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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	List	References	1	N.D.	b6;
002	Report	Candidate Report [7 PAGES RELEASED IN PART FOR (b)(6) ON PRA RE-REVIEW 05/20/2025 JLS]	7	07/30/2001	b6;
003	Report	Candidate for Nomination to the U.S. District Court for the Western District of Oklahoma [4 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 05/20/2025 JLS]	4	07/23/2001	
004	Report	Candidate Report [8 PAGES RELEASED IN PART FOR (b)(6) ON PRA RE-REVIEW 05/20/2025 JLS]	8	N.D.	b6;
005	Report	Candidate for Nomination to the U.S. District Court for the Eastern District of Oklahoma [2 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 05/20/2025 JLS]	2	N.D.	

COLLECTION TITLE:

Counsel's Office, White House

SERIES:

Kavanaugh, Brett - Subject Files

FOLDER TITLE:

District Judges - Oklahoma

FRC ID:

9122

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- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
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- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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facsimile
TRANSMITTAL

To: Mr. Brett Kavanaugh
Office of White House Counsel

Fax: 202-456-1647

Phone: 202-456-7984

Date: July 27, 2001

Re: References/News Release
James H. Payne Judicial Nomination

Please find attached the reference list requested by you during our telephone conversation yesterday.

From the desk of...

James H. Payne
United States Magistrate Judge
Eastern District of Oklahoma
(918) 687-2434 (phone)
(918) 687-2411 (fax)

References/News Release	Home Address/Phone	Office Address/Phone
Joseph W. Morris Attorney at Law (former United States District Judge, Eastern District of Oklahoma)		Suite 1000 100 West 5th Street Tulsa, OK 74103-4219 918-595-4800
Charles D. Neal, Jr. Attorney at Law (current President, Oklahoma Bar Association)		100 East Carl Albert Parkway P.O. Box 1165 McAlester, OK 74502 918-423-4611 (office) (b)(6) <i>Note: Authorization given by Mr. Neal 07-26-01 for contact via cell phone</i>
Honorable Frank H. Seay Chief United States District Judge Eastern District of Oklahoma		250 United States Courthouse 101 North 5th Street P.O. Box 828 Muskogee, OK 74402 918-687-2437
James M. Sturdivant Attorney at Law		Suite 1000 100 West 5th Street Tulsa, OK 74103-4219 918-595-4800
Betty Outhier Williams Attorney at Law		530 Court Street P.O. Box 87 Muskogee, OK 74402 918-687-5424
Ron Wright Attorney at Law		Suite A 300 West Broadway P.O. Box 707 Muskogee, OK 74402 918-682-0091

AUTOMATIC COVER SHEET

DATE : JUL-27-01 01:55 PM

TO :

FAX #: 912024561647

FROM : MAGISTRATE JUDGE PAY
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FAX #: 918 687 2411

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JOHN T. SPRADLING (1919-1996)

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TELECOPY TRANSMITTAL

TO: Brett Cavanaugh FAX NUMBER: 202/456-1647

FROM: Stephen P. Friot

DATE: July 27, 2001

MESSAGE/INSTRUCTIONS:

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JOHN T. SPRADLING (DD12 1990)

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EUGEN P. RIEGER

July 27, 2001

Via Facsimile No. 202/456-1647

Brett Cavanaugh, Esq.
Deputy White House Counsel
The White House
Washington, DC

Re: Stephen P. Friot -- Western District of Oklahoma

Dear Mr. Cavanaugh:

I enjoyed speaking with you this morning. Per our conversation, the following is a list of community leaders and prominent lawyers. I believe that all of these individuals would react quite favorably to the news of my nomination. All of the individuals named below are lawyers except Ann Felton. Ann Felton is a prominent community leader.

NAME	TELEPHONE
William R. Burkett	(405) 522-2530
George S. Corbyn, Jr.	(405) 239-7055
Ann Felton	(405) 232-4828
John N. Hermes	(405) 552-2258
John A. Kenney	(405) 552-2244
Eugene H. Mathews	(405) 843-7772
James R. Waldo	(405) 235-5516

Sincerely,



Stephen P. Friot

SPF/lg

**ATTORNEY-CLIENT, ATTORNEY WORK-PRODUCT,
AND DELIBERATIVE PROCESS PRIVILEGED**

CANDIDATE REPORT: STEPHEN P. FRIOT

**Prepared For The White House Pursuant To The White
House's Request For Views On The Candidate**

Summary: Stephen Perley Friot is a veteran trial lawyer at a mid-sized law firm in Oklahoma City, Oklahoma. His litigation experience is almost exclusively civil, with a particular expertise in aviation product liability matters. In addition to attending to regular client matters, Mr. Friot also has a commendable *pro bono* record and is active in community organizations such as the Boy Scouts, Habitat for Humanity, the local bar, and Legal Aid of Western Oklahoma. Members of the Oklahoma bench and bar uniformly applaud the selection of an experienced trial lawyer like Mr. Friot for the federal bench.

Mr. Friot's case load, writings, and speeches provide little insight into his judicial philosophy. However, his answers to certain oral and written questions suggest that he has a moderate judicial ideology. While Mr. Friot suggests that judicial activism may be an appropriate function of the appellate courts, he believes that trial judges should focus their energies on guaranteeing a neutral and impartial forum in which to try disputed facts and should intrude into the affairs of the political branches with "considerable caution." In addition, Mr. Friot lists Sandra Day O'Connor as his most admired justice.

In short, there is little reason to expect any opposition to Mr. Friot's nomination given his standing in the Oklahoma legal community, his absence of controversial commentary, and his relatively moderate ideological views.

I. General Background/Legal Career

Stephen Friot was born in Troy, New York (b)(6). He attended the University of Oklahoma for both his undergraduate and legal education, graduating with a bachelor's degree in political science in 1969 and earning his law degree in 1972. Upon graduation from law school, Mr. Friot joined the law firm that is now known as Spradling, Alpern, Friot & Gum, L.L.P. Less than three years later, Mr. Friot became a partner in that firm. Today, that law firm consists of twelve lawyers – eleven males and one female first-year associate.

In addition to his legal practice, Mr. Friot has, over the years, engaged in a number of other legal and non-legal activities. Throughout his private legal career, Mr. Friot has carried at least one *pro bono* matter (and as many as three such matters) at any particular time. Mr. Friot has been actively involved in the Legal Aid of Western Oklahoma, serving on its board since 1995 and being recognized as *pro bono* lawyer of the month in February 1995. In 1979, he was an adjunct

professor at the University of Oklahoma College of Law. During the 1991-92 year, Mr. Friot served as President of the Oklahoma County Bar Association, during which time he wrote a monthly column in the county bar newsletter. (One of those columns is discussed in further detail below.) He is also a Master in his local Inn of Court. Since 1977, Mr. Friot has been involved with his local chapter of Habitat for Humanity, acting as Chairman of the Board of that chapter since 1992. He is also active in the Boy Scouts organization, serving as a scoutmaster from 1993 through the present and as chairman of the troop committee since 1997. (In his capacity as a Boy Scout leader, Mr. Friot has not had occasion to address the gays-in-the-scouts issue.) In March of 2001, Mr. Friot received the Silver Beaver Award, one of the highest honors the Boy Scouts bestows. Mr. Friot is also active in the Mayflower Congregational Church and a member of its Board of Trustees.

Mr. Friot has some limited judicial experience. In the early 1980s and again in 1991, Mr. Friot was appointed by the Chief Justice of the Supreme Court of Oklahoma to serve as a member of a three-judge panel of the Temporary Court of Appeals for the State of Oklahoma. These temporary courts, which have jurisdiction over only the three cases assigned to them, are appointed from time to time in Oklahoma in order to lessen the backlog of civil cases. Of the cases addressed by Mr. Friot during his service on these temporary courts, none seems particularly interesting or controversial. In September 1980, Mr. Friot served as one of nine judges appointed to a judicial disciplinary panel. In the one case Mr. Friot heard in that capacity, a judge was compulsorily retired. Since 1995, Mr. Friot has also been a gubernatorially-appointed member of the Oklahoma Housing Finance Agency, where he acts in a quasi-judicial capacity.

Mr. Friot's political activity has been modest. He has been the treasurer for the election campaigns of two Oklahoma state court judges, and has participated in two referenda opposing casinos and the lottery in Oklahoma. In addition, Mr. Friot hosted attorney receptions for both of Governor Keating's campaigns, and was Oklahoma co-chair of Lawyers for Bush-Cheney 2000.

II. Noteworthy Litigation

Mr. Friot has appeared as counsel on roughly three dozen published opinions in both the state and federal courts, almost all of which are entirely unexceptional commercial cases. Several of Mr. Friot's cases, however, are worthy of mention:

1. *Penn Square Bank litigation*. Mr. Friot represented two directors of Penn Square Bank in the litigation and congressional hearings following the failure of that bank in July 1982. The litigation stemming from this bank failure resulted in numerous published opinions at the federal district court level. Mr. Friot has assured me that neither of his director clients were implicated in any fraudulent or criminal activity while serving as bank directors.
2. *Weeks v. United States*, 406 F. Supp. 1309 (W.D. Okl. 1975), *rev'd sub nom*, *Delaware Tribal Business Committee v. Weeks*, 430 U.S. 73 (1977). Mr.

Friot represented a Native American tribal group known as the Kansas Delawares in litigation challenging a federal statute governing the distribution of funds designed to redress the United States' breach of two 19th century treaties with the Delaware Tribe. Specifically, the statute at issue favored certain segments of the Delaware Tribe to the exclusion of the Kansas Delawares. Mr. Friot and a more senior partner at his firm were able to convince a three-member district court that a portion of the statute at issue was irrational and thus violated the equal protection component of the Fifth Amendment. On direct appeal to the U.S. Supreme Court, the case was argued by the more senior partner at Mr. Friot's firm. The Supreme Court reversed in an opinion written by Justice Brennan, holding that the statutory scheme survived the highly deferential judicial review of congressional action taken pursuant to Congress' unique obligation toward the Indians.

3. *Majors v. Good*, 832 P.2d 420 (1992). Mr. Friot represented Lee Majors (the actor) in a suit against an Oklahoma businessman and his wife for fraud and breach of fiduciary duty arising from the defendants' misappropriation of the assets of three drilling companies in which Lee Majors made a substantial investment. The jury returned a verdict in Majors' favor, and this verdict was sustained on appeal.
4. *EEOC v. Ackerman, Hobd & McQueen, Inc.*, 758 F.Supp. 1440 (W.D. Okl. 1991), *aff'd*, 956 F.2d 944 (10th Cir. 1992). Mr. Friot represented an Oklahoma City advertising agency against a claim by the EEOC that the advertising agency had engaged in pregnancy discrimination. The case was tried to a judge who issued extensive findings of fact and concluded that the advertising agency had, in fact, engaged in blatant pregnancy discrimination. The trial judge, however, went out of his way to commend Mr. Friot by name and in the published opinion and note that he and his opposing counsel were both "extremely well prepared and represented their clients with the highest degree of professionalism." 785 F.Supp. at 1442. On appeal, the Tenth Circuit affirmed without oral argument in a published opinion.
5. *Morgan v. Parcener's Ltd.*, 493 F.Supp. 180 (W.D. Okl. 1978). Mr. Friot represented a landlord in a civil rights action brought by prospective tenants who claimed that the landlord refused to rent an apartment to them based on race. The district court granted summary judgment in the landlord's favor on the plaintiffs' Fair Housing Act claim, holding that the claim was untimely.
6. *White Stripe Pipe Inspection, Inc. v. Apache Corporation*. Mr. Friot represented Apache in an action brought by White Stripe for unpaid billings. Apache had suspended payment of the billings, believing that White Stripe had been engaging in the commercial bribery of Apache employees by providing

them with cash, illegal drugs, and prostitutes. Ultimately, Mr. Friot obtained a jury verdict in favor of his client on his counterclaim for commercial bribery. Mr. Friot states that his counterclaim on behalf of Apache was quite controversial in the oil and gas industry, as his client was one of the few to challenge commercial bribery in the industry rather than look the other way.

III. Miscellaneous Other

Several other items appearing in Mr. Friot's record are worthy of mention:

Mr. Friot lists Justice O'Connor as the Supreme Court justice that he most admires. He particularly admires her joining of the majority in the recent string of 11th Amendment cases, as well as her opinions (often in dissent) regarding the right of bar associations to discipline lawyer advertising notwithstanding the First Amendment. Mr. Friot also describes Justice Ginsburg as "not as liberal as [he] expected," and he admires the Chief Justice's ability to foster collegiality on the Court despite the contentious issues it faces every year. As for lower court judges, Mr. Friot identified Senior Judge Ralph Thompson (W.D. OKL.), a Ford appointee, as a judge who embodies all that a judge should be. (Judge Thompson, in turn, described Mr. Friot as someone who would "absolutely" make an "exemplary" federal district court judge.)

Mr. Friot is somewhat naive concerning how diverse his law firm will be perceived by certain interest groups. Presently, Mr. Friot's law firm (of which he is a name partner) has twelve lawyers, of which only one first-year associate is a female. (Notably, that first-year associate sings Mr. Friot's praises.) Over the nearly thirty years that Mr. Friot has been with the firm, there has been only one female partner and only a handful of female associates. As for racial diversity, the firm has had two Latino lawyers over the years. Mr. Friot also proudly proclaimed that his firm has an admirable record with African-Americans, employing a number of them in staff positions around the office. In sum, Mr. Friot described his firm's diversity record as one that "anyone could be satisfied with." Obviously, Mr. Friot's responses in this area will need to be fine-tuned prior to his confirmation hearing.

Mr. Friot's writings are largely unexceptional, addressing various commercial litigation topics of no great interest. One writing, however, could unfairly be used against him by those concerned about the lack of diversity at his law firm. In a monthly column written by Mr. Friot during the year he served as President of the Oklahoma County Bar Association, Mr. Friot wrote a tribute to a deceased female lawyer, Kittie Sturdevant, who was admitted to the Oklahoma bar in 1912. In that column, Mr. Friot included the following quote from a 1913 legal treatise concerning women in the law:

Her peculiar temperament probably fits a woman for the duty of gathering evidence and preparing the details of a case. Her intuition will suggest means of securing witnesses and overcoming difficulties. But the clash of wit and the incidents of intense provocation arising in the

Quality 
1/2 ABA

actual trial of the cause are usually too severe for the sensitively nervous organism of a woman. So while woman's success in almost every line of endeavor, including the profession of medicine, has hitherto been quite notable, her lack of success as an advocate stands out in vivid contrast as one very important exception. Probably the future has for us some great woman advocate who will yet tread, triumphantly, the halls of justice and at whose remarkable self-control, clear logic and convincing words courts and juries will be won and the rights of clients vindicated; but that time has not yet arrived and until some such brilliant example appears upon the horizon we are not justified in holding out much hope for success to the young woman starting out with the ambition to be a great advocate.

Mr. Friot follows this quote by stating that some might view the quoted passage as "stripe," while others might deem it a "candid commentary on the natural order of things." Mr. Friot, however, identifies Ms. Sturdevant as who, despite the then-prevailing view of women in the legal profession, would have been undaunted. Unfortunately, Mr. Friot's column is not carefully written, and thus does not clearly articulate the point he is trying to make through reference to this quote, namely that Ms. Sturdevant went on to great accomplishment in the legal profession despite the prevailing view of the early 1900s that women were unfit for such work.¹

Mr. Friot states that he has been quite circumspect in the expression of his personal views on contentious issues. He states that the only personal view he has expressed in even a small gathering is that lawyer advertising should be regulated notwithstanding the First Amendment.

Mr. Friot and his wife have a woman (Unita Arthur) come to clean their house every other week. Mr. Friot represented that this woman is authorized to work in the United States, all relevant taxes related to her services were paid, and Mr. Friot's CPA completed the necessary paperwork.

Mr. Friot has had two very minor tax disputes over the years that were easily resolved through letters to the relevant taxing authorities. In one instance, the IRS conceded error. In the other, Mr. Friot was required to pay approximately \$1,400 to the Oklahoma Tax Commission.

Mr. Friot has had no scrapes with the law other than a traffic ticket twenty years ago for speeding in a school zone. Mr. Friot also reports that he has never used illegal drugs and has not abused alcohol or prescription medications.

¹ Several of Mr. Friot's writings also contain the following footnote that some particular individuals or groups may deem objectionable: "My eleventh grade English teacher, Maryalice Truesdale (no misogynist, and yes, that was her real name), taught me that 'his' is perfectly appropriate as a third person possessive pronoun of indefinite gender, when not used to refer to a particular person. Same with 'he.' So it will be in this paper."

Mr. Friot has been a defendant in three lawsuits – one by a federal inmate, one by a disgruntled former client, and one by a litigation adversary. All three were frivolous and were swiftly resolved in Mr. Friot's favor.

Those with whom I have spoken concerning Mr. Friot's potential nomination have universally lauded him. He is repeatedly praised as a courteous and even-keeled individual. Perhaps the only fault that anyone could identify in him was a lack of a sense of humor.

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Volume 23, Number 10, October 1991

BRIEFCASE

A Publication of
The Oklahoma County Bar Association

A Publication of the Oklahoma County Bar Association

A Tribute To The Human Spirit

President's Column

Stephen P. Friot



Kittie Sturdevant died in October, 1986. The remarkable thing about her is that she was born in 1890, was admitted to the Oklahoma bar in 1912, and practiced law for 74 years. She practiced law in her office in

the First National Building until a few months before she died. (A Datatimes search indicates that she filed her last pleading — a notice of hearing on the final account in a probate matter — on February 26, 1986.)

Not much was said or written about Kathryn Clyde Sturdevant (she was always known as "Kittie," even in her pleadings) when she died. This is a bit of a curiosity, because, according to impeccable sources such as Jack High (who was born the year Kittie Sturdevant started practicing law and has now been a lawyer for 55 years), there was certainly nothing about Kittie Sturdevant's comportment as a lawyer which would make her one of those individuals whose passing causes one to feel a vague sense of relief. (I'm sure you know the type.) Her career deserves more notice than it got.

I did not know Kittie Sturdevant well, but I knew her well enough that, in her own way, she was an inspiration to me. Not only did I see her practice law until she was in her mid-90s, I saw her go about her business with an indomitable spirit which

shamed me whenever I felt waves of laziness washing across me at 4:00 in the afternoon. In the last few years, she walked with the aid of a four-legged walker. That slowed her down, but didn't stop her. I once saw her picking up her mail on the ground floor of the First National Building on a morning when a foot of new snow had kept most lawyers snug at home. She always held her head high. Even though my passing acquaintance with her was based only upon a few brief conversations in Judge Traub's anteroom, she never failed to smile at me when our eyes met. After she died, I lamented the fact that (to my knowledge) no one had thought to record this remarkable woman's reflections upon a legal career that spanned parts of eight decades.

Kittie Sturdevant's advice to a young woman just starting out in the practice of law would have been interesting. The year after Kittie Sturdevant entered the practice of law, Professor Alexander H. Robbins (a professor of advocacy and legal ethics) published his work entitled *A Treatise on American Advocacy*. (Central Law Journal Co., 1913.) A passage in this book helps set the stage for the birth of Kittie Sturdevant's legal career. Professor Robbins had this to say about women in the practice of law:

"Her peculiar temperament probably fits a woman for the duty of gathering evidence and preparing the details of a case. Her intuition will suggest means of securing witnesses and overcoming difficulties. But the clash of wit and the incidents of intense provocation arising in the actual trial of a cause are usually too severe for the sensitively nervous organism of a woman. So while

See PRESIDENT Page 10

PRESIDENT

Continued from Page 1

woman's success in almost every other line of endeavor, including the profession of medicine, has hitherto been quite notable, her lack of success as an advocate stands out in vivid contrast as one very important exception. Probably the future has for us some great woman advocate who will yet tread, triumphantly, the halls of justice and at whose remarkable self-control, clear logic and convincing words courts and juries will be won and the rights of clients vindicated; but that time has not yet

arrived and until some such brilliant example appears upon the horizon we are not justified in holding out much hope for success to the young woman starting out with the ambition to be a great advocate."

Today, some lawyers would say this passage is tripe; some would say that this is but a candid commentary on the natural order of things. We will never know whether Kittie read this passage or anything like it, but I will venture to say that the Professor's views wouldn't have daunted Kittie Sturdevant.

Privileged/Deliberative Process

**REPORT ON JOSEPH LYNN HEATON,
CANDIDATE FOR NOMINATION TO THE
U.S. DISTRICT COURT for the WESTERN DISTRICT of OKLAHOMA,
PREPARED FOR THE WHITE HOUSE PURSUANT TO
THE WHITE HOUSE'S REQUEST FOR VIEWS ON MR. HEATON**

I. Career Highlights

Joseph L. Heaton presently serves as the First Assistant United States Attorney for the Western District of Oklahoma. He was appointed to that position in 1996 by the previous administration's United States Attorney, Patrick Ryan.

- * 1993-96 = attorney with Fuller, Tubb & Pomeroy, P.C. of Oklahoma City, OK.
- * 1992-93 = United States Attorney (A.G. appointed) for the Western District of Oklahoma
- * 1984-92 = State Representative, Oklahoma House of Representatives
- * 1977-92 = attorney with Fuller, Tubb & Pomeroy, P.C. of Oklahoma City, OK.
- * 1976-77 = Legislative Assistant for United States Senator Dewey F. Bartlett of Oklahoma in Washington, D.C.
- * 1974-76 = Legal intern/Clerk with Fuller, Tubb & Pomeroy, P.C. of Oklahoma City, OK.

In 1980, 1981, 1992, and 1993, he also served as an Adjunct Instructor/Lecturer in Business Law at Univ. Central Oklahoma in Edmond, OK.

While he was in school, from 1972-73, Mr. Heaton also served on the City Council of Alva, OK.

II. Education

- * 1973-76 = he attended and graduated from Univ. Oklahoma College of Law in Norman, OK. (He was Order of the Coif and a member of the Oklahoma Law Review.)
- * 1970-73 = he attended and graduated from what is now Northwestern Oklahoma State University in Alva, OK., with a Bachelor of Arts degree.

III. Associations/Memberships/Pro Bono and/or Outside Activities

Mr. Heaton is a member of the usual list of local, state, national Bar associations.

He is a member of the Rotary Club, the Boys Scouts of America, and several local and state civic and cultural organizations.

He has also been active in his college and law school alumni organizations.

He has served as court-appointed counsel to indigent criminal defendants; he participates in the Oklahoma Bar Association's annual "Ask a Lawyer" program, which provides free legal advice; and he is a long-time financial supporter of Legal Aid of Western Oklahoma. In

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addition, he participated in the local Bar's program that provided free legal services to victims of the Oklahoma City bombing.

IV. Legal Experience/Significant Litigation/Cases.

Mr. Heaton's legal experience includes private practice, focusing on civil matters, and his experience as a government attorney during his two separate tours of duty with the United States Attorney's office.

His civil practice with Fuller, Tubb & Pomeroy was general in nature, emphasizing business, commercial law, real estate, bankruptcy, administrative, and banking law matters, primarily in the area of chartering state and federal banks. His criminal experience while with the firm was very limited.

He handled two major cases involving constitutional and tax questions in the area of state education finance, a case involving taxation and tribal jurisdiction issues in the Supreme Court of the Sac and Fox nation, and representation of the Governor of Oklahoma in litigation with the Oklahoma legislature and others over constitutional/separation of powers issues.

His firm represented First Penn Corporation, a holding company that owned Penn Square Bank which failed in 1982. This resulted in his working on many commercial bankruptcy matters. During 1995-96, his firm represented the Oklahoma State Insurance Commissioner in his capacity as the receiver of American Standard Life Insurance Company. Mr. Heaton handled the appeal of a major case involving reinsurance and receivership issues.

His experience with the United States Attorney's office has been, mainly, supervisory and managerial in nature. He has not maintained a personal caseload, but he has participated in plea negotiations, trial preparation, appellate briefing, and oral argument.

V. Judicial Philosophy/Approach to Particular Issue Areas

In his written response, Mr. Heaton states that he believes that "a judge's proper role is to identify the law and to apply it to the parties and circumstances appearing before him or her. A court case should not be viewed as a vehicle for advancing the personal or policy preferences of the judge or of others, but for applying the law as best the judge can objectively determine it."

He states that "(f)ederal courts play a critical role in protecting the constitutional rights of individual Americans. Where constitutional rights are implicated, a judge should protect those rights and do so vigorously. However, so long as constitutional standards are met, a judge should avoid second-guessing the policy choices of the elected branches of government and should seek to apply the legal standards enacted by them to the cases before the court. Similarly, a judge should recognize that he or she is bound by the legal standards established by the higher appellate courts and apply them conscientiously."

He adds that "(i)n the course of protecting the constitutional rights of citizens or in fashioning relief to fit the specific nature of a plaintiff's claims, there may be circumstances

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where federal court oversight of some other institution is appropriate or where use of a class action is appropriate. However, such devices should be employed only within the established parameters for their use and not employed to expand the court's power beyond its appropriate judicial role."

During his telephone interview with the Department's vetter, Mr. Heaton responded to the question of "What are the important qualities of a good judge?" by stating that a good judge must have "personal integrity" by establishing "an honest basis for his/her rulings," he/she must be "fair and firm" and show "respect for litigants and their lawyers," and he/she must have the "intellectual horse power" by being able to "understand the law and apply it correctly."

As far as what he believes are the appropriate demeanor and temperament for a judge, Mr. Heaton stated that he/she must be "firm but fair" and have a "seriousness and focus to move a case along, while showing proper respect for all who appear before you." A judge should "give a fair hearing to both sides and be even tempered."

VI. Publicity/Public Record

A. Noteworthy News and Media Coverage.

Mr. Heaton has not been the subject of any noteworthy news or media coverage, including the period of his service in the State Legislature.

B. Published Writings, Articles, and Speeches by the Candidate That Are Substantial or Controversial Enough to Affect Confirmation.

Mr. Heaton has not written any articles or given any speeches involving substantial or controversial issues, including the period of his service in the State Legislature.

VII. Confirmation Issues

There may be a potential confirmation issue regarding a pending discrimination complaint that has been made by a current AUSA in the USAO-OKLA.-W.D. against her immediate supervisor, but apparently not against Mr. Heaton - at least not yet.

Further details will be provided as soon as they are made available to the Department's vetter.

VIII. Third-Party Interviews

A total of 13 interviews were conducted.

The United States Attorney for the Western District of Oklahoma, Daniel Webber, who is a hold-over from the previous administration, stated that Mr. Heaton is "one of the better public servants around" and is "a good government person." Mr. Webber said that Mr. Heaton is a "straight-shooter", he's not "slick", and he's "an honest broker." It speaks highly of Mr. Heaton that he was called back to the United States Attorney's office by Mr. Webber's predecessor,

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Patrick Ryan, who is also a Democrat.

Four of the District's federal district court judges were interviewed.

Their comments include: "he's an A+ person;" "he doesn't allow his emotions to control him, even during the most trying of circumstances;" "he doesn't lose his cool;" "he doesn't allow his personal considerations to enter into his professional duties;" "he knows the law and is practical;" "there's no one better suited for the job;" he possesses a unique temperament - he has both common sense and academic skills;" "he's decisive and not a hand-wringer;" "despite having personal differences on issues of substance with (Mr. Heaton), he will make a good addition to the court;" "he will be reasoned in his approach to the issues before him and he will be reasonable;" "he's even-tempered, extremely bright, an effective advocate, patient, civil, gracious, collegial, and will fit in with members of this court because people like him;" "he is intellectually gifted;" "he will be a model federal judge;" "he is an exemplary person."

Comments from members of the Bar include: "he's tremendous; outstanding;" "he's pragmatic, fair, and decisive;" "he's low-key, never extreme;" "he's fair and open-minded;" "he's very calm, and even-tempered;" "he's unflappable and doesn't lose his composure;" "he's willing to listen;" "he/she would feel comfortable appearing before him;" "he's efficient and task-oriented;" "he's no-nonsense;" "he understands and plays by the rules;" "he's not heavy-handed;" "he will expect the government to meet its burden;" "he will apply the law equally to both sides;" "he has never fudged anything;" "he's a straight-shooter;" "he's honest and hard-working;" "he has earned his way to this nomination;" "if the Oklahoma Trial Lawyers Association (OTLA) opposed his nomination, I'd oppose the OTLA;" "he's first class;" "I'd want to appear before him;" "he will be a credit to the judiciary;" "he's well-prepared, thoughtful, and knows the law;" "he wants to be fair;" "he has no vindictiveness or hostility;" "he treats everyone with dignity and respect;" "he will be humble on the bench;" "he will take seriously the power that a judge can exercise and he will not exert it to anyone's detriment;" "he's a listener;" "he will be a very good appointment because he is what you want in a judge;" "he's very detailed oriented and wants to know all the facts;" "he never made any enemies while he was in the state legislature;" "his kind is needed on the bench."

There was only one mildly negative comment from a practicing attorney who stated that "while I may be mis-interpreting a personality trait, I believe he has a chip on his shoulder and so, he can be arrogant. However, he is qualified to be a federal judge. His real test was his tenure as the Republican leader of the Oklahoma House. He is steady-as-you-go."

ATTORNEY-CLIENT, ATTORNEY WORK PRODUCT,
AND DELIBERATIVE PROCESS PRIVILEGED

CANDIDATE REPORT: CLAIRE V. EAGAN

Prepared For The White House Pursuant To
The White House's Request For Views On The Candidate

Summary: Claire Veronica Eagan is a highly-respected and experienced professional who is accomplished both in the private practice of law and in government service. Ms. Eagan has been Magistrate Judge, United States District Court for the Northern District of Oklahoma, since 1998. Prior to becoming a Magistrate Judge, Ms. Eagan was in the private practice of law for twenty years (1978 - 1998) with a well-regarded law firm, Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C. ("Hall, Estill"), in Tulsa, Oklahoma.

Ms. Eagan graduated from the Fordham University School of Law in 1976, after which she clerked for the Honorable Allen E. Barrow, Chief Judge, United States District Court, Northern District of Oklahoma, for a period of two years. Upon completion of her clerkship, Ms. Eagan joined Hall, Estill, where she was an associate from 1978 to 1981. In 1982, Ms. Eagan became the first female elected to the firm's Shareholder status, a position she held until she left to become a Magistrate Judge in 1998. She has assumed leadership positions at Hall, Estill and with other organizations and entities. Ms. Eagan has performed significant *pro bono* work -- mostly on behalf of the Catholic Charities of Tulsa, for which she handled all adoption matters for a period of 15 years. She also has served as a court-appointed lawyer.

During her interview, Ms. Eagan stated that, among the Justices of the Supreme Court of the United States, her judicial philosophy is most closely aligned with that of Chief Justice Rehnquist. While she noted an admiration for all of the Justices because of their intellects, she mentioned Justice Scalia, in particular, as one who she regards as a "superstar" and as "brilliant." Apart from opinions, orders, and recommendations she has authored while a Magistrate Judge, there are only two published writings attributable to Ms. Eagan; both are dated from the time she was a law school student, and neither appears to contain any controversial political or ideological material.

There is no reason to believe that any individual or group would oppose Ms. Eagan's appointment. She receives universally high-praise from all spheres -- Republicans and Democrats, co-counsel and opposing counsel, colleagues on the bench and those who have appeared before her, clients and friends -- for her demeanor, her respect for others, her efficiency, her attention to detail, and her keen intellect. The Honorable Terry Kern, Chief Judge of the United States District Court for the Northern District of Oklahoma, commented: "She'll be our best Article III judge once she's confirmed."

Of particular significance for these purposes is the fact that not long ago Ms. Eagan was named a Magistrate Judge following a lengthy and rigorous selection and vetting (including FBI) process. There appears to have been no opposition to her candidacy for the Magistrate Judge position, and she reportedly received high praise from members of the selection committee and the local bar. Ms. Eagan was chosen from among some 90+ applicants and nominees for the position. The selection committee narrowed the pool of applicants and nominees to 5 individuals, and the names of those 5 were thereafter presented to the United States District Court judges for consideration. Once the selection committee narrowed the pool to 5, they ranked those 5 in order (from No. 1 to No. 5) before submitting the names to the judges. Ms. Eagan received the overall No. 1 ranking in the ordering process, having been ranked No. 1 by all but one of the members of the selection committee. Once the names of the 5 individuals were turned over to the United States District Court judges, those names were made public so that members of the local bar could offer comment about them. One of the District Court judges, the Honorable Sven Holmes, personally canvassed over 50 members of the local bar to gauge the level of support that existed for each of the 5 individuals. According to Judge Holmes, Ms. Eagan was the **unanimous** choice of all members of the local bar who were contacted. Her level of support from members of the local bar does not appear to have diminished during the time she has served as a Magistrate Judge. She is given extremely high marks by those familiar with her work, and the number of cases practitioners have consented to be tried before a Magistrate Judge in the Northern District of Oklahoma has increased sharply since Ms. Eagan assumed the Magistrate Judge position.

I. General Background / Legal Career

Claire Eagan was born in Bronx, New York (b)(6). She attended Trinity College in Washington, D.C. from 1968 to 1972, earning a bachelor's degree there cum laude in sociology. Having had a heavy minor in French, Ms. Eagan spent part of her undergraduate time (1970 to 1971) studying at the University of Fribourg in a French-speaking area of Switzerland. After graduating from Trinity College, Ms. Eagan spent a year (1972 to 1973) studying comparative law at the University of Paris in France. She enrolled in Fordham University School of Law in 1973, and graduated there cum laude in 1976.

After she earned her J.D. from Fordham, Ms. Eagan served for two years (1976 to 1978) as a Law Clerk to the Honorable Allen E. Barrow, then Chief Judge of the United States District Court, Northern District of Oklahoma. She joined Hall, Estill as an Associate in 1978 and became a Shareholder there in 1982. She remained a Shareholder of the firm until she left to become a Magistrate Judge in 1998. While a Shareholder at Hall, Estill, Ms. Eagan was a Director and served as a Member of the firm's Executive Committee. For a time, she also served as Chair of the firm's Recruiting Committee. Her practice at Hall, Estill principally involved representation of clients in complex civil litigation matters. Ms. Eagan's clients included, among others, the Williams Companies, Inc. (a telecommunications entity headquartered near Tulsa), Thrifty and Dollar Rental Car companies, Shearson American Express, Hormel Foods, and a host of companies with environmental concerns.

Ms. Eagan inherited a Magistrate Judge position that had in excess of seventy Social Security cases in backlog on its docket. She is now entirely caught-up, and reportedly has no backlog whatsoever of any kind on her docket. She is universally recognized for being extremely detail-oriented and efficient.

II. Noteworthy Litigation

In one of her first assignments as an associate at Hall, Estill, Ms. Eagan was directed to argue lack of personal jurisdiction on behalf of a client in a state court case that would later reach all the way to the Supreme Court of the United States; the case — World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980) — resulted in a famous textbook decision on the very issue of personal jurisdiction that she had argued in the first instance. The initial argument in state court was Ms. Eagan's first oral argument. Interestingly, Ms. Eagan's involvement in World-Wide Volkswagen began even before she was an associate at Hall, Estill; as a Law Clerk to then Chief Judge Barrow, Ms. Eagan had drafted an order for Judge Barrow remanding the case to the state court to which she would later present the argument on personal jurisdiction. Ms. Eagan remained involved in the case and helped prepare for the argument in the Supreme Court.

Ms. Eagan worked on one particular matter, involving claims of breach of express and implied warranties, for a period of ten years. On her first day as an associate at Hall, Estill, Ms. Eagan drafted the complaint in the case. Over the course of the ten year period during which she worked on the case, Ms. Eagan twice argued successfully to the Tenth Circuit Court of Appeals. The decisions, Patty Precision v. Brown & Sharpe Manufacturing Co., 742 F.2d 1260 (10th Cir. 1984) and 846 F.2d 1247 (10th Cir. 1988), resulting therefrom are frequently cited as leading cases on Oklahoma law of privity and disclaimer.

As a Magistrate, Judge Eagan was affirmed by the Tenth Circuit Court of Appeals in a matter in which she held that a plaintiff's "chemical dependency" on illegal drugs did not amount to a "disability" under the Rehabilitation Act of 1973, 29 U.S.C. section 701 *et. seq.*, Fitzgerald v. Caldera, 34 F. Supp. 2d 1299 (N.D. Okla. 1999), *aff'd*, No. 99-5079 (10th Cir. June 27, 2000) (unpublished). Although the Tenth Circuit Court of Appeals declined to reach the issue of whether the "chemical dependency" was a "disability" within the meaning of the Act, it affirmed Judge Eagan on her further holding that the defendant had articulated a legitimate, non-discriminatory reason for its conduct even assuming the plaintiff had made a *prima facie* showing of disability. *Id.*

III. Publicity / Public Record

Apart from any published orders, opinions, and recommendations since she became a Magistrate Judge, there are only two published writings attributable to Ms. Eagan: (1) Note, Possible Antitrust Violation Held Insufficient to Warrant Injunction Against Tender Offeror or Duty

of Disclosure to Target Shareholders, 43 Fordham L. Rev. 484 (1974), reprinted in Securities Law Review; and (2) Casenote, Antiradiation Agents Discovered Under Contract with AEC Held Not Property of Government Under Section 152 of Atomic Energy Act of 1954, 43 Fordham L. Rev. 1097 (1975), reprinted in Patent Law Review. These two publications (copies of both of which are attached to her Senate Judiciary Questionnaire) are apolitical and do not appear to contain any controversial passages. Ms. Eagan stated in her interview that she does not have any published editorials, letters to the editor, op-ed pieces, books, or handbooks. While she has frequently given lectures at the University of Tulsa School of Law (where she has taught courses, including constitutional law), Ms. Eagan advises that she has not given any speeches or presentations that have been memorialized in writing. Ms. Eagan also advises that she has not made any public statements that would be regarded as controversial or otherwise made publicly known her views on any controversial legal issues.

IV. Miscellaneous Other

There are other items that are worthy of mention and consideration:

- Ms. Eagan has done significant *pro bono* work. While in the private practice of law, Ms. Eagan's *pro bono* work was for fifteen years focused principally on handling all legal aspects of adoption work for the Catholic Charities of Tulsa, an organization designed to assist women who choose to place their children for adoption.
- Ms. Eagan has twice been appointed by a court to handle a case *pro bono*. In one instance, she was appointed by a court to assist a woman in a matter concerning her housing. In another, she was appointed by a court to be co-counsel with the Federal Defender's office with respect to a case involving a habeas corpus petition for a death row inmate. Ms. Eagan sought this appointment while in private practice, in part because she wanted some habeas corpus experience to bolster her chances of later becoming a federal judge.
- As a Magistrate Judge, Ms. Eagan has handled a number of habeas corpus matters. She has in each case denied the habeas petition. In one case, however, she recommended that DNA testing be performed on hair found in a dead victim's hand. The petitioner claimed that the DNA testing would exonerate him of the crime. The District Court adopted Judge Eagan's recommendation to permit the DNA testing. The hair has not been subject to DNA testing, however, because the hair was somehow lost before the envelope in which it had been placed arrived at the laboratory for testing. The case is currently stayed.
- Ms. Eagan has been very active in community affairs. Apart from her role on behalf of the Catholic Charities of Tulsa for a period of fifteen years, Ms. Eagan has served on the Board of the Cystic Fibrosis Foundation, on the Board of the Oklahoma

Symphonia, as a community leader for the Tulsa Area United Way, and on the Board of Gannon University (located in Erie, Pennsylvania).

- Within the legal community, Ms. Eagan has been President, Barrister, Master, and Executive Committee Member of the Tulsa Chapter of the American Inns of Court. She was at one time a member of the Board of Governors of the Young Lawyers Division of the Oklahoma Bar Association and, as well, a Chair of various committees of the Tulsa County Bar Association. She has been President of the Tulsa Women Lawyers Association and has served as Chair of the Admissions and Grievances Committee of the United States District Court, Northern District of Oklahoma.
- Ms. Eagan was honored last year at the Oklahoma Bar Association's Women in Law Conference for her achievements in the legal profession.
- While in the private practice of law, Ms. Eagan and her husband (Anthony J. Loretto, Jr.) purchased a printed circuit board business from a friend. Ms. Eagan and her husband owned the business only for about a year because it quickly became apparent that equipment could not keep up with the sales that Mr. Loretto was able to generate. Although Ms. Eagan was on the Board of the company, there were only four Board meetings during the tenure of their ownership. She reportedly never set foot in the business premises and was not involved in the operation of the business.
- Ms. Eagan had one prior marriage. That marriage ended in divorce in 1984. Although she stated in her interview that there were no embarrassing issues arising out of the divorce, one person [REDACTED] (b)(6)
[REDACTED]
- [REDACTED] (b)(6)
- Ms. Eagan was a named party in a bank foreclosure action that arose out of her divorce. Ms. Eagan's former husband owned the couple's house pursuant to the settlement decree that accompanied their divorce in 1984. Three years later, in 1987, the Bank of Oklahoma, N.A. filed a foreclosure action against her former husband for default on the note. The bank also named Ms. Eagan as a co-defendant. Ms. Eagan's former husband gave a quit-claim deed to the bank.

- Ms. Eagan has testified in several matters: (1) She gave deposition testimony concerning attorneys' fees in the 1987 action arising out of her divorce; (2) she testified in Bankruptcy Court in Florida as Oklahoma counsel for Charter Oil Company, the debtor, in support of the settlement and as to why the settlement was in the best interest of the estate; and (3) she testified in a civil case in the Northern District of Oklahoma with respect to an issue concerning her law firm and her discovery that a Hall, Estill legal assistant, who was best friend of the plaintiff in the case, had had computer access to confidential information about the case while Hall, Estill was counsel for the defendant.
- Ms. Eagan reportedly has never been sanctioned or disciplined for a breach of ethics or for unprofessional conduct. In one case in which Ms. Eagan served as counsel for a defendant, Dennis Warner and Katherine Sohar v. Vyvx, Inc., Global Access Telecommunications, Inc. and Delwin Bothof, Civil Action No. 96-5912H, Commonwealth of Massachusetts Trial Court, Superior Court Department (Suffolk County), plaintiffs' counsel filed a motion to revoke her *pro hac vice* admission. The motion claimed that Ms. Eagan's client sent letters to each of the discharged plaintiffs in the action offering to reinstate them to their former jobs. Not only did the letter to the former employees go from the client -- and not Ms. Eagan -- but such communications had expressly been approved by the Supreme Court of the United States in another action. The matter was not pursued once the response to the revocation motion was filed, and the case was later settled.
- Hall, Estill reportedly had a good record of gender diversity during some of the time Ms. Eagan worked there. Ms. Eagan was the first female lawyer elected as Shareholder at Hall, Estill. Following her election in 1982, Ms. Eagan actively sought to promote other female lawyers to Shareholder status at the firm. By the late 1980s, Hall, Estill had a relatively large number of female Shareholders, but each began to leave thereafter one-by-one -- apparently for independent reasons not related to the quality of the work environment for women at the firm. Although Ms. Eagan referred to the firm as "progressive," Hall, Estill, a firm of approximately 85 attorneys, apparently has had only two African-American Shareholders.
- Judge Eagan has been reversed by the Tenth Circuit Court of Appeals four times since she became a Magistrate in 1998. All four of the cases were Social Security cases -- and those four were only a minute fraction of the hundreds of Social Security opinions she has issued since she has been a Magistrate Judge.
- Ms. Eagan currently hires corporate entities to provide cleaning services at her house and for her pool. The entities are reportedly licensed and pay their own taxes. Ms. Eagan admitted during her interview, however, that she has in the past hired two individuals to provide cleaning services at her house. For one, Erma Bowie (who worked at the house in 1994 and in early 1995), Ms. Eagan claims to have paid social

security taxes and filed quarterly statements declaring the amount of social security withheld. For the other, Queen Esther Hurd (who worked about every other week at Ms. Eagan's house in the early 1980s), Ms. Eagan stated that she did not file taxes because Ms. Hurd, who also worked for others, told Ms. Eagan that she would handle the taxes herself.

- Ms. Eagan stated in her interview that she believes there may have been one or two occasions in the past in which she and her husband filed extensions to file their tax returns. Ms. Eagan reported that on each occasion their accountant made sure that they paid an appropriate estimated amount of taxes.
- Ms. Eagan admitted in her interview that she tried marijuana in 1970 -- when she was twenty years old and prior to her enrollment in law school. She stated that she tried marijuana only once.
- In an opinion last year adopting Judge Eagan's recommendation, the United States District Court for the Northern District of Oklahoma sanctioned two Tulsa area lawyers and their law firm for filing a copy of a settlement conference statement in violation of a local rule. Davis v. Kansas City Fire & Marine Ins. Co., 195 F.R.D. 33 (2000). In a telephone interview, one of those lawyers praised Judge Eagan even though he recounted the case and said that he disagreed with her decision and recommendation. The lawyer stated that he had both an objective and a subjective view of Judge Eagan -- the objective one being that she would be an "excellent" Article III judge because she is "conscientious and bright," and the subjective one being that he did not like or agree with her decision in this particular case but that "in fairness to her" she had heard him thoroughly on his argument and had "backed off" of her even more strident position after she listened to him. He also stated that he knew of no individual or group who would likely oppose Ms. Eagan's candidacy if she is formally nominated.
- During telephone interviews, Ms. Eagan's current and former colleagues, co-counsel, opposing counsel, and friends all gave her extremely high praise. She was given particularly high marks for her efficiency and attention to detail. She was praised for her even-handedness and for the respect she accords to every individual in her courtroom. She was repeatedly recognized for her bright intellect and enthusiasm for work. The Chief Judge of the United States District Court, Northern District of Oklahoma, the Honorable Terry Kern, commented: "She'll be our best Article III judge once she's confirmed." One member of the Tulsa Bar (who volunteered that she is a Democrat) commented that Ms. Eagan is "very well qualified" and noted that she had "heard nothing but positive support from the Bar" for Ms. Eagan.

- The Chairman of the Magistrate Judge selection committee that chose Ms. Eagan for the Magistrate Judge position described how Ms. Eagan was the clear choice for the position notwithstanding that there were nearly 100 applicants and nominees. He noted that the selection committee had unanimously agreed Ms. Eagan was to be among the 5 individuals whose names were submitted to the District Court judges for consideration, and that of those 5 individuals she was ranked No. 1 by all but one of the members of the selection committee. The Honorable Svern Holmes, United States District Court, Northern District of Oklahoma, recalled how Ms. Eagan was the unanimous choice of all members of the local bar he canvassed when considering who to select from among the 5 individuals that had been presented to the District Court judges by the selection committee.

V. Confirmation Issues

Although there is no reason to believe that any individual or group would oppose Ms. Eagan's nomination, there are a few issues that should be considered with respect to the nomination and confirmation process --

Relative Lack of Criminal Litigation Experience -- Ms. Eagan practiced law for over twenty years; her entire practice was spent representing clients in civil litigation matters. As a consequence, Ms. Eagan could meet with some resistance due to her relative lack of criminal litigation experience. It is unlikely that such a criticism would develop much momentum, however, given her many years of practice and the respect she has earned. It is even more unlikely that this criticism would mount, moreover, given the fact that she has gained some criminal experience as a consequence of her position as a Magistrate Judge. One of the District Court Judges, the Honorable Sven Holmes, noted that Judge Eagan has had a great deal of criminal experience in a relatively short amount of time as a Magistrate Judge -- more experience, according to him, than most who practice criminal law get in the same amount of time in private practice. She has regularly conducted suppression and detention hearings. One Tulsa area lawyer with a criminal practice noted that Judge Eagan does an "extraordinarily good job" and is "an ideal choice" to become an Article III judge. He said that Judge Eagan "will have no problem getting her arms around criminal matters" because "she is extremely bright."

Miscellaneous Other -- One should prepare for the remote possibility that several items -- such as Ms. Eagan's one time marijuana use in 1970 and/or her failure to withhold social security and other applicable taxes with respect to a woman who cleaned her house in the early 1980s -- could be the source of some embarrassment or contention during the confirmation process.

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**REPORT ON JAMES HARDY PAYNE,
CANDIDATE FOR NOMINATION TO THE
U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA,
PREPARED FOR THE WHITE HOUSE PURSUANT TO
THE WHITE HOUSE'S REQUEST FOR VIEWS ON MR. PAYNE**

I. General Background

James Payne graduated from the University of Oklahoma Law School in 1966, and, until 1970, served as an Air Force JAG officer. From 1970 to 1973, he was an Assistant U.S. Attorney for the Eastern District of Oklahoma, in Muskogee, Oklahoma. In 1973, he became a founding partner of the Muskogee law firm of Sandlin and Payne. He left Sandlin and Payne in 1988 to become a U.S. Magistrate Judge. In 1991, President Bush nominated him for the roving position of U.S. District Judge for the Eastern-Northern-Western Districts of Oklahoma. The Senate did not act on that nomination. Payne and his wife reside in Muskogee.

II. Legal Experience and Judicial Philosophy

A. Legal Experience. From the standpoint of legal experience, Payne's 13 years as a magistrate judge, 15 years in private practice, 3 years as an AUSA, and 3 years as an active duty JAG officer are more than sufficient background for a district court judgeship.

(1) As magistrate judge: Payne's responsibilities as magistrate judge include nearly all responsibilities of a district court judge. A significant exception is felony criminal trials. A high number of litigants consent to Judge Payne's handling their cases, reflecting the local bar's confidence in him. Of more than 800 civil cases he has handled to final disposition, 93 were disposed of by jury or non-jury trials. Pre-trial matters include discovery hearings, detention, and arraignments. In addition, he implemented the Eastern District's Alternative Dispute Resolution Program, which annually produces about 100 settlement conferences. His judicial temperament is reportedly exemplary. **(2) At**

Sandlin and Payne: Payne's 15 years of civil private practice experience required appearances before federal and state courts as well as administrative agencies. His main areas of practice were commercial litigation, product liability defense, workers compensation defense, eminent domain, labor negotiations, bank charter applications, and probate and estate planning. **(3) As an AUSA:** Payne's docket as an AUSA was half civil and half criminal. His criminal work involved prosecution of bank robbers, interstate shipment of stolen property, counterfeiting, and gun/drug violations. His civil experience involved numerous condemnation cases, and defense of tort claim matters. **(4) Air Force JAG Officer:** As Assistant Staff Judge Advocate, Payne prosecuted and defended misdemeanor and felony cases such as desertion, drug possession, rape, and assault. Later, as Staff Judge Advocate, he was senior legal advisor to the Wing Commander and Base Commander. As such, he supervised all court martial activities, and represented the

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and represented the Air Force's interests in contracts, tort claims, aircraft accident investigations, and flying evaluation boards.

B. Judicial Philosophy. Payne has not published anything that reflects a judicial philosophy. When we interviewed him, he told us that he admires Chief Justice Rehnquist and Justice Scalia, as well as, on a personal level, 10th Circuit Judge Deanell Tacha and 8th Circuit Judge David Hansen.

C. Approach to Particular Issue Areas. Decisions by Judge Payne in Westlaw or attached to his Senate questionnaire response are too few in number to predict what his approach would be to particular issue areas. Westlaw revealed two decisions. The first, *Summers v. Missouri Pacific Railroad System*, 897 F. Supp. 533 (E.D. Okla. 1995) (excluding plaintiffs' expert testimony on multiple chemical sensitivities because scientific theory not adequately tested), was partially overturned on a finding that the district court abused its discretion in refusing to extend the scheduling order for new witnesses. See 132 F.3d 599 (10th Cir. 1997). The second, *Eldridge v. Missouri Pacific Railroad*, 832 F. Supp. 328 (E.D. Okla. 1993) (holding federal law preempts state law on adequacy of locomotive warning devices and speed regulations but not negligence claim based on inadequate grade crossing warning devices), was not appealed.

III. Publicity/Public Record

A. Noteworthy News and Media Coverage. None.

B. Published Writings, Articles, and Speeches by the Candidate That Are Substantial or Controversial Enough to Affect Confirmation. None.

IV. Confirmation Issues

None.