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SECTION: CAPITOL HILL HEARING

HEADLINE: HEARING OF THE SENATE JUDICIARY COMMITTEE;

SUBJECT: NOMINATIONS;

CHAired BY: SENATOR BENJAMIN CARDIN (D-MD);

WITNESSES: BARBARA MILANO KEENAN TO BE UNITED STATES CIRCUIT JUDGE FOR THE FOURTH CIRCUIT; **LAURIE ROBINSON** TO BE ASSISTANT ATTORNEY GENERAL FOR THE OFFICE OF JUSTICE PROGRAMS, U.S. DEPARTMENT OF JUSTICE; KETANJI BROWN JACKSON TO BE A MEMBER OF THE UNITED STATES SENTENCING COMMISSION;

LOCATION: 226 DIRKSEN SENATE OFFICE BUILDING, WASHINGTON, D.C.

TIME: 4:00 P.M. EDT

DATE: WEDNESDAY, OCTOBER 7, 2009

BODY:

SEN. CARDIN: We -- the Judiciary Committee will come to order. Senator Sessions will be joining us shortly, and he has asked that we start the hearing. So let me welcome our guests that are with us today. It's an honor to have Judge Barbara Keenan here, who's a nominee for the U.S. Circuit Court for the Fourth Circuit; **Laura Robinson** for assistant attorney general for Office of Justice Programs; and Ketinja (sic/Ketanji) Brown Jackson for the member of the U.S. Sentencing Commission, and, of course, my two colleagues from Virginia, Senator Webb and Senator Warner. It's a please to have both of you with us today.

I take particular interest in the Fourth Circuit, so I am very pleased today that Senator Leahy has allowed me to chair this hearing on the nomination of Barbara Keenan to the U.S. Circuit judge for the Fourth Circuit.

This will be the third hearing that I've chaired for nominees in the Fourth Circuit. I had the opportunity to chair the hearing for Justice Steven Agee, who was confirmed to be a U.S. Circuit judge for the Fourth Circuit from Virginia. And I also chaired the confirmation hearings of Judge Andre Davis of Maryland, who was approved by our committee 16 to 3, and we are waiting full Senate confirmation of his appointment. Unfortunately, that's been delayed several months, and I say unfortunately because the Fourth Circuit has the highest vacancy rate of any circuit. One-third of the judges still remain unfilled, and that's unacceptable, and we need to move these appointments much more rapidly.

So I share Senator Leahy's concerns about the delay in the completion of the confirmations of judges we have -- we're backed up now, and many that have been recommended by the -- this committee, and there's been a delay by Republican senators in allowing us to bring forward those nominations on the floor of the United States Senate. I hope that can be changed, because I think it's critically important that we move as quickly as possible to fill these vacancies.

In regards to the Fourth Circuit, we're pleased that Justice Keenan's nomination has come forward. She has served on each of the four levels of the Virginia State Courts -- the General District Court, the Circuit Court, the Court of Appeals and Supreme Court. She was admitted to the State Bar of Virginia in 1974, and she first took the bench at age 29.

It's fitting that she has served as a judge for 29 years. She has had a balanced career, and she's an -- she has presided over an impressive number of cases. Now, that's a blessing and could also be a concern, because you've had to make some tough decisions. And there may well be some questions about some of the decisions that you joined, either in the majority or in dissent because of the large number. But you bring a wealth of experience and a great reputation and well-known to the people in Virginia. And we're very pleased about your appointment and look forward to this hearing.

Justice Keenan has received the unanimous rating of well-qualified from the American Bar Association Standing Committee on the Federal Judiciary, which is the highest rating. And I do look forward to our comments from our two senators from Virginia.

Our second nominee today is Laurie **Robinson** to be the assistant attorney general for the Office of Justice Programs. This is a very important appointment, but again I want to comment about Senator Leahy's points about -- so many of the assistant attorney generals in the Department of Justice is being held up from floor votes. We, fortunately, just got the assistant attorney general for the Civil Rights Division confirmed yesterday after a four-month delay and a cloture vote, which was withdrawn at the last minute.

These delays are not helping the Department of Justice restore its rightful reputation. And I hope that we can move quickly on the Office of Justice Programs. We need leadership in that department. That's very important. And if you're confirmed, I might say, Ms. **Robinson**, you'll be hearing from all of us because it's a very popular position of our local officials to figure out how they're going to get help in the administration of justice.

I'm glad that I'm chairing this hearing. I hope you'll remember that in the future that I chaired this committee -- (laughter) -- when Maryland requests come forward. You have an impressive resume. Since 2004, Ms. **Robinson** has been the director of the Masters of Science Program at the University of Pennsylvania's Department of Criminology. From 1993 to 2000 served as assistant attorney general at the Office of Justice Programs.

So you bring a great deal of experience to this position. You served on a number of national boards related to the justice system, including the Board of Trustees at the Vera Institute of Justice, which you chair, the Board of Directors of the Police Foundation, the Advisory Board of George Mason University, Administration of Justice Programs. You've published numerous articles. So you bring a wealth of experience to this position.

And I will put into the committee records letters of support for Ms. **Robinson**, including the U.S. Conference of Mayors, National League of Cities, National Association of Counties, and the International Association of Chiefs of Police.

Our third nominee today is Katinja (sic/Ketanji) Brown Jackson. Ms. Jackson has been nominated to be a member of the U.S. Sentencing Commission. The commission is an independent agency in the Judicial Branch of government. Its purpose is to establish sentencing policies and practices for the federal court, including criminal sentencing guidelines to advise and assist Congress and the Executive Branch in developing crime policy and to analyze and research criminal justice information, a very important position.

Ms. Jackson is a counsel at Morrison and Foerster in Washington D.C. where she has worked since 2007. From 2005 to 2007, she was an assistant federal public defender in the District of Columbia. I could go through the rest of her resume, but let me point out one of the most important parts of her resume. She's a resident of Bethesda, Maryland -- (laughter) -- which is duly noted, graduated with a B.A. from Harvard University and a J.D. from Harvard Law School.

Before I turn to the Ranking Republican member, Senator Sessions, let me just thank all three of you for your willingness to continue in some cases to start a new challenge in public service for others. We thank you for this. I know that it's not easy to serve in public positions. I know it's difficult, not only for you, but your families, and we thank you for your willingness to serve your community.

And with that, let me turn it over to Senator Sessions.

SEN. JEFF SESSIONS (R-AL): Thank you, Mr. Chairman. I look forward to hearing from our Virginia senators and our nominees. I look forward to asking some questions. Thank you. And hopefully, these nominees will meet all the tests and we can move them forward.

SEN. CARDIN: Thank you.

With that, let me turn to Senator Webb.

SEN. JIM WEBB (D-VA): Thank you very much, Mr. Chairman and Ranking Member Sessions. I'm privileged to join my colleague from Virginia, Senator Mark Warner, here today for the purpose of introducing to this committee Virginia's Supreme Court Justice, Barbara M. Keenan, whom the president has nominated for a seat on the Fourth Circuit Court of Appeals.

And I'd like to point out also that her husband, Judge Alan Rosenblatt, is with us today, as are a number of friends and family members that I know she will want to introduce.

I'd like to thank the committee for scheduling this hearing. The seat on the Fourth Circuit that Justice Keenan seeks to fill has been vacant since the death two years ago of Judge Emory Widener of Abingdon. It's important to the people of Virginia and to the proper functioning of this court that this vacancy be filled as expeditiously as possible.

Mr. Chairman, I believe that the president has made an extraordinary choice in nominating Justice Keenan. Earlier this year, our two Senate offices interviewed more than two dozen highly qualified candidates for this seat, including distinguished law professors, judges, private practitioners and government attorneys. And from this very competitive field Senator Warner and I were drawn to Justice Keenan's record of achievement on the bench, her keen intellect, her even temperament, and perhaps most importantly her abiding sense of fairness. We recommended her to the president for nomination in June of this year. I should add that Justice Keenan is held in the highest regard by members of the Commonwealth's legal community, including the Virginia State Bar, which gave her a highly qualified rating.

Justice Keenan, as you mentioned, Mr. Chairman, has a distinguished record of service to our courts in Virginia. She was appointed to the Fairfax County General District Court in 1980 at the age of 29. She was promoted by the General Assembly to the Fairfax County Circuit Court in 1982, to the Intermediate Court of Appeals in 1985, and finally to the Supreme Court in 1991. She's active in numerous boards and commissions and tended to foster excellence in our judicial system.

Justice Keenan is a 1971 graduate of Cornell University, a 1974 graduate of the George Washington University School of Law, and she also holds an LLM from the University of Virginia School of Law. I'm very, very pleased to be before you today endorsing her nomination. And I would now like to invite my colleague, Senator Warner, to offer his comments.

Thank you, Mr. Chairman.

SEN. CARDIN: Senator Warner, pleased to hear from you.

SEN. MARK WARNER (D-VA): Thank you, Mr. Chairman, Ranking Member Sessions, and I join my colleague and good friend, Jim Webb, in wholeheartedly endorsing Justice Keenan for this very important position. I think President Obama made a wise choice in nominating Justice Keenan for this seat on the Fourth Circuit Court of Appeals. I will not reiterate all of the comments of -- that Senator Webb made about her background. I would simply add a couple of additional comments.

Justice Keenan is the first judge in Virginia judicial history to serve on all four levels of our bench, as you -- many -- in your opening comments -- that gives her a broad and wide range of record, 29 years serving in the Judiciary. But I can say that in the process that Senator Webb and I went through it was a very rigorous process. We had a number of good candidates. I know we've got folks here in the audience, Mitchell Dolan and others, who helped us go through that process.

But Justice Keenan had a remarkable array of people all across Virginia -- I believe many of them unsolicited -- writing in on her behalf. I would add members of the legislature from both sides of the aisle who complimented her judicial temperament and her background. She has got an enormously impressive academic record.

I would only add -- and clearly, the 29 years on the court has been -- on all four of our courts has been important as well. I would only add as well -- I had the occasion to get to know her a bit personally during my tenure as governor. We would have a -- every year a dinner between the governor and our justices of the Supreme Court, and with her kind of quiet confidence she was a leader on that court. She truly reflects I think the right intellectual capabilities, the right judicial temperament, and she will be a great addition to the Fourth Circuit.

I would simply close in adding not only a note of congratulations to Justice Keenan, but I would echo what Senator Webb has said, is we do hope that this nomination will be moved expeditiously.

As you well know, Mr. Chairman, the burden on the Fourth Circuit at this point in terms of the number of open positions and the amount of caseload that confronts that important circuit is tremendous. This position, as Senator Webb has mentioned, has been open for a couple years right now. So we commend her to the committee's consideration and hope that we will soon be able to address her as Judge Keenan of the Fourth Circuit.

So thank you very much.

SEN. CARDIN: Just to underscore that one point, there are five vacancies on the Fourth Circuit. The Second Circuit has four vacancies. The next are two vacancies. So we are really in serious need of filling these spots. Let me thank both of our colleagues. Thank you very --

SEN. SESSIONS: Let me just say one of the things that I think is healthy in this entire judicial nomination process is that key senators are involved and that your opinions are sought, and some might think that that's unhealthy, but really, you know the lay of the land in your states and you know if somebody has got problems, and your strong support is a factor in my evaluation for sure of a nominee.

Thank you very much for your insight.

SEN. CARDIN: Appreciate it. Which is the tradition of our committee. We'll use two panels. The first panel will consist of Barbara Keenan to be United States Circuit Judge for the Fourth Circuit.

Judge, if you'll come forward -- and the tradition of our committee -- also swear the witnesses in.

(The witness is sworn in.)

SEN. CARDIN: Please have a seat. Your entire statement will be made part of the record. What we do ask you to do first -- if you would introduce the members of your family that may be here and proceed as you wish.

JUDGE KEENAN: (Off mike.)

SEN. CARDIN: Thank you very much. Let me start, if I might, asking questions that have been ones that have been of great interest to our committee, and that is talk a little bit about your philosophy as to the importance you place on existing precedent, on the clear language of laws that are passed by Congress. I know that you have been a state court judge, but if you confirmed, you're going to be called upon to make significant rulings concerning federal issues. In most of these cases it's going to be the final word. Very few cases, as you know, get appealed to the Supreme -- get accepted to the Supreme Court.

And I know this committee wants to hear your judicial philosophy as to the deference that you will give to laws that are passed by the Congress and to the precedent of the court.

JUDGE KEENAN: Yes, senator. As an Appeals Court judge, if confirmed, I will be most mindful of precedence. That is what guides our legal system. It is our obligation as judges to apply the law, and if at all possible, to apply the plain meaning.

SEN. CARDIN: I would ask you if you could just get the microphone a little closer to you.

JUDGE KEENAN: Oh, okay. I'm sorry. All right. I don't do this every day. (Laughter.) All right. I'm sorry, sir. I would be most mindful of precedent. It is what guides me as a judge and has always guided me as a judge, because our system of government is based on the certainty and predictability of the law, and this guides people in their everyday affairs in order to determine what is lawful and what is not. So as a judge, I am required to examine the precedent, examine the statutes whenever possible to apply the plain meaning of the statutes, and to realize that it's my role to apply the law and to do it in a manner that gives full and fair consideration to all of the arguments propounded by the parties.

SEN. CARDIN: In 2000, you ruled in a Virginia human rights case expanding the ability of a person to bring a claim for employment discrimination. I agree with your holding, but it was contrary to the prior rulings, as I understand it. And I mention that because I do believe one of my criteria for determining who I support on confirmation to the federal bench is their passion and respect for the protections that are in our Constitution and their willingness to understand the evolution of the rights in this country. But could you just go through for me and for the committee why you thought it was important to ignore precedent in that case?

JUDGE KEENAN: Well, sir, it wasn't ignoring precedent. Really, the issue had come up as to whether a cause of action for wrongful termination for employment would lie under common law principles when these principles were also principles covered by the Virginia Human Rights Act. And the Virginia General Assembly had after the Virginia Human Rights Act -- had been on the books for a few years, had amended to the statute to say that the statute did not create an independent cause of action.

And so the question before our court was to determine whether -- if there was a cause of action under the common law, could it nevertheless be made, notwithstanding the statutory bar?

And this was a question of first impression, really, in our court. And the majority of the court held yes in the opinion that I wrote. And the reason why is if we hadn't done that, then the fact that there was a principle in the Human Rights Act -- for example, principles supporting racial equality or gender -- anti-discrimination based on gender -- would provide an employer a shield. An employer could do anything he or she wanted as long as it was the principle of equality espoused in the Virginia Human Rights Act. That could be used as a shield. And that's the reason why we felt that it was important to decide the case the way we did.

SEN. CARDIN: I'm going to have some additional questions on this point, but at this point with the consent of the -- Senator Sessions I'm going to yield to Senator Specter for the purposes of an introduction.

SEN. ARLEN SPECTER (D-PA): Well, thank you very much, Mr. Chairman. I appreciate your yielding to me. I've come to the hearing for the introduction of Ms. Laurie **Robinson**, who is nominated for the position of assistant attorney general for the Office of Justice Programs. Ms. **Robinson** brings an extraordinary resume to this important position. She is a magna cum laude Phi Beta Kappa graduate from Brown University. She worked for 14 years as the director of the American Bar Association's Section on Criminal Justice.

She served in the Clinton administration as the assistant attorney general for the Justice Department's Office of Justice Programs, which is the position she's been nominated for now, and after that served as -- eight years as the distinguished senior scholar at the University of Pennsylvania in criminology and directed the University of Pennsylvania's Criminology's Master of Science Program.

She has now been nominated for this very prestigious position. Her background includes some 30 articles on criminal justice and legal periodicals, 250 criminal justice-related conference and forums, appeared before congressional committees some 15 times. She has been a member of some very distinguished professional organizations, served on the Board of Trustees of the Vera Institute of Justice, which she chaired, the Police Foundation, the National Center for Victims of Crime.

So that is really an extraordinary resume, having seen quite a few in my tenure here. I think this is a very important position because too little of scientific research has been devoted to trying to deal with the criminal law problem. Early on I came to the conclusion that there was a very effective way to deal with violent crime in America. It had two parts, life sentences for career criminals who commit 70 percent of the crimes, and realistic rehabilitation for the others who are going to be released back into society. And last year, we passed the legislation on the Second Chance Act.

But we've had much too little insight into the ways of job training, literacy training. No surprise when a functional illiterate leaves jail without a trade or a school they go back to the revolving door on recidivism. We have not really made the analysis of what it takes on parole and probation to turn that around, never really made the analysis of the effectiveness of the Armed Career Criminal Bill, which provides for a mandatory sentence of life, which in the federal system is 15 years to life for three major offences.

So to see someone of her caliber in that position is very refreshing, so refreshing that I came to introduce her, even though she's not a Pennsylvanian. (Laughter.) Thank you very much, Mr. Chairman.

SEN. CARDIN: As I noticed in my comments about her, we're all -- assuming she gets confirmed -- all interested in how she's going to treat grants from our states, so we figured -- (laughter) -- perhaps you had some interest because of that also.

SEN. SPECTER: Well, Mr. Chairman, had I known that, I wouldn't have taken up the extra time of the committee. (Laughter.)

SEN. CARDIN: (Laughs.)

SEN. SPECTER: Thank you.

SEN. CARDIN: Thank you.

Senator Sessions.

SEN. SESSIONS: Well, I would associate myself with the remarks about Ms. Laurie **Robinson**. She's a -- fabulous service in a previous tenure, although maybe not every theory of -- Senator Specter's theory of crime would I totally endorse, but most of that I would endorse to -- you hadn't finished I believe?

SEN. CARDIN: No, I --

SEN. SESSIONS: You go ahead, and --

SEN. CARDIN: Sure, I'm --

SEN. SESSIONS: You were pursuing a question -- yes, go right ahead.

SEN. CARDIN: Well, let me wait until the next round. I'll let you proceed. I want to go into a couple different areas, so I'll hold for a second round.

SEN. SESSIONS: Mr. Chairman -- (inaudible). Chairman Leahy and others like to start a preemptive complaint about failure to move judges. We're really not at a problem yet, in my view. There are two or three that are controversial. But I would note that there's 74 vacancies as of October 7th, and the president has nominated nine for the District Court bench. And so we can't confirm people for vacancies if they don't have a nomination. And when a nominee is made and the staffs review their backgrounds and their FBI reports and share that with the senators, if there's any problem, they are looked at. Usually, prominent lawyers and people are checked on. We get the ABA report. Cases appear sometimes that are -- cause people concern, and they're inquired into.

But I think we'll -- I'm committed to moving the good nominees rapidly forward. It doesn't bother me that a nominee is a Democrat or has been elected as a Democrat or been active politically. That doesn't bother me. We just like to see nominees that I know that when they put on the robe, something special occurs and that they are no longer in the political arena. They're in adjudication arena, and objectivity and fairness to all parties is what's called for.

So a few of the nominees that are nominated now and that are pending probably are going to be a bit controversial, but I would expect the overwhelming number of these nominees to move forward. And some of those that are not controversial now for reasons I don't know, understand, are not being called up for vote, and they would be promptly confirmed if the majority leader called them up.

Justice Keenan, it's great to have you.

JUDGE KEENAN: Thank you, sir.

SEN. SESSIONS: You have a background certainly worthy of this position, and it's good to see your senators are firmly in support of your nomination, and we're proud of that. I would just ask a few questions, and I don't mean to suggest that I think that you've failed in some serious way, but I'd just like to ask some questions about some matters.

At a commencement at William and Mary Law School in 1998 you stated that "lawyers have made great contributions to the progress of social justice. The contributions that we each make to the cause of social justice will be our true legacy as lawyers." And I think I agree with that most totally, but I want to ask whether you meant that your role as a judge -- you said lawyers, you didn't say judges -- that it's your duty as a judge to seek to -- affirmatively, I guess, to promote social justice. Now, the reason that's significant, of course, is whose opinion of social justice and to what extent do you believe a judge is -- should be thinking of policy matters and -- as they render their opinions in difficult cases?

JUDGE KEENAN: Thank you.

SEN. SESSIONS: Did I ask that clearly? Not very clearly.

JUDGE KEENAN: No, you did. Thank you, Senator.

SEN. SESSIONS: If I was before the bench, you would probably ask me to clarify the question. (Laughter.)

JUDGE KEENAN: Not at all. When I made that speech, I was talking to young lawyers beginning to enter the legal profession, and in coining the -- or in using the term social justice, I was referring to lawyers' duty to work within the system of laws to protect people, to protect society and to make strides for the general good of all.

A judge's role is very different however. A judge is not advocate and never can be. A judge is not an activist. A judge is somebody who comes with an open mind to listen to the arguments put forth, consults precedent, examines the law, makes a determination based on what the parties have advanced, whether there is any merit to the position and then writes very clearly and precisely, if the judge's goal is met, to apply the precedent that exists in a given situation. And so a judge's role is very different from that of a young lawyer.

SEN. SESSIONS: Well, I think you're right, as I think there is a difference. And I do think lawyers have a responsibility to -- if they think an injustice is occurring and a party isn't able to always pay a full fee, that they should be pre-

pared on occasion to step up and serve the higher good. And you make a valid point there, and I think with regard to a judge, objectivity, as you stated, is important.

I think one of the biggest difficulties we face in the legal system is confusion over the Establishment Clause. We just had a marvelous ceremony. I was so proud to be there to replace one of the statutes that Alabama had placed in Statuary Hall with a statue of Helen Keller, who was such a -- perhaps did more than any single person in history to help the disabled. And it began with a prayer delivered by the (paid ?) chaplain of the House of Representatives, and it concluded with a prayer by the (paid ?) chaplain of the United States Senate.

So at any rate, I think the Supreme Court is pretty -- is it's failed to clarify what it is that's okay and what's not okay, or what's permissible and not. In *Virginia College Building Authority vs. Lynn*, the Virginia Supreme Court considered the Regent University, a sectarian private school in Virginia, could participate in a state-run bond program. I guess it was a bond program to -- that colleges and universities, private and public, could participate in. You joined another justice's dissent that would've held that the university -- "since the university provided religious training or theological education," close quote, in violation of the Virginia Constitution and state statute, it would be a violation of Virginia Constitution and state statute to allow them to participate in that program, even though the university taught secular subjects also.

Although your opinion didn't directly address whether it would violate the Establishment Clause to allow Regent to participate in a bond program, I am concerned about your view on the separation of church and state issues. At the time you decided this case, did other religious schools in Virginia -- for example, private or parochial schools -- participate in the program, and if so, what made Regent different from those schools?

JUDGE KEENAN: Well, as I recall, senator, that bond issue came in the context of the proposed Regent campus that was going to be for a divinity program. So that while Regent had other non-sectarian programs, such as business and law, that the bond funding was going to be used directly for that school of divinity. And that's what made a difference in my mind in the analysis that was applied. We did not have an Establishment Clause argument. It was simply whether there was that sectarian -- whether there was that overlap in terms of the bond funding and the religious purpose of the construction that was proposed.

SEN. SESSIONS: Well, I would acknowledge that we've got quite a body of law that's pretty amorphous about how to decide these issues. But the Constitution prohibits establishment of a religion, but it guarantees the right to free exercise of religion. Presumably, being a minister of a religious faith is not in itself a bad thing. And therefore, I'm a bit -- I'll just ask you to -- perhaps see if you can explain why it is that you would care whether they wanted to study to be a minister.

JUDGE KEENAN: Well, I think it was great that they wanted to study to be a minister. I mean, certainly --
(Cross talk.)

SEN. SESSIONS: -- disqualify, why is that profession different than being a consigliere for the mafia?

JUDGE KEENAN: Well, the --

SEN. SESSIONS: They could get money if you were going to --

JUDGE KEENAN: Well, the issue, though, was the bond funding and whether the bonds were being used for a religious purpose. And under our law, the bonds could not be used for a religious purpose. And that was the --

SEN. SESSIONS: Was that the state constitution or state statute, or -- do you recall?

JUDGE KEENAN: I believe it was brought under the -- there was a constitutional challenge, and I don't recall any particular statute, I have to say, because that --

SEN. SESSIONS: State, constitution or federal?

JUDGE KEENAN: I believe it was state, but because of the passage of time, sir, I could stand corrected on that.

SEN. SESSIONS: Well, it -- they're difficult issues. It just seems to me that we all exercise -- if somebody is going -- wants to undertake a religious career and actually counsel people on their marriages and go through their funerals with the families and help raise their children in good and healthy values, somehow that becomes unconstitutional and that other goals are not.

Thank you, Mr. Chairman.

SEN. CARDIN: Senator Franken?

SEN. AL FRANKEN (D-MN): Thank you, Mr. Chairman, and welcome, Justice Keenan. That's proper, right?

JUDGE KEENAN: Thank you.

SEN. FRANKEN: I'd like to welcome your family as well, and I agree that mafia consigliere schools shouldn't get funding -- (laughter) --

SEN. SESSIONS: Well, they would be able to go to the court, demand it and get it. (Laughter.)

SEN. FRANKEN: Well, okay, I think -- we can't even agree on that evidently. But anyway -- I -- this morning we had a hearing called Workplace Fairness: Has the Supreme Court Been Misinterpreting Laws Designed to Protect American Workers from Discrimination? And Jack Gross was one of the folks who -- one of the witnesses who testified from the Gross versus FBL Financial Services case. And I'm interested to learn more about your rulings in discrimination cases. In *Shaw vs. Titan Corp*, you ruled that a plaintiff is not required to prove that his or her employer's discriminatory motive was the sole cause of termination.

Now, in *Gross*, the Supreme Court recently ruled on this very question, and they determined that lawsuits under the Age Discrimination Employment Act -- that in lawsuits under that that the plaintiff must show that age was the determinative factor in the termination. And I found this to be troubling and sort of thought of it as judicial activism. And can you tell me your reasoning in deciding the *Shaw* case, what led to your decision, and what do you think of the Supreme Court's decision on *Gross*, which, of course -- you would certainly abide by the precedence of that, being -- since you're -- this is for the Fourth Circuit.

JUDGE KEENAN: All right. Thank you, sir. First of all, of course, the United States Supreme Court precedent binds us all.

SEN. FRANKEN: Right.

JUDGE KEENAN: And the statute that they interpreted -- that issue is settled and beyond dispute. The *Shaw* case came up in the context of a wrongful termination of employment. It was, as I recall, a common law claim. And the question was was the plaintiff, as you say, required to prove that the employer's sole motive was the discriminatory motive? And our court unanimously determined that the plaintiff was not so required. And the reason for that was that the -- in these situations the -- there are often after the fact reasons given.

There are a myriad of reasons that come to the fore. And we felt that this was an issue for the trier of fact. This is something for the jury to sort out. I mean, was this a reason why this person was fired, as opposed to was it the only reason why this person was fired? There could be many justifications for firing, many gradations, perhaps the most serious being the discriminatory act of the employer and there being some subsidiary considerations that were really quite minimal in comparison. And so the trier of fact could make that determination.

SEN. FRANKEN: So is the burden on the plaintiff in that case to show that the preponderance of the cause of being fired was the discriminatory motive?

JUDGE KEENAN: No, by the preponderance under the *Shaw* ruling it would be that -- by a preponderance of the evidence, my employer fired me for a discriminatory reason. And then the employer could by defense come back and say, well, wait a minute, you know, this was very, very minimal. In our determination, this employee didn't show up for work on time. This employee was disloyal, leaked information to a competitor, and all sorts of -- a host of reasons that would be available to an employer for a defense. And --

SEN. FRANKEN: Right. But you felt that -- I mean, what you ruled was that it doesn't have to be the sole reason, the discrimination.

JUDGE KEENAN: That's right. Yes, sir.

SEN. FRANKEN: Well, thank you. Thank you, and welcome to your family again.

JUDGE KEENAN: Thank you, sir.

SEN. CARDIN: Justice Keenan, let me just comment on one of your roles; I found it important. And that is the removal of a district court judge, which is something that's rather unpleasant. No one likes to be involved in that. But I

want to give you an opportunity to talk a little bit about how important judicial ethics is in your life as a judge, and if you're confirmed to the federal bench, how you see your role as far as ethics is concerned.

JUDGE KEENAN: Yes, Senator Cardin. I think that judges serve a very important role in terms of in their communities, in terms of always standing for the highest ethical principles. The case to which you allude is -- was a very difficult case for our court. A judge, as you're aware factually, had -- a woman was claiming that she was injured or attacked by her husband, and the judge made a very, very poor decision in terms of asking the woman to lower her pants in the courtroom to display her wound. And although this was a restricted hearing because it was a domestic relations court, there were still several members to whom this woman was not related who saw her exposed body.

And as a court reviewing this, we took the matter very seriously, because we considered in terms of the community -- what would it say if we sent that judge back to the community having done this, having, from my perspective, ignored the dignity of the individual who was before the court? This woman was coming before the court with a complaint. She was seeking the aid of the court. And in our view, she was degraded by that judge. We felt that it would be a very, very unwise course to return that judge to the bench in view of the extreme nature of his conduct and misjudgment.

SEN CARDIN: Well, thank you for that answer. It's a tough decision to remove a colleague, and it was the right decision.

The oath that you will take if confirmed includes a provision of doing justice regardless of wealth, specifically mentioning the poor. I personally believe the legal community has a specific responsibility as it relates to providing access to justice to those who otherwise could not afford it, including pro bono work. I want to hear what you have done during your career in regards to meeting this obligation of pro bono and how you see your role as a judge in furthering access to those who otherwise would not have access to our judicial -- to our legal system.

JUDGE KEENAN: Thank you, senator. I think the judge is a very important role model in terms of the legal community in encouraging lawyers to perform pro bono work. As an attorney, I regularly accepted reduced fee civil cases from the Fairfax Bar Association, I accepted criminal court appointed case, and I worked on many bar committees and did volunteer work for several years for -- when I practiced as an attorney. And then when I became a judge, I felt it was very important to continue this work, and I did it at different -- in very different aspects of the community.

In one case, I worked as a volunteer mentor for a year in an elementary school where once a week I met with a student, and she and I went over her homework, talked about the law. I tried to give her hope for the future. She lived with -- I think with six siblings in one-bedroom apartment with her mother and her grandmother. And it was a one-on-one relationship to try to give this young girl some hope.

I've worked in much larger group programs with the YMCA to encourage young students with regard to careers in the law, to excite them and interest them. I love speaking in public schools. I've done that quite a bit. My favorite grades are four, five and six because the kids are still lacking in cynicism and they just love to learn everything they can. I am now currently working on a Judicial Wellness Initiative with the Supreme Court of Virginia, and that is something I regard as very, very important to our state, and that is to help judges and their families who are having substance abuse problems. They also could be having bereavement problems, problems involving depression, problems that a judge normally can't get help for in a community because of the judge's leadership role. So I have devoted a big part of my career to pro bono work.

With regard to the second part of your question, the courtroom and the court process and what we do for litigants, I think a court has to be zealous in making sure that litigants have all of the rights that they're entitled to. In other words, if the defendant is asking for an attorney, as a trial judge, I always made sure that defendant got the attorney. When the defendant was making a motion under Ake vs. Oklahoma for an investigator or whatever, I, of course, wanted to make sure that his or her plea was fully and fairly heard.

A judge has a boundary, though, that the judge cannot step over. I cannot subjectively cross over and actively try to rebalance the scales because I think somebody may have fewer resources in the legal system. I will zealously ensure that they get everything that is available and that they're entitled to, but I don't believe it's my role to, as I said, attempt to rebalance the scales, because then I become a player in the process rather than a neutral evaluator of the case before me.

SEN. CARDIN: And I do believe that there's been some court decisions on that as well defining that role the way you just stated. So I agree with that.

I want to -- you know, in normal times it's difficult to -- for poor people to get access to our civil system. In a recession, it's that much more difficult. Our highest court in Maryland has passed rules underscoring the responsibilities of every member of the bar to participate in pro bono activities and having mandatory reporting as to what our lawyers are doing in regards to meeting that obligation. I don't know whether the Supreme Court of Virginia has taken any similar steps or not. I do know that the different circuits do talk about these issues.

And I just want to get your -- I guess your interest in using your position appropriately in the leadership of the judiciary to advance what I hope you agree with me is a responsibility that all lawyers have to participate in pro bono and to help particularly in tough economic times.

JUDGE KEENAN: Well, I certainly agree, Senator, that there is a great need. There's an enormous need out there. And I think that a judge -- all judges should encourage lawyers to engage in this kind of work, and it doesn't mean that a lawyer has to do one type of pro bono work over another. There is a myriad of options available to attorneys so that they can find what suits them best, suits their interests and their personal beliefs. And I don't think that a judge should advocate for any one particular program over another, but a judge should urge lawyers to give of themselves and to give back to the community that's really given them a lot. And so that's something I've done throughout my career, and that's something I would anticipate if confirmed that I would take pleasure in doing on the Federal Appeals bench.

SEN. CARDIN: Okay, thank you for that answer.

Senator Sessions.

SEN. SESSIONS: Thank you. Judge Keenan, I guess you know fairly closely what you get paid. Are you willing to serve at that salary? (Laughter.)

JUDGE KEENAN: (Laughs.) Yes, sir. (Laughs.)

SEN. SESSIONS: When I asked -- John Roberts sat in -- Justice -- Chief Justice Robertson -- he took a little longer to answer it -- (laughter) -- and he has since asked for more -- (laughter) -- but it is -- with the deficit we are facing, I don't think we're likely to see any huge increases. And everybody would like to pay more, but this country is in a serious financial condition.

And I'm -- tell me about the -- just briefly on your caseload -- how would you estimate the caseload on the Fourth Circuit to be compared to your caseload on the Supreme Court that you serve now, and do you -- I know we have a shortage of judges, probably more in the Fourth Circuit than any other circuit. Some of that is due to objections from senators from the Fourth Circuit to President Bush's nominees, and rightly or wrongly, but -- so it'll -- some of them didn't get confirmed. I'll just say it that way.

But how do you feel about that and the -- we just had a hearing -- was it last week, I guess -- in which Judge Joe Platt of the Eleventh Circuit -- I think he has the highest caseload in the country -- believed that they should not add more judges because the circuit becomes more unwieldy. And some of the other circuits were requesting judges when they had substantially less. So I guess at any rate -- do you feel a responsibility to manage cases, and how do you compare the level you expect to see in the federal court as compared to what you have to do on the Supreme Court?

JUDGE KEENAN: Well, I think the biggest difference probably is the Supreme Court of Virginia. Most cases do not have appeals of right. They proceed on a petition for appeal. And in the federal court there is the right of appeal. And so that certainly admits of the possibility of a lot more cases. In Virginia we handle, I think, about 3,000 cases a year in our Supreme Court. And we work very hard and --

SEN. SESSIONS: You write opinions on how many?

JUDGE KEENAN: No, we write opinions -- not on that many, no. We issue orders in many cases. This is an estimate, but I'm -- I -- we issue somewhere around 250 opinions, I think, a year. I believe that the -- and see, with regard to the Fourth Circuit, I -- I'm not familiar with their internal statistics, but they do issue a number of opinions, and then some of them non-published, some of them published. So I'm not really familiar with the numbers.

But I do sense that I'm going from one pretty demanding job to another. And I have to say --

SEN. SESSIONS: (Inaudible.)

JUDGE KEENAN: -- I'm looking forward to the challenge. I like to work. (Chuckles.)

SEN. SESSIONS: Well, you've got a record of -- that's won the respect of quite a lot of people, and that's something you can be proud of, and I know you're pleased to have the honor of this nomination, and we'll be -- maybe submit a few more questions to you, but I appreciate the opportunity to meet you and talk with you today.

JUDGE KEENAN: Thank you, sir.

SEN. CARDIN: Thank you, Senator Sessions. Let me point out the record will remain open for questions by members of the committee. I would urge all the nominees to try to get those responses back as quickly as possible and thoroughly as possible. It will expedite the ability of the committee to bring -- to move the matter forward. So we just urge you to give that your prompt and complete attention.

Judge, thank you very much. Appreciate it.

JUDGE KEENAN: Thank you, sir.

SEN. CARDIN: Thank you.

JUDGE KEENAN: Thank you, senator.

SEN. CARDIN: The next panel will consist of Laura (sic/Laurie) **Robinson** to be assistant attorney general for the Office of Justice Programs, United States Department of Justice, and Katinja (sic/Ketanji) Brown Jackson to be a member of the United States Sentencing Commission.

I do have -- before we -- I'm going to ask you -- if you would just remain standing and raise your right hand for the oath.

(The witnesses are sworn in.)

SEN. CARDIN: Thank you very much. Before we start the testimony, without objection, I'm going to put in the record on behalf of Ms. **Robinson** a letter from the Baltimore Police Department, the police commissioner in support of the nomination, from Ike Leggett, the county exec from Montgomery County, the director of the Department of Correction and Rehab in support of Ms. **Robinson's** nomination, and the statement from the Honorable Paul Ryan, a member of Congress from Wisconsin in support of Ms. Jackson's nomination to the Sentencing Commission.

Ms. **Robinson**, you may begin.

MS. **ROBINSON**: Thank you, Senator. If I could introduce my family, I'd like to introduce my husband, Sheldon Krantz (sp) -- if you could stand; my son, Ted, stand; my sister, Anne Kay (sp), and her husband, Jeffrey Kay (sp). And I thank you, senator, and certainly Senator Sessions, who I've known for many years, and very pleased to be here, very honored to have been nominated by the Administration for this position, very happy to answer your questions, senator.

SEN. CARDIN: Thank you.

Ms. Jackson?

MS. JACKSON: Yes, sir. Senator, thank you very much for this opportunity to appear before the committee today. I appreciate it, and I would like to start by thanking the president for nominating me to this position. I'd also like to thank the chairman of the committee and the ranking member, Senator Sessions. I also appreciate the opportunity to introduce my family, beginning with my husband, Dr. Patrick Jackson, who is my support system for 13 years and a wonderful father to our two young daughters who could not be here today, but are hopefully hard at work doing their homework right now.

I would also like to introduce my parents, Johnny and Elorie (sp) Brown, who have come here from Miami, Florida to support me, my parents-in-law, Gardner and Pamela Jackson, who have come here from Boston, Massachusetts, my brother, second lieutenant Ketaj (sp) Brown, who is a member of the Maryland Army National Guard, who served in Iraq and who graduated from Officer Candidate School two weeks ago; his supportive girlfriend, Olga Butler; and my wonderful brother-in-law and sister-in-law, Dana and William Jackson.

Other than that, Mr. Chairman, I don't have a statement, but I would like to say that if I am fortunate enough to be confirmed, I look forward to working again with the excellent staff at the Sentencing Commission, and I'm happy to take any questions that you might have.

SEN. CARDIN: Well, thank you, and we appreciate both of you introducing your families, and it's a pleasure to have you all here on our committee.

Ms. **Robinson**, if I just could begin with you, if you could just share with us how -- whether -- what would be your priorities if confirmed to this position? How do you see the Office of Juvenile Justice and Delinquency Preventions, a very important part of local governments? Give us a little idea about some of the priorities that you would look at within your portfolio of responsibilities, whether you think there's a need to change the way that priority sentences are made. How do you intend to work with the Judiciary Committee in carrying out that responsibility?

MS. **ROBINSON**: Certainly. I'd be happy to. And senator, if I could first say also that I overlooked one of my family members because I didn't know he was coming. I'd also like to introduce my brother, Peter Oberby (sp), who's seated over at the press table --

SEN. CARDIN: Oh. (Laughter.)

MS. **ROBINSON**: -- because he's a member of the press.

SEN. CARDIN: Right.

MS. **ROBINSON**: And he didn't tell me he was going to be coming.

Senator, if I'm lucky enough to be confirmed, I would want to emphasize these priorities. One of the key areas that OJP works in, of course, is partnership with the field. So I would see strong importance to strategic partnerships with state, local and tribal officials in working to reduce crime across the country.

Of course, this is a key area in which OJP has always worked, but I think there's much more that can be done to strengthen the way in which OJP -- and you mentioned OJJDP, and that's a key part of this -- particularly with the very difficult problems of youth violence that have so recently been highlighted just in the last few days -- ways in which we can make sure that officials around the country can access the resources available through OJP and OJJDP.

In a second area, I want to make sure that what we're doing at OJP is based on what we know from science. I know that Senator Specter mentioned that -- and this is an area that Senator Sessions and I have discussed in the past -- is what we're doing based on the best evidence. We shouldn't be spending taxpayer dollars unless we know that it's on areas that really work. So that would be a second area of priority.

A third area of priority would be to ensure working closely with the inspector general that we're ensuring that we're good stewards of federal taxpayer dollars and guarding against abuse and neglect of those dollars.

SEN. CARDIN: Well, the juvenile justice issues are really important. We are struggling with that in this committee. We have had some legislation that we're considering. If I had to pick the two areas we probably spend the most time, it would probably be juvenile justice and the drug issues dealing with recidivism, dealing with drug treatment, dealing with how we handle the drug issues. So you're going to get a lot of requests in both of these areas. For example, drug courts.

MS. **ROBINSON**: Yes.

SEN. CARDIN: Give me your thoughts as to how you would encourage -- and I hope you would do this -- a larger interest among the local governments so that we can have better choices. I mean, the more interest you have, the more closely you can work with the local agencies, the better pool of requests we're going to have, the better programs we get, the best practices we all learn from each other's states. Drug courts are working well in some states. Other states need help. How do you see your role in trying to bring this together?

MS. **ROBINSON**: Senator, I think one way that OJP can do that better -- if I'm confirmed, I would want to have and to set up what I call a what works clearinghouse. I think OJP has not in the past done a good enough job in distilling information about the innovative programs out there that really are working well. Have we really distilled the information from research on how well drug courts really are reducing recidivism and reducing drug use? Let's help people, let's say, in Des Moines find out how the drug court in Denver is working well, or the one in Philadelphia, and show people over in Pittsburgh, just as examples.

I think if they can see how their peers around the country are really using this in a effective way, not necessarily just a federal agency telling them, but their peers in another jurisdiction -- that that's a good selling point, if you will. And if they can see the percentage reductions in recidivism, that they have good data -- that that's a selling point to their own city councils when federal funding may run out.

SEN. CARDIN: And you have a large workforce that is part of the office -- some are represented by AFSCME. Can you tell me how you plan to work with the workers and their representatives in order to have unity for the purpose of the goal of the agency?

MS. ROBINSON: Yes, senator. When I was at OJP back in the 1990s, I had a very good working relationship with the union. I met regularly with the president of the union then, who was Stu Smith. We didn't always agree on every issue, but it was a very good communication. And if I'm confirmed, I would plan to have that same kind of regular communication and working relationship. I believe very strongly in a fair workplace and ensuring that our managers and supervisors at OJP are people who are fair in the way that they go about managing the workplace and that they have the training to ensure that they're good managers.

SEN. CARDIN: Thank you.

Ms. Jackson, I'm going to talk a little bit about sentencing with you. There's one issue that has been of foremost interest in this committee, and that is the disparity between crack and powder cocaine. Now, these are statutes, so you -- the sentencing -- the sentence disparity is -- needs to be corrected by Congress. I understand that. But the Sentencing Commission needs to take a look at that and is taking a look at it. How do you see your role on the Sentencing Commission dealing with disparities in our system that are impossible to justify?

MS. JACKSON: Well, senator, thank you for your question. If I am fortunate enough to be confirmed, I believe that my role, along with the other commissioners, would be to look at the research, to look at the data, to consider the statistics and determine whether or not the disparities that are reflected in the data have some justification in the purposes of sentencing. That's part of the role of the commission in setting federal sentencing policy, and it's certainly something that I know -- that at least with respect to crack and the crack/powder disparity, the commission has looked at and was very forward-thinking about addressing that particular disparity.

SEN. CARDIN: And I do hope that our committee will be able to deal with that issue. There's a lot of work being done by many members of our committee to try to bring us together on that issue. Do you have a view in regards to the Supreme Court decision in 2005, the Booker case, which held that the guidelines are not mandatory?

MS. JACKSON: Well, it's a complicated decision, as you know, that has different aspects to it. I believe that at the end of the day the remedial half of the opinion was the correct outcome given the constitutional holding. And the guidelines, as you say, are now advisory, and I do think that as a result there are -- there is additional statistical data that the commission can collect about what judges are actually doing in these cases where they now have the opportunity to sentence outside of the guidelines under the statute directly.

SEN. CARDIN: Senator Webb has introduced legislation for us to take a look at the criminal justice system and our sentencing and penal issues. If that legislation is successful, your commission will have an important role in helping that study go forward. Can you just share with me your thoughts as to Senator Webb's request that we take a more comprehensive look at our sentencing and penal policies in America?

MS. JACKSON: Well, Senator Webb's proposal I have not studied in detail, but it certainly is a part of a national dialogue that's going on right now with regard to federal sentencing. And I believe to the extent that his commission and working group is able to come up with proposals and -- as to how to address sentencing, then that would certainly be welcome in the overall debate about what needs to be done now.

SEN. CARDIN: Thank you very much.

Senator Sessions.

SEN. SESSIONS: Thank you. Sentencing is such a big deal. You've got a 98 percent conviction rate. The real question in most cases is how much time will a person serve? I am absolutely convinced from my experience that -- the fact that we have a lot of people in jail for fairly long periods of time has been a factor in -- the predominant factor, in my view, in the decline in crime.

Murder rates in a lot of areas are half what they were. The crime in general is down. In the late '70s and early '80s -- I became a United States attorney in the early '80s, and people were terrified over crime. It's not as intense today, and we've done some things right, but not that there's not -- nobody should serve longer in the slammer than makes sense. So that's why I've supported our substantial reductions in the crack cocaine penalties, and I'm working with a number of people and -- to see if we can reach an accord. I've been supporting that for six years, and they haven't gotten anything past yet, maybe more than six years.

And I am a little worried about where we're heading with the sentencing guidelines, and essentially I -- that I -- we need not go back to the situation in which two defendants in the courthouse -- and one is down the hall before Judge X, and one before Judge Y, and they get twice as -- five times the sentence for the same offense. So the guidelines on Booker's -- opened up some real challenges for us, and I hope that you'll work on that.

Ms. **ROBINSON**, I really appreciated your talking about science, because what kind of defendants repeat, which ones, if you release, are likely to go back and commit serious crimes again are big factors.

And I support the drug courts, Senator Cardin. I really do. I think they work pretty well, but they're done quite differently in different cities, and I guess I really liked your answer to say, well, which one is working best. And shouldn't we be able to advise a community who's going to establish a drug court, and -- especially if they're going to get a federal grant -- to ask them whether -- are they going to comply with the best data we have out there on how to conduct that drug court?

MS. **ROBINSON**: Right.

SEN. SESSIONS: Do you kind of -- do you agree that we can do a better job of that, Ms. **ROBINSON**?

MS. **ROBINSON**: Yes, senator, I very much do. And I think a key part of what the federal government does best with these kinds of grants is provide technical assistance with them, which goes directly to your point. And one of the key things about technical assistance is that the best way to provide it is not have it be conducted by federal employees from Washington, but have it conducted by people who are from -- professionals from jurisdictions out in America who are doing this kind of work. So we arrange it from an agency in Washington, but it's actually conducted out in the field by professionals, again, from one jurisdiction, maybe from Denver going over to Des Moines or wherever.

SEN. SESSIONS: I think that's a good idea, and I would support that. I remember -- you and I have shared this story with you, Mr. Chairman. Fred Thompson was elected to this body before I was. He chaired the Subcommittee on Juvenile Crime. At the time there was a big emphasis on what to do about juvenile crime. And he said the only thing he was sure of when I took over that subcommittee was that we didn't know enough about why juveniles commit crime. And if the federal government wanted to do something worthwhile, we would do some really aggressive studies into that because 99.99 percent of juvenile cases are tried in state courts, not federal courts. And I always thought that was pretty common sensical. Do you think we know enough about juvenile crime, its causes, its recidivism possibilities? Do we provide enough data and information for individual juvenile judges and probation officers and juvenile prison systems around the country?

MS. **ROBINSON**: No, senator, I do not. I think we have --

SEN. SESSIONS: Well, you were there for eight years?

MS. **ROBINSON**: Seven years.

SEN. SESSIONS: Seven years. What can we do to do -- learn more about it?

MS. **ROBINSON**: Well, I think we know some things, but we need to know much more. There is very little research money actually appropriated by Congress to look into these things. There's a lot of -- there --

SEN. SESSIONS: A lot of the money that goes to Office of Justice Programs, which you administer, are earmarked, are directed to things other than research and development?

MS. **ROBINSON**: That's correct.

SEN. SESSIONS: (Inaudible.)

MS. **ROBINSON**: Most of it goes into programmatic money, which is very important, but a very small percentage goes to research.

SEN. SESSIONS: Now, you say programmatic.

Is that money that goes to state and local jurisdictions mostly --

MS. **ROBINSON**: Correct.

SEN. SESSIONS: -- to help them start a drug court or --

MS. **ROBINSON**: Correct.

SEN. SESSIONS: -- run one --

MS. **ROBINSON**: Yes.

SEN. SESSIONS: -- or a juvenile program?

MS. **ROBINSON**: Or for the Byrne grants, for example, for law enforcement task forces and those kinds of things.

SEN. SESSIONS: So tell us -- be honest with us -- time of budget -- if we had to choose, it seems to me we'd do better to investigate rigorously some of the programs that are being tried all over America and see if we can't help give good advice, even if we had to reduce some of the grant money, program money.

MS. **ROBINSON**: Yeah, the fact is that even a doubling or a tripling of the research funding would make a tremendous difference, because it -- it's not a tremendous amount of money, but even putting \$20 million more, or \$10 million more into research could create a great deal more knowledge about these issues and really inform the spending of the program dollars.

SEN. SESSIONS: I also appreciate your willingness to examine, Mr. Chairman, the operation and structure of Office of Justice Programs. It has been cobbled together by -- this legislation gets passed. We're all proud of them. We get a director in charge of it, director in charge of this, and director -- and they have interest groups and everything. And then at some point you say, oh, it's time to run this thing more streamlined, and we can be more efficient, be more productive. Usually, somebody hollers, you know, and objects, and it's difficult to get anything done. But I hope that you would continue your willingness to examine how to, as you just said, make sure we get the best use of the taxpayers' money. Would you do that for us?

MS. **ROBINSON**: I would be happy to continue those discussions with the committee, of course.

SEN. SESSIONS: I know you had some good ideas on how we can improve the structure of that when you were a part of the Clinton administration, and afterwards too you testified here before our committee on that.

So, Mr. Chairman, I think in Ms. **Robinson** we have one of the best nominees of the Clinton Administration. I think you did a great job and managed well and worked hard, and were focused on doing the right things. And I think it gives us a opportunity as the committee to listen to your advice and suggestions and see if we can't help you do your job better, because this system has developed over the years. It's not as productive, I think, as it should be.

Thank you.

SEN. CARDIN: Well, Mr. Chairman -- Senator Sessions, let me agree with you. Your timing is perfect because the budget's on the floor -- (laughs) --

SEN. SESSIONS: (Laughs.)

SEN. CARDIN: -- as we speak, being managed by my colleague from Maryland, Senator Mikulski. And you're correct. We --

SEN. SESSIONS: And my colleague.

SEN. CARDIN: Right. That's right, you're -- and Senator Shelby. You are correct. We generally get involved with that as we put another little wrinkle into the program rather than looking at the overall effect. And I am very encouraged by Ms. **Robinson**'s responses because the purpose of the agency, Office of Justice Programs, is to make sure that there's a national benefit to this. If it was just a funding program, we could just figure out a formula and save a lot of time. But we're trying to make this -- the benefits -- so states can benefit from other states, and that there's national strategies to help states, which are the primary agencies that deal with these problems -- that there's a sharing of information and there is a more effective way for a state or local government to deal with these issues.

So I think Senator Sessions is absolutely right, and Ms. **Robinson**, we really do look forward to your recommendations in this area. I think we all are trying to get a better effectiveness on the use of these federal funds. It really shouldn't be just who can get as many earmarks to their states as possible, but how we can best utilize the funds to deal with this national priority of reducing juvenile crime and adult crime and make our communities safer in the most cost effective way. So I just wanted to add my support to Senator Sessions' comments.

SEN. SESSIONS: And what is the total OJP budget?

MS. **ROBINSON**: For 2009, it was \$2.8 billion.

SEN. SESSIONS: And so I'm not saying any of this is wasted, although I'm sure some is not spent well. But the idea that we don't have enough money to do good research is -- raises questions -- 10 (million dollars) or \$20 million could substantially increase your ability to do research out of a multi-billion dollar budget, indicates that Congress probably needs to examine how we allocate the money.

SEN. CARDIN: I think that's our responsibility. You're correct. Let me thank both of our nominees. The record will remain open for one week without objection. I will submit statements from -- I understand, Ms. **Robinson**, you have an opening statement to submit for the record. That'll be included in the record. And with that, the committee will stand adjourned. (Sounds gavel.)

MS. **ROBINSON**: Thank you.

LOAD-DATE: October 9, 2009