I directed a litigation team of 7 attorneys representing named defendant and the Commonwealth of Virginia in defending a challenge to drawing of Virginia's Third Congressional District, the Commonwealth's first majority-minority congressional district. I worked on all pleadings for trial. I did not examine witnesses at trial. Nor did I present opening or closing arguments.

*Planned Parenthood v. Camblos*, 155 F.3d 352 (4th Cir. 1998), *cert. denied*, 1999 U.S. Lexis 1062 (Feb. 22, 1999). I represented defendant Commonwealth Attorney and Commonwealth of Virginia. As co-counsel on the case I argued before Judge Turk, US District Court for the Western District of Virginia. The litigation team consisted of 9 attorneys. I worked on the pleadings before the District Court and the Court of Appeals.

*Edmonds v. Clarkson*, 996 F. Supp. 541 (E.D. VA 1998), 210 F.3d 361 (4th Cir. 2000), *cert. denied*, 1999 U.S. LEXIS 6770 (Oct. 10, 2000). I was co-counsel representing the Commonwealth of Virginia in opposing federal constitutional claim of a state judge who resigned his office during a judicial disciplinary investigation where plaintiff failed to raise the claims during the initial judicial inquiry. I directed the team of 4 attorneys. I did not examine any witnesses or present opening or closing arguments at trial.

*Cox v. Saunders (In re Sargent)*, 136 F.3d 349 (4th Cir. Feb. 13, 1998), *cert. denied*, 1998 U.S. Lexis 5389 (Oct. 5, 1998). I was co-counsel representing the Commonwealth of Virginia and an Assistant Attorney General opposing a motion to sanction the attorney. I worked on the pleadings with a team of 4 attorneys. I did not argue at the hearing.

*Coyne Beahm, Inc. v. U.S. FDA*, 966 F. Supp. 1374 (M.D. N.C. 1997). I was lead co-counsel representing the Commonwealth of Virginia. I drafted and filed a brief *amicus curiae*. I worked with a team of 3 attorneys. As amicus, Virginia did not argue before the U.S. District Court for the Middle District of North Carolina.

In addition to my other experience, as a third year law student, I participated in trial practice under a North Carolina law that permitted me to practice in state/county court in Durham, NC. There, I handled numerous misdemeanor cases before the North Carolina courts. During this time, I assisted in the appeal of a death penalty case. In this case, as part of a team of attorneys at the law firm of Kilpatrick & Stockton, I researched and drafted pleadings filed in the North Carolina Supreme Court challenging the imposition of the

**death penalty on the grounds that the penalty was disproportionate in its application to the defendant. I did not participate in the oral argument of this matter. I do not have any records pertaining to this time period.**

d. Can any of the cases you tried be considered complex litigation? If so, please explain. How long was each of the trials in which you participated? How many witnesses were presented by each side? Were any of the witnesses expert witnesses?

**ANSWER: Government contracts litigation can be considered complex by its very nature in that cases are litigated to judgment on a 40-day schedule in which all aspects of the case including filing pleadings, conducting discovery (interrogatories, depositions, etc.), and the trial usually are completed. Additionally, work involving the Federal Energy Regulatory Commission typically involves complex issues. Most of the cases I worked on were at the appellate level and did not require expert testimony in the Courts of Appeals. Federal elections/reapportionment cases, namely Moon v. Meadows, was considered a complex case because of the scope of the litigation involved. Expert witnesses were used in Moon v. Meadows. I directed the litigation team through the trial phase and on appeal. The trial lasted 2 days with approximately 8-10 witnesses presented by each side. Expert witnesses were examined at trial. While I worked with the litigation team throughout the trial, I did not examine any witnesses at trial.**

2. In your response to Question No. 18 of the Questionnaire, you cite *Edmonds v. Clarkson*, 996 F. Supp. 541 (E.D. Va. 1998), 210 F.3d 361 (4th Cir. 2000), *cert. denied,* 1999 U.S. LEXIS 6770 (Oct. 10, 2000), as one of the ten most significant litigated matters which you personally handled. You state that you "directed the litigation team throughout the litigation." The complaint in that case was filed in April 1997.

a. When did you become involved in the case?

**ANSWER: In June 1997, when I was appointed Deputy Attorney General for the Civil Litigation Division of the Virginia Office of the Attorney General.**

b. Approximately how many hours did you spend working on the case?

**ANSWER: The practice of the Office of the Attorney General was that Deputy Attorneys General did not record time spent on cases. As Deputy Attorney General, I did not keep track of hours worked on specific cases. Consequently, there are no records available that would allow me to**

**approximate the number of hours I spent working on this particular case.**

3. In July 1997, the defendants, whom you represented, filed motions for attorneys fees Pursuant to the Court's order, the defendants were required to file statements reflecting their attorneys' fees sometime in October. Two other attorneys in the Virginia Attorney General's office, Gregory Lucyk and Mary Shea, filed affidavits regarding their time spent in the case, and included their hours spent in the case through October. Apparently, you filed no such affidavit. It also appears that the Attorney General's office never filed a motion for your attorney's fees to cover any time you spent on the *Edmunds* case.

   a. Why did you not file an affidavit setting forth your time spent on the case?

**ANSWER: The practice of the Office of the Attorney General was that Deputy Attorneys General did not record time spent on cases. Accordingly, as Deputy Attorney General for the Civil Litigation Division, I did not record the time spent on this or any other case on which I worked. Consequently, I did not file an affidavit setting forth my time spent on this case.**

   b. How many hours had you spent in the case at the time that your co-counsel filed their affidavits in October? Did you keep your time on a computerized system as did Mr. Lucyk and Ms. Shea? If so, please produce those time records. If you did not keep time on a computerized system, please explain why not.

**ANSWER: I did not keep records of time spent on the case. There are no records from which to determine how many hours I spent on the case when my co-counsel filed their affidavits in October. Deputy Attorneys General did not keep their time on a computerized system as did Assistant Attorneys General. I, therefore, did not use the computerized system, as did Mr. Lucyk and Ms. Shea.**

   c. Did the Attorney General's office ever request attorney's fee for any time you spent on the *Edmunds* case? If not, please explain in detail why not and whose decision it was not to seek such fees.

**ANSWER: No. The Virginia Attorney General's Office did not request attorney's fees for any time I spent working on the *Edmunds* case. The practice of the Virginia Attorney General's Office was not to include a Deputy Attorney General's time in requests for attorney's fees because Deputy Attorneys General did not record time spent on cases.**

   d. After the affidavits and the supporting brief pertaining to attorneys' fees were filed in October, 1997, it appears that there was no other activity at

the District Court level except for the issuance of the Court's orders. Is this correct?

**ANSWER: To my knowledge, there was no other activity at the district court level. The litigation team would have continued work on this matter in anticipation of appeal.**

e. Were you involved at the District Court level in the case after October, 1997. If so, in what capacity and how much time did you spent on the case?

**ANSWER: To the extent there were matters open in the District Court after October 1997, I continued my involvement in the case until my departure from the Office of the Attorney General in January 1998. Much of this involvement would have been supervisory in nature. As noted above, because it was not the practice of Deputy Attorneys General to record the hours they worked on a specific case, there are no records available that would allow me to provide an estimate of how much time I spent on this matter between October 1997 and January 1998.**

f. The plaintiff appealed the case in April, 1998. By this time, you had ceased practicing law. Therefore, you were not involved in the litigation of the appeal in any way, is that not correct? How do you reconcile this fact with your statement that you directed the team "throughout the litigation"?

**ANSWER: The reference in my statement to "throughout the litigation" refers to the period during which I was Deputy Attorney General for the Civil Litigation Division. In April 1998, I left the Attorney General's Office to become Secretary of Health and Human Resources for the Commonwealth of Virginia. My response in no way meant to suggest involvement in this matter beyond the time in which I served as Deputy Attorney General. I participated in post trial activities in anticipation of an appeal prior to my departure in January 1998.**

4. You served as the Press Secretary during the 1984 reelection campaign of former Senator Jesse Helms, and for Senator Helms when he served on the Senate Foreign Relations Committee. Shortly before you joined Senator Helms' reelection campaign in 1983, Senator Helms vocally opposed extension of the Voting Rights Act. In fact, Senator Helms led a filibuster in the Senate arguing against extending Section 5 of the Voting Rights Act. A 1983 article in the *Raleigh News & Observer* ("Conservative Black Joined Helms Staff Because He Agreed with Senator's Ideals," *Raleigh News & Observer*, 12/25/83) notes that you personally agreed with Senator Helms's opposition to extension of the Voting

Rights Act.

a. Please explain in detail why you stated in 1983 that the Voting Rights Act should not be extended.

**ANSWER: I did not then and do not now oppose the extension of the Voting Rights Act of 1965. The statement you are referring to was not my statement, but rather an inaccurate assumption on the part of the author of the news article. My concern in 1983 was that in discussing the extension of the Voting Rights Act, it should be applied evenly across the Country to ensure equality in voting rights to all Americans and not just to those living in southern states. Given that we were taking the opportunity to discuss extending the Voting Rights Act, it was my feeling that we should engage in extending it across America. Indeed, at the time I discussed this issue, I noted that states like Massachusetts had one of the lowest African American participation rates in the U.S. and therefore, African Americans could benefit from having Massachusetts under the same scrutiny as those southern states and subdivisions covered by the Voting Rights Act.**

b. Do you still believe that the Voting Rights Act should not have been extended? If not, please explain in detail how and why your views on this issue have changed.

**ANSWER: As I explained above, I supported extending the Voting Rights Act so that it would be applied evenly across the country.**

c. As you know, there have been several important Voting Rights Act cases in the Fourth Circuit in recent years. Given your stated views on the Voting Rights Act, what can you say to assure this Committee that if you are confirmed, you will faithfully apply the Voting Rights Act rather than seek to overturn it?

**ANSWER: As I explained above, I supported extending the Voting Rights Act so that it would be applied evenly across the country.**

During your testimony before the Senate Judiciary Committee, you were asked about your knowledge of the Hugh Finn case. In response, you stated that your role in the case was "simply ministerial."

a. You testified that, when you were Secretary of Health and Human Resources, you received a telephone call about that case from someone before you were contacted by Michele Finn. Who was that initial telephone call from?

**ANSWER: I did not personally speak to the caller who registered the complaint about Mr. Finn's care. My reference to receiving a phone call was to my Office and not to me personally. I subsequently was notified of the call after it was received. I have no recollection of the caller's identity or the specific date and time of the call.**

b. During your confirmation hearing, you testified that your role in the Hugh Finn case was "minimal, in simply passing information to the Governor for his consideration." Exactly what information did you provide the Governor regarding this matter and what specific steps did you take to obtain that information?

**ANSWER: On several occasions, I contacted the Governor's Office to forward the comments I received from Michelle Finn as well as the rest of the Finn Family. Additionally, upon receiving Marie Saul's utilization review of Hugh Finn's conditions, I forwarded it to the Governor Office. My Office merely forwarded relevant information as it was received.**

c. Did you or anyone on your staff have contact with State Delegate Bob Marshall regarding the Hugh Finn case? If so, please describe in detail the nature of that contact, who was involved, and what information was requested or conveyed.

**ANSWER: I may have spoken with Delegate Marshall and a member of my staff may have spoken with Delegate Marshall. If we did speak, I cannot recall the specifics of the conversation.**

d. Did you or anyone on your staff have contact with nurse Marie Saul regarding the Hugh Finn case? If so, please describe in detail the nature of that contact, who was involved, and what information was requested or conveyed.

**ANSWER: No.**

e. Please describe in detail any contacts you had with any member of Hugh Finn's family regarding his case, including but not limited to, the names of the family members you had contact with, when, who initiated the contact, and what information was requested or conveyed.

**ANSWER: I spoke with Michelle Finn, with Hugh Finn's parents, two of his brothers as well as Michelle Finn's sister, Elaine Glazier. I do not remember the specifics of each conversation other than I expressed compassion for the difficult circumstances the family was dealing with and they expressed their**

**concern for Hugh Finn. I did not initiate the contact in any of these cases.**

f. Other than the persons named in your answers to the questions above, did you have contact with anyone else regarding the Hugh Finn case? If so, please set forth in detail who you spoke with, the nature of the contact, who initiated the contact, and what information was requested or conveyed.

**ANSWER: No.**

**Responses of Claude Allen to Written Questions from Senator Patrick Leahy**

1) Many federal judges come to the bench with years of litigation experience. They have demonstrated their commitment to core jurisprudential values over decades of legal work before they are entrusted with the power to shape the legal rights upon which our democracy depends. Recognizing that judges play such a pivotal role in our democracy, the American Bar Association says that anyone nominated to a federal court of appeals should have at least 12 years of litigation experience. A substantial minority of your ABA rating panel rated you "not qualified."

According to your responses to the Committee questionnaire, while you have been out of law school longer, you really have only about seven years of actual litigation experience. It looks like most of your legal career has been spent in the executive branch in a variety of political appointments, where your primary responsibilities involved policy making. Why do you think your experience commends you for a lifetime appointment to the Fourth Circuit? Can you understand why people looking at your record might see this as a politically motivated appointment?

**ANSWER: A substantial majority of the ABA rating panel found me qualified based upon an extensive review of my training, skills, and temperament including my diverse legal career and public service. Over the past twenty years, I have worked in all three branches of government at the federal level and in three executive branch positions in two offices at the state level. My public service includes serving as a judicial law clerk for the United States Court of Appeals for District of Columbia. As a judicial clerk, I worked on complex cases involving criminal, civil, administrative, and international law. In addition to this judicial experience, I have had the privilege of serving as a professional staff member, press secretary, and Minority Deputy Staff Director on the United States Senate Foreign Relations Committee. There, I gained experience in the legislative branch of government. My present public service in the executive branch consists of serving in a Presidentially appointed and Senate confirmed position as Deputy Secretary for the U. S. Department of Health and Human Services. As the Deputy Secretary, I am the chief operating officer of a department responsible for implementing a broad spectrum of legislative and judicial mandates governing and/ or implemented by 13 federal agencies and approximately 63,000 employees. Likewise, I served in the Virginia executive branch as Secretary of Health and Human Resources where I was similarly responsible for 11 state agencies and in excess of 15,000 employees. In each of these positions, I have utilized my legal training to execute the law.**

**My legal career also includes serving as a Deputy Attorney General in the Virginia Attorney General's Office. In this capacity, I managed, supervised, and directed the appellate and trial work of in excess of 75 attorneys and staff. Additionally, I have practiced law at the Washington, D.C. firm of Baker & Botts, L.L.P. where my practice included government contracts, litigation before the boards of contract**

**appeals, appellate practice before the federal courts and the U.S. Supreme Court, general litigation and transactions practice in energy, civil law, administrative law, and international law issues.**

**It is this diverse background and experience that has led to bipartisan support of my nomination from numerous former and current Virginia Attorneys General including, Anthony F. Troy, James S. Gilmore, III, Richard Cullen, Randolph E. Beals, and Jerry Kilgore.**

2) You have made some apparently inconsistent statements regarding the implementation of the Children's Health Insurance Program ("CHIP") in Virginia. This program was intended to provide health insurance to children of poor parents, and was widely hailed on both sides of the aisle as a necessary and humane step in assuring that all children receive adequate health care. Nonetheless, while you were Virginia's Secretary of Health and Human Resources, you opposed it. You asserted that Virginia's failure to sign many children up for CHIP was because poor parents did not want to receive "more welfare." I find it difficult to believe that any parent would deny their child health care because it might be viewed by some as welfare, but that was apparently your belief. Later you said that implementation was slowed because CHIP funds might provide benefits for reproductive health services, and that this was in fact a "sticking point" for you. Why did you impede implementation of the CHIP in Virginia?

**ANSWER: I have never opposed the implementation of Virginia's State Children's Health Insurance Program (S-CHIP). In fact, I have been a strong advocate of the program in Virginia. As you know, when Congress created S-CHIP, it gave states the option to expand Medicaid, create a new health insurance program outside of Medicaid, or do a combination program. Sixteen states, including Vermont and Virginia, chose to create a separate program rather than expand Medicaid. Virginia initially moved to expand Medicaid. Governor Gilmore, however, sought to take full advantage of the flexibility Congress afforded states by enacting a state separate program that built upon the private insurance market. Virginia received approval on October 22, 1998. By comparison, Vermont's plan was approved on December 15, 1998.**

**S-CHIP was created for children in families that are above the poverty level. The Gilmore Administration believed that to be successful, Virginia needed to do things differently than how Medicaid operated in the past. For example, Virginia simplified the eligibility process, reducing the application from 14 pages to 2. Additionally, Virginia adopted new outreach strategies beyond the local welfare offices that sought to capture working families who were neither familiar with nor desirous of working with welfare agencies.**

**It has been widely known for some time, including through General Accounting Office reports, that there are millions of children eligible for Medicaid who have not enrolled. The ideas for making health insurance look and work more like the**

**private sector came from discussions with families, advocacy groups, and others about how to overcome the stigma attached by many to Medicaid.**

**Virginia not only developed a program that would reach uninsured low-income children, but their parents as well. Insuring the parents to increase enrollment of children has proven to be a successful strategy.**

**I did nothing to impede the S-CHIP program in Virginia. Rather, the Health Care Finance Administration (HCFA, now the Centers for Medicare and Medicaid Services) delayed approval of Virginia's plan because HCFA sought to require coverage not required under federal law.**

3) At your hearing, you acknowledged that education about the use of contraceptives has played an important role in Uganda's success in limiting new cases of HIV/AIDS. In light of this acknowledgment, do you still agree with the Bush Administration's policy of restricting certain funds to "abstinence-only" programs, which by their very design deprive individuals of important information about contraceptive use? Have you ever opposed safe sex education programs, either in Virginia or at the federal level? Please explain.

**ANSWER: The success of Uganda in fighting HIV/AIDS has been through the comprehensive sex message of ABC. Abstinence for young people, Being faithful in one's relationships, and Condom use in high-risk populations, recognizing the risks that are still present with condom use. In the youth population of Uganda, the focus has clearly been on abstinence education and the delay of sexual debut among teen-age boys and girls, which has resulted in a 50 percent reduction of HIV rates in young girls and a delay of sexual debut of more than two years.**

**The laws that govern Title V and Title XX, the abstinence-only programs in the United States, were established by Congress, and they are clear that abstinence-only is the message for young people under these programs. This does not prohibit a teacher or grantee, however, from referring a young person to their parents, their cleric, rabbi, or minister, local health department, or other programs within the school for information about contraception.**

**In light of Uganda's documented success and the success of other abstinence programs, I believe that abstinence education should be supported for young people, and this is part of the comprehensive ABC message. I have always supported the ABC message, and believe that it is the safest sex message.**

4) It was reported that you were the force behind a recent review of smaller AIDS prevention organizations that receive federal funds. In response to protests against this review, the Department of Health and Human Services Inspector General's Office led an audit of all HIV/AIDS groups that receive federal funds. You have been quoted as saying that after the audit those HIV/AIDS groups should "think twice" before protesting your

policies in the future. You stated at your hearing that you "in no way believe that Government officials should threaten" individuals and organizations. You also stated that you had nothing to do with the initiation of the audit.

A) What did you mean when you said that in the future these groups would "think twice"? Do you understand how that could be perceived as a threat?

**ANSWER: Secretary Thompson was in Barcelona to provide a message of hope and to discuss the United States' significant contribution to combat the HIV/AIDS crisis around the world. While individuals certainly have a right to protest, I meant to express that it was not helpful to the overall HIV/AIDS effort for them to prevent a cabinet-level official from presenting such an important message in an international forum. Secretary Thompson and I met with the groups immediately following the protest in a good faith effort to address their concerns. Given the full context of Secretary Thompson and my discussions with activists, I do not see how my comments could be perceived as a threat.**

B) When you said that you had nothing to do with "the audit," were you referring to the initial review of AIDS workshops to determine if their material was sexually explicit, or were you referring only to the larger audit that took place after the Barcelona protests, or both?

**ANSWER: I had no involvement in any investigations or audits of HIV/AIDS organizations either before or after the conference in Barcelona.**

C) You stated at your hearing that the audit was not in response to the Barcelona protests, but rather an "across the board" review that included such other programs as bioterrorism. In 2001, however, you were quoted in the Associated Press as saying that you were unaware of any other HHS-funded programs that received similar scrutiny. How do you reconcile these statements? Can you point to any documents that support your assertion that these groups were not singled out for scrutiny?

**ANSWER: I am not familiar with the 2001 Associated Press article mentioned or the statement attributed to me. HHS, however, reviews all of its funding streams, including bioterrorism, HIV/AIDS, Ryan White Program, Medicaid, and Medicare on a regular basis. While as Deputy Secretary and the Chief Operating Officer for the Department I work to ensure that the Department makes the best use of and account for the taxpayers' dollars, I had no involvement in any investigations or audits of HIV/AIDS organizations or any other organizations. Such audits are handled by the Office of the Inspector General. As such, I am unable to provide any documents.**

# SUBMISSIONS FOR THE RECORD

**Judiciary Committee**
**Introduction of Deputy Secretary Claude Allen**
**Nominee: U.S. Court of Appeals for the Fourth Circuit**
**October 28, 2003 – 10:00 am – SD-226**

- **Mr. Chairman and members of the Committee, I am very pleased to join my colleague, Senator Warner, in supporting the nomination of Deputy Secretary Claude Allen, a fellow Virginian and close friend, to serve on the U.S. Court of Appeals for the Fourth Circuit, a seat that has been declared a Judicial Emergency by the National Judicial Conference.**

- **Secretary Allen has the distinct honor of having served in every branch of government.**

    - **Secretary Claude previously served as the Deputy Director of Minority Staff and as a Press Secretary and Professional Staff Member on the Senate Foreign Relations Committee.**

    - **After law school, Secretary Allen clerked for the Honorable David B. Sentelle on the D.C. Circuit Court of Appeals.**

    - **And Secretary Allen has served in various Executive Branch positions on both the State and federal level.**

- **When I was Governor of Virginia, I was honored to have Secretary Allen as the Deputy Attorney General that served my Cabinet Secretary of Health and Human Resources.**

- **In this position, he was instrumental in warding off legal challenges to implementation of Virginia's ambitious and successful welfare reform plan leading the nation even before Congress passed welfare reform on the federal level.**

    - **Then serving as Secretary of Health and Human Resources, Secretary Claude Allen continued to implement Virginia's groundbreaking welfare reform programs under my successor, when he served as Secretary of Health and Human Resources for the Commonwealth of Virginia, leading 13 agencies and 15,000 employees.**

- **I was Governor of Virginia during a despicable and deplorable rash of African American church burnings.**

    - **During this time, Claude Allen worked with former Virginia Governor Doug Wilder to bring about a dialogue in Virginia about this issue.**

- **By the way – Secretary Allen has been confirmed twice by the Senate.**

- **Secretary Allen was nominated under President Clinton to serve on the Board of Directors for the African Development Foundation (ADF), which works to alleviate poverty and promote broad-based sustainable development in Africa.**

    - **In this role, Secretary Allen worked on various issues, including the development of micro-businesses for women in Africa, the care for orphans affected by HIV/AIDS, and adding an economic focus on the HIV/AIDS crisis in Africa.**

- **On May 26, 2001, Claude Allen was confirmed by the Senate as the Deputy Secretary for the Department of Health and Human Services, a position he currently holds.**

    - **During his service at the Department of Health and Human Services, Secretary Allen has worked on issues dealing with the health disparities in minority communities, as well as the issues of bioterrorism, homelessness, and HIV/AIDS, both in our nation and abroad.**

- **Secretary Allen has an outstanding record of commitment to positive youth development in Virginia, as well as across the nation.**

    - **He has been active in Virginia's Right Choices for Youth Program, which promotes healthy behaviors among youth in the effort to help them live up to their fullest potential.**

- **Secretary Allen received his undergraduate degree from the University of North Carolina at Chapel Hill and both a law degree and a Masters of Law from Duke University School of Law.**

- **I am pleased to recognize members of Secretary Allen's family who are here today:**

    - **Wife – Jann**
    - **Alexander – son**
    - **Mildred – Secretary Allen's sister**
        - **Tom – brother-in-law (Mildred's husband)**
    - **Paul Gillis – former State President of the Virginia State Conference of NAACP**

- **Secretary Allen is an outstanding nominee, and I am confident that he will honorably and fairly administer justice in the Fourth Circuit.**

- **Mr. Chairman, members of the Committee, it is my sincere pleasure to support this exceptional nominee and outstanding Virginian, and I recommend his swift approval by this Committee.**

http://www.sunspot.net/news/opinion/bal-ed.judge28oct28,0,6810076.story

# Questions about Mr. Allen

October 28, 2003



THE APPOINTMENT of Claude A. Allen to the federal appeals court for the district that covers Maryland shouldn't have gotten this far. He is a Virginia Republican, nominated to a vacancy traditionally held by a Marylander, in a district in which Marylanders are a fifth of the population. By our calculations, at least a third of the seats on the 15-member 4th U.S. Court of Appeals should represent Maryland interests. The White House has ignored those considerations and pushed ahead with its decidedly conservative choice, who has spent more of his career making public policy than lawyering.

Today, Mr. Allen, deputy secretary of the federal Department of Health and Human Services, is expected to appear before the Senate Judiciary Committee for his nomination hearing. If committee members choose to ignore the geographic objections raised by their Maryland colleagues, Paul S. Sarbanes and Barbara A. Mikulski, then they will have plenty of reasons to question Mr. Allen's legal qualifications. The American Bar Association gave Mr. Allen the equivalent of a C-minus when its review panel rated him "qualified" by a "substantial majority," which means a couple of panel members found him "not qualified" for the job.

That's not surprising. Mr. Allen has never been a judge, nor has he distinguished himself in his legal career. The extent of his legal experience is four years with a private law firm and three years in the Virginia Attorney General's Office - about five years shy of the ABA's 12-year standard. Mr. Allen's short tenure as a practicing lawyer should raise serious questions for the committee, notably: Does he have the legal knowledge and practical experience to don the robe of a federal appeals court judge? Residents of Maryland, Virginia, the Carolinas and West Virginia deserve federal appellate judges who rate better than C-minus.

Then there are Mr. Allen's records as Virginia's health and human services chief and as deputy director of the federal agency. A born-again Christian and former aide to North Carolina Sen. Jesse Helms, Mr. Allen has taken positions on reproductive rights, end-of-life and AIDS prevention issues that, critics charge, raise significant concerns about his ability to divorce his ideological views from his role as a judge.

The experience of Michelle P. Finn is instructive. She battled Mr. Allen and the state of Virginia over efforts to remove a feeding tube from her brain-damaged husband in contravention of state law. A court found for Mrs. Finn, but her dealings with the state tell her that Mr. Allen is more concerned with asserting his personal beliefs than upholding the law.

That is an issue Mr. Allen should address today in Washington.

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September 30, 2003

*VIA FACSIMILE NOS. (202)224-6331 and (202)224-9102*
*AND REGULAR MAIL*

The Honorable Orrin Hatch
Chairman
Judiciary Committee
United States Senate
104 Hart Senate Office Building
Washington, D.C. 20510

*Re: Nomination of Claude A. Allen to the U. S. Court of Appeals for the Fourth Circuit*

Dear Senator Hatch:

I write to express my strong support of the President's nomination of Claude A. Allen to the U. S. Court of Appeals for the Fourth Circuit. Claude is one of the finest men I know. I had the good fortune to work with him when I was the Attorney General of Virginia and, before that, as Chief Deputy Attorney General, while Claude was Virginia's Secretary of Health and Human Resources. He is a man of the utmost integrity, a highly intelligent and capable lawyer, and a person who exhibits a calm and thoughtful demeanor in even the most trying of circumstances. In short, he clearly has the sort of judicial temperament that a judge should have. I first came to know Claude Allen well during the transition after the 1997 election here in Virginia. I was the incoming Chief Deputy Attorney General, and even though Claude's appointment as the incoming Secretary of Health and Human Resources had already been announced by the Governor-elect and he was, consequently, very busy getting prepared for the new role he would soon assume, he was most generous with his time and in sharing his expertise as I prepared to take over the day-to-day management of the Virginia Attorney General's Office.

Despite Claude's relatively young age, he has accomplished so much in a distinguished career as Counsel to the Attorney General of Virginia, as Deputy Attorney General of the Civil Division, the division with the largest and most wide-ranging responsibility, in the Virginia Attorney General's Office, as Virginia's Secretary of Health and Human Resources, and as U. S. Deputy Secretary of Health and Human Services. He has frequently had to deal with difficult and controversial matters, and he has handled such matters with great aplomb.

In short, Claude Allen is truly a quality person who cares deeply about others and has dedicated his career to public service. He would certainly make an excellent addition to the Fourth Circuit Court of Appeals.

Sincerely,

Randolph A. Beales

Randolph A. Beales
Former Attorney General of Virginia

RAB/mpg/#650773

Thanks so much for all that you are doing to support Claude's confirmation —

October 27, 2003

Senator Orrin Hatch
Chair, Senate Judiciary Committee
224 Dirksen Office Building
Washington, DC 20510
FAX: 202-224-6331

Senator Patrick Leahy
Ranking Member, Senate Judiciary Committee
152 Dirksen Office Building
Washington, DC 20510
FAX: 202-228-0861

Dear Senators Hatch and Leahy:

The Black Women's Bar Association of Suburban Maryland strongly urges you to oppose the nomination of Claude Allen to the Fourth Circuit Court of Appeals.

We were extremely disappointed to learn that President Bush had nominated a Virginian, Claude Allen, to a seat that belongs to the people of Maryland and that should be filled by a lawyer from Maryland. Judge Francis Murnaghan from Maryland served in this seat with distinction for years. After his death, President Clinton recognized the seat as a Maryland seat when he nominated Maryland's African American federal judge, Andre Davis, to fill the seat. Unfortunately, the Senate never confirmed Judge Davis. We agree with Maryland Senators Paul Sarbanes and Barbara Mikulski that President Bush should withdraw this nomination, and nominate a Marylander instead.

We also note that Claude Allen, with his lack of qualifications and his ideological background, is the wrong nominee for the Fourth Circuit. Mr. Allen received a partial "not qualified" rating from the American Bar Association, likely based on the fact that he has practiced law for fewer than seven years. We know of countless African American lawyers who are more qualified for an appellate court judgeship on the Fourth Circuit. We are also concerned about Claude Allen's reputation as a Jesse Helms' protege. The Fourth Circuit needs a moderating influence; we strongly believe that Claude Allen is not it. Thank you for your attention to this matter.

Sincerely yours,

Dolores Dorsainvil, Esq.
President

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October 27, 2003

The Honorable Orrin Hatch
Chairman, Committee on Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington D.C. 20510

The Honorable Patrick Leahy
Ranking Member, Committee on Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington D.C. 20510

Dear Senator Hatch and Senator Leahy:

I write to offer my unconditional support for Secretary Claude Allen's nomination to the Fourth Circuit Court of Appeals of the United States. As a former Attorney General of Virginia, I can attest to the unmatched service Secretary Allen has provided to the Commonwealth and to his country.

In addition to Secretary Allen's prior work as a Deputy Attorney General in Virginia and then Secretary of Health and Human Resources, he is in the unique position of having worked at the highest levels of all three branches of the federal government. This perspective will provide him with the temperament and expertise to address any legal issue that comes before him during his tenure on the bench.

During my term as Attorney General of Virginia, I counted on Claude Allen not only for his tremendous legal expertise but also his counsel on major issues confronting our office on a daily basis. While he had specific responsibilities in the areas of health and human resources, the entire Office of the Attorney General looked to Secretary Allen for guidance and direction out of respect for his legal credentials and his common sense understanding of the law and how it affects government and the citizens it represents.

Claude Allen will bring a combination of mastery of the law, leadership and commitment to public service, and unwavering support for the Constitutional principles that make the United States the envy of the entire world. I would strongly encourage the confirmation of Secretary Allen and look forward to answering any questions you may have about my experience with and admiration of his work.

Sincerely,

R. Cullen 1st

Richard Cullen

Mrs. Marenann Dolivier
2268 E. Marlene Drive
Gilbert AZ 85296
August 21, 2003

Senator Orrin Hatch
104 Hart Senate Office Building
Washington DC 20510

Dear Senator Leahy,

Claude A. Allen has been nominated to the 4th Circuit Court of Appeals. He has no judicial experience (except for one session as a law clerk). His legal biases are clear. As Virginia's Secretary of Health & Human Services in 1998, he showed his right-to-life extremist agenda and his determination to invade a family's privacy. He went to court trying to overturn court findings of an irreversible condition and convincing evidence of Hugh Finn's wishes not to be KEPT alive. He fought at every turn. The Virginia General Assembly found Allen's blatant harassment so outrageous that it awarded Mrs. Finn $48,000 to help pay her legal fees fighting his zealotry.

Allowing one to die with dignity by not prolonging suffering MUST NOT be confused with euthanasia. Just because medical science CAN keep someone alive doesn't mean they should! I believe in the right-to-life, but I am a realist, not an extremist. Even if I held an extremist view, I believe that judges are supposed to apply the law. They are not supposed to impose their personal views on us.

Please, please block the appointment of Claude A. Allen to the federal bench.

Thank you,

Marenann Dolivier

**Statement of Sen. Dick Durbin**
**Nomination Hearing of Mark Filip**
**to be District Court Judge for the Northern District of Illinois**
**October 28, 2003**

I have had the chance to meet with Mark Filip in Chicago, I have reviewed his record, and I am happy to support his nomination to be a District Court Judge for the Northern District of Illinois.

Mark Filip – a son of Illinois – has impressive credentials. He was born in Chicago and graduated *phi beta kappa* from the University of Illinois, Urbana-Champaign. He studied at Oxford on a prestigious Marshall Scholarship, and then at Harvard Law School, where he graduated *magna cum laude* and served on the *Harvard Law Review*. He received an award at Harvard for having one of the top two GPAs in his first-year class, and he went on to serve as a law clerk to Justice Antonin Scalia on the U.S. Supreme Court.

As an Assistant U.S. Attorney in Chicago, Mark was on a trial team that successfully prosecuted seven corrupt police officers from Chicago's Austin Police District for racketeering, extortion, bribery, narcotics trafficking, and other acts of police corruption. Mark and his trial team received a Justice Department award and the Chicagoland Chamber of Commerce's 1999 Excellence in Law Enforcement Award.

Scott Lassar, the former U.S. Attorney in Chicago under President Clinton, supervised Mark and said he was a "rising star" and "extremely bright and hard-working."

I am impressed by that recommendation, but I am equally impressed with praise that Mark has received from his opposing counsel. One criminal defense lawyer in Chicago said Filip was "one of the fairest,

most even-keeled, thoughtful prosecutors I've gone up against." The lawyer said he thinks Filip "would make a wonderful judge because he understands the human condition and the principle that everyone deserves their day in court."

Another Chicago criminal defense lawyer said that Mark was a zealous and difficult adversary but predicted: "I think he can put his prosecutor's hat aside and be a very good judge." And another former opposing counsel observed that he found Mark to be "forthright, honest, and a person of impeccable integrity."

Mark has earned a similar reputation in his current job at the Chicago office of Skadden Arps. One of his opposing counsel in a recent and highly contentious bankruptcy case said that although Mark was a "formidable adversary" he was a person of great skill, integrity, temperament, fairness, and professionalism. The opposing counsel said that she has "the highest and best regard for Mark Filip in all respects."

Finally, I want to commend Mark on his commitment to giving back to his community. He has performed significant *pro bono* work at Skadden Arps, despite what I suspect were competing interests both at work and at home. He has served on the boards of the University of Illinois Urbana-Champaign Alumni Council, the University of Illinois Alumni Association, and the Harvard Law Society of Illinois. He has been a leader in the American Bar Association's White Collar Criminal Law Committee. He has been an adjunct law professor at the University of Chicago and Northwestern University. And he has been a leader in charitable campaigns at his church.

One final note. When I first examined Mark's record, I was concerned about an article he wrote back in law school. In the article, Mark ~~lectured against~~ legislative history and suggested that judges should pay little heed to what Members of Congress say about legislation, beyond the mere words of the statutes we pass. When I met with Mark last month,

he assured me that he now understands the value of legislative history and, indeed, he has made frequent citation to it as a practicing attorney. He wrote a letter discussing this matter, and I would like to enter that letter into the record.

In sum, I want to express my confidence in Mark Filip and my hope that he will receive a rapid and smooth Senate confirmation.

MARK R. FILIP
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October 3, 2003

The Honorable Richard J. Durbin
United States Senate
332 Dirksen Senate Office Building
Washington, D.C. 20510
By Express Mail and Facsimile

Dear Senator Durbin:

Thank you for the opportunity to meet with you and Mike Daly earlier this week in connection with my nomination to the United States District Court for the Northern District of Illinois. It was my honor and pleasure to speak with you.

As you requested, I have tried in this letter to explain my current thinking about the subject of judicial use of legislative history – the subject of my law review note some eleven years ago. To begin, I should emphasize that I regard the question of whether judges should use legislative history to help interpret statutes as a clearcut legal issue: Precedent from the Supreme Court and Seventh Circuit makes clear that judges can and should use legislative history, under various and far-reaching circumstances. If fortunate enough to be confirmed as a District Judge, I would apply that precedent faithfully and without hesitation.

With respect to the note itself, let me please make three points. First, the thrust of the note was about exploring options to best promote the supremacy of Congress's democratically chosen policy choices and, concomitantly, to discourage willful judging that might undermine that legislative supremacy. See Note, "Why Learned Hand Would Never Consult Legislative History Today," 105 Harv. L. Rev. 1005, 1024 (1992) (discussing the "promot[ion] of legislative supremacy" and the "mimim[ization of] the role of judges' personal preferences in statutory interpretation"). Those goals – ensuring that congressional policy choices are fully respected, and minimizing the role of judges' personal preferences in statutory interpretation – are ones, I believe, that are widely if not universally shared.

Second, this note was written while I was in law school and before I gained extensive real-world experience litigating a variety of federal criminal and civil cases. Through those cases, I have come to appreciate the important role that legislative history can play in resolving interpretive questions, and I have often used legislative history in briefs and arguments. My views on the subject of legislative history now are not dissimilar to those stated by Justice Breyer when he wrote that textualist scholar-

ship about use and abuse of legislative history has helpfully made lawyers and judges "more sensitive to problems of the abuse of legislative history," but has not made the case that legislative history should be broadly or universally disregarded. See Stephen Breyer, "On the Uses of Legislative History In Interpreting Statutes," 65 S. Cal. L. Rev. 845, 846 (1992). At the same time, my years since law school, including my real world experience litigating cases for clients and the government, have underscored my belief in the importance, as discussed in the Learned Hand note, of "the goal of leaving policy decisions as much as possible in Congress's hands." Note, 105 Harv. L. Rev. at 1006.

Third, my law review note, like much law review scholarship, was written with a view to presenting a novel legal argument in a coherent and thought-provoking manner. (In selecting a note topic, the first step usually is to survey existing literature to determine whether a position has already been presented in the legal literature.) As a result, the note of necessity staked out a new position and did not revisit well-established views such as that legislative history is often helpful but sometimes can be abused, and that one must be careful not to misread it. In any event, as stated immediately above, as a result of my litigation experience since law school, I have come to appreciate the role legislative history can sometimes play in addressing statutory interpretation questions, as reflected in my citation of legislative history in briefs and my consultation of legislative history during many years of practice in federal courts.

Finally, let me please take this opportunity to forward a document that I inadvertently forgot to share at our meeting – an evaluation from the Chicago Council of Lawyers, culminating their review of my nomination, in which the Council found me qualified. (As I understand it, the Council only rates nominees as "qualified" and "not qualified".) I was particularly proud of the Council's reporting that I received strong reviews for my "legal ability, temperament, and professionalism," and the Council's reporting that "as a prosecutor, he [Filip] was considered exceptionally fair and forthright in his dealing with defense counsel."

Thank you again for the opportunity to meet with you and to address the subject of legislative history in this letter. And please do not hesitate to contact me if I can be of any further assistance in your evaluation process.

Very truly yours,

Mark Filip

Mark R. Filip

cc: The Honorable Peter G. Fitzgerald

**Mark R. Filip**

Mark R. Filip, 36, was admitted to practice in Pennsylvania in 1993 and in Illinois in 1995. Mr. Filip is currently a partner at Skadden, Arps, Slate, Meagher, & Flom, where he has been since 1999. His practice at Skadden includes complex civil litigation, corporate internal investigations and criminal defense. He spent four years prior to that as an Assistant U.S. Attorney for the Northern District of Illinois. From 1994 to 1995, he was an associate with Kirkland & Ellis. From 1993 to 1994, he was law clerk to U.S. Supreme Court Justice Antonin Scalia. Before that, he spent one year as clerk to Judge Stephen F. Williams of the U.S. Court of Appeals for the D.C. Circuit.

Mr. Filip has also lectured at the University of Chicago Law School since 2000. He was an adjunct professor at the Northwestern University School of Law from 1998 to 1999. He is a graduate of Harvard Law School.

Mr. Filip receives rave reviews for his legal ability, temperament, and professionalism. As a prosecutor, he was considered exceptionally fair and forthright in dealing with defense counsel. As a commericial litigator, his opponents credit him as a hard-worker who is a zealous advocate for his client.

The Council questions whether a lawyer with less than 12 years of practice is seasoned enough to be given a lifetime appointment as a federal judge. We believe, however, that Mr. Filip's extensive and varied litigation experience overcomes our concerns. The Council finds Mr. Filip qualified.

MICHELE P. FINN
2409 Running Brook Trail
Fisherville, KY 40023

June 19, 2003

Senator Orrin G. Hatch
Chairman, Judiciary Committee
U.S. Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Senator Patrick J. Leahy
Ranking Democrat, Judiciary Committee
U.S. Senate
152 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators Hatch and Leahy:

I am writing to express my strong objection to the nomination of Claude Allen to the United States Court of Appeals for the Fourth Circuit.

Mr. Allen's actions in 1998 as Secretary of Health and Human Resources in Virginia during the court case concerning my late husband, Hugh Finn, demonstrate that Mr. Allen is an unsuitable candidate for the judiciary, much less an appropriate candidate for this lifetime appointment. Mr. Allen is unafraid to abuse his discretion and use the power of office to promote his personal philosophy and moral views. Judges must be willing to separate their personal views from the law of the issues before them. They must also have respect for the proper role of government in order to ensure the legal rights of citizens who come before our federal courts. Mr. Allen fails in both respects.

Allow me to place Mr. Allen's actions in the context of the case. My husband, Hugh, was in a March 1996 car accident which left him with severe brain injury. After a year of acute and rehabilitative care at two hospitals and two rehab centers, Hugh was placed in a Manassas, Virginia nursing home where he qualified for Medicaid. His physician diagnosed Hugh as being in a permanent vegetative state (PVS). In May 1998 I asked two additional doctors, specialists in brain injury, to examine Hugh to see if they concurred with the attending physician's diagnosis. Upon their concurrence, I made the difficult decision to follow Hugh's express wishes that he would not want his life artificially prolonged if he were in such a condition. I had the authority to request the withdrawal of artificial nutrition and hydration on Hugh's behalf under the Virginia Health Care Decisions Act as Hugh's wife and as his legal guardian.

Hugh's parents and several of his siblings objected to this decision. On behalf of the family, John Finn, Hugh's brother, petitioned the Prince William Circuit Court. A temporary injunction was granted and a full evidentiary hearing took place July 29, 1998. Judge Frank A. Hoss ruled that I had met, and, in some of the criteria, exceeded the requirements of the statute and was authorized to make this end-of-life decision. The Order, entered August 31, 1998, states the Court's finding by "clear and convincing" evidence that Hugh was in a permanent vegetative state, and that discontinuance of artificial nutrition and hydration were his express wishes.

Authority to withdraw the artificial life support was stayed for the 30 day appeal period. During this time the resources of state government were used to try to find a way to force my husband to be maintained indefinitely on artificial life support against his express wishes and directly contrary to Virginia law on health care decision making. As you will see in the attached chronology of events, from September 3rd through September 29, 1998, there were at least six investigations at the nursing home by three separate agencies all falling under and reporting to Secretary Allen. This heavy handed use of government resources to contravene the law and further his own personal beliefs demonstrates that Claude Allen cannot be entrusted with the mantle of judicial authority.

Secretary Allen's determination to further his personal agenda led to a gross abuse of the power of his office. His agenda empowered government agencies to conduct repetitive investigations, often on the basis of patently false or anonymous complaints. Secretary Allen's agenda did not cease even when physicians chosen by the state also concluded that my husband was in a permanent vegetative state. Secretary Allen's agenda did not cease even when family members who had initially opposed my decision reached agreement not to appeal the court decision. Secretary Allen's agenda preyed on the vulnerabilities of a family in the midst of tragedy and personal turmoil. This government intrusion ultimately culminated in a midnight appeal by then Governor of Virginia, James S. Gilmore.

As Hugh's wife I exercised a moral obligation to honor his wishes. As his guardian I was legally bound to protect his interests. The July 29th hearing confirmed I was conducting these duties properly. For this, I endured the full weight of the power of the Governor of Virginia, the Attorney General's Office and the Secretary of Health and Human Resources and the agencies under his direction. In summary, Secretary Allen was a core participant in a concerted effort to impose his personal agenda and beliefs over the legal and moral rights to which my husband was entitled.

President Bush's nomination of Claude Allen as a lifetime appointee to the U.S. Court of Appeals for the Fourth Circuit is alarming. Claude Allen's actions during the Hugh Finn case showed personal disregard for the proper role of a high government official. He, therefore, cannot be expected to serve with the impartiality that the judiciary requires. Judges must uphold the law and protect the rights of citizens before our courts. Claude Allen's actions during the Hugh Finn case have shown he is incapable of meeting these essential standards for our judiciary.

Michele P. Finn
June 18, 2003

As a concerned citizen who regrettably has already experienced first-hand the improper use of high public office by Claude Allen; and in order to protect future citizens from abuse of the judicial process, I strongly urge you, as the ranking members of the Senate Judiciary Committee, to oppose Mr. Allen's appointment to the U.S. Court of Appeals for the Fourth Circuit.

Please indulge me with one parting thought, as I know this letter is lengthy. On October 8th, the day before Hugh's death, Delegate Marshall filed an emergency petition in Federal Court, and the District Court Judge rejected Delegate Marshall's arguments. If Hugh had not died the following day, it is entirely possible that the next step may have been the U.S. Court of Appeals for the Fourth Circuit. I hope you will ensure that future litigants before that court can expect a fair and impartial hearing of their cause.

Respectfully submitted,

Michele P. Finn

**Chronology of Virginia Government Intrusion in the Hugh Finn Case**
**Actions Taken with the Direction or Approval of Secretary Claude Allen**

**August 21, 1998:** Delegate Robert Marshall, a member of the House of Delegates, sends a letter to Secretary Allen, dated August 21, 1998, asking Secretary Allen to "immediately direct the resources of your department to investigating this matter in depth."

**September 3, 1998:** A physician for the Virginia Department of Health investigates Hugh's condition and care at the nursing home. The physician does an exit interview with the facility administrator where the physician tells him that he agrees that Hugh is PVS and that Hugh is receiving good care. Despite multiple requests, the Health Department never acknowledges even the existence of a written report of this investigation.

The concluded Health Department investigation should have been the end of the state government's involvement in this family's tragedy. Claude Allen had received a complaint concerning Hugh's condition and care. The investigation proved the allegation unfounded. Furthermore, Secretary Allen had the transcript of the July 29th hearing with the testimony of three physicians that Hugh was PVS. But, it seems apparent he did not receive the answer he wanted during the Health Department's investigation.

**September 14, 1998:** An Assistant Attorney General for the Department of Health calls one of my attorneys, Garey Eakes, and requests a copy of the 8/31/98 Court Order. She indicates "the Secretary [Claude Allen] has a copy of the transcript" and the Secretary "wants more information."

**September 18, 1998:** Marie Saul, a utilization review nurse for the Department of Medical Assistance Services (DMAS) enters the nursing home under the guise of conducting a utilization review. Hugh was one of the patients checked. Nurse Saul spent an uncustomary 2 ½ hours reviewing his chart and 70 minutes in his room. This was very unusual for a utilization review. It should have been obvious within minutes upon seeing Hugh that he was completely incapacitated and required all services indicated on the chart.

Nurse Saul was accompanied to Hugh's room by a staff nurse who remained with her for awhile. When finally Nurse Saul is alone in the room with Hugh, she says, "Hi" to Hugh and reports back that Hugh responds, "Hi." She then spends the rest of her time in the room trying to provoke another response without success. She leaves the nursing facility

**September 19, 1998:** Nurse Saul signs an extensive affidavit prepared by attorneys for the State detailing her visit in Hugh' room and the alleged "Hi."

**September 21, 1998:** The affidavit by Nurse Saul, the utilization review nurse, was given by the State to the family members who opposed the withdrawal of life support. Upon, what appears to be the urging of state officials, John Finn submits this affidavit in a hastily called hearing before Judge Hoss to try to have the July 29th case reopened on the grounds that there was new evidence that Hugh was not PVS. Upon reading the affidavit of Marie Saul it is clear that her mission was to allege that Hugh was not PVS when she did her investigation. With her motivation suspect,

her lack of expertise to diagnose PVS, no other witnesses present to verify her report, and the reality of guttural sounds produced by PVS patients, Judge Hoss ruled there was nothing new in this report and denied the request to reopen the case.

The Deputy Director of DMAS advises the nursing home they have received a complaint from a family member opposing withdrawal of life support that Hugh has an intestinal blockage and has been vomiting stool for three days without appropriate care. The agency indicates they will send Nurse Saul or another investigator back to the facility.

**September 22 – 24, 1998:** Nurse Saul returns to the nursing home to investigate. It appears to have taken her several days to determine Hugh did not have a blockage and was not vomiting stool. Note that these kinds of complaints are not normally the job of a utilization review nurse. Surveyors or Adult Protective Services usually investigate inadequate care.

**September 22, 1998**: Dr. Adiele, the Medical Director of the Medicaid program, informs the attending physician that the State has directed at least two doctors to examine Hugh. The examinations will take place within two days.

**September 24, 1998**: An Adult Protective Services (APS) representative (also reporting to the Secretary) arrives at the nursing home to investigate a complaint that Hugh has gangrene. The virtual daily investigations have all concluded that Hugh is receiving excellent care. DMAS staff investigating the two previous days did not observe gangrene. This obviously bogus complaint was used as an excuse for yet another agency under Secretary Allen to disrupt the care routine and to attempt to deny Hugh's legal rights.

The very same day, three doctors chosen by the State arrive at the nursing home to examine Hugh allegedly to determine if Hugh is in a PVS. These three doctors include the Medical Director for DMAS, Dr. Adiele; a neurologist, Dr. Gill; and a physiatrist (a doctor that specializes in rehabilitation for brain injury patients), Dr. Parks. All conclude that Hugh is PVS. Dr. Parks states to the nursing home administrator that if it were his family member he would have discontinued the feeding tube a year ago. Dr. Gill writes a formal report of his findings. My counsel receive this report September 29th. Several days later Del. Marshall is interviewed on local television and is asked about the doctors' findings. He is quoted as saying, "they did not do as they were instructed."

Note: On September 24 five representatives of State agencies, all under the authority of Secretary Allen, examine Hugh and produce no evidence to contradict the PVS diagnosis.

**September 26 – 27:** After emotionally wrenching family meetings, the family agrees not to appeal the Court Order approving my decision to withdraw the artificial life support.

**September 28, 1998:** Two APS representatives arrive at the nursing home There is no stated complaint to prompt the investigation. The nursing home's Assistant Director of Nursing, following my directions in the wake of concerns for Hugh's security, refuses to allow them to enter Hugh's room. They enter anyway, they ask the Assistant Director of Nursing to leave Hugh's room and she refuses. They finally left and told this nurse they would be back in twenty

minutes. The Guardian ad Litem, Elizabeth Munro von Keller, is notified and goes to the nursing home to be present for this latest APS investigation. The APS investigators tried to illicit responses from Hugh to no avail.

I received a telephone call from a family member who had opposed my decision, but who had agreed with the decision not to appeal. He told me the family was receiving harassing phone calls from state agency representatives trying to persuade them to reverse their decision and appeal the case.

**September 29, 1998**: In the early afternoon Garey Eakes and Elizabeth Munro von Keller learn from Joe McGuire, the opposing family's attorney, that Hugh's parents had received a call from the State (Claude Allen's people) asking them to continue the investigation.

In the late afternoon the written report concluding that Hugh was PVS, prepared by Dr. Gill, the neurologist sent in by the State, is faxed by the Attorney General's office to the nursing home. The nursing home administrator distributes it to my counsel. However, at 10:30 p.m. my attorneys receive calls that the Governor has filed suit to stop the withdrawal of the feeding tube by asserting that this is euthanasia – a position patently without basis and directly contrary to the plain reading of the Health Care Decisions Act statute. It is not much of a stretch to assume that the State officials took this "Hail Mary" approach because they could not substantiate, despite the virtually continuous investigations by state agencies all under the direction of Secretary Claude Allen that Hugh was not in a permanent vegetative state. The hearing takes place at the Prince William County Courthouse at 11:45pm; fifteen minutes before the time for appeal expires. Judge Hoss rejects the state's legal argument and their only "new" evidence, the previously rejected affidavit of Nurse Saul.

**September 30, 1998:** Hugh's feeding tube is removed.

**October 2, 1998**: Governor Gilmore appeals Judge Hoss' decision to the Virginia Supreme Court. Within hours and without a hearing, the justices issue a substantive decision unanimously upholding Judge Hoss' ruling.

**October 9, 1998**: Claude Allen's archived telephone log indicates that Del. Marshall called, leaving a message for the Secretary saying, "Thought you would want to know that Hugh died around 10:00 am this morning."

**February 1999**: The Virginia General Assembly approves an appropriation of $48,000 to help pay my legal expenses in condemnation of the state's interference in the Hugh Finn case.

**MR. PAUL C. GILLIS**
39 Langston Blvd.
Hampton, VA 23666

October 27, 2003

Senator Orrin Hatch
104 Hart Senate Office Building
Washington, D.C. 20510

Senator Patrick Leahy
433 Russell Senate Office Building
Washington, D.C. 20510

Dear Senators Hatch, Leahy and members of the Senate Judiciary Committee:

Please accept my wholehearted support of the nomination of Mr. Claude Allen, Deputy Secretary of Health and Human Services, to the position of judge to the U.S. 4th Circuit Court of Appeals.

Over the past several years, I have worked with Mr. Allen on a variety of issues and endorse his nomination to this respected position without reservation. I am confident that Mr. Allen will carry the same commitment of fairness, compassion and drive to assist those less fortunate -- particularly African Americans – which he demonstrated during his exemplary tenure as Secretary of Health and Human Resources, Counsel to the Attorney General, and Deputy Attorney General for Virginia.

It has been my direct experience that Mr. Allen has been an able, thoughtful, and tireless advocate for African Americans specifically and all Virginian's as a whole throughout his career in Virginia. Although there are a host of issues Mr. Allen worked on, he was particularly aggressive in helping to put an end to the rash of burnings of African American churches in Virginia.

In closing, I am confident that Mr. Allen will continue to serve people of Virginia with the same excellence, commitment, concern, and drive, on the bench that he has had in his other capacities.

Sincerely,

Paul C. Gillis

Paul C. Gillis
Former State President
Virginia State Conference NAACP

Statement
*United States Senate Committee on the Judiciary*
**Judicial Nominations**
October 28, 2003

**The Honorable Orrin Hatch.**
United States Senator , Utah

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Statement of Senator Chairman Orrin G. Hatch

Before the United States Senate Committee on the Judiciary

Hearing on.the Nomination of

Mark R. Filip to be

United States District Judge for the Northern District of Illinois

Mark R. Filip, our nominee for the Northern District of Illinois, has a wide variety of legal experience and will make an excellent addition to the federal bench.

Mr. Filip attended Oxford on a Marshall Scholarship, where he graduated with First Class Honors, receiving an Honors B.A. in Law. He then received his J.D., magna cum laude, from Harvard in 1992.

After graduation, Mr. Filip clerked for D.C. Circuit Judge Stephen Williams, then for U.S. Supreme Court Justice Antonin Scalia. After a year of private practice he joined the U.S. Attorney's Office for the Northern District of Illinois, where he prosecuted criminals for legislative, judicial, and police corruption; white collar fraud; labor racketeering; and international heroin trafficking. In 1999, Mr. Filip joined the Chicago office of Skadden, Arps, Slate, Meagher & Flom, where his practice includes commercial litigation, corporate internal investigations and criminal defense.

Additionally, Mr. Filip has taught at Northwestern University School of Law and the University of Chicago Law School. He has also spent an extraordinary amount of time involved with a variety of pro bono matters.

Mr. Filip's impressive legal experience and academic knowledge will serve him well as a federal district judge. It is my privilege to welcome this fine nominee to the Committee, and I look forward to hearing his testimony.

**John D. Kemp, Esq.**
**1875 Eye Street, NW**
**Washington, D.C. 20006**
**John.Kemp3@verizon.net**

June 6, 2003

The Honorable Orrin Hatch
Chairman, Committee on the Judiciary
U. S. Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510-6275

The Honorable Patrick Leahy
Ranking Member, Committee on the Judiciary
U.S. Senate
152 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senators:

I write in support of Claude Allen's nomination, and urge his confirmation, to serve on the U.S. Court of Appeals for the Fourth Circuit.

As a person with a disability, a proud member of the disability community for my entire life and, hopefully regarded as a leader by fellow community members, I'm proud to state my position for the record that Claude Allen deserves to be confirmed. I've witnessed his personal interest and participation in the civil rights-affirming Annual Gala of the American Association of People with Disabilities, and his supportive comments about our organization's mission

My leadership work in the disability community is or has been as follows: Co-Founder and current Board Chairman of the American Association of People with Disabilities; Incoming President (volunteer) of the U.S. International Council on Disabilities (USICD); past Board Chairman of Access Living of Metropolitan Chicago, a leading independent living center; past Board Chairman of CARF (Commission on Accreditation of Rehabilitation Facilities), and present Board memberships with the National Rehabilitation Hospital and the Rehabilitation Institute of Chicago, two of the prestigious rehabilitation hospitals, HalfthePlanet Foundation, The Abilities Fund for entrepreneurs with disabilities and The Eric Fund for the purchase of assistive technology for people with disabilities in the DC metropolitan area. For our federal government I

have served as Sen. Robert Dole's designated appointee to the National Council on Disability and presently serve on NIH's National Center on Medical Rehabilitation and Research's National Advisory Committee. My life has purpose, in part, by my community involvement and by my commitment to promoting a better quality of life for people with.disabilities. My law practice with the firm of Powers, Pyles, Sutter & Verville, P.C., is focused on assisting clients with their disability-related products, services and advocacy needs.

Claude Allen is worthy of U.S. Senate confirmation to serve as a judge on the U.S. Court of Appeals for the Fourth Circuit.

Sincerely,

John D. Kemp

July 10, 2003

Senator Orrin Hatch
Chair, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Senator Patrick Leahy
Ranking Member, Senate Judiciary Committee
152 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators Hatch and Leahy:

As lawyers and professors of law in states within the jurisdiction of the U.S. Court of Appeals for the Fourth Circuit, we write to express our opposition to the nomination of Deputy Secretary of Health and Human Services Claude Allen to that court. We harbor serious concerns both about the process surrounding Mr. Allen's nomination and about his extremist views and lack of qualifications for a lifetime appointment to a seat only one step below the Supreme Court.

First, we are disturbed by the President's decision to nominate Mr. Allen, a Virginian, to the seat left vacant when Judge Francis Murnaghan, a well-respected Maryland jurist, died. President Clinton nominated Andre Davis, another well-respected Maryland jurist to fill that seat, but, in spite of support from both of his home-state senators, Judge Davis was never given a hearing. In a transparent attempt to deny Maryland's senators any participation in the selection process, President Bush picked a Virginian to fill that seat. The Maryland State Bar Association has taken the unprecedented step of urging you not to consider a non-Marylander for that seat, and we do the same.

Even if Mr. Allen were a member of the Maryland Bar, however, we would still oppose his nomination. Through his relatively brief career as a political appointee of Virginia Attorney General and then Governor Jim Gilmore, and then as Deputy Secretary to Tommy Thompson in the U.S. Department of Health and Human Services, Mr. Allen has amassed a record of hostility toward basic rights that is not fitting for a federal judge. Mr. Allen has taken and supported hard-right positions on a number of critical and controversial issues, such as a woman's right to reproductive choice, welfare reform, health insurance for poor children, sex education in public school, and the right of next-of-kin of terminally ill patients to make decisions about life support.

As Virginia's Deputy Secretary of Health and Human Resources, Mr. Allen publicly supported laws endorsed by anti-abortion activists intended to restrict a woman's right to have an abortion. One law he supported, Virginia's so-called "partial birth abortion" statute, which was later struck down based on the Supreme Court's ruling in *Stenberg v. Carhart*, was touted by the Reverend Pat Robertson as a first step toward overturning *Roe v. Wade*. Mr. Allen also voiced public support for a state law that mandated a 24-hour waiting period for all women seeking to obtain an abortion in Virginia. Mr. Allen has been careful not to come right out and say that he opposes a woman's right to choose, but his actions make it clear that he does.

Mr. Allen admitted that the possibility that Virginia might have to provide abortions for low-income teenagers was a "sticking point" to his and the Governor's opposition to a program to provide health insurance for low-income children. This, in itself, is disturbing. But we are even more concerned over the fact that Mr. Allen, who was then in charge of enrolling the state's poor children, did not do so. For over two years after the adoption of the program, Mr. Allen's agency was criticized by nearly every Virginia newspaper for this failure. And when one paper noted that the Governor's budget cuts had contributed by intentionally capping the number of poor children who could be enrolled, Mr. Allen had the temerity to deny falsely that such a cap even existed. It is one thing to oppose the adoption of a new program of assistance to the poor. It is quite another simply to refuse to implement a policy, especially when the victims are children of working parents who cannot afford to send their kids to doctors.

We are also very concerned about actions Mr. Allen has taken and statements that he has made that suggest a hostility toward gays and lesbians and an indifference to their needs. In the past two years, Mr. Allen has initiated and led audits of several prominent and respected AIDS advocacy groups. The audits were a clear attempt to harass and silence the groups after some of their members protested the Bush Administration's ultra-conservative policies on AIDS research and prevention. Nonetheless, Allen has claimed that they are "routine," while at the same time issuing veiled threats about the potential harm to such groups if they speak out against the government. Such abuse of power raises grave concerns about Mr. Allen's willingness to use the even greater power of the bench to advance his ideological agenda. And his 1984 comment, as a-then campaign advisor to Senators Jesse Helms, that Helms' rival was vulnerable for his links "to the queers" only furthers our concerns that his views may be motivated by personal hostility.

Moreover, Mr. Allen's promotion of abstinence-only programs in the areas of both AIDS prevention and public school sex education demonstrates a willingness to replace science with personal politics that is akin to the type of activism we do not want in our federal judges. In spite of a recent report by former Surgeon General David Satcher specifically finding that a comprehensive sex education curriculum – one that combines information on birth control with promotion of abstinence until marriage – was the most effective means of curbing both teen pregnancy and transmission of HIV and other sexually transmitted diseases, Mr. Allen refuses to support such programs. And he has rejected assertions of gay rights groups that explicit materials are critical to educating vulnerable populations about the risk of AIDS. Mr. Allen's HHS has removed critical information about condoms from government websites. He claims that the government is merely trying to ensure accurate and up-to-date information, but it seems clear that it is using that excuse to excise information with which it does not agree, at the expense of the health and safety of potentially millions of Americans.

Although Mr. Allen's actions in a number of areas have provoked criticism and cause us to doubt the wisdom of his nomination, perhaps the most egregious was his involvement in the well-known case of Hugh Finn. Mr. Finn was severely and permanently brain damaged in a 1996 car accident. After over a year of rehabilitative care, his own physician, an expert, pronounced him to be PVS – in a permanent vegetative state. Mr. Finn had explicitly told his wife Michele that, should he ever be in such a condition, he did not want to be kept on life support. Respecting his wishes, and after consulting with two other experts, Mrs. Finn requested that her husband's

feeding and hydration tubes be removed. Allen and Gilmore stepped in, however, and fought Mrs. Finn in court to keep them in place. Even after a Virginia judge definitively ruled that she had the legal authority to terminate life support, Mr. Allen continued to spearhead the state's efforts to thwart her and turn an already painful experience into an extremely traumatic one.

Although a judge ordered sanctions against the governor for his involvement, and the Virginia legislature awarded Mrs. Finn nearly $50,000 to cover her legal expenses in the case, Mr. Allen has never apologized to Mrs. Finn for his outrageous attempt to usurp her role as next-of-kin. Again, this type of abuse of power is unacceptable at any level, but particularly troubling in the context of a nominee to a lifetime seat on the federal bench.

Finally, Mr. Allen is simply not qualified for the position to which he has been nominated. He worked as a lawyer for only four years, and he has since worked as a political appointee dealing with mainly non-legal, policy-related matters. The American Bar Association, which has been rating federal judicial nominees for fifty years, generally requires at least twelve years of legal experience for a nominee to the federal appellate bench. Mr. Allen does not even come close to qualifying.

Based on all of these concerns, we strongly oppose Mr. Allen's nomination to the Fourth Circuit and urge you to vote against his appointment.

Sincerely,

Clinton Bamberger
*Emeritus Professor of Law*
*University of Maryland School of Law*

Kenneth J. Barnett
*Attorney*
*Summersville, WV*

Donald K. Bischoff
*Attorney*
*Summersville, WV*

Clinton R. Bischoff
*Attorney*
*Charleston, WV*

Richard Bourne
*Professor of Law*
*University of Baltimore School of Law*

Elliot Bredhoff
*Attorney*
*Chevy Chase, Maryland*

Cammie Chapman
*Attorney*
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Doug Colbert
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*University of Maryland School of Law*

Ryan Creese
*Attorney*
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Stephen A. Davis
*Attorney*
*Summersville, WV*

Charles Daye

*Professor of Law*
*University of North Carolina School of Law*

Randall Galford
*Attorney*
*Summersville, WV*

Linda N. Garrett
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W. Warren Hamel, Esq.
*Venable, Baetjer and Howard, LLP*

Kelly Hamon
*Attorney*
*Summersville, WV*

Mark D. Hudnall
*Attorney*
*Summersville, WV*

John Levy
*Chancellor Professor*
*College of William and Mary, Marshall-Wythe School of Law*

Jonathan Lipson
*Assistant Professor of Law*
*University of Baltimore School of Law*

Carolyn McAllaster
*Clinical Professor of Law*
*Duke University School of Law*

Patrick C. McGinley
*Professor of Law*
*West Virginia University College of Law*

Christopher Morehead
*Attorney*
*Summersville, WV*

Jane C. Murphy
*Director of Clinical Education*
*University of Baltimore School of Law*

J. Wilson Parker
*Professor of Law*
*Wake Forest University School of Law*

Ralph Peeples
*Professor of Law*
*Wake Forest University School of Law*

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*University of Baltimore Family Law Clinic*

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*College of William and Mary, Marshall-Wythe School of Law*

Jane Wettach
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*Attorney*
*Summersille, WV*

# Leadership Conference on Civil Rights

1629 K Street, NW
10th Floor
Washington, D.C. 20006
Phone: 202-466-3311
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www.civilrights.org

WADE J. HENDERSON
Executive Director




October 27, 2003

The Honorable Orrin G. Hatch
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Patrick Leahy
Ranking Member, Senate Judiciary Committee
152 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senators Hatch and Leahy:

On behalf of the Leadership Conference on Civil Rights (LCCR), the nation's oldest, largest, and most diverse civil and human rights coalition, we write to express our opposition to the confirmation of Claude Allen to the U.S. Court of Appeals for the Fourth Circuit.

Mr. Allen's nomination is highly troubling for several reasons. First, as reflected in the American Bar Association's (ABA) evaluation, Mr. Allen's lack of legal experience raises serious doubts about his ability to assume the responsibilities of a circuit court judge. Since his law school graduation 13 years ago, Mr. Allen has practiced law for only seven years – five years short of the ABA Standing Committee's 12-year requirement. As a result, though a majority of the ABA Standing Committee rated Mr. Allen as qualified, several members of the Committee rated him as unqualified.

Given Mr. Allen's minimal legal experience, LCCR and others are forced to examine his tenure as Virginia's Secretary of Health and Human Resources, and his role as campaign spokesperson and staff for Senator Jesse Helms, to determine how he might carry out his responsibilities if confirmed to the Fourth Circuit. A review of Allen's record provides LCCR with little comfort. Repeatedly, Mr. Allen disregarded the law in an effort to advance an agenda driven by personal ideology. For example, while serving as Virginia's senior health official, Allen flaunted his opposition to the Commonwealth's Health Care Decisions Act and ignored a Prince William Circuit Court decision while denying the family of Hugh Finn the right to terminate Mr. Finn's life support. In response to Mr. Allen's actions during that period, Michelle Finn, Mr. Finn's wife and legal guardian, wrote, "Secretary Allen was a core participant in a concerted effort to impose his personal agenda and beliefs over the legal and moral rights to which my husband was entitled."

LCCR is especially troubled by Claude Allen's record on civil rights. In his role as a campaign spokesperson for Senator Helms in 1984, Allen expressed views antithetical to basic civil rights protections. In that capacity, Allen stated support for Helms' position against extending the Voting Rights Act. In addition, rather than denouncing Helms' past efforts to prevent integration, Allen suggested that he was not troubled by it. Allen stated that he believed most African Americans agreed with Helms' opposition to school busing for integration.

During the 1984 Senate campaign, Allen also defended a Helms fundraising letter that the North Carolina Association of Black Lawyers publicly criticized as racist:

> "[The fundraising letter] appears, without some explanation to the contrary, to pander to the racist emotions of people and to inject racial considerations into the United States Senatorial campaign. For years, the North Carolina Association of Black Lawyers and other groups have attempted to eradicate racial prejudices and biases in this state. . . . It would be a slap in the face of all such people and to the entire black community to now allow or expect any political candidate in this day to use racial codes to enflame their political supporters."

In fact, the 1984 campaign was marked by so much racial hostility by Helms that a three-judge panel actually cited the 1984 Senate campaign, in a North Carolina redistricting case, as an example of how racism continued to flourish in North Carolina politics. *Gingles v. Edmisten*, 590 F. Supp. 345, 364 (E.D.N.C. 1984).

LCCR is also concerned that the administration nominated Mr. Allen of Virginia to a seat previously held by Maryland jurist Francis D. Murnaghan, Jr. The replacement of a judge from a different state occurs very rarely. In the Fourth Circuit, this has not happened in thirty-two years, when Maryland lost the seat. South Carolina, still greatly overrepresented on the circuit, gained the seat. Mr. Allen's nomination represents a geographic reallocation in the Fourth Circuit since the seat currently in question was traditionally allocated to Maryland.

In order to fairly uphold the proportional representation of Maryland in the Fourth Circuit, Maryland should be allocated three of the circuit's fifteen authorized seats. Such an allocation would bring geographic balance to the Fourth Circuit by giving Maryland twenty percent of the judicial positions – a percentage in keeping with Maryland's population in the circuit. Currently, Virginia holds one-third of the seats on the court, but has only one-fourth the population of the Fourth Circuit. To accomplish the balance needed, in June 2003 the Maryland Bar wrote a letter to the White House, requesting that President Bush appoint a Marylander to the vacant seat. In July, both of Maryland's senators, Paul Sarbanes and Barbara Mikulski, wrote to the White House opposing Claude Allen's nomination because it shifts a seat from Maryland.

LCCR is particularly perplexed because Mr. Allen's nomination violates the standard set forth by the administration. The administration stated that it would seek geographic balance among states in a circuit so that the number of sitting judges would correspond to each State's percentage of the overall population of the circuit. In a memorandum sent to Maryland Senators Barbara Mikulski and Paul Sarbanes, White House Counsel Alberto Gonzales said the current allocation of the Fourth Circuit is "significantly out of balance" and that President Bush intends

to nominate individuals to Fourth Circuit vacancies "in a manner that will bring the circuit closer to geographic balance."

For these reasons, LCCR opposes the confirmation of Claude Allen to the U.S. Court of Appeals for the Fourth Circuit. Mr. Allen's nomination raises serious substantive concerns, and in addition, it is only fair that the person nominated to this Fourth Circuit seat be strongly rooted in the Maryland legal and civic communities.

We hope you will take our concerns into consideration. If you have any questions regarding this matter, please contact Nancy Zirkin, LCCR Deputy Director/Director of Public Policy at (202) 263-2880. Thank you for your consideration.

Sincerely,

Wade Henderson
Executive Director

Nancy Zirkin
Deputy Director

cc: Senate Judiciary Committee

# U.S. SENATOR PATRICK LEAHY

CONTACT: David Carle, 202-224-3693 VERMONT


**Statement of Senator Patrick Leahy**
**Hearing Before the Judiciary Committee**
**On The Nomination of Claude Allen**
**October 28, 2003**

For more than 200 years, the Constitution's advice and consent injunction has helped to temper partisan politics in the judicial nomination process. It has protected the courts and the American people from single-party domination, and it has helped ensure that those who become federal judges are fair judges who reflect mainstream legal thought. Historically, Democrats and Republicans alike have guarded the protections of the advice and consent process. They have done so because they have recognized the seriousness of the task we perform when we confirm a judge to a lifetime appointment, giving him or her extraordinary power -- indeed, it is power that often is unchecked. At one time or another, both parties have sought the protections of the process. The result has been that we have had a federal bench that has served us extraordinarily well over the course of our republic. Our independent federal judiciary has been the envy of the world, and may it ever be so.

The record of the 108th Congress, however, is a compilation of changed practices and of bent and even broken rules. Over the last nine months, we have seen the systematic dismantling of the protections upon which we all had come to rely. Republicans are rushing to confirm extreme nominees that do not reflect the mainstream values of the American people. To do this, they have had to discard many of the protections that have historically helped to ensure a fair and independent judiciary.

The blue slip policy is the enforcement tool to ensure consultation by the Executive Branch with home-state senators about judicial appointments to their states. Already the Chairman has changed his blue slip policy, so that even a negative blue slip from both home-state Senators is not sufficient to prevent action on a nominee. The rule used to be that no judicial nominee would move out of this Committee if the Chair knew that the nomination was opposed by both home-state Senators. When this rule was used to block President Clinton's nominees, it was followed stringently by the Republican majority. Indeed, it was even broadened by Republicans so that objections by a single Republican Senator from the circuit was sufficient cause to end a nomination without a hearing and without a vote. As soon as the traditional practice threatened to forestall an extreme Bush nominee, it was discarded.

The Chairman has also changed his interpretation of Rule 4 of this Committee, which protects the minority's right to continue debate on any subject. This rule allows any

member of the Committee to object to a matter coming to a vote. To override that objection, at least one member of the minority party must vote with the majority in favor of ending debate and moving forward to a vote. The Chairman had properly interpreted and implemented this rule in the past. Rule 4 was an important protection against single-party domination and extremism. Like the blue slip, it was a protection that was best used to encourage discussion and cooperation. It was most important to prevent unnecessary confrontations and divisive partisanship. And like the blue slip policy, when Rule 4 stood as a potential obstacle to a Bush nominee, it was promptly reinterpreted.

The Chairman's new and novel reinterpretation of Rule 4, that it is a device to force the Chairman to call a matter to a vote, is unsupported by the language and history of the rule, as well as by the Chairman's own prior interpretation. It is also unsupported by logic. The idea that the rule was intended to allow the Committee to force the Chairman to bring a matter to a vote is belied by the fact that the Chairman himself controls the agenda and therefore determines whether a matter would even be subject to Rule 4. The only thing that the new interpretation of Rule 4 did was to allow the Republican majority to force through the Committee controversial nominees on an expedited basis. I am glad that the Republican leadership worked with us to return such a nominee to the Committee for its consideration and has provided assurances that Rule 4 will not again be circumvented.

Today this Committee is dismantling another critical part of the judicial nomination process. The Chairman has decided to hold a hearing on the nomination of Claude Allen of Virginia. Virginia is currently represented by two Republican Senators, both whom support this nominee. I respect their views and have worked with them when I chaired this Committee to expedite consideration of several Virginia nominees. Roger Gregory was confirmed to the U.S. Court of Appeals for the Fourth Circuit, Henry Hudson was confirmed to the U.S. District Court for the Eastern District of Virginia, and Timothy Stanceau, to the Court of International Trade. This year, we cooperated in filling a second vacancy on the district courts in Virginia, with the confirmation of Glen Conrad to the Western District. So well have we worked together that there are no current vacancies at all on the federal courts in Virginia. None.

We also worked well to fill vacancies all over the Fourth Circuit, not just in Virginia. Of the five circuit court nominees President Bush has sent to the Senate, three have been confirmed to date. Roger Gregory is one, but also Dennis Shedd, from South Carolina, and Allyson Duncan from North Carolina. This stands in stark contrast to the way the Republican Senate treated President Clinton's nominees to this circuit, when three African-American nominees were blocked. Two, Judge James Beaty and Judge James Wynn, were from North Carolina, and were never even given a hearing. The third, Judge Andre Davis, was a Marylander who was given the same shabby treatment. I am proud that we did better for the Fourth Circuit while I was Chairman, and pleased that Senator Edwards was able to come to an agreement with the White House on Judge Duncan.

Working with this Administration has not been so simple for the Maryland Senators. The seat for which Mr. Allen has been nominated is a Maryland seat, last held by Judge

Francis Murnaghan of Baltimore. Senators Sarbanes and Mikulski will tell the Committee more about him, but I can say that Judge Murnaghan was a brilliant and compassionate jurist. He practiced law for 30 years, including as Assistant Attorney General and as Assistant to the General Counsel to the High Commissioner for Germany, before being named to the federal bench. The *Baltimore Sun* said of Judge Murnaghan after his death in 2000: "[I]f a theme runs through Francis D. Murnaghan's career, it is using the law to realize the American people's constitutional freedoms." Judge Murnaghan was a fair jurist with mainstream views. He was also a lifelong Marylander.

In 2000 President Clinton nominated another Marylander, Andre M. Davis, an African-American district court judge from Baltimore, to fill Judge Murnaghan's seat. This Committee, under Republican control, refused to act on the nomination. At the time, Republicans claimed that the Fourth Circuit did not need any more judges, even though there were five vacancies on the 15-member court. As soon as President Bush was elected, however, the Republican majority reversed its position.

The White House originally recognized that Judge Murnaghan's seat was rightfully a Maryland seat. After the name of a non-Marylander was floated and rejected by the Maryland Senators, however, the White House apparently decided that it would rather work with Republican Senators from Virginia than have to reach consensus with the Senators from Maryland. Thus, a Virginian who works in D.C. and who used to staff a Republican Senator from North Carolina has been nominated to fill a Maryland seat on the Fourth Circuit.

This seat has traditionally been a Maryland seat and it should remain so. Maryland accounts for approximately 20 percent of the population of the Fourth Circuit. By this traditional measure for the allocation of judgeships, Maryland should have three seats on the Fourth Circuit. If this judgeship is allowed to be uprooted to Virginia, Maryland will be left with only two and this Committee will have acquiesced in the White House ploy to move circuit vacancies around to avoid having to allow balance or to have to consult with Democratic home-state Senators. These are among the dangers that advice and consent protect against.

On the merits, this nominee could not be more different from Judge Murnaghan. Claude Allen is a conservative political operative with little litigation experience and extreme views. He has practiced law for a total of six and one-half years. This is much less than the minimum 12 years suggested by the American Bar Association. This may be one reason why the ABA's peer review rating of this nomination included partially "not qualified." He is among the more than two dozen judicial nominees with "not qualified" or partially "not qualified" ratings.

Where Mr. Allen has had substantive experience, he has shown himself to be extreme with a reputation for recalcitrance and an unwillingness to work with others of differing views. A judge needs to be able to consider facts and legal arguments that might contradict the outcome he would personally like. I have a number of questions about Mr. Allen's actions, including when he served at the Virginia Department of Health and

Human Resources and apparently refused to promote the Children's Health Insurance Program, and whether he used audits of safe-sex programs to strike out at critics and at programs with which he personally did not agree.

This is not a consensus nomination. Rather this is one that the White House has gone out of its way, with cold, politically motivated calculation, to inject all of the elements necessary to produce an impasse, at the expense of the independence of two other parts of our government, the judiciary, and United States Senate. As one journalist put it, Mr. Allen has infuriated "liberals and moderates of both parties who say he is at best an unresponsive manager and at worst an executive who is trying to dismantle longstanding programs for women and children. . . [m]any lawmakers, including those in his own party, said they do not trust Allen to provide data and insight."

Rather than work with the distinguished Senators from Maryland to find a consensus nominee to fill this vacancy, someone like Roger Titus who is about to be confirmed unanimously to the federal court in Maryland, this nomination is another example of the Administration seeking to divide and insinuate partisan politics into the judicial nominations process.

When the Administration has been willing to work with the Senate, we have made progress. Indeed, last night the Senate confirmed the 167th judicial nominee of this President.

In less than three years' time, President George W. Bush has exceeded the number of judicial nominees confirmed for President Reagan in all four years of his first term in office. Senate Democrats have cooperated so that this President has now exceeded the record in his entire four-year first term of the President Republicans acknowledge to be the "all time champ" at appointing federal judges. Since July 2001, despite the fact that the Senate majority has shifted twice, a total of 167 judicial nominations have been confirmed, including 29 circuit court appointments. One hundred judges were confirmed in the 17 months of the Democratic Senate majority and now 67 have been confirmed during the comparative time of the Republican majority.

One would think that the White House and the Republicans in the Senate would be heralding this landmark. One would think they would be congratulating themselves for putting more lifetime appointed judges on the federal bench than President Reagan did in his entire first term and doing it in three-quarters of the time. But Republicans have a different partisan message, and this indisputable truth is not consistent with their efforts to mislead the American people into thinking that Democrats have launched widespread obstruction of this President's judicial nominations. Only a handful of the most extreme and controversial nominations have been denied consent by the Senate.

Not only has President Bush been accorded more confirmations than President Reagan achieved during his entire first term, but he has also achieved more confirmations this year than in any of the six years that Republicans controlled the Senate when President Clinton was in office. Not once was President Clinton allowed 67 confirmations in a year

when Republicans controlled the pace of confirmations. Despite the high numbers of vacancies and availability of highly qualified nominees, Republicans never cooperated with President Clinton to the extent Senate Democrats have. President Bush has appointed more lifetime circuit and district court judges in 10 months this year than President Clinton was allowed in 1995, 1996, 1997, 1998, 1999, or 2000.

Last year, the Democratic majority in the Senate proceeded to confirm 72 of President Bush's judicial nominees and was savagely attacked nonetheless. Likewise in 1992, the last previous full year in which a Democratic Senate majority considered the nominees of a Republican President, 66 circuit and district court judges were confirmed. Historically, in the last year of an administration, consideration of nominations slows, the "Thurmond rule" is invoked and vacancies are left to the winner of the presidential election. In 1992, Democrats proceeded to confirm 66 of President Bush's judicial nominees even though it was a presidential election year. By contrast, in 1996, when Republicans controlled the pace for consideration of President Clinton's judicial nominees only 17 judges were confirmed and not a single one of them was to a circuit court.

In fact, President Bush has now already appointed more judges in his third year in office than in the third year of the last five presidential terms, including the most recent term when Republicans controlled the Senate and President Clinton was leading the country to historic economic achievements. That year, in 1999, Republicans allowed only 34 judicial nominees of President Clinton to be confirmed all year, including only 7 circuit court nominees. Those are close to the average totals for the six years 1995-2000 when a Republican Senate majority was determining how quickly to consider the judicial nominees of a Democratic President. By contrast, with today's confirmation, the Senate this year will have confirmed 67 judicial nominees, including 12 circuit court nominees, almost double the totals for 1999.

These facts stand in stark contrast to the false partisan rhetoric that demonize the Senate for having blocked all of this President's judicial nominations. The reality is that the Senate is proceeding at a record pace and achieving record numbers. Time after time after time, the good faith that Democrats have shown this President, despite the egregious treatment of his predecessor's nominees, has been met with cynical political calculation to undermine the rules not only of this committee, but even the rules of the United States Senate itself. We have worked hard to balance the need to fill judicial vacancies with the imperative that federal judges need to be fair. In so doing, we have reduced the number of judicial vacancies to 41. More than 95 percent of the federal judgeships are filled. After inheriting 110 vacancies when the Senate Judiciary Committee reorganized under Democratic control in 2001, I helped move through and confirm 100 of the President's judicial nominees in just 17 months. With the additional 67 confirmations this year, we have reached the lowest number of vacancies in 13 years. There are more federal judges on the bench today than at any time in American history.

# # # # #

THE MACLELLAN FOUNDATION, INC.

May 28, 2003

Senator Orrin G. Hatch
Chairman
United States Senate Committee on
the Judiciary
224 Dirksen Senate Office Bldg.
Washington, D.C. 20510

Re: Claude A. Allen
Deputy Secretary of Health and Human Services

Dear Senator Hatch:

This letter is in support of the nomination of Claude A. Allen to the United States Fourth Circuit Court of Appeals. In my job as Executive Director, I have had the privilege of traveling the world and meeting public officials at the very highest levels of government. I have never met anyone to equal Claude Allen in his role as Deputy Secretary of Health and Human Services. He is intelligent, committed, focused, and personable. He has the best interests of the people of the United States at heart. He can handle a wide breadth of issues and players. His ability to handle complex issues and understand consequences of actions will make him a great jurist. I urge the Committee's approval and the full Senate's consent to Claude A. Allen's appointment.

Yours very truly,

Thomas H. McCallie III

cc: Senator Lamar Alexander
Senator Bill Frist

1 Fountain Square, Provident Building, Chattanooga, TN 37402 Voice 423-755-1366 Fax 423-755-1640 www.maclellan.net

BARBARA A. MIKULSKI
MARYLAND

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United States Senate
WASHINGTON, DC 20510–2003

September 22, 2003

Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Hatch,

I understand you have scheduled a hearing on the nomination of Claude A. Allen to the U.S. Court of Appeals for the Fourth Circuit on Wednesday, September 24th. As you know, both Senator Sarbanes and I are very much opposed to the Allen nomination, and have asked that the Judiciary Committee not proceed with the nomination. In the event that the Committee decides to proceed with the nomination hearing over our objection, I respectfully request the opportunity to testify before the Committee about this nomination.

Thank you for your attention to this important matter.

Sincerely,

Barbara A. Mikulski
United States Senator

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News From
U.S. Senator Barbara A. Mikulski
Democrat from Maryland

**FOR IMMEDIATE RELEASE**
**October 28, 2003**

**CONTACT: Liz Poston**
**Amy Hagovsky**
**202-228-1122**
**http://mikulski.senate.gov**

**SENATOR BARBARA MIKULSKI OPPOSES NOMINATION OF VIRGINIA JUDGE TO MARYLAND SEAT ON 4TH CIRCUIT COURT OF APPEALS**

***Mikulski: "If Maryland loses a seat, they lose a voice."***

Washington, D.C. – Senator Barbara A. Mikulski (D-MD) today joined her colleague, Senator Paul S. Sarbanes (D-MD) in testifying before the Senate Committee on the Judiciary in opposition to the nomination of Claude A. Allen to the 4th Circuit Court of Appeals.

Judge Allen is nominated for what has traditionally been a Maryland seat on the 4th Circuit Court of Appeals. The seat has been held by a Marylander since it was created. By tradition, a vacancy from one state on the Circuit Courts of Appeal is replaced by a nominee from the same state.

Maryland also deserves to have fair representation on the Court. Maryland has 20% of the population of the 4th Circuit and should have 20 % of the seats on this important court. This means Maryland should have three of the 15 seats in the 4th Circuit. If Judge Allen is confirmed, the Maryland seat would to go to Virginia – giving that state its fifth judge on the Court, even though it only has 27% of the population.

The following is Senator Mikulski's testimony before the Senate Judiciary Committee, as prepared:

"I want to thank the Committee for the opportunity to testify today on the injustice that has been done to the State of Maryland in selecting a Virginian to occupy a Maryland Seat on the 4th Circuit Court of Appeals – a seat that rightfully belongs to Maryland.

"I am here today to oppose the nomination of Mr. Claude Allen. This is a Maryland seat and a Maryland lawyer should have been nominated for it. Mr. Allen does not have the qualifications to adequately represent Marylanders. This injustice hurts Maryland's representation on the Court of Appeals – an extremely important court that decides thousands of cases that affect the lives of Marylanders including their businesses, education, employment rights, their environment, and the Chesapeake Bay.

"Our federal Courts of Appeal are often the last resort. If Maryland loses a seat, we lose a voice.

**- more -**

"This is not just any seat on the Court of Appeals. This is the seat previously occupied by Francis Murnaghan, an esteemed Maryland jurist who served on the court for over 20 years and was a stalwart in protecting constitutional and civil rights. Marylanders looked with high regard to the federal Court of Appeals and they are proud of Judge Murnaghan's service on that important court. They want to see a Marylander placed in this seat.

**Maryland's Seat on Court of Appeals**
"Maryland's seat on the Court of Appeals was occupied by Judge Murnaghan since its creation in 1979. Our Senate tradition is for a vacancy to be filled by a person of the same state. The Clinton White House recognized it as a Maryland seat when they nominated Andre Davis, a distinguished lawyer who clerked for Judge Murnaghan.

"The Bush Administration recognized it as a Maryland seat when they consulted with Senator Sarbanes and me on two previous candidates for this seat. However, the individuals they put forward had little or no connection to Maryland - one was not even a member of the Maryland Bar and the other who did not even live in Maryland. In both cases, I had to object to such an important position going to someone with little or no ties to Maryland. The Administration is now playing bait and switch. They are trying to switch the seat to Virginia because Senator Sarbanes and I raised concerns about the people that the Bush Administration originally tried to nominate for that seat.

**Geographical Balance**
"The Administration's claim that it needs to switch the seat to geographically balance the Court of Appeals is outrageous. If the Administration truly wants geographically balance, then they would be looking for opportunities to ensure that Maryland - which is possibly the only state in balance on the Fourth Circuit Court of Appeals - stays in balance. They should have nominated a Maryland lawyer because we are entitled to fair and balanced representation. Balance dictates that since we have 20% of the population, we should have 20% of the judges. If Mr. Allen is confirmed, Virginia would have five seats. This would dwarf the representation of Maryland, the third most populous state in the 4th Circuit, down to two seats.

**Many Highly Qualified Maryland Lawyers**
"There are 30,000 practicing lawyers in the great state of Maryland. It is unacceptable that the Bush Administration could not find one well-qualified lawyer to appoint to this prestigious court. They found three well qualified attorneys for the district court - Judges Quarles, Bennett and hopefully soon Judge Titus. They are all exceptional nominees who represent the types of nominees the Administration could have chosen to fill Judge Murnaghan's seat. Any one of these nominees has more legal experience than Mr. Allen and they certainly have greater ties to the community. Why didn't the administration look to one of them or someone of their caliber to sit on the Court of Appeals from Maryland?

"We certainly would have worked with the Administration to find the right person. I think the reason they went around us is simple. This Administration seems more concerned with politics. That is simply unacceptable.

**Senate's Co-equal Role in the Nominations Process**
"Why didn't the Administration come to us and consult, as every Administration has since I have been a Senator? We would have worked tirelessly to pick a consensus nominee, like we did with Judge Bennett, Quarles and Titus – and even with Judge Neimeyer who was nominated by the first President Bush for this Court of Appeals. These judges were exemplary choices, had bipartisan support, and were easily confirmed. With all these nominees, we did not look at partisanship. We selected true blue Marylanders with significant experience.

**Integrity of Maryland Courts**
"I am first and foremost concerned with the integrity and excellence of the Maryland federal bench. I have raised my objections to this nomination as the Senator from Maryland who is fighting to preserve our fair representation on the federal courts. That is not to say that in the absence of this issue I would deem Mr. Allen qualified.

"I urge my colleagues to reject this nomination send a message to the White House that Advice and Consent means you can't just switch a seat to make sure its smooth sailing for your nominee.

"Advice and Consent means working together, picking nominees who are well qualified and committed to the law and their community, nominees who will serve with distinction and be within the mainstream of legal thought, and nominees who are truly from the state and can represent their state well.

"I urge the Administration to work with us to get a federal Court of Appeals nominee *for* Maryland and *from* Maryland."

###

PAUL S. SARBANES
MARYLAND

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United States Senate
WASHINGTON, DC 20510-2002

July 11, 2003

Orrin G. Hatch, Chairman
Patrick J. Leahy, Ranking Member
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senators Hatch and Leahy:

For the reasons set forth in the attached letter to White House Counsel Gonzales, we are very much opposed to the nomination of Claude Allen to the U.S. Court of Appeals for the Fourth Circuit seat previously held by esteemed Maryland jurist Francis D. Murnaghan, Jr.

In making this nomination, the Administration is shifting a seat that has been traditionally allocated to Maryland to Virginia. Moreover, the Allen nomination runs directly counter to the principles for the allocation of seats that White House Counsel Gonzales enunciated to us in a recent memorandum. The Administration claimed that it would seek geographical balance so that a State has a number of judges sitting in that State corresponding to the State's percentage of the overall population of the Circuit. The memorandum went on to say that the current allocation of the Fourth Circuit is "significantly out of balance" and that President Bush intends to nominate individuals to Fourth Circuit vacancies "in a manner that will bring the circuit closer to geographic balance."

According to 2000 Census figures, Maryland's population makes up twenty percent of the population of the Fourth Circuit. Therefore, Maryland should be allocated three of the Circuit's fifteen authorized seats in order to be proportionally represented on the Circuit with twenty percent of the judicial positions. The Committee should not countenance the shifting of a seat from Maryland to Virginia and we respectfully request that the Committee not proceed with the Allen nomination.

Thank you for your attention to this most important matter.

Sincerely,

Barbara A. Mikulski
United States Senator

Paul S. Sarbanes
United States Senator

PAUL S. SARBANES
MARYLAND

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United States Senate
WASHINGTON, DC 20510-2002

July 11, 2003

Alberto R. Gonzales
Counsel to the President
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Mr. Gonzales:

We are writing to you regarding the nomination of judges to the United States Court of Appeals for the Fourth Circuit, which has fifteen authorized seats. In particular, we write about the recent nomination of Claude A. Allen to the judgeship left vacant by the death of the esteemed jurist Francis D. Murnaghan, Jr. This proposed appointment would shift a seat that has traditionally been allocated to Maryland to Virginia.

This shift runs directly contrary to your recent memorandum to us setting out the criteria you will be following in allocating seats in the Fourth Circuit. In that memorandum, you noted that you would seek geographical balance so that a State has a number of judges sitting in that State corresponding to the State's percentage of the overall population of the Circuit. You went on to say that the current allocation of the Fourth Circuit is "significantly out of balance" and that President Bush intends to nominate individuals to Fourth Circuit vacancies "in a manner that will bring the circuit closer to geographic balance" (although the Administration did not do so when it nominated Judge Shedd thereby giving South Carolina, with fifteen percent of the population of the Circuit, four of the fifteen judges, i.e. twenty-seven percent).

Shifting a seat from Maryland to Virginia will lead to the substantial under-representation of Maryland on the Fourth Circuit. According to 2000 Census figures, Maryland's population makes up twenty percent of the population of the Fourth Circuit. Therefore, Maryland should be allocated three judges in order to be proportionally represented on the Circuit with twenty percent of the judicial positions. Clearly in this instance, your own standard calls for a deceased Maryland judge to be replaced by a Marylander.

As we have in the past, we remain committed to working with the Administration on the selection of nominees for Maryland's Federal judicial vacancies. We both supported the nominations of Richard D. Bennett and William D. Quarles, Jr. to Maryland's Federal District Court. Despite the current tension surrounding judicial nominations, Judges Quarles and Bennett were confirmed expeditiously and we both appeared before the Judiciary Committee in support of each nominee. Judges Quarles and Bennett are now serving on the District Court and we expect them to make valuable contributions to the Federal bench.

We are likewise committed to working with the President to find an appropriate Maryland nominee for the seat held by Judge Murnaghan on the Fourth Circuit. We earlier raised concerns about two individuals the Administration considered nominating to this Maryland vacancy because of the individuals' lack of involvement in Maryland's legal and civic communities. In previous discussions, we clearly communicated to you our threshold standards when considering potential nominees – standards that apply regardless of the political party of the nominee or Administration, or the Court to which an individual is nominated. Moreover, we both supported the last Republican nominee to the Fourth Circuit, Paul Niemeyer, appointed by President George H.W. Bush, and praised his "record of professional practice and public service" and his "significant contributions to the legal profession in Maryland."

Throughout the years, we have worked with every Administration to protect the integrity and excellence of the Maryland Federal bench, and to ensure that all nominees from Maryland have a record of service in the Maryland legal community and in the community at large that has elevated them to positions of respect in the State. We cannot accept the shifting of a seat away from Maryland, which has twenty percent of the Circuit's population and should be allocated three of its fifteen judges. Maryland's legal community is uniquely active and experienced, and the breadth of the profession in our State includes deserving and well-qualified potential jurists. We stand ready to assist you in your selection of a Maryland candidate to fill this most important Fourth Circuit judgeship.

Sincerely,

Barbara A. Mikulski
United States Senator

Paul S. Sarbanes
United States Senator

# Memorandum

**To:** Chairman Orrin G. Hatch
Ranking Member Patrick J. Leahy
Members of the Judiciary Committee

**Date:** October 28, 2003

**Re:** Maryland Judges on the U.S. Court of Appeals for the 4th Circuit

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Since the U.S. Courts of Appeals for each of the nine judicial circuits were established by the Judiciary Act of 1891 (commonly known as the Evarts Act), the following eight Marylanders have served on the Court.

Hugh Lennox Bond: Judge Bond was reassigned to the U.S. Court of Appeals for the 4th Circuit when the Court was created in 1891 (he was 62 at the time of his reassignment). At the time of his reassignment, he had served on the U.S. Circuit Court for 21 years after being nominated to that Court by President Grant. Judge Bond was born in Baltimore, received his degree from the University of the City of New York in 1848 and read law in 1851. Prior to his Federal judicial service, Judge Bond was in private practice in Baltimore (1851 to 1860, and 1867 to 1870) and served as a Judge on the Criminal Court of Maryland (1860 to 1867).

John Carter Rose: Judge Rose was nominated to the 4th Circuit by President Harding in 1922 (he was 61 at the time of his nomination). Prior to his service on the 4th Circuit, Judge Rose served as a judge on the U.S. District Court for Maryland for 12 years. Judge Rose was born in Baltimore, and received his law degree from the University of Maryland School of Law. He spent time in private practice in Baltimore, as an editorial writer for the Baltimore Sun, as a Supervisor of the Census, and as the U.S. Attorney for the District of Maryland (from 1898 to 1910).

Morris Ames Soper: Judge Soper was nominated to the 4th Circuit by Herbert Hoover in 1931 (he was 58 at the time of his nomination). Prior to his service on the 4th Circuit, Judge Soper served on the U.S. District Court for Maryland for eight years. Judge Soper was born in Baltimore, received his undergraduate degree from Johns Hopkins University, and his law degree from the University of Maryland School of Law. His career include service as Assistant State's Attorney for Baltimore City (1897 to 1899); Assistant U.S. Attorney for the District of Maryland (1900 to 1909); time in private practice (1909 to 1914); service as the President of the Board of Police Commissioners of Baltimore City (1912 to 1913); and as Chief Judge for the Supreme Bench of Baltimore (1914 to 1921).

Simon E. Sobeloff: Judge Sobeloff was nominated to the 4th Circuit by President Eisenhower in 1956 (he was 61 at the time of his nomination). Prior to his service on the

4th Circuit, Judge Sobeloff was Chief Judge of the Maryland Court of Appeals (1952 to 1954) and the Solicitor General of the United States (1954 to1956). Judge Sobeloff was born in Baltimore and received his law degree from the University of Maryland School of Law. His career included more than 20 years in private practice; service as the Assistant City Solicitor (1919 to 1923) and Deputy City Solicitor (1927 to 1930) for Baltimore, Maryland; a term as U.S. Attorney for the District of Maryland (1931 to 1934); service as City Solicitor for Baltimore (1943 to 1947); and service as the Chairman of the Commission on the Administrative Organization of the State of Maryland (1951 to 1952).

Harrison Lee Winter: Judge Winter was nominated to the 4th Circuit in 1966 by President Johnson (he was 45 at the time of his nomination). Prior to his service on the 4th Circuit, Judge Winter spent four years on the U.S. District Court for Maryland. Judge Winter was born in Baltimore, received his undergraduate degree from Johns Hopkins University, and his law degree from the University of Maryland School of Law. His professional career included private practice (1945 to 1959); service as the Assistant Attorney General (1948 to 1951) and Deputy Attorney General (1954 to 1955) for the State of Maryland; and service as the City Solicitor for Baltimore (1959 to 1961).

Francis Dominic Murnaghan, Jr.: Judge Murnaghan was nominated to the 4th Circuit in 1979 by President Carter (he was 58 at the time of his nomination). Judge Murnaghan was born in Baltimore, received his undergraduate degree from Johns Hopkins University, and his law degree from Harvard Law School. Prior to his service on the 4th Circuit, Judge Murnaghan spent 25 years in private practice in Baltimore; served as a Staff attorney for the U.S. Department of State, High Commission on Germany (1950 to 1952); and served as the Assistant State Attorney General for Maryland (1952 to 1954). Judge Murnaghan's long list of civic activities included service to the Walters Art Gallery (President, Board of Trustees), Charter Revision Commission for Baltimore City, Board of School Commissioners of Baltimore City (President), numerous bar associations, and membership on the Boards of Trustees for Johns Hopkins University, the Peabody Institute, Baltimore Museum of Art, and Baltimore Urban League.

Paul Victor Niemeyer: Judge Niemeyer was appointed to the 4th Circuit by President Bush in 1990 (he was 49 at the time of his nomination). Prior to his service on the 4th Circuit, Judge Niemeyer spent three years on the U.S. District Court for Maryland. Judge Niemeyer was born in Princeton New Jersey, received his undergraduate degree from Kenyon College, and his law degree from Notre Dame Law School. He spent 22 years in private practice in Baltimore, and has served as a member of the Maryland Court of Appeals Standing Committee on Rules of Practice and Procedure (1973 to 1988), on the Inquiry Panel of the Attorney Grievance Commission (1978 to 1981), as a lecturer at Johns Hopkins University (1971 to 1975), and has been active in several bar and legal associations.

Diana Jane Gribbon Motz: Judge Motz was appointed to the 4th Circuit by President Clinton in 1994 (she was 50 at the time of her nomination). Prior to her service on the 4th Circuit, Judge Motz was an Associate Judge on the Court of Special Appeals of Maryland (1991 to 1994). Judge Motz was born in Washington, D.C., received her undergraduate

degree from Vassar College, and her law degree from the University of Virginia School of Law. Her career has included time in private practice (1968 to 1971 and 1986 to 1991) and service as the Assistant State Attorney General for Maryland (1972 to 1986, including a period as Chief of Litigation from 1982 to 1986). Her civic activities include service on the Federal Courts Committee and as a member of the boards of directors of the Johns Hopkins Hospital, Baltimore City Bar Library, YWCA of Greater Baltimore, Union Memorial Hospital, Legal Mutual Society, and the Maryland Bar Foundation.

WASHINGTON BUREAU
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
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## NAACP OPPOSITION TO CLAUDE ALLEN'S NOMINATION TO THE FOURTH CIRCUIT COURT OF APPEALS

***PASSED BY THE NATIONAL BOARD OF DIRECTORS OF THE NAACP BY UNANIMOUS VOTE ON OCTOBER 18, 2003***

**WHEREAS**, on April 28, 2003 President George W. Bush nominated Claude Allen, Presently Serving as Deputy Secretary of the United States Department of Health and Human Services, to the United States Court of Appeal for the Fourth Circuit; and

**WHEREAS**, Claude Allen was supportive of Jesse Helms' filibuster of the Martin Luther King Holiday bill. During Allen's tenure with Helms, Helms tried to block the creation the Martin Luther King Holiday and called Dr. King a communist sympathizer. In fundraising letters, Helms boasted that he "did [his] level best to stop the Martin Luther King Holiday. . . " and that "[he] simply asked the Senate to take every step to question if Dr. King's behavior, in its entirety, was worthy of that high honor." When asked about Helms' actions, Allen said that Helms "had very serious reservations about [the holiday] and I took his word for it." Allen said he shared those reservations about the King holiday, and that he believed Helms was unfairly criticized. Allen stated that there was ample documentation that key King advisers were members of the American communist party.

**WHEREAS**, the Fourth Circuit Court of Appeals is virtually the court of last resort for federal civil rights claims of all persons residing within Maryland, Virginia, North Carolina, South Carolina and West Virginia; and

**WHEREAS**, the Fourth Circuit Court of Appeals has more African Americans living within its boundaries than any other Circuit Court in the country. In addition, its jurisdiction has one of the fastest growing Latino populations in our nation; and

**WHEREAS**, Claude Allen worked for the ultra right wing Senator Jesse Helms for four years, in his campaign and on his Senate staff. The NAACP

is deeply concerned that Claude Allen has built his career on the backs of right wing extremists and segregationists. Even more alarming, is that Allen has been a staunch defender of the extremist actions of Jesse Helms; and

**WHEREAS**, Claude Allen has been a staunch defender of Senator Helms efforts eliminate social programs. Mr. Allen stated that African American voters rely too heavily on social programs: "I tie that back to what I call the vicious cycle of the welfare state that blacks have become dependent on in the federal government, whether it is jobs or taking care of their families. Anybody that makes an attempt to change that, it is very easy to say it is from racial motivation"; and

**WHEREAS**, only eight months before Allen went to work for Helms, Helms led a filibuster against the extension of what he termed the "so-called" Voting Rights Act. The extension renewed a key provision of the Voting Rights Act, Section 5, which required the U.S. Justice Department to review election law changes in nine states and portions of 13 others that have a proven track record of preventing racial and ethnic minorities from exercising their right to vote. Senator Helms argued there was no longer racial discrimination in voting laws in North Carolina and the South. Helms said that the bill discriminated against the South. In an interview, Allen said he agreed with Helms. He said he believed it was unfair for the Voting Rights Act to apply only to the South. The Senate ultimately voted 85-8 to extend the Voting Rights Act.

**WHEREAS**, on July 21, 2003, the American Bar Association gave Claude Allen a partial "not qualified" rating. Even prior to the rating, many questioned whether Allen possesses the legal experience required for an appellate court judge; and

**WHEREAS**, at his death in August 2000, Judge Francis Murnaghan from Maryland vacated the seat to which Claude Allen, a Virginian, is nominated. As such, Claude Allen's nomination is a severe departure from the longstanding tradition of filling a seat from the state in which the vacancy was created with someone from the same state; and

**WHEREAS**, the entire Bar of Maryland has registered its objection to the Administration's nomination of a Virginian to the seat held by Judge Murnaghan. The Maryland Bar wrote a letter to the White House, requesting that President Bush appoint a Marylander to this seat. Both of

Maryland's Senators, Paul Sarbanes and Barbara Mikulski, have also written to the White House, opposing Claude Allen's nomination as shifting a seat from Maryland; and

**WHEREAS**, in their letter to President Bush asking for a Maryland nominee, Maryland Senators Sarbanes and Mikulski, wrote that "Maryland's legal community is uniquely active and experienced, and the breadth of the profession in our State includes deserving and well-qualified potential jurists." In addition to rejecting the most qualified lawyers Maryland has to offer for the Fourth Circuit, the Administration has added insult to injury by nominating a Virginian who is not qualified to serve on the Fourth Circuit; and

**WHEREAS**, Deputy Secretary Claude Allen's nomination would not advance the interest of maintaining an ideological balance on the Circuit Court and would not ensure that the federal judiciary provides fairness and equality to all Americans.

**WHEREAS**, the Maryland State Conference of the National Association for the Advancement of Colored People opposes the nomination of Claude Allen to serve on the United States Court of Appeals for the Fourth Circuit; and

**WHEREAS**, The Baltimore Sun Newspaper called upon the Bush Administration to withdraw the Allen nomination for many reasons, but "principally for his lack of experience." The Sun has stated that "Mr. Allen's paper-thin credentials do not qualify him for such an important judgeship"; and

**THEREFORE, BE IT RESOLVED**, the National Association for the Advancement of Colored People (NAACP) opposes the nomination of Claude Allen to serve on the United States Court of Appeals for the Fourth Circuit; and

**BE IT FURTHER RESOLVED**, the NAACP urges the Senate Judiciary Committee and the full Senate, in the strongest possible terms, to defeat Claude Allen's nomination; and

**BE IT FINALLY RESOLVED**, the NAACP remains steadfast in its efforts to encourage President Bush to live up to his personal commitment to the country to be a "uniter, not a divider," and to nominate a moderate candidate who will garner the trust and respect of all of the people in the Fourth Circuit.

# NATIONAL BAR ASSOCIATION



**FACSIMILE MATERIAL**

October 28, 2003

The Honorable Patrick Leahy
United States Senate
433 Russell Office Building
Washington, DC 20510

RE: Claude Allen: Nominee to the United States Court of Appeals for the Fourth Circuit

Dear Senator Leahy:

The National Bar Association, this nation's oldest and largest association of African American lawyers and judges, submits this letter in opposition to the nomination of Claude Allen to the United States Court of Appeals of the Fourth Circuit.

Since 1925, the National Bar Association has endeavored to protect the civil and political rights of all citizens of these United States. We are committed to maintaining a watchful eye on federal judicial nominations. As an organization, we feel strongly that a confirmation of Claude Allen to serve on the Fourth Circuit will severely undermine the civil and voting rights of millions of Americans within the Circuit, and nationwide.

The Fourth Circuit Court of Appeals is virtually the court of last resort for the federal civil rights claims of all persons residing within Maryland, Virginia, North Carolina, South Carolina and West Virginia. The Fourth Circuit Court of Appeals has more African Americans living within its boundaries than any other Circuit in the country. Its jurisdiction has one of the fastest growing Latino populations in the country. Consequently, it is crucial that the justices who sit on the court be sensitive to the rights and concerns of these citizens.

The position to which Claude Allen has been nominated bears heavily on civil and voting rights issues. Allen served as press secretary for Senator Jesse Helms' 1984 Senate Campaign against North Carolina's

Governor James Hunt. Allen came on board in early 1983, just months after Helms led a fight in the Senate to oppose renewal of key portions of the Voting Rights Act. According to the Raleigh News and Observer, December 25, Allen stated he agreed with Helm's opposition to the Voting Rights extension. Allen also defended race baiting ads used during the 1984 Helm's campaign. In a North Carolina redistricting case, a three-judge panel actually cited the 1984 Senate campaign as an example of how racism continued to flourish in North Carolina politics. Gingles v. Edmisten, 590 F. Supp. 345, 364 (E.D.N.C. 1984).

As a Fourth Circuit justice, Allen would have had absolutely no prior experience as a judge. Moreover, Allen may have argued only once before the Fourth Circuit, the court to which he has been nominated. Because of Allen's woeful lack of legal experience, the American Bar Association gave him a partial "Not Qualified" rating. This means that a minority of the members of the ABA review committee believed Allen was not qualified for the judgeship.

Also troubling is Allen's attack on public benefits. As Deputy Secretary at Health and Human Services under President George W. Bush, Allen has strongly supported the reauthorization of welfare reform. This includes block grants for states and imposing a forty-hour work week on recipients of federal money.

The Fourth Circuit is widely recognized as the most conservative circuit in the nation. The Circuit is so extreme that its adverse civil rights rulings are reversed by this Supreme Court. The Fourth Circuit ruled that federal law enforcement officials need not follow the Miranda decision, only to be reversed by the Supreme Court. The Circuit authorized drug testing for pregnant women without their consent, which was reversed by the Supreme Court. The Circuit authorized drug testing for pregnant women without consent, which was reversed by the Supreme Court. The Fourth Circuit has issued numerous opinions hostile to affirmative action, women's rights, fair employment and voting rights. The confirmation of Claude Allen will continue this downward spiral and will further erode the protection of civil and voting rights of minorities. For these reasons, the National Bar Association strongly opposes the nomination of Claude Allen to the United States Court of Appeals for the Fourth Circuit.

Sincerely,

Clyde E. Bailey, Sr.
President

NCJW

National Council of Jewish Women

Marsha Atkind
President

Sandra Lief Garrett
Executive Director

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September 15, 2003

The Honorable Orrin Hatch
Chairman, Senate Judiciary Committee
104 Hart Senate Office Building
Washington, DC 20510

Dear Senator Hatch:

I am writing on behalf of the 90,000 members and supporters of the National Council of Jewish Women (NCJW) to express our deepest concern regarding the nomination of Claude A. Allen to the US Court of Appeals for the 4th Circuit. Allen's record of hostility toward reproductive rights and privacy law calls into question his suitability for a seat on the federal bench. We urge you to oppose his confirmation.

Claude A. Allen's career has been that of a vociferous partisan of extreme views. He is an opponent of the constitutional right to privacy and to abortion in all circumstances except to save the life of the mother. As Virginia's Secretary of Health and Human Services, he opposed implementing the state's federally funded Children's Health Insurance Program because the federal government required abortion coverage in cases of rape or incest as well.

In another violation of individual privacy rights Allen went to court to prevent Michele Finn from having her brain-damaged husband, Hugh Finn, disconnected from his feeding tube in accordance with his wishes as expressed to her prior to his mortal injury. Using his official position, Allen continued to assist in futile legal interventions to overturn a finding that Finn was in a persistent vegetative state and would never recover. To redress the harm done to Finn's family, the Virginia General Assembly approved an appropriation of $48,000 after Finn died to help pay Michele Finn's legal fees fighting Allen.

While serving as press secretary to US Senator Jesse Helms' 1984 re-election campaign, Allen attacked Helms' opponent as having "links with queers." He is also an advocate of abstinence-only sex education.

Allen has little or no trial experience, and his selection for the appeals court bench appears to have been made on ideological grounds. The seat he would fill has normally been reserved for a resident of Maryland, and the nomination of a

Virginia resident will circumvent the expected opposition of the two liberal Maryland senators. Allen's nomination should be defeated.

The extreme ideology that Claude Allen would bring to the bench, including ardent opposition to the right to privacy and to the separation of religion and state, makes him a poor candidate for a lifetime seat as a federal appeals court judge. His espousal of "competitive federalism" would undo civil rights protections and social welfare legislation that have been the hallmark achievements of the 20th century. His nomination endangers the rights of women and all Americans, and should be defeated.

Sincerely,

Marsha Atkind
National President

Cc: Members of the Senate Judiciary Committee

**NORTH CAROLINA NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE**

POST OFFICE BOX 20547
GREENSBORO, NORTH CAROLINA 27420-0547
PHONE (336) 275-0851 • FAX: (336) 275-4832
WWW.NC-NAACP.ORG

Jim Wiggins
Executive Director

Melvin "Skip" Alston
President

October 23, 2003

Senate Judiciary Committee
United States Senate
Washington, D.C. 20510

**RE: NORTH CAROLINA STATE OF CONFERENCE OF THE NAACP STANDS IN OPPOSITION TO THE NOMINATION OF CLAUDE ALLEN TO THE FOURTH CIRCUIT COURT OF APPEALS**

Dear Senator:

On behalf of the North Carolina State Conference of Branches of the NAACP we would like to express our strong opposition to the nomination of Claude Allen to the Fourth Circuit Court of Appeals. We are united with the Maryland State Conference of Branches of the NAACP who has previously expressed their opposition to nomination of a Virginian to a seat vacated by Judge Murnaghan, a Maryland judge, and what is historically a Maryland seat on the Fourth Circuit.

The North Carolina State Conference is keenly aware of the record of Claude Allen, especially during his tenure with Jesse Helms. During his tenure with former North Carolina Senator, Jesse Helms, he participated, defended, and indicated his support for a number of actions by Senator Helms that were adverse to civil rights and civil liberties for African Americans and other racial and ethnic minorities such as the opposition to Martin Luther King, Jr. federal holiday, the voting rights act, a number of social issues.

The Fourth Circuit Court of Appeals is virtually the court of last resort for the federal civil rights claims of all persons residing within Maryland, Virginia, North Carolina, South Carolina and West Virginia. The Fourth Circuit Court of Appeals has more African Americans living within its boundaries than any other Circuit Court in the country. Its jurisdiction has one of the fastest growing Latino populations in the country.

In an article about his employment with Helms, Allen stated he agreed with Helm's opposition to the Voting Rights Act extension in 1982. (Conservative Black Joined Helms Staff Because He Agreed with Senator's Ideals, *Raleigh News & Observer*, 12/25/83.) Only eight months before Allen went to work for Helms, Helms led a filibuster against the extension of what he termed the so-called Voting Rights Act. The extension renewed a key provision of the Voting Rights Act, Section 5, which required the U.S. Justice Department to review election law changes in nine states and portions of 13 others. Helms argued there was no longer racial discrimination in voting laws in North Carolina and the South. Helms said that the bill discriminated against the South. In an interview, Allen said he agreed with Helms. He said he believed it was unfair for the Voting Rights Act to apply only to the South. The Senate ultimately voted 85-8 to extend the Voting Rights Act.

Allen also said that he believed most African Americans shared Helm's views on social issues such as opposition to school busing for racial integration. In 1981, Helms had an anti-busing amendment that was held up for months by a filibuster by Republican Lowell Weicker. Helms had sponsored many other anti-busing proposals during his years in the Senate.

Allen stated that African American voters rely too heavily on social programs: I tie that back to what I call the vicious cycle of the welfare state that blacks have become dependent on in the federal government, whether it is jobs or taking care of their families. Anybody that makes an attempt to change that, it is very easy to say it is from racial motivation.

In the voting rights lawsuit addressing racism in North Carolina political campaigns, a sociologist testified that Helm's political ads were racial appeals and cited this ad in particular. He testified that the ad was a racial appeal because it is drawing to the attention of the public that a likely opponent has a controversial black leader in his office. It draws attention to the fact that black voters are being registered and questions whether or not it is legitimate for a governor to support the voter registration of blacks. The Helms organization is trying to link the governor with Jesse Jackson, because they believe Jesse Jackson is unpopular among white North Carolinians.

Claude Allen defended these ads. On one occasion, involving an ad featuring Julian Bond, he claimed that they were aimed at the political views of Bond and others, and not race. He stated that the media is overlooking the fact that [Bond] is an avowed socialist.

Although Allen had urged to let the past be the past with Helms, it was during Allen's tenure with Helms that Helms tried to block the creation of a federal holiday honoring Martin Luther King, Jr. With Allen as campaign spokesman in Fall 1983, Jesse Helms tried to filibuster the bill creating the Martin Luther King holiday and then campaigned on the issue. Claude Allen addressed

Helm's actions on the King bill during a personal interview while he still worked for Helms. According to Allen, Helms had very serious reservations about the holiday and I took his word for it. Allen told the reporter that he shared those reservations about the King holiday. He also stated he believed Helms was unfairly criticized. Allen stated that there was ample documentation that key King advisers were members of the American communist party.

Based on his record, we urge you to oppose the nomination of Deputy Secretary Claude Allen to the U.S. Court of Appeals for the Fourth Circuit in the Judiciary Committee.

Thank you for your careful consideration of this crucial matter. Should you have any questions or concerns, please contact me, or Hilary Shelton, Director of the NAACP Washington Bureau at (202) 638-2269.

Sincerely,

Melvin Skip Alston
President

Senator Orrin Hatch
Chair, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Senator Patrick Leahy
Ranking Member, Senate Judiciary Committee
152 Dirksen Senate Office Building
Washington, DC 20510

October 27, 2003

Dear Senators Hatch and Leahy,

We, the undersigned organizations, are writing to express our firm opposition to the confirmation of Claude A. Allen, current Deputy Secretary for the Department of Health and Human Services, to the United States Court of Appeals for the Fourth Circuit. Our opposition is based on Allen's consistent willingness to subvert science and sound public health policy to his personal conservative ideology, specifically in the context of harmful abstinence-only-until-marriage programs. We are concerned that he may similarly disregard the rule of law in favor of his own personal beliefs if confirmed to the federal bench.

Since his appointment as Deputy Secretary for the Department of Health and Human Services, Allen has been a vocal proponent of abstinence-only-until-marriage programs. Such programs have been championed by the Bush Administration as the most effective way to combat unintended pregnancy and the spread of HIV/AIDS and sexually transmitted diseases in adolescents. Allen continues to promote these programs despite the fact that not a single, sound study has been able to prove that abstinence-only-until-marriage programs have positive long-term effects on young people's behavior. Recent research suggests that some abstinence-only-until-marriage programs may actually be causing harm to young people by making them less likely to use contraceptives once they become sexually active.[1] Disregarding these studies, Allen has argued that "encouraging...young adults and youth to abstain is the only appropriate additional strategy to make an informed decision."[2]

Allen has promoted these unproven programs at the cost of methods that work and has even defended the Bush Administration's decision last year to pull vital information regarding condom effectiveness and successful teen pregnancy prevention programs from the federal Centers for Disease Control and Prevention (CDC) website. Removal of the CDC fact sheets prompted twelve U.S. Representatives to send a letter to

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[1] "Promising the Future: Virginity Pledges and First Intercourse," *American Journal of Sociology, 2001.* "Abstinence and Safer Sex HIV Risk-Reduction Interventions for African American Adolescents," *Journal of the American Medical Association, 1998.*

[2] Transcript of Allen's closing remarks at the 2003 HIV Prevention Conference in Atlanta, GA, held July 30, 2003. Transcript from www.kaisernetwork.org.

Secretary of Health and Human Services Tommy Thompson saying, "A growing number of cases provide evidence that actions directly affecting the public health are being driven by ideology rather than by science."[3] In addition, the minority staff of the House Government Reform Committee found in a report titled "Politics and Science" that the Bush Administration changed the standards used to determine the effectiveness of abstinence-only-until-marriage programs in order to claim the programs are more effective than they actually are. Replacing science with politics, HHS has eliminated behavioral benchmarks of success, such as teen birth rate and sexual activity, and has instead relied on non-scientific attitudinal measures which have little bearing on program participants' actual behavior or health outcomes.[4] The House Government Reform Committee staff concluded, "In pushing an 'abstinence-only' agenda, however, the Bush Administration has consistently distorted the scientific evidence about what works in sex education."[5] In defense of the Administration's decision to remove the CDC fact sheets, however, Allen claimed, "We're looking at ourselves to see what we need to do to be efficient and effective."[6]

Allen has even relied on medical inaccuracies in his own testimony, claiming that "condoms are highly effective in preventing HIV infection and gonorrhea in men, but not as effective with all sexually transmitted diseases."[7] In fact, the federal Centers for Disease Control and Prevention (CDC) has stated, "It is important to note that the lack of data about the level of condom effectiveness indicates that more research is needed – not that latex condoms do not work."[8]

Helping the Bush Administration export its abstinence-only-until-marriage agenda abroad, Allen has praised the much-politicized Uganda "ABC" model. Allen's misinterpretation of ABC is "'A' is for abstinence in young people, the 'B' is for being faithful in a mutually monogamous relationship, and the 'C' is for condom use in high risk populations."[9] Ugandans, on the other hand, insist that educating people of all ages about condoms has been vital to their success in reducing the spread of HIV/AIDS.[10] Disregarding Uganda's comprehensive prevention program, Allen advocates importing his own interpretation into American classrooms saying, "The ABC prevention concept is something that we should seriously examine in our own country."[11]

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[3] Letter from 12 Members of Congress to HHS Secretary Tommy Thompson, dated October 21, 2002.
[4] http://www.house.gov/reform/min/politicsandscience/example_abstinence.htm.
[5] www.politicsandscience.org.
[6] Laura Meckler, "HIV prevention groups says Bush administration is targeting their work," Associated Press, October 1, 2002, posted on AIDS Coalition to Unleash Power (ACT UP) website, http://www.actupny.org/reports/cdc-condoms.html.
[7] Testimony before the Committee on Energy and Commerce, Subcommittee on Health, "HIV/AIDS, TB, and Malaria: Combating a Global Pandemic," March 20, 2003.
[8] U.S. Centers for Disease Control and Prevention (CDC), *Latex Condoms and Sexually Transmitted Diseases – Prevention Messages* (Atlanta, GA: CDC, 2001), p.2.
[9] Testimony before the Committee on Energy and Commerce, Subcommittee on Health, "HIV/AIDS, TB, and Malaria: Combating a Global Pandemic," March 20, 2003.
[10] Emily Wax, "Ugandans Say Facts, Not Abstinence, Will Win AIDS War; Bush Likely to Hear Dissent on Policy," *Washington Post*, July 9, 2003.
[11] Testimony before the Committee on Energy and Commerce, Subcommittee on Health, "HIV/AIDS, TB, and Malaria: Combating a Global Pandemic," March 20, 2003.

Given Allen's history of supplanting science and sound public health policy with his own ideology, it remains questionable whether he could serve as a fair and impartial judge. For this and other reasons, we respectfully request that the Senate Judiciary Committee reject the confirmation of Claude A. Allen to the Fourth Circuit Court of Appeals.

Sincerely,

Stephen Conley
Executive Director/COO
American Association of Sex Educators, Counselors, and Therapists

Lauren Oshman
AMSA National President
American Medical Student Association

Crystal Plati
Executive Director
Choice USA

Jill Egeth
Public Policy Analyst
The Federation of Behavioral, Psychological, and Cognitive Sciences

LLEGÓ, The National Latina/o Lesbian, Gay, Bisexual, and Transgender Organization

Judith M. DeSarno
President and CEO
National Family Planning and Reproductive Health Association

Matt Foreman
Executive Director
National Gay and Lesbian Task Force

Cynthia Pearson
Executive Director
National Women's Health Network

Judy Norsigian
Executive Director
Our Bodies Ourselves

Peter Kostmayer
President
Population Connection

Tamara Kreinin
President and CEO
Sexuality Information and Education Council of the United States

Ann L. Hanson
Minister for Children, Families and Human Sexuality
United Church of Christ, Justice and Witness Ministries

Ellen Y. Rosenberg
Executive Director
Women of Reform Judaism, The Federation of Temple Sisterhoods


October 24, 2003

Senator Orrin Hatch, Chairman
Senate Judiciary Committee
104 Hart Senate Office Building
United States Senate
Washington, D.C. 20510

Senator Patrick Leahy
Senate Judiciary Committee
433 Russell Senate Office Building
United States Senate
Washington, D.C. 20510

Dear Senator Hatch and Senator Leahy:

I am writing on behalf of People For the American Way and our more than 600,000 members and activists to express our opposition to the confirmation of Claude Allen, Deputy Secretary of Health and Human Services, to the United States Court of Appeals for the Fourth Circuit. Our review of Mr. Allen's record reveals that he is not suited for the federal bench, particularly because of his lack of relevant legal experience and his troubling history of ideologically-driven policy decisions.

Mr. Allen lacks the legal experience necessary to serve as a federal judge. A 1990 graduate of Duke University School of Law, Mr. Allen has held political appointments in the health policy field since 1998. The American Bar Association Standing Committee on the Judiciary's rating criteria for federal judicial nominees states that ordinarily a nominee should have been admitted to the bar for at least twelve years and should have been engaged in the practice of law during that time. The fact that Mr. Allen has dedicated no more than eight years of his career to the practice of law may be among the reasons the ABA gave him its lowest passing rating – "qualified," with a minority voting "not qualified" -- in considering his fitness for the federal bench.

In addition, throughout Allen's career, he has exhibited an extreme ideology that raises serious questions about whether he would be able to set aside his personal feelings and follow the law. For example, in his role as Deputy Secretary of the U.S. Department of Health and Human Services, Allen has been the Bush administration's "point man" on highly controversial and unproven abstinence-only sex education,[1] a movement to replace all other forms of sex education with

[1] Richard Knox, Profile: Abstinence-only advocates seek to replace all other forms of sex education with abstinence only education, NPR radio broadcast, All Things Considered, Jan. 22, 2003.

2000 M Street ♦ Suite 400 ♦ Washington, DC 20036
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programs that teach that abstinence is the only way to effectively protect one's self from pregnancy and sexually transmitted diseases. Abstinence-only grant recipients are not even permitted to discuss contraceptives, except to explain they are "ineffective."[2] Allen has also been harshly criticized for the removal of condom information sheets from the CDC web site – a move that was criticized as having more to do with ideology than with health concerns.[3]

Allen has also shown a disregard for the rights of patients and their families to make end-of-life care decisions free from government interference. During his tenure as Secretary of the Virginia Department of Health and Human Services, Allen was a key figure in a fight to prevent Michelle Finn from having her husband, Hugh, disconnected from life support after a car accident left him in a Persistent Vegetative State. After a court ruling determined that Mrs. Finn had the right to determine the course of her husband's treatment, Allen's DHHS intervened in an attempt to prevent her from exercising her rights as his guardian. According to press accounts, Allen sought out family members who had initially objected to removing life support and personally "pressed the family of [the] comatose man hours before his life-sustaining feeding tube was to be removed to consider whether the state should intervene to stop the action . . . even as state attorneys pondered ways to keep the tube in place without the family's blessing."[4] Allen's intervention was unsuccessful, and Finn's feeding tube was removed. Responding to the news that Claude Allen had been nominated to the federal bench, Michelle Finn said, "any judge has to be able to set aside their own personal and moral convictions to protect the public interest. His actions in my husband's case show that he's incapable of doing that."[5]

As Secretary of Virginia's DHHS, Claude Allen also built a long record of hostility to reproductive freedoms. In one example, Allen worked to defeat legislation that provided health insurance for children of the working poor, largely because the program covered abortion services for rape and incest victims under the age of eighteen. When the law was ultimately enacted, Allen was faulted for not enrolling children quickly enough. He admitted "abortion was a sticking point" delaying the enrollment of children.[6] In this episode, Allen proved himself to be so adamantly opposed to reproductive rights that he found it preferable for poor children to go without health coverage than to risk an underage sexual abuse victim having access to state-funded abortion services.

Finally, we find it highly objectionable that the Administration took the step of appointing Allen, who is a citizen of, and has spent his entire legal career in, Virginia to a seat on the federal bench that has traditionally been held by a Marylander, over the objections of both Maryland Senators The Bush administration has, in the past, promised to appoint judges in such a way as to foster "geographical balance" in the federal courts, ensuring each state has a number of judges in its circuit court proportionate to that state's population. This nomination contradicts that pledge. Yet the Administration has ignored this problem and the strong objections of Maryland Senators Barbara Mikulski and Paul Sarbanes.[7]

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[2] Abstinence-only draws fire, Houston Chronicle, March 17, 2002.
[3] Sarah Downey and Vanessa Juarez, The Battle Over Abstinence, Newsweek, Dec. 1, 2002
[4] With Deadline Near, Comatose Man's Family Pressed, Roanoke Times, Oct. 1, 1998, B1.
[5] Christina Nuckols, Court Nominee is Often "Hard to Pin Down," The Virginian-Pilot, Aug. 10, 2003.
[6] Donald Baker, Va. Is Slow Getting Insurance to Children, the Washington Post, January 18, 1999, B1.
[7] Senators Mikulski and Sarbanes letter to Alberto Gonzales, July 11, 2003.

For these reasons, we join our colleagues at the NAACP, Leadership Conference on Civil Rights, Alliance for Justice, NARAL Pro-Choice America, and numerous other civil rights and liberties organizations in asking you to reject this nomination and seek a Fourth Circuit nominee better suited to the challenges and responsibilities of the bench.

Sincerely,

Ralph G. Neas
President
People For the American Way

CC: All Senate Judiciary Committee Members

Incoming Attachment:
From: Mary Ann Tetreault <moontyger@earthlink.net>
Date: 9/23/2003 7:17:37 AM
To: senator_leahy@leahy.senate.gov
Subject: Please oppose Claude Allen

Dear Senator Leahy,

Please oppose and vote against the nomination of Claude Allen to a seat on the Fourth Circuit Court of Appeals. He is another "in your face" Bush nominee but with an extra added twist, since he opposes litigation, at least when the litigators are abused persons. I'm sure I don't have to recount his background or the fact that he would give an extra seat to a Virginian on a court that should represent a region and not merely the state of choice for prosecutors of interstate criminals liable to the death penalty.

Entirely too many of the Bush appointees are extremists and the motivations behind their appointments are perverse and anti-American. Some are packaged like mines and cluster bombs, shiny yet harmless looking, luring the unsuspecting into picking them up and getting killed. The bushies disguise their most hateful ideologues as poster children for minority rights. Please do your best to stop another of these cluster bombs from getting on the court.

Mary Ann Tetreault 249 Sias Avenue
Newport VT 05855

Senator Orrin Hatch
Chair, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Senator Patrick Leahy
Ranking Member, Senate Judiciary Committee
152 Dirksen Senate Office Building
Washington, DC 20510

October 27, 2003

Dear Senators Hatch and Leahy,

We, the undersigned women's, civil, and human rights groups are writing to express our strong opposition to the confirmation of Claude A. Allen, current Deputy Secretary for the Department of Health and Human Services, to the United States Court of Appeals for the Fourth Circuit. Our opposition is based on Allen's lack of experience, his extreme conservative ideology, his lack of respect for the law, and, not insignificantly, his nomination to a seat reserved for a member of the Maryland bar, which he is not.

Allen's lack of judicial experience, coupled with his relatively short legal career, call into question his qualification for the federal judiciary. After his graduation from law school in 1990, Allen clerked for a judge for one year and then practiced law at a law firm until 1995, after which he worked under then- Virginia Attorney General James Gilmore. In1998, when Gilmore became Governor, he appointed Allen to be Virginia's Secretary of Health and Human Resources. Thus, in the thirteen years since he graduated from law school, Allen has had at most eight years of practical legal experience. As you may know, the American Bar Association Standing Committee on Judiciary normally requires at least twelve years of legal practice. Recognizing Allen's lack of credentials, a minority of this committee rated him unqualified for the federal judiciary, and, while a substantial majority rated him qualified, none rated him well qualified for the judicial position to which he has been nominated.[1]

Further, Allen's extreme conservative ideology is well documented and out of step with the vast majority of Americans; he has shown a propensity for putting his ideology over sound public policy and the requirements of the law. While Allen was serving as Virginia's highest-ranking public health official, the Virginia Department of Health and Human Resources was criticized for its slow enrollment of youth in an insurance program for the uninsured children of Virginia's low-income working families.[2] Allen admitted that "abortion was a sticking point" and the cause for delayed

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[1] http://www.abanet.org/scfedjud/ratings108.pdf.
[2] Donald P. Baker, "Va. Is Slow Getting Insurance to Children; State Program for Poor Enrolls Only About 2,000," *Washington Post*, January 18, 1999.

enrollment.[3] Allen's opposition to a woman's right to choose is also clear in legislative positions he took. Allen helped craft a Virginia law requiring health providers to notify the parents of minors seeking to exercise their right to choose. He also supported a law that imposed 24-hour waiting periods for women seeking abortions and increased the amount of biased information women had to receive about the medical implications of abortion.[4] Virginia's so-called "partial-birth abortion" bill that Allen supported was struck down as unconstitutional based on the Supreme Court's ruling in *Stenberg v. Carhart*.[5]

In an egregious abuse of power while Secretary of Health and Human Resources in Virginia, Allen allowed his personal opposition to Virginia's Health Care Decisions Act to interfere with the rights of the family of Hugh Finn, a Kentucky resident with family in Virginia, in a permanent vegetative state. Following a Prince William Circuit Court decision that Michele Finn, as Mr. Finn's wife and legal guardian, had the authority to terminate life support, Allen launched a month-long series of investigations in an attempt to overturn the ruling. In a letter to Senator and Chairman of the Judiciary Committee, Orrin Hatch and Senator and Ranking Democrat of the Judiciary Committee, Patrick Leahy, Michelle Finn wrote, "Secretary Allen was a core participant in a concerted effort to impose his personal agenda and beliefs over the legal and moral rights to which my husband was entitled."

Allen's personal opposition to government-sponsored support for the needy has also translated into his policy decisions. Along with his abortion-based opposition to the CHIPs program to give health insurance to Virginia's poor children, Governor Gilmore opposed the program as an unwarranted expansion of welfare. Indeed, he originally vetoed government funding for the program on the grounds that he wanted it to be run by a private, HMO-based company. Although the program was eventually enacted, as noted above, Allen then dragged his feet in enrolling children, keeping tens of thousands from receiving the care they needed for several years. He even went so far as to deny, in the face of clear facts to the contrary, that Gilmore's budget cuts intentionally capped the number of children who could be enrolled at 40,000, after 63,000 were estimated to be eligible.[6]

Since his appointment as Deputy Secretary for the Department of Health and Human Services, Allen has been a vocal proponent of abstinence-only-until-marriage programs. Such programs have been championed by the Bush Administration as the

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[3] *Id.* According to the article, the federal Health Care Financing Administration provided two-thirds of the money for the program and wanted Virginia to allow abortion coverage in cases of rape and incest, in addition to cases where the woman's life was endangered.

[4] Charles Babington and Spencer S. Hsu, "New Law of the Land in Va., Md.; Court May Impede Abortion Measure," *Washington Post*, June 29, 1997. When informed that a federal district judge might delay implementation of the law, Allen stated that "the harm [to the state] is that even one minor may be exposed to abortion" while the law was not in effect.

[5] The law made certain abortion procedures a Class 1 misdemeanor and was struck down in accordance with *Stenberg v. Carhart*, 530 U.S. 914 (2000).

[6] Claude A. Allen, "All Who Qualify Will Be Covered: Virginia is Doing Children's Health Insurance Right," *Roanoke Times & World News*, February 12, 2001.

most effective way to combat unintended pregnancy and the spread of HIV/AIDS and sexually transmitted diseases among adolescents despite the fact that not a single, sound study has shown abstinence-only-until-marriage programs to have positive long-term impacts on young people's sexual behavior. Allen has even defended the Bush Administration's decision to pull vital information regarding condom effectiveness and teen pregnancy prevention programs from the Center for Disease Control and Prevention (CDC) website, claiming, "We're looking at ourselves to see what we need to do to be efficient and effective."[7] Removal of the CDC fact sheets prompted twelve U.S. Representatives to send a letter to Secretary of Health and Human Services Tommy Thompson saying, "A growing number of cases provide evidence that actions directly affecting the public health are being driven by ideology rather than by science."[8]

In addition, Allen has apparently spearheaded a series of audits of AIDS service organizations that receive federal money, in retaliation for protests against U.S. AIDS policy by some of their members at the international AIDS conference in Barcelona. Urged on by Ultra-conservative Congressman Mark Souder (R-IN) and others, Allen has made clear that the groups' funding is in peril, in large part because of their disagreement with the administration's, and HHS's, policies, which the groups perceive as draconian and counter-productive. When asked about the audits, Allen insisted they were routine, but added that protestors should "think twice before preventing a cabinet-level official from bringing a message of hope to an international forum."[9]

Allen's service as a Director of the Board of Peacemaker Ministries also raises serious questions regarding his ability to handle cases with the impartiality that is essential for a federal judge. That organization condemns litigation as a destructive way of dealing with conflict.[10] It condemns broad categories of litigation, including divorce[11] and suits by children harmed by sexual abuse by members of the clergy.[12] Given the clear hostility to litigation exhibited by an organization in which Allen is an active leader, a claimant appearing before him would have legitimate concerns about whether he or she would receive justice.

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[7] Laura Meckler, "HIV prevention groups says Bush administration is targeting their work," Associated Press, October 1, 2002, posted on AIDS Coalition to Unleash Power (ACT UP) website, http://www.actupny.org/reports/cdc-condoms.html.

[8] Letter from 12 Members of Congress to HHS Secretary Tommy Thompson, dated October 21, 2002.

[9] "*Not So Free Speech*," THE ADVOCATE, Oct. 1, 2002 at pg. 17.

[10] The organization's website states that, "Although some conflicts may legitimately be taken before a civil judge (see Acts 24:1-26:32; Rom. 13:1-5), lawsuits usually damage relationships, diminish our Christian witness, and often fail to achieve complete justice. This is why Christians are commanded to make every effort to settle their differences within the church rather than the civil courts (see Matt. 5:25-26; 1 Cor. 6:1-8)." http://www.hispeace.org/html/ss.htm.

[11] There is a separate page on the website devoted to "Women & Conflict," in which Peacemaker Ministries discusses the special role women have in resolving conflicts biblically and asserts that even Christian women "easily give up on people when wrongs occur and relationships become rocky. Instead of showing grace through loving confrontation and forgiveness, it says, women regularly "move on" to new relationships and "are quick to be catty, petty, and competitive." The site asserts that women who cannot negotiate biblically hurt not only their marriages but their children, who learn from their bad habits. http://www.peacemakerministries.org/html/fam_women.htm.

[12] http://www.hispeace.org/html/eNews_May-02.htm.

Finally, the seat on the Fourth Circuit to which Allen has been nominated has traditionally been reserved for a Maryland appointee in order to ensure fair representation of Marylanders and depth of knowledge of Maryland law on the court. There are currently four Virginians and two Marylanders on the Court. Demographically and historically, this seat belongs to Maryland, as its two senators have stated forcefully in letters to both the White House and the Committee.

For these reasons we respectfully request that the Senate Judiciary Committee reject the confirmation of Claude A. Allen to the Fourth Circuit Court of Appeals.

Sincerely,

Nan Aron
President
Alliance for Justice

Amy Isaacs
National Director
Americans for Democratic Action

Eleanor Smeal
President
Feminist Majority

Kate Michelman
President
NARAL Pro-Choice America

Vicki Saporta
President and CEO
National Abortion Federation

Marsha Atkind
President
National Council of Jewish Women

Judith M. DeSarno
President and CEO
National Family Planning and Reproductive Health Association

Kim Gandy
President
National Organization for Women

Kathy Rodgers
President
NOW Legal Defense and Education Fund

Ralph Neas
President
People for the American Way

Tamara Kreinin
President and CEO
Sexuality Information and Education Council of the United States

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