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SEPTEMBER 30, 1997, TUESDAY

SECTION: IN THE NEWS

LENGTH: 22735 words

HEADLINE: HEARING OF THE SENATE JUDICIARY COMMITTEE

SUBJECT: PENDING NOMINATIONS

CHAired BY: SENATOR ORRIN HATCH (R-UT)

NOMINEES:

RAYMOND C. FISHER, JR., TO BE ASSOCIATE ATTORNEY GENERAL

RONALD GILMAN, TO BE US CIRCUIT JUDGE FOR THE SIXTH CIRCUIT

SONIA SOTOMAYOR, TO BE US CIRCUIT JUDGE FOR THE SECOND CIRCUIT

RICHARD CASEY, TO BE US DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF  
NEW YORK

JAMES GWIN, TO BE US DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OHIO

DALE KIMBALL, TO BE US DISTRICT JUDGE FOR THE DISTRICT OF UTAH

ALGERNON MARBLEY, TO BE US DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF  
OHIO

CHARLES SIRAGUSA, TO BE US DISTRICT JUDGE FOR THE WESTERN DISTRICT OF  
NEW YORK

226 DIRKSEN OFFICE BUILDING

WASHINGTON, DC

2:00 PM

BODY:

SEN. ORRIN HATCH (R-UT): If we can begin. Today, the Judiciary Committee will hold a hearing on the nomination of Mr. Raymond C. Fisher of California for the position of Associate Attorney General of the United States.

Following this hearing, at 3:00 PM, the committee will consider the nominations of seven individuals for positions as United States Circuit and District Court Judges.

The position of Associate Attorney General is the number three position in our Justice Department. The Associate Attorney General assists the Attorney General in formulating and implementing departmental policies and programs pertaining to a broad range of civil justice matters.

The Associate Attorney General also supervises the non-criminal litigating components of the Justice Department including the Anti-Trust, Civil, Civil Rights and Tax Divisions.

Although efforts were made by some to eliminate the position of Associate Attorney General I believe it to be an office that is very important to the order of the administration of Justice. If confirmed to this position, Mr. Fisher, you will be responsible for coordinating the efforts of hundreds of attorneys engaged in the enforcement of some of our nations most significant laws.

In light of the scope and critical importance of the responsibilities of the Associate Attorney General, I am pleased that the President has finally sent us a nominee for the position.

It is unfortunate that the administration has moved somewhat slowly in nominating individuals to fill various high level vacancies within the department, such as the Assistant Attorney General -- or excuse me, the Associate Attorney General, the Solicitor General, and the Assistant Attorney

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in charge of the Criminal Division. That is now two years, two months without a Criminal Division head.

For my part as chairman of this committee, I can assure President Clinton and the American people that, as demonstrated by handling of the nomination of Eric Holder (sp) for the position of Deputy Attorney General, and now the nomination of Mr. Fisher as Associate Attorney General, his nominees for the Department of Justice will continue to receive thorough and prompt consideration by the committee.

Mr. Fisher, I note that you have had a very distinguished career. You served as a law clerk for the DC Circuit Judge Jay Scully Wright (sp), and then as a clerk for Supreme Court Justice William Brennan.

You've been a partner at a major Los Angeles firm and have enjoyed a distinguished public service record as well. You have tried, had extensive experience in complex litigation matters. For which you deserve accolades and I think much respect and I welcome you on behalf of the committee and am pleased by your willingness to serve the American people in this position of trust.

And I should note, however, that these are not the best of times for the department. Attorney General Reno's apparent unwillingness to appoint an independent counsel to investigate allegations of illegal fund raising by members of the administration casts a shadow over the entire department.

And I have to say in this regard I don't get all caught up in this business of phone calls made from government property. The law seems to indicate that that shouldn't be done and I think that most people try not to do that. But the fact of the matter is that I think that pales in significance compared to some of the allegations of misuse of soft money as hard money and some of the allegations concerning foreign influence in our political process.

And frankly, I don't see any reason in the world why the Attorney General should not request the appointment of an independent counsel. And I sincerely hope that General Reno will overcome any pressure she may be receiving from the White House and call for the appointment of an independent counsel. Because such an appointment will remove the appearance of any conflict that may exist and that's important in my eyes.

And Mr. Fisher, you're being nominated yourself to a position of great trust. You'll be advising our nation's chief law enforcement officer on matters of serious national concern.

And although you naturally will feel loyalty to the administration which has forwarded your nomination, I hope this confirms that you'll be able to at all times stand above partisan politics and render the very best appropriate legal judgment that you can.

In the end the administration will be well served by that. I think this President knows that. At least my conversations with him indicate that he knows that and expects that.

Remember, if confirmed, you serve not only the present administration but you serve all of us as American people as well. Your responsibility to all Americans must come before any partisan concerns. And I personally knowing you have confidence that you'll resist any political pressures that might be brought to bear on you. Be it from the White House or the Congress. You'll have plenty of chance to have political pressures from the Congress I'm sure. My point is you'll give the Attorney General the benefit of your fine legal judgment and of your best legal judgment. So, I hope that's the case. I'll turn to Senator Torricelli who represents the minority at this time and then we'll swear you in shortly.

SEN. ROBERT TORRICELLI (D-NJ): Thank you, Mr. Chairman. I just want to point out I represent the minority, but I'm proud that we got equal numbers of votes in

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this committee as we stand here today. (Laughter.)

A rare moment in the Senate. It's a pleasure to see Mr. Campbell and Mr. Berman. Mr. Fisher, you are well served by having them as your introducers and advocates.

I want to welcome you to the committee as well, in what will be the completion of, I think, an extraordinarily talented group of individuals who will now be servicing Attorney General Reno.

I too hope that in your capacity, not simply with those direct responsibilities that you will possess, but in your advisory capacity to the Attorney General you will approach some obvious and extremely important issues on the merits with the respect for law and without regard to personal favoritism or partisanship.

The chairman and I might disagree in interpretation of what that law might dictate but we do agree these judgments and the confidence in our system of justice for our people is so important. Having people of extraordinary integrity to make these decisions. And indeed in your own case to advise the Attorney General making them is very important to administration of justice in this country.

Mr. Chairman, I believe that Mr. Fisher is well suited for that role because he has been tested before. In times of, in our country, of great discord with the disturbances in Los Angeles that followed the unfortunate case of Rodney King. You were called upon and served the community well.

Serving as the General Counsel to the Christopher Commission, you received the praise of the Mayor of Los Angeles, who noted your professionalism, your knowledge of the law, your commitment to the community. I think, Mr. Chairman, that the President and the Attorney General have chosen well. And I'm very proud to be part of recommending this nomination.

SEN. HATCH: Well, thank you, Senator Torricelli.

Mr. Fisher if you would stand and raise your right hand.

(Nominee is sworn in.)

Thank you.

We are delighted to have two of our good colleagues here with us today -- people that I have great respect for -- both of them -- from two respective parties from California, and I can't remember which one of you is the more senior. I think you are, Howard, aren't you?

Shall we start with you, or do you want to with Tom?

REP. HOWARD BERMAN (D-CA) Oh, I'd prefer to start with the representative of the party in control of the Senate right now.

(Laughter.)

SEN. HATCH: That is so unlike you, you know.

(Laughter.)

SEN. HATCH: No, no, we're grateful to have both of you here. I didn't know which one to start with so we'll start with you, Congressman Campbell.

REP. TOM CAMPBELL (R-CA): Mr. Chairman, thank you. Senator Torricelli, it's a pleasure to see you here, and in once sense still be your colleague. I enjoyed our time together in the House.

What a pleasure and a unique opportunity for me to recommend favorable consideration for my friend, my colleague, my fellow Californian, Ray Fisher. In the interest of absolutely full disclosure but also I think to make an important point about bi- partisanship, I do wish to make public knowledge that Mr. Fisher helped me when I ran for United States Senate in 1992. Despite the fact that I am of the party of truth and light, and he was not.

SEN. HATCH: Well that's certainly going to happen to you, Mr. Fisher, as often

as -- (laughter.)

REP. CAMPBELL: Nevertheless, he was not successful, so I hope he is more successful in this next effort. But that is as I say mostly in the interest of full disclosure, but also to show that we are speaking of a man here who I think will be very very careful against the temptation to which the chair referred -- which is a natural temptation.

I also note that my good friend and colleague, the Mayor of Los Angeles, has placed the highest trust in Ray Fisher by making him the president of the police commission at a very difficult time, as you noted and as Senator Torricelli noted.

The second area I wanted to comment on is his expertise in the field of law that he will be administering. As I think the chairman knows, I used to be a full time professor at Stanford. I'm now still on the faculty -- I only teach one class a year.

And I would stay, it's very important to recognize that we are, and the Department of Justice -- if he's confirmed -- will be in the presence of an expert in complex litigation, and really very knowledgeable individual, as well, in the field of anti-trust, which is a field that I used to teach. Particularly pleasing to me, is the alternative dispute resolution work that Mr. Fisher has done, because to both of us, I know, Mr. Chairman, that is critical.

I note in passing, but for me it would be determinative, that he was President of the Stanford Law Review. That should close any question as to his confirmation.

And lastly, I wanted to speak about his management ability. So, I begin with non-partisanship, I speak about knowledge and expertise in the fields he'll be administering -- complex litigation, anti-trust in particular -- and then management.

It's significant to me that he not only was the managing partner of Tuttle and Taylor (sp), but he was the founding and managing partner of Heller-Erman (sp) in Los Angeles. And that's really quite a testimony to Mr. Fisher's ability to handle the management part of the task he now undertakes.

With that I appreciate your continual and heartfelt kindness to me and urge very favorable consideration for this qualified -- exceptionally well qualified and, I believe you will find, distinguished nominee for the appointment of the Associated Attorney General.

SEN. HATCH: Thank you. That's high praise, Mr. Fisher, coming from, I think, one of the best legal minds in the Congress, for whom I have inestimable respect. And we're honored that you guys would come here. We have a vote going on, but I'm going to keep going for another 10 minutes so that we can let you go, because I know you're busy. And that's one reason why I decided to start up at this time.

Let just mention for the record that Senator Feinstein will be here. She also wanted to introduce you. But she's going to vote and then come, and I'll probably turn the committee over to her or whoever is here until we can get back from that vote. So, we'd like to proceed.

Mr. Berman we're honored, as you know, to have you here as well. We know what an influential member of the house you are, and what an influential person in California you are. So it's very important for you to take the time to come here and I think it's a tribute also to Mr. Fisher.

REP. BERMAN: Well, thank you very much, Mr. Chairman, and it's my honor to come here both to the committee and on behalf of Ray Fisher.

For twenty years he was my constituent. The last reapportionment, unfortunately, I did not control and so I was moved out of his area by a few blocks.

But I have known him for 22 years. And the man is a superb lawyer, a very

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rigorous and tough-minded individual who has been put in some of the most difficult positions.

I first met him when, soon after Edmund G. Brown, Jr. was elected Governor of California, when he was picked to run the whole labor management relations. Well, here you have a new Democratic governor elected with the strong backing of organized labor in charge of negotiating and bargaining with some of those very same unions.

This man calls them as he sees them. He is fiercely independent. He has showed a sensitivity in his job as president of the LA Police Commission, a position to which he was appointed by Mayor Richard Riordan at the most difficult time imaginable for Los Angeles, both to help build the guideline to strengthen the department and then deal with the very sensitive transition from one police chief to another. He did the job superbly.

My colleague, Tom Campbell, has mentioned that he was not only a prestigious litigator in a very well known Los Angeles firm, but in reference to your comments regarding his organizational skills, started and built the new office of a very well known San Francisco law firm in Los Angeles, exercising the organizational management and supervisory responsibilities that would be necessary in this job.

Ray Fisher will do the job the way it's meant to be done. He really is an excellent appointment and I hope you will see it the same way and confirm him, and I thank you very much for letting me have the time to appear on his behalf. SEN. HATCH: Well, thank you, Congressman Berman. We appreciate both of you being here and we appreciate you taking your time, and I'm sure Mr. Fisher and his wife and family do as well. You're both great. Thanks for being here with us.

REP. BERMAN: And I might add his wife, also a tremendously talented person in her own right, who has taught public schools in my district for a number of years now and if confirmed will probably have to leave that position. So, I have mixed feelings but it's a great family.

SEN. HATCH: Well, that's great. Thank you and we happy to have you here Mrs. Fisher as well. We appreciate that. Mr. Fisher do you have any comments you'd care to make at the beginning of this hearing?

MR. RAYMOND FISHER: If I might, Senator, I really do appreciate the kindness and courtesies you all have shown me and the kind words of my good friends Howard Berman and Tom Campbell. If I may introduce my family at this point would that be appropriate?

SEN. HATCH: Sure, we'd love to have you do that.

MR. FISHER: I'd like to introduce my wife, Nancy Fisher, who is a public high school teacher as you've heard.

My son, Jeff, who is also a public high school teacher and Jeff is representing the rest of our family. We have three grandchildren, two with Jeff and Rose his wife, Megan and Andrew. Megan is in kindergarten so she can't come and Andrew is a little too young.

And then our daughter, Amy -- Jeff's sister -- is an attorney in Northern California and married to her husband, James Allers (sp), and they have our newest granddaughter, Madeleine. So, Jeff is representing the younger part of the family, two generations.

We also have our friends from Maryland, for almost 30 years, the Rosenbergs (sp), Conrad and Judy Rosenberg, who are very dear friends. Mark Steinberg (sp), who has come, on a red-eye almost, to be here with us from Los Angeles recently in the Justice Department.

Judge Kim Wardlaw (sp), who couldn't stay away from a second chance to be on the Judiciary Committee. And she's a terrific --

SEN. HATCH: You just love her, I can see -- (laughs).

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MR. FISHER: -- a terrific judge in the Central District of California.

And so we're delighted to have them here.

SEN. HATCH: Well, we're delighted to welcome all of you here and appreciate having you here.

MR. FISHER: I'd hoped and would like to introduce my associate, Ken Charnoff (sp), from Heller and is also back with me and will come with me if I am confirmed.

SEN. HATCH: Great, that's great. Welcome.

MR. FISHER: I am very honored that Attorney General Janet Reno has recommended me, and that President Clinton has nominated me for the position of Associate Attorney General.

For me the Department of Justice has always represented the highest ideals of the legal profession, which is a commitment to excellence through independent judgement and to guaranteeing the rights of all Americans.

Serving in this department would be an extraordinarily high calling and I am grateful for the opportunity, if I am confirmed, of working with the Attorney General and Deputy Attorney General Eric Holder and overseeing the operations and working of the department and working with this committee.

As you know the associate attorney general does have responsibility essentially for the non criminal side of the department and does have a tremendous impact on the areas that affect deeply America lives such as the environment, the end of discrimination, anti-trust issues, ensuring competition in our market based economy. And it also has responsibility for a number of programs that directly affect law enforcement.

For roughly 30 years many of these issues have been the heart of my law practice which has ranged over a broad-spectrum anti-trust and civil issues as well as a variety of constitutional law matters.

As a trial attorney and as a general litigator I have represented a wide variety of businesses and individuals and as has been now mentioned I have also served as the managing partner of two very fine law firms. And I do expect these experiences will enable me to carry out my duties as associate attorney general. I should say that my experience in the private practice of law has brought me face to face with the best aspects of our civil justice system, which is so important to all of us. By in large it works to resolve various controversies big and small but it has also shown me that there are some trouble spots including high costs, delays and regrettably uncivil tactics at many times. Both as a courtroom trial attorney but also as a mediator charged with resolving problems outside the courtroom I have come to appreciate that good lawyering is not just an ability to win in court at all costs. It also involves an ability, when appropriate, to find ways of reaching just and sensible solutions outside of litigation particularly in the rapidly evolving area of alternative dispute resolution.

It is this kind of experience, real world experience, I hope to bring to the department. I would also look forward to the management side of dealing with the department drawing upon my experience in private law practice as well as the leadership function that I've performed with respect to the Los Angeles Police Commission and certain other organizations that I've been involved with.

Because there are very talented people in the department and I would try to use my experience to help them produce effective and efficiently as possible.

In reference to law enforcement efforts it is part of the associates responsibility to work to assist state and local governments in law enforcement and crime prevention efforts. And here too I would draw upon my prior experience largely in the public sector where I have worked on the Christopher Commission as mentioned. I have been a police commissioner and most recently

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served as President of the Los Angeles Police Commission.

I have seen first hand and at street level the realities of law enforcement, which involves not only the leadership issues confronting command officers, but to the responsibilities and problems confronting patrol officers on the beat. And I would definitely draw on that experience. I have several lessons that I think I can bring from that experience just briefly. Lesson number one I must say is the enormous respect I have developed for the men and women who participate in the difficult, dangerous, sometimes thankless and always vital task of law enforcement.

Secondly, my police commissioner experience has given me an appreciation for the viewpoint of state and local law enforcement officials as they work in cooperation with the federal government. And this goes to the heart of a successful community policing effort in our various communities.

And finally, I would simply say that combining my police commission experience with my family's long standing and multi generational, if you will, participation in public education has left me with a very special interest in issues of juvenile justice both in terms of prevention as well as enforcement. And I would draw upon my experiences in many years of working with children in our middle schools and high schools and the efforts that I undertook on behalf of the police department and police commission to bring the police department, our public and private schools, legislators and other civil organizations from non-profit to work on the various serious issue of juvenile and juvenile crime prevention. So, I thank you for allowing me to be here today. I thank you for all the courtesies that have been extended to me as I've had the opportunity to meet with you before today.

I, if am confirmed, look very much forward to working with all of you and I would be, of course, pleased to answer any questions you may have.

SEN HATCH: Well, thank you so much, Mr. Fisher. I'm going to have to run to vote. So, I'm going to turn the committee over to Senator Thurmond, if no one is here at recess, because I'm going to now have some questions for you when I return and it'll take me probably 15-20 minutes to get over to vote and get back -- assuming I don't get grabbed by everybody.

But that was an excellent statement and we look forward to questioning you know and asking some of the questions that the committee would like to have. So, Senator Thurmond will be in charge until I get back.

MR. FISHER: Thank you, Mr. Chairman.

SEN. STROM THURMOND (R-SC): Mr. Fisher we're glad to have you here.

MR. FISHER: Thank you, sir.

SEN. THURMOND: You have been nominated for one of the highest management positions at the Department of Justice. What experiences have you had to prepare you to be a top manager and administrator for a huge organization like the Department of Justice?

MR. FISHER: Senator I have had the experience of managing two law firms. So, I've had the experience of dealing with professionals as they carry out their activities and I think that --

SEN. THURMOND: Speak into your loudspeaker, so we can hear you.

MR. FISHER: Sure. I have had the experience of working as a managing partner of two law firms so I think I bring the experience of working with lawyers who are professionals and providing them the opportunity to carry out their duties. I've also most recently had the experience with the Los Angeles Police Department which has had some serious management issues and as the President of the Police Commission I was able to bring some experience and expertise to that endeavor.

SEN. THURMOND: Mr. Fisher, your Los Angeles Police Commission indulged a

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proposed ordinance in 1996 that would ban the manufacture and sale of certain handguns in Los Angeles. Do you believe that limiting the public's access to handguns is generally an effectual way to fight crime?

MR. FISHER: Senator, the ordinance that was being referred to was one that endorsed by the Los Angeles Police Department.

I believe in the right of people to hunt. I believe in the right of people to engage in target shooting for example, the lawful engage in sports. What the police departments are concerned about is the proliferation of particularly handguns, cheap Saturday night specials.

I've actually seen the body of a young police officer shot down in the streets by a 17 year old who was fleeing from a 7-Eleven with two six packs of beer turned around and shot a young police officer just two months out of the police academy. Shot him, killed him and left his two young children as orphans and his wife, of course, a widow. So, in that respect, I think this is important to keep the guns out of the hands of criminals, yeah.

SEN. THURMOND: Mr. Fisher, I'm concerned about the length of time it has taken the administration to nominate replacements for vacancies in the Department of Justice.

The Office of Associate Attorney General was vacant for six months before you were nominated. The Chief of the Criminal Division has been vacant for over two years.

If confirmed what will you do to make certain that nominees are quickly submitted for advise and consent positions in the Department of Justice.

MR. FISHER: Senator I will be working with the Attorney General and the Deputy Attorney General to pursue qualified candidates.

I understand that the Senate has an important function and an important role in advising to these appointments and I know that the department and the President are committed to getting the best- qualified candidates.

Sometimes that takes some time. But anything I can do to assist in that process I certainly will do so.

SEN. THURMOND: Mr. Fisher if you are confirmed you will have a major role in establishing policy for the Department of Justice. What are the primary goals on which you intend to focus?

MR. FISHER: Senator there are three that based on my examination of the department so far that I would like to focus on at least at the outset. First of those is to bring my management experience to bear on helping the Attorney General and the Deputy Attorney General manage the complexities of the department. And I think I can bring some experience and expertise to that. Secondly, I would like to keep repeating focus on juvenile justice, crime prevention and avoiding, as much as possible having kids dragged into lives of crime. I think I can bring both a perspective from the public education sector as well as the police sector.

And thirdly, based on my experience as a litigation attorney but also as a mediator I think there are tremendous opportunities to make an impact on the litigation functions of the department and throughout the country in the use of alternative dispute resolution. Those are areas where I think that I can make a contribution at the beginning.

SEN. THURMOND: I observed the able and beautiful senator from California just arriving. Would you care to endorse him?

SEN. DIANNE FEINSTEIN (D-CA): I would, Mr. Chairman.

I ran into both Representatives Campbell and Berman and they told me that they had been here and put in a good word, and so I thought I'd better show up and do the same thing and, if I may, I'll leave my statement for the record.

I think his biography amply identifies his qualifications. He is well known

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in the city of Los Angeles. I think his work on the Los Angeles Police Commission, his work for the Christopher Commission, his partnership in a very prestigious Los Angeles law firm all really stand him in very good stead for this position. So, if I may I won't take further time I'll just leave you --

SEN. THURMOND: Thank you.

SEN. FEINSTEIN: -- my statement for the record.

SEN. THURMOND: Incidentally, did you first suggest him for this position?

SEN. FEINSTEIN: I beg your pardon?

SEN. THURMOND: Did you first suggest him for this position?

SEN. FEINSTEIN: No. I wish I did. The Attorney General came up with this one all by herself.

MR. FISHER: Thank you very much.

SEN. FEINSTEIN: Thank you. Thank you, Mr. Chairman.

SEN. THURMOND: Thank you very much.

Mr. Fisher, you have anything else you want to say?

MR. FISHER: I simply, Senator, would like to affirm that I'd look forward to working with the members of this committee.

I enjoyed our conversation that we were able to have and I think those kind of constructive conversations can lead to a cooperative relationship at a personal level and also I think between the Senate and the department -- all of which I think is very helpful to all of us and to the American people.

SEN. THURMOND: Okay, the chairman has gone to vote -- he'll be back in just a minute. Let's take a recess till he comes back.

MR. FISHER: Thank you, Mr. Chairman.

SEN. THURMOND: He may have some more questions for you.

MR. FISHER: Thank you.

SEN. THURMOND: Now the audience feel free to talk now if you want to.

(Recess.)

(AUDIO BREAK)

MR. FISHER: -- would be about it.

There is also the line of cases, the Seattle case, where the court also found to be, on constitutional grounds, impermissible interference with the rights minorities or women to achieve lawful, affirmative action programs. And I think that certainly a signal issue that has to be addressed in the context of proposition 209. Proposition 209 was a general initiative and in the initiative process there isn't always the opportunity for fine tuning the legislation because it doesn't go through a committee process. So, unfortunately I think that's one of the issues that has to be worked out in the courts as to whether or not Proposition 209 may have gone too far in terms of --

SEN. HATCH: It seems to me, lawful interpretation of Proposition 209, there are affirmative actions to quote the Seattle case is something that you can agree with while still upholding the constitutionality of Proposition 209.

MR. FISHER: Well, again Senator I recognize that the Supreme Court has indicated that affirmative action programs will be subject to strict scrutiny. I do understand that.

There are also question, again I am speaking in part because we've encountered some of the issues in Los Angeles where we had to deal with the diverse population and we had a very non diverse police workforce. So in some limited circumstances I think these are weighty issues that still have yet to be fully flushed out. And that's why I'm trying to be responsive as I am.

SEN. HATCH: Now, as you know, the department is required to defend the nation's law. Now what is your view of when the Department of Justice should elect not to defend an enacted statute?

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For instance, let me give you an illustration. The department recently decided not to defend a number of provisions that insure Medicaid and Medicare benefits for Christian Scientists. I must say that I personally am very troubled by that decision, because among these divisions there may arise constitutional questions.

In my view they're plainly not unconstitutional and should be defended in court and my personal view is that it's a dereliction for the department not to defend them. All I could ask for here is your commitment that you will revisit the department's litigation posture in that case and look it over carefully, and see if you can defend the statute.

MR. FISHER: I understand, Senator, that efforts have been made to redraft the statute to make it more broadly applicable and so, I would if confirmed certainly make it a priority of mine to review where that legislation is and how it can be defended.

It think the department's policy is to the extent that there is any reasonable basis to defend the statute. That is it's obligation so that is my understanding. SEN. HATCH: Alright, well, then the way I'm interpreting what you're saying here is that you find that the administration's position is correct in your view. Then you are basically trying to help us to write a statute that would remedy the defect.

MR. FISHER: I certainly look forward to working with the committee I think on a constructive basis. It think that is my understanding of one of the efforts that the department tries to engage in at least have a dialog with the committee.

SEN. HATCH: Okay. Mr. Fisher, although I recognize that you will not be responsible for criminal matters within the department, you will be in the position of advising the attorney general on numerous issues that may even overlap into the criminal area. As a consequence, I would like to ask you just a question or two about your thoughts about the recommendations for independent counsel. And your thoughts just on the independent counsel statute itself. First, do you believe that there is a conflict of interest, or at least the appearance of a conflict of interest, in having the Justice Department conducting an ongoing campaign finance investigation which clearly includes determining the extent to which a number of White House officials were aware of or conflicted in alleged violations of federal law?

MR. FISHER: Senator I have not been briefed on the area of the independent counsel on the facts and the lie. I have to say that I have the utmost trust in Attorney General Reno to do as she has repeatedly said she would. Which is to carefully look at the facts, carefully analyze the law and come to a decision as she sees appropriate without responding to pressure. And I believe her very much. She is a woman of the greatest integrity.

If I am confirmed and I am asked for my views about the matter, certainly would give her my best objective judgment.

But I don't know the facts, that it is a pending investigation and I would hesitate to go beyond that.

SEN. HATCH: Well, I recognize that you have just been nominated as Associate Attorney General and that as a consequence you have to fill us up with a degree of loyalty to the administration that nominates you.

Can you give us your commitment, however, that when asked to give your advise on sensitive matters such as whether or not to appoint an independent counsel to investigate the very people that have nominated you to this position? You will follow the law and will render your bests judgment unmoved by whatever your personal loyalties may be.

MR. FISHER: I can give you that commitment senator that is how I have tried to

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conduct myself in my public service to date.

SEN. HATCH: Well and that's the impression that I have from knowing you and knowing of your past background is that you'll call it the way it should be called. And I think that's very important because frankly she is being very badly misadvised at this time and I'm not the only one who thinks that.

I think virtually most everybody who knows anything about this thinks that but including a lot of the editorial boards of this country and especially the New York Times. But editorial boards are editorial boards. Sometimes they're right sometimes they're wrong.

What is important is that you give the best you can to this position and you will just serve whoever is attorney general and whoever is president if you don't do that. So, I'm just kind of bringing that home.

And I recognize that this is a tough position to be in but all I'm asking is that you do your duty because you represent all of us. And I would expect the same if it was a republican nominee here today for a republican president who maybe having some difficulties with his or her administration.

Now, one of the other areas for which you will be responsible is the anti-trust position and would you tell the committee for the record what experience you have in the areas of anti-trust. MR. FISHER: Senator, I have represented defendants in section two and section one monopolization that (strayed?) in trade cases. I have represented plaintiffs bringing similar claims. I've had experience under the (claymak?) in dealing with the Federal Trade Commission. So, I have a fairly broad experience. I'm not a specialist in anti-trust law but I am familiar with it's concept with the law and with the underlining economic theories I think. So, I think I have a fairly good understanding and grounding in anti-trust law.

SEN. HATCH: Tell us what your approach toward anti-trust litigation would be in the department and the enforcement of the nation's anti-trust laws. How are you going to approach that?

MR. FISHER: Well I would certainly in the first instance work closely with the Assistant Attorney General Joel Klein, who I happen to know and respect greatly. And there are a number of statutes including the ones I have mentioned. Of course, more recently enacted statutes where the department has major responsibilities. I would certainly work with Attorney General Klein to make sure that those laws are being carried out as they are intended to be and that the interest of competition, free and open competition, in the country are well served.

SEN. HATCH: Thank you. Senator Thurmond, do have any further questions or comments.

SEN. THURMOND: Thank you, Mr. Chairman. I have already asked Ray a number of questions. I've already asked those. Thank you very much.

SEN. HATCH: Well, let me just say this. My experience in knowing you is that not only have you earned a very good reputation in the practice of law, but that you've given a lot to the community and that it hasn't just been an easy job being the community leader. These have been difficult jobs and you've given what you can to the community and have done so with distinction.

I think the administration should be complimented for nominating people like you to serve at Justice. And I just hope that as you get there you'll recognize that there are a lot of us up here on Capital Hill are very concerned with what you're doing. That you need to work with us in order to function clearly effectively down there as well.

And there are things that you may be able to help us with as you noticed that the inadequacies with the law. We would love to have your advised as to how to change or to rectify those inadequacies and you'll find there are plenty of them. One of the laws you might find to be terrifically, poorly written is

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the independent counsel statute.

My personal belief is that that needs to be narrowed very carefully. I have come to the conclusion that probably it's essential to have an independent counsel statute. But, I do think that it can be over used.

In this case, I think the attorney general is wrong not to have requested the appointment of an independent counsel and I have high hopes that she'll recognize that and will remedy that problem, that I have deliberately not poured it on over the last several months hoping that she'll arrive at that conclusion by herself and I hope that she will, because there is a lot of concern up here on Capital Hill and not just in the mind of Republicans -- among others as well. So, if you serve there, I hope that you'll consider how important good advice is and that it's best to call it the way it is. Do what is right and honest in every case, because over the long run that will pay off for you, the department, the government and whoever is president. And my impression and experience with you is that that's exactly what you'll do.

So, I just want to compliment you on being willing to accept this position, being willing to make the sacrifices that it takes to come here to Washington and to do a job that's going to perhaps make you work harder than you've ever worked in your life. And that's had to say with any attorney who's worked very hard as you have all your legal life.

And I'm just very pleased you're willing to come and I certainly think your wife will add a great deal to this community and I think you ought to make your son come back take school here in the District for a while we can lift the District a little bit too. If we can do that. I hope you'll can teach in this area. That would be great.

MR. FISHER: Thank you senator.

SEN. HATCH: Do we have any questions from anybody?

SEN. TORICELLI: Mr. Chairman.

SEN. HATCH: Senator Torricelli?

SEN. TORICELLI: I wanted only to make sure that you understand for many of us the center piece of the current administration's efforts to fight crime and help our communities has been the COPS Program. My understanding is that will be under your jurisdiction?

MR. FISHER: That's correct.

SEN. TORICELLI: This for all of us that have invested so much money and so much of our attention in this program, I simply wanted to underscore what it's administration means to all of us.

It means that you are not simply part of and many of our estimations, the administrations fighting of crime, you are the center of it. That we've invested everything in this program and will continue to do so. And I wonder at this point if you could just give some assessment yourself of successes or your hopes for it or what you've learned about it today.

MR. FISHER: Well, Senator, I can speak from first hand experience with Los Angeles. That's my primary focus. We have been the beneficiaries of COPS funding in two accounts.

One, we have 2000 more police officers on the street and I think people in Los Angeles would agree that's been a very good thing, and we've also received COPS grant money for some technological improvements much needed in a department that has been under resourced.

So, I think I do bring that perspective and good contacts within the local law enforcement community.

So, I look forward to the COPS administration part of this position. I think it's a vital part of what the government has been able to do help state and

local law enforcement.

SEN. TORRICELLI: And if this really occupies your good judgement in administration here is so important. Because although 70 to a 100,000 police officers is a significant number, it is a very large country. And if we do not manage this tightly and local police forces simply substitute federal money with their own resources because we're not watching closely -- or police officers for political or other reasons are sent to communities where the need is not the greatest. Then we are squandering a great resource.

In the communities I know in New Jersey which are making the most progress in fighting crime where there's a change in the quality of life. This has been the only resource we've had to bring to the table. This is it and for you that becomes an enormous responsibility. And I simply wanted to underscore it to you how much all of our hopes are invested in you and the program. Mr. Chairman I have no further questions.

SEN. HATCH: Thank you, Senator. With that, Mr. Fisher, I intend to move your nomination as quickly as we can. We're not going to have a committee mark up this Thursday because of Rosh Hashanah, the holiday, but we probably will the next Thursday and hopefully you'll be on that mark up.

And hopefully we can get you down there and get you operating and working as quickly as possible. We'll try not to delay this and we appreciate you coming, we appreciate your willingness to serve and we commend you for that willingness as well.

MR. FISHER: Thank you senator.

I look forward to working with all of the members and with the committee.

SEN. HATCH: Oh forgive me, I had forgotten. They tell me Senator -- well, then what an easy time you've had of it -- (laughter) -- is all I can say. I guess we'll have to be mean to the judges in the next hearing. Thank you, sir.

MR. FISHER: (Laughs.) Senator thank you very much.

SEN. HATCH: Thanks, Mr. Fisher, appreciate it.

With that I'm going to switch gavels. Senator DeWine is going to conduct a traditional nomination proceedings, and I'll be here for part of it.

SEN. MIKE DEWINE (R-OH): I would invite my colleagues, Senator Glenn, Senator Bennett, to come immediately to the table. We are now proceeding to hearing for two circuit court judges and five district court judges.

We need to be out of here by 4:30, which I assume we can be. I would say to all of the prospective judges who are here that it certainly is possible that we may want to submit some questions for the record either because we've run out of time or there may be members who are not here or members who have to leave. So you should be prepared to receive those questions. Let me start, if I could, with the chairman of the committee, Senator Hatch.

SEN./MR. : Okay. It's okay.

SEN. ORRIN G. HATCH (R-UT): Well thank you, thank you -

SEN. DEWINE: Again, I would ask if all of you could just please pull that door shut back there as your come in. Thank you, Roger.

SEN. HATCH: Thank you, Mr. Chairman. I appreciate this opportunity to appear before the committee for and on behalf of Dale Kimball, who has been nominated for district court judge for the District of Utah.

And I'm also happy to be here with my friend and colleague, Senator Bennett, as well. Mr. Kimball obtained his BS from Brigham Young University in August of 1964, his Juris Doctorate from the University of Utah in 1967. He became an associate with the largest law firm in Utah and one of the most prestigious, was a partner and then helped form one of the major law firms in Salt Lake City, Kimball, Parr, Watiks, Brown and Gee (sp). He has been the senior partner in that law firm from 1975 till the present.

He has been an associate professor of law at the Brigham Young University

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School of Law from 1974 to 1976, adjunct professor from 1976 to 1979. He has had extensive experience in the practice of law and was engaged in general practice title work, oil and gas and mineral matters, contract negotiations and litigation including securities law, (striking?) disputes, administrative agency matters and criminal defense.

Since 1975 he has been engaged primarily in business litigation including securities fraud, insurance anti-trust, contract and energy cases. Among them are some arbitrations and municipal litigation.

He's had extensive experience in the practice of law, in the practice of teaching law and as a fine lawyer in the Utah area. He has authored several articles. He is a member, of course, of the appropriate bar associations and is one of the finest people I know.

Dale Kimball is not only an excellent lawyer, he is a person of the highest of integrity, the highest ability, a person we can rely upon, a person who understands the role of judging and a person who literally I think will elevate the federal bench in this country. There's so much more we could say.

He's still with his wonderful wife. I've know him for a long time. I have total respect for him as I think do all people in Utah and especially all members of the bar association.

As you know in any of these situations it's very difficult to make a decision as to who should replace another federal district judge. And, there are so many people who can be qualified for that position and there are a number in Utah who certainly qualify for this position. But I know of none better, non greater and non with more ability than Dale Kimball.

I think he will become one of the great judges in America. And I would expect no less from him. So, I recommend to the committee that they approve this nomination as quickly as possible and help us to resolve the problem of an open seat on that bench which has been open since June of this year.

SEN. DEWINE: Senator thank you very much. Let me turn now to the junior senator from Utah. Senator Bennett.

SEN. ROBERT F. BENNETT (R-UT): Thank you, Mr. Chairman. Being the junior senator and not being a member of the Judiciary Committee, where the senior senator, the chairman of the Judiciary Committee, usually means that my activity with respect to the appointing of federal judges is a fairly minimal one.

I will say that Senator Hatch has been more than solicitous however of my opinion and he came down to see me early in this process to tell me of the various people that were being considered for this particular vacancy. And to tell me that his recommendation would be Dale Kimball.

This would have made it very easy for me to say yes without any kind of demure or objections. I won't go over the specifics in Dale Kimball's background. Senator Hatch has already done that and they are available to the committee generally. I will share with you this personal experience.

I was the CEO of a company that grew very rapidly and finally got to the point where if investors were to get any of their money out it had to go public. And the decision was made that it would go public and go directly to the New York Stock Exchange.

That meant underwriting by two of the nations largest investment bankers, Merrill Lynch and Smith Barney and I said to the people who were then handling it I had other things on my mind at the time this was done I had gotten involved in the senate race. I assume this means we're going to hire a very expensive law firm in either New York or San Francisco or possibly both.

You don't go public with a hometown lawyer when you're going to go directly to the New York Stock Exchange. The folks at Merrill Lynch said actually you have one of the finest law firms in the country dealing with this particular issue

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in Kimball, Parr. And we would recommend as a New York investment banker that the law firm that handles the public offering for Franklin, Gee, Kimball, Parr. That was the first time I had heard Mr. Kimball's name. And as I associated with the people at Kimball Parr both in an official manner and in the unofficial question of how I handle my own shareholdings I have come to realize how wise they were in making that recommendation.

Mr. Kimball is the founder of that firm. His name is the first in the list of named partners and it has demonstrated a capacity that some who are a little less parochial than I might not normally associate with Salt Lake City, Utah, but think of at a high legal track than that.

He would be qualified to serve on any bench in any jurisdiction and I'm happy to add my endorsement to that of Senator Hatch's based on that personal experience with him and his legal background.

SEN. DEWINE: Senator, thank you very much. Let me now turn to my senior senator from the state of Ohio, my colleague, John Glenn. SEN. JOHN GLENN (D-OH): Fine, thank you very much, Mr. Chairman, and members of the committee. It is a pleasure to be here today to introduce to the committee two Ohioans who have been nominated by the President to serve as federal district court judges. They are products of our judicial review commission that advises me on these selections as the chairman knows. These individuals Judge James Gwin and Mr. Algernon Marbley are certainly worthy of appointment. And I've asked them to come up and sit with me up here while I introduce them if I could.

Mr. Marbley and Judge Gwin would come up please. Thank you.

They both have had very distinguished careers and before I go on to describe some of the qualities in these gentlemen that I believe make them well suited to serve on the federal bench, I want to take just a moment to recognize their families who have traveled with them here today to share in this proud moment. So, as I read your names if you would just stand back where I'd appreciate it so you could be recognized. We have Mr. Marbley's wife Janet Green (sp) Marbley as well as their two sons Algernon, Jr. and Arron Marbley. Their both here. They're joined by Mr. Marbley's mother Anne Johnson. We thank you for coming in today.

We also have Judge Gwin's wife, Bonnie Gwin. Their two sons, John and Michael Gwin, and Judge Gwin's mother, Carol Gwin.

So, thank you all for coming here today. I still don't know who's minding the store back home, Mr. Chairman, back home but you have quite a contingent in here. This committee has a large amount of information on these nominees. I won't try to go through it all. I'll just sort of summarize their highlights, some of the things I believe make them outstanding nominees.

Jim Gwin returned to the Stark County Court a common plea's judge where he has presided for the last seven years. Judge Gwin has earned a reputation for hard work.

Since 1989 he has presided over more jury trials than any other general division judge in the state of Ohio. Judge Gwin has provided over 440 jury trial including 225 felony trials 19 of which were murder trials.

Where the average is 15 jury trials per year Jim Gwin has averaged more than 50 jury trials per year. So, we definitely would be getting a hard worker, Mr. Chairman, when we get Jim Gwin.

When not hearing cases, Judge Gwin has been active with the Ohio Judicial Conference chairing the Court Technology Subcommittee and serving as a member of the court reform committee.

He has also worked in the community on behalf of the Central Stark County United Way, the Central Stark County Mental Health Center, the East Central Ohio

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Juvenile Diabetes Foundation and the Canton Group Home.

Judge Gwin has also been a lecturer at the Ohio Judicial College. In my opinion Judge Gwin has demonstrated the talent, intellectual capacity and commitment to public service to make an exceptional addition to the federal bench in the Northern District of Ohio.

I'd also like to introduce to the committee Mr. Algernon Marbley, or Marty Marbley, as he is better known. Mr. Marbley is a partner of Ory, Satter, Seymour and Peas (sp).

He too is exceptionally qualified to serve on the federal bench. He's had 18 years of excellent as a trial lawyer both in the public sector for the United States Department of Health and Human Services and in the private sector with Ory Satter.

Mr. Marbley has had substantial trial experience at the federal and state levels in civil and criminal matters both in jury and non jury trials. Marty Marbley has significant academic experience as an adjunct professor at both the law school and undergraduate levels and he has taught trial advocacy to lawyers at the National Institute for Trial Advocacy for the past ten years.

Like Judge Gwin, Mr. Marbley has also taken the time to plan an active role in his community. He has worked as a leader in organizations assisting disadvantaged youth in the Columbus area.

He has served as secretary and counsel to the board of directors of the Big Brother and Big Sisters Association of Franklin County. He has served for seven years on the board of directors and two years as president of the Sylesian Boys and Girls Club which serves economically disadvantaged inter-city youth.

He also has served in leadership positions for the Franklin County United Way Campaign and the United Negro College Fund. In 1995 he was honored as one of the top ten outstanding young citizens of Columbus, Ohio. Mr. Chairman I recommend Jim Gwin and Marty Marbley without any reservation whatsoever and I believe both of them will make very very fine federal judges.

They have the demonstrated ability and they have the temperament to be able to dispense justice fairly and impartially. And, I am confident the committee will agree with this assessment and I hope to see their very swift confirmation. Thank you very much, Mr. Chairman.

SEN. DEWINE: Senator Glenn, thank you for that fine statement. Let turn now to a colleague from New York, Senator D'Amato.

SEN. ALFONSE D'AMATO (R-NY): Thank you very much, Mr. Chairman. Might I ask that as I introduce the nominees they have an opportunity to come forward.

First, it is my pleasure on behalf of both myself and Senator Moynihan who has submitted an extensive statement and let me just read a little part of it. He said today is great day for New York and he talks to the honor and privilege it is for him to put forth and join with me in support of three of the wonderful nominees that will be before this committee.

So, I'm going to introduce Mr. Richard Casey, who is the President's nominee for the southern district. This nomination also follows a nomination of Mr. Casey by President Bush. Not very often that we get one nominee nominated by two presidents for the same job, two presidents of different parties.

And I think that is a testimony both to both of our president's administrations, the Justice Department and to the caliber of the nominee.

And secondly, Judge Sotomayor, who comes before the committee is no stranger, for the second time. It was less than five years ago when the judge was nominated for the Southern District, in a position that she has held now for almost five years.

And she is now nominated to one of the most important courts in the land, the Second Circuit Appellate Court.

And then Judge Charles Siragusa, from Rochester, whose daughter went to law

school, coincidentally, with my son, Christopher. I think she helped him get through.

By the way, I want you to know that this is not a payback (laughter). That indeed, I have been privileged to support this nomination, as I think it was brought, Judge Siragusa, to the attention of the president, by Senator Moynihan. Were it not for Senator Moynihan being somewhat, feeling somewhat under the weather, he's had a heavy, heavy, heavy, heavy cold, and he would be here. I want you to know that. And I'm going to ask that his statement be in the record.

SEN. DEWINE: His statement will be made a part of the permanent record.

SEN. : Mr. Chairman, I have three statements from him.

Senator D'Amato, do you have all three statements, the same I have?

SEN. D'AMATO: Yes. Yes. All three of them. And that's why I wanted to characterize his statement as this being a great day for the judicial system of this country, but particularly as it relates as to these three magnificent individuals.

And I say they're magnificent. And let me say, I'm going to ask that my full statement be included in the record as --

SEN. DEWINE: It will be made a part of the record.

SEN. D'AMATO: -- in its entirety, because I have these loquacious speech writers who have gone into every detail of all of the candidates and their lives. Some they might want to hear. Others would be -- well, no.

But, let me say that it's a great privilege and honor to nominate Dick Casey. Dick Casey's impressive legal career is quite extraordinary.

And I think more extraordinary is the fact that over the past five years, Mr. Casey's legal work has shifted slightly as a result of his blindness. He is blind.

He would be the first district court judge who would be nominated for this position, and take the bench, as a person who has no sight and is legally blind. There is no doubt as to his legal acumen. There is no doubt as to the brilliance of this academic record, and his distinguished career before the bar. But thereafter, after he lost his sight, he remained vigorous, vigorous in actively practicing the law, probably more than most. His tenaciousness towards justice and fairness will never be impeded by his loss of sight. Let me also suggest that we had a distinguished panel of jurists before our committee came forward with this nominee, to explore the question as to whether or not he would be able to discharge the duties as a trial justice.

This was headed by the former chief justice of the Seventh District. Their recommendation was unanimous, in terms of indicating that Dick Casey could do the job.

I believe that not only is he eminently qualified, by way of his background and his experience, but his success in the face of the disability that he has had to deal with, will give further testimony, living proof, to his great personal strength, and it will be an inspiration to Americans, and many others, that we are winning the battle against the prejudices towards the disabled. As always, he will be a trailblazer, opening new doors for others.

And let me just add for the record, just some of his credentials. And I might mention that those who know him best have come forward and are here today. Not only his family, but one of the great US attorneys from the Southern District of New York, a great prosecutor in his own right, is here today, to loan his support to his friend and colleague. And that is the former US attorney Otto Obermeier (sp).

Mr. Casey's impressive legal career began as an assistant US attorney in the Southern District, in the criminal division. He joined the special commission

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for the State of New York investigating public corruption. And for over three decades he's been practicing with Brown and Wood (sp) in New York City.

So, it is my distinct pleasure to put forth this nominee.

As it relates to Justice Sotomayor, what can one say but "only in this country." The daughter of a humble working family has risen by way of her legal, scholastic stewardship to the highest trial court in the federal district of, and premier district I might add with some prejudice, of the Southern District of New York where she has distinguished herself.

And I predicted to this committee, almost five years ago, that Judge Sotomayor would be an exemplary, outstanding justice. She has demonstrated that, repeatedly. She has shown compassion, wisdom, one of the great intellects on the court.

Her experience, both as a prosecutor, civil litigator, and federal trial judge, makes her an exceptionally qualified candidate for the Second Circuit.

And she's here with her beautiful mama. And I wonder if we could have her, your mother, Mrs. Sotomayor.

Congratulations to you.

Last, but not least, Judge Siragusa, and I want you to know that the judge comes with one of the highest rated records, as a great trial judge, sitting in the Supreme Court of Monroe County, having served as an assistant district attorney, first assistant district attorney, and thereafter being recognized by more groups than one could possibly mention, in terms of his service to community, and in terms of his legal stewardship.

Of all of his great accomplishments, I might add, is the fact that the judge graduated from a wonderful school. And you know that my chief and top administrative assistant put this in. He said, "after graduating from a wonderful college, Le Moyne college in Syracuse."

So I want you to know, Judge, that Mike Cansella (sp) has never forgotten that kinship. And we share that with this committee today.

I recommend him to this committee, along with Senator Moynihan, recognizing that the president has chosen well.

And also that this district is tremendously one of the busiest districts, most overworked districts in the country. And they certainly could use the judge as quickly as possible.

So, Mr. Chairman, it's a great honor to recommend these three nominees, and join with our senior senator in presenting them to the committee today.

SEN. DEWINE: Senator D'Amato, thank you very much for joining us.

Let me turn now to my colleague from the state of Tennessee, Senator Thompson.

SEN. FRED THOMPSON (R-TN): Thank you, Mr. Chairman, should I remain here, Mr. Chairman?

SEN. DEWINE: That would be fine.

SEN. THOMPSON: Is that all right with you? SEN. DEWINE: That will be fine.

SEN. THOMPSON: Mr. Gilman, would you come forward please.

SEN. DEWINE: I see our colleague from Tennessee, also, Mr. Frist, is here -- Senator Frist.

SEN. THOMPSON: Mr. Chairman, fellow members of the committee, I'm pleased to come here today, before you to introduce Ronald L. Gilman, the president's nominee to fill a vacancy in the United States Court of Appeals for the Sixth Circuit.

I want to start by acknowledging my gratitude, the gratitude of all lawyers who practice before the Sixth Circuit, to our chairman for scheduling a hearing on Mr. Gilman's nominee so promptly.

Before I summarize Mr. Gilman's accomplishments to the committee and explain why I believe he merits the committee's approval, I want to say a brief word to

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recognize Judge Ted Milburn (sp), whose seat Mr. Gilman will be filling, if he's confirmed.

Judge Milburn has served the people of Tennessee and the United States as a judge for almost a quarter of a century, first as a state trial judge, and since 1983, a federal judge.

Judge Milburn is widely regarded throughout the Sixth Circuit as a leader on the court. On behalf of all Tennesseans, I want to thank him for his service and wish him well in his retirement. Mr. Gilman has big shoes to fill.

Let me turn now to the nominee before you today. Mr. Gilman is a native of Memphis, and attended high school at Christian Brothers Academy in Memphis, from which he graduated as valedictorian.

He left Tennessee for college and law school in Massachusetts, attending Massachusetts Institute of Technology and Harvard Law School. After graduating cum laude from Harvard in 1967, Mr. Gilman returned to Memphis, where he practiced ever since in one of Tennessee's leading law firms, Ferris, Matthews, Gilman, Brennan, and Hellin (sp).

I might point out that the Matthews in this firm name is former Senator Harlan Matthews. I might also point out that my son is a member of that firm.

Mr. Gilman rapidly became established as a leader of the Memphis Bar, serving as the president of the Young Lawyer Division of the Memphis Bar Association, and president of the Young Lawyer's Conference of the American Tennessee Bar Association.

He subsequently served a term as president of both the Memphis Bar Association and the Tennessee Bar Association. As recognition of Mr. Gilman's leadership at the bar, he was appointed to served on the Tennessee Court of the Judiciary, which hears disciplinary cases against state judges. And he's also served occasionally as a special judge in the state courts in Memphis.

Mr. Gilman has been a leader, not just in the Memphis Bar, but in the Memphis community as well. He served on the board of directors of the Chickasaw Council for the Boy Scouts of America, the Memphis Jewish Home, the Memphis Senior Citizens Services, among other groups.

In 1981, Mr. Gilman was awarded the Sam A. Meyer Jr. (sp) Memorial Award for outstanding service to the legal profession and the Memphis community.

Perhaps most interesting of all Mr. Gilman's memberships, is in the Society of Memphis Magicians, of which he serves as president since 1986. While it gives me a little concern, I assume he will restrict himself from pulling rabbits out of the hat, and not judicial decisions.

Mr. Gilman is an extremely well qualified, and unusually well rounded nominee. While his practice has concentrated on litigation, particularly commercial litigation, he also engaged in estate planning and general business law.

Not only is he experienced in civil law, but in criminal law, as well. He has represented a number of indigent criminal defendants in federal courts.

More recently Mr. Gilman's practice has focused on the practice of alternative means of dispute resolutions, such as arbitration and mediation. Mr. Gilman has also served as an arbitrary mediator for groups like the American Arbitration Association, and the National Association of Securities Dealers.

With the backlog in civil litigations throughout the nation, I think it's important to recognize the importance of the nominee's experience in this area. Not only is this experience similar to the experience of being a judge, but will no double help him bring a special insight to the variety of procedural issues, to help the civil litigation system work better.

I know his wife Betsy is here today. I know he wants to introduce her.

I want to thank again Chairman Hatch for scheduling this hearing, and you, Mr. Chairman, for presiding today. And I'm confident that after the hearing for Mr. Gilman, the committee will favorably report it's nomination that the full

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Senate will confirm him promptly.

Thank you very much.

SEN. DEWINE: Let me turn to our, the other Senator from the state of Tennessee, Senator Frist.

SEN. WILLIAM H. FRIST (R-TN): Thank you, Mr. Chairman.

SEN. DEWINE: And also, I saw Congressman Ford back there. Congressman, can you come on up and join us.

SEN. FRIST: Thank you, Mr. Chairman and I'll join my colleague from Tennessee in welcoming the opportunity to introduce Mr. Ron Gilman, who has been nominated to fill the vacancy in the Sixth Circuit Court of Appeals.

The president has chosen wisely in his selection of Ron Gilman of Memphis, Tennessee, to fill this vacancy. And it is an honor for me to be here to speak on his behalf.

I've heard from many Tennesseans since the nomination, from across the state, and uniformly, and unanimously, they have called to express their support, their full support for this nomination.

Mr. Gilman will make an outstanding judge and do a tremendous job in serving Tennessee, as well as the entire Sixth Circuit.

His experience, which has been outlined for you, is diverse and impressive. His reputation, throughout Tennessee, is fair and deliberative, all of which speaks volumes for his integrity.

I'm proud to support this outstanding nominee, was glad to have the opportunity to meet his family earlier today, and look forward to completion of this nomination process.

SEN. DEWINE: Senator Frist, thank you very much. Congressman Ford, welcome.

REP. HAROLD E. FORD (D-TN): Thank you. And I certainly thank my senators, Mr. Thompson and Mr. Frist for their leadership on this. I welcome my friend and certainly the future Sixth Circuit jurist, Mr. Gilman and his family.

I know his wife, Betsy, if she would not mind standing, his daughter Sherry (sp), who's there in the back. I know Laura (sp) was not able to be with the soon-to-be-jurist today. But I'm sure she would be proud of her father.

I thank Chairman Hatch, and certainly again my senators, for moving this process forward in a way that they were able to, and did. I would certainly say that Mr. Gilman's nomination, the way that this Senate has conducted itself, I believe is a fair illustration of how this process can and should work when partisan politics takes a back seat to the pressing needs of our judiciary.

I thank you, again, Mr. Chairman, for scheduling this hearing, and I congratulate my friend, Mr. Gilman, again.

SEN. DEWINE: Congressman, thank you very much.

I have a statement that I will place in the record, that Senator Leahy has asked me to place in the record. It will be made, without objection, a part of the record today.

We will now proceed with our circuit court judges. And so I would ask our two nominees if they could come up. And we apologize for moving everyone around. But I think what we will do is do this in two panels, and we will start with the circuit court judges.

And as you come up, I'll just ask you to remain standing and both take the oath. (Nominees sworn in.)

SEN. DEWINE: Thank you both for joining us today. We will start with Mr. Gilman.

Mr. Gilman, if anyone in the audience is with you that has not been introduced that you would like introduce. I think this is just, it's sort of a family

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day here today, which is just fine with me.

MR. RONALD L. GILMAN: Well, I appreciate it, Mr. Chairman.

I have my wife, I believe has been introduced, and my daughter Sherry (sp).

Also I have my cousins from Chevy Chase, Mary and Leon Bloom (sp). SEN. DEWINE:

Let's have them all stand up -- or maybe they're standing up already.

MR. GILMAN: And I've got three friends of my daughter, Sherry, Rhonda Rivins, Alison Isaacman and Stuart Frisch (sp) are all here, living in the Washington, DC, area.

Thank you very much.

SEN. DEWINE: Mr. Gilman, we have, all of us have interest in all of the nominees. I obviously have a little special interest because you will be in the Sixth Circuit, and the state of Ohio, of course, also happens to be part of the Sixth Circuit.

Let me ask you, I notice in your resume that you've worked as an arbitrator, mediator for the American Arbitration Association. I think you also worked as a referee in the Dock and Shield (ph) litigation.

You've written on this topic. And I wonder if you could just comment for us, what do you think are, well do you think our system uses mediation enough, both at the federal level and at the state level?

MR. GILMAN: Well I think that my own experience, of course, is in the Tennessee courts, and it is just coming of age. It was just this year, as a matter of fact, that the Tennessee Supreme Court adopted an official rule for mediation. The Western districts of Tennessee just set up its program this year. And I believe it's something that has quite been helpful. I know the Sixth Circuit, several years ago, set up the special counsel's office to try to resolve disputes, even when they reach the Court of Appeals.

It seems to me a way of churning the process of what resolving civil cases. And the statistics show that in about 80 percent of the cases that are mediated, end up being resolved.

So I think the parties are better off. And I think the courts are better off because it unclogs the system a good bit.

SEN. DEWINE: What is your opinion? Are we using this to the maximum in the federal system?

MR. GILMAN: It is not yet, in my own experience, in the Western district of Tennessee, not being fully, but it's just in the process of being utilized. I expect though, as I talk to colleagues in the states, for example, Texas and Florida, where it's been in existence for approximately ten years. I understand it's gotten to the point in those states where you can't go through trial until you first try mediation.

And that's probably the direction that we're going in, which, in fact, I think is healthy, particularly mediation is not binding, and it's not, the parties aren't obligated to settle. But if they have to go to court they certainly have the opportunity and the legal right to do so.

But on the other hand, many of these civil cases get resolved far earlier, and with far less expense to the parties, than if they had to go through traditional litigation.

SEN. DEWINE: Mr. Gilman, during your tenure as president of the Tennessee Bar Association, the Association drafted a professional creed for Tennessee lawyers. Anything particularly unique about that professional creed that we should take note of?

MR. GILMAN: Only that the, probably the thing that seems most important is the need for attorneys to disagree without being disagreeable. There, unfortunately, seems to be, more and more, as the profession grows, or the lawyers don't have regular contact with each other on a repeated basis, that you find less civility in the process.

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And that then reflects on the cost to the litigants, and the prolonging of the litigation, and the need for lawyers to be able to cooperate, particularly on procedural matters that don't affect the substance of the case. But rather than just schedule a deposition date, and then have problems -- Well, I'm going to be out of town -- to talk to each other first, and do things informally, where it doesn't affect the merits, but yet greatly aids in the case being processed through the system.

And that's really the heart of the professionalism in the creed's standard.

SEN. DEWINE: Senator Thurmond.

SEN. STROM THURMOND (R-SC): Thank you, Mr. Chairman.

Judge, you pronounce it Sotomayor? Is that the way you pronounce it?

MS. SOTOMAYOR: Sotomayor, Senator. Sotomayor. It is a difficult name, Senator.

SEN. THURMOND: A former Supreme Court justice had expressed his view of Constitutional interpretation as follows, and I quote, we look to the history of the time of framing of the Constitution, and the intervening history of interpretation. But the ultimate question must be, what do the words and the text mean in our time? End quote.

Do you agree with this statement?

MS. SOTOMAYOR: No, sir. Not fully.

I agree with the first two parts of it. If you look at the Constitution and what it meant at the time. The last suggests that I would be trying to change it's meaning today. And no.

I think the first two would inform what the last results should be, which is what does it mean today, and how to apply new facts to that, if the issue is new facts.

SEN. THURMOND: Mr. Gilman.

MR. GILMAN: Senator, I think that --

SEN. THURMOND: Do you want me to repeat that or did you remember?

MR. GILMAN: If you would, that would be fine.

SEN. THURMOND: We look to the history of the time of framing of the Constitution, and the intervening history of interpretation. But the ultimate question must be, what do the words and the text mean in our time?

MR. GILMAN: I think that we need to look more of the text of the Constitution, as it was written. The words are important. And I think if the Constitution is to have enduring meaning, the concept obviously has to be applied to current circumstances.

New events arise all the time. But I think the Constitution has got to be interpreted within the meaning of its text.

SEN. THURMOND: Now, this question is for both of you.

You have both had some involvement with the American Bar Association. Do you believe, that the ABA should take positions on social and public policy issues, such as abortion, and aid to the homeless?

MR. GILMAN: I would be glad to answer first. I was actually in the House of Delegates for the last eight years. I'm no longer in the House. My term ended in August of this year.

I believe the ABA does a tremendous amount of good in areas like continuing legal education, and professionalism, and providing legal services.

My own opinion it should not, Senator, be involved in these issues that are primarily social and moral, and which lawyers have no particular expertise. And I in fact have voted against those kinds of resolutions, when they came up before the House.

MS. SOTOMAYOR: I've only been an inactive member of the Bar. I joined it largely because of it's educational importance.

The American Bar Association regularly issues studies on the current state of

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got it to trial last week.

SEN. ASHCROFT: And what was the outcome of the case?

MS. SOTOMAYOR: As I said, the jury found for the defendants on the initial question, which is that the prison had not removed him without his consent, that he had, in fact, consented to the removal.

But those are issues of facts that a judge can't decide on paper, sir. Those are factual questions always for a jury -- did X or Y happen? SEN. ASHCROFT: I think those are evidentiary questions.

MS. SOTOMAYOR: Exactly.

SEN. ASHCROFT: It's not possible that a judge --

MS. SOTOMAYOR: Exactly.

SEN. ASHCROFT: -- possible that a judge can decide evidence in question in the absence of a jury.

MS. SOTOMAYOR: Well, in some circumstances.

SEN. ASHCROFT: Do you believe that there's a constitutional right to homosexual conduct, by prisoners?

MS. SOTOMAYOR: No, sir. There isn't. Case law is very clear about that. The only constitutional right that homosexuals have, is the same constitutional right every citizen of the United States has, which is not to have government action taken against them arbitrarily and capriciously. The Supreme Court said that last term, in *Evans v. Romer* (sp). But outside of that, that's a basic constitutional right, not to them in particular, but to the world that constitutes the US.

SEN. ASHCROFT: Do you think there should be one, a special constitutional right.

MS. SOTOMAYOR: I don't think that we should be making constitutional rights any greater than they exist right now. The Constitution should be amended sparingly, sir, as it has been throughout our history.

It is something that should be done only after much history and much thought.

SEN. ASHCROFT: Do you agree with the amendments that have been made to date?

MS. SOTOMAYOR: Yes, sir. It's the document that I live by.

SEN. ASHCROFT: I agree with them. And think it's good that they were amended.

So, I, you know, I accept the process.

So, in your judgment, you wouldn't read additional rights into the Constitution, like a right for homosexual conduct on the part of a prisoner.

MS. SOTOMAYOR: I can't do it, sir. I can't do it because it is so contrary to what I am as a lawyer, and as a judge.

The Constitution is what it is. We cannot read rights into them. They have been created for us.

SEN. ASHCROFT: The Constitution then, as a matter of policy, you would like see protected?

MS. SOTOMAYOR: I never thought about that in a while, sir. I know--

SEN. ASHCROFT: My time's not up.

MS. SOTOMAYOR: I think I --

SEN. ASHCROFT: In your opinion, do you think Congress has the right, constitutionally, to restrict the jurisdiction of the lower federal courts?

MS. SOTOMAYOR: You know, I haven't examined that question in the longest time. But I can't, I'm not thinking, we were created by legislation of Congress, so I would think that if Congress created it, Congress can take it away. What you can't do is take away that which the Constitution would give the courts. I think that was established in *Marbury v. Madison*. But after that, not looking at the question, or studying it in depth, I can't give a better answer than that.

SEN. ASHCROFT: Thank you. That will be all. Thank you.

SEN. DEWINE: Judge, one of the great burdens of being a federal district court

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all cases.

And where there may be a complex legal question. For example, in that case, and a few others, in that *Holmes v. Artus*, where I did that, the Supreme Court was just considering an equal protection claim that I mentioned might elucidate this area.

In a case like that, where there is an unsettled legal question, and you can define that by something where the circuits are split, or the Supreme Court is hearing an issue.

Then I'll usually ask for a lawyer, because then the questions are so complex that one needs some help, in terms of making sure that you've thought of all the arguments. You want the lawyer, and not a pro se prisoner, to brief them.

SEN. DEWINE: I want to thank both of you very much, and thank you for your patience.

And I would, just again state that there may be questions from members of the committee who were not here today. They will be submitted to you. They may not be.

Also, I would invite you, if you want to elaborate on any answers, you want to submit anything in writing to us, the committee would be more than happy to receive that.

MS. SOTOMAYOR: Senator, may I take just half a second just to introduce my mother again, and my fiancée.

SEN. DEWINE: I think that's very appropriate.

MS. SOTOMAYOR: My mother, Celina Sotomayor is here, and my fiancée, Peter White. And respecting your time, I will not introduce individually, all of the wonderful supportive friends I have here, but other than my Godson, who is a Boy Scout.

SEN. DEWINE: Well, tell the godson to stand up then.

MS. SOTOMAYOR: No, he's probably gone.

SEN. DEWINE: He's standing anyway.

MS. SOTOMAYOR: He's in the back standing up.

S SEN. DEWINE: So, thank you very much.

MR. GILMAN: Thank you, Senator.

SEN. DEWINE: Thank you very much.

We are going to, let me just make a, kind of a personal comment. As a father of eight kids, I've rarely seen children so quiet. We have a roomful of children here. And I congratulate all of you for staying with it.

I would ask our next panel to come up. We're going to take about a four or five minute break. Ask you to come up. We're going to start this at about, well we're start at 15 after. So we'll take a couple of minute break, but we're going to plow right on here.

Thank you very much.

(Pause to change panels.)

SEN. DEWINE: Well, let me thank all of you for coming today, and thank you also for your patience.

Let me just start from my left, with you Judge Siragusa.

MR. SIREGUSA: Yes it is.

SEN. DEWINE: Judge, is there anyone in the room, you want to introduce. We're going to go right down, and do that to begin with, because I don't want you leaving here and getting home with someone you hadn't been introduced. And I think we may have missed somebody.

MR. SIRAGUSA: Mr. Chairman, at the risk of correcting a United States Senator, this is my wife, Lisa, who attended law school with Senator D'Amato's son, although I'm sure of two things, that she's very flattered by his comments, and she'll never let me forget it. (Laughter)

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My wife Lisa's here, and my in-laws, James and Lucille (Furio?) and I thank them for being here.

Thank you.

SEN. DEWINE: Thank you very much. Mr. Marbley.

MR. ALGENON MARBLEY: Yes, Senator, I've been fortunate, I've had some very good support throughout this process and I have some law school classmates, who were with me back in the old days at Northwestern, who came. And I like to have them acknowledged for the record, if I may.

One is Thomas Preston, who is with the IRS. And then another friend of mine, Antoinette Cooke-Butch (sp) was here -- I don't know whether -- she left -- she was a former staffer, now partner at Scad- Knotts (sp). And then I have Ronald Sullivan, who was like an understudy, but he's a Harvard lawyer now, so I can't call him that anymore.

And he's a Washington attorney now.

Thank you very much.

SEN. DEWINE: Mr. Kimball.

MR. DALE KIMBALL: Thank you, Senator. I'm grateful to my wife, Rachel here. She's a nurse, and I hope I don't need her medical services during the hearing. Our of six children and 16 grandchildren are scattered around the country taking care of each other and working.

SEN. DEWINE: Judge Gwin.

MR. JAMES GWIN: I'm pleased to have my wife Bonnie, and my sons Michael and John here. I would also introduce my sister, Mary Jo Wiess (sp) and her husband Ed Wiess and their sons, Robert and Edward, and also my mother Carol.

I've also some special friends that have been helpful and these include John Lewis of the Squire-Sanders firm, and John Heider (sp). who is the executive vice president of B. F. Goodrich, and John Manos (sp) had been here -- Judge John Manos -- but he may have stepped out, and I thank them for their help during this process.

SEN. DEWINE: Thank you. Mr. Casey.

MR. RICHARD CASEY: Mr. Chairman, I'd like to introduce -- I have my sister here, Mrs. Carol Brunell (sp). Unfortunately my son Richard, Jr., is unable to be here today. But I do have with me my nephew, Christopher Brunell, and his daughter Kelly (sp), and my nephews, Frank Casey and Tom Casey.

I also have with me, Senator, some of my very dearest friends who have been so supportive to me, from years back, and since I lost my eyesight. With me here today is Mr. Richard McCarthy, Mr. Otto Obermeier, who the senator identified as the former US attorney. Another friend who was supposed to be here, Suzanne Brown, and she, unfortunately, couldn't make it.

But I also have with us today, several members of the National Federation of the Blind, and some other blind organizations. I'm not sure if all have arrived, but I'm very grateful for their support.

Thank you, Senator.

SEN. DEWINE: Very good. Thank you all very much.

One of the privileges of having this gavel is you get to ask whatever questions you want, and --

MR. CASEY: Excuse me, Senator, I'm sorry -- I'd be remiss, and I couldn't go home -- I have two of my partners here. Mr. Thomas Sutter, and Mr. Robert Petersack (sp), and life wouldn't be too good when I got home.

(Cross talk.)

SEN. DEWINE: I appreciate that very much.

Let me just say to the nominees that the questions that we ask are frankly difficult to frame, because most of us who sit here and who have the

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obligation to confirm or not confirm presidential appointments have some very definite ideas about what we think a judge should be, particularly those of us who have appeared before judges, we have our ideas. But it's difficult sometimes to phrase questions that can get at what we're really looking at. I'm just going to be very candid with you and then I'm going to start, Judge with you, if I could and we'll just go from my left, to all the way down.

We often talk about judicial temperament. I don't particularly like the term. I don't even know what it means. But I think we generally know what we're talking about.

And one of the things that I am always concerned about, and frankly it's difficult asking somebody this question, and getting an answer doesn't tell you a whole lot. But, maybe I'm just saying it so that two years from now, or ten years from now, at some point, maybe you'll remember what some United States Senator said during the confirmation hearings.

But, one of the things that troubles me is that occasionally, when someone is either elected to the bench, but frankly, maybe more often, when they are appointed to the bench you have life tenure, they become what I would call arrogant. They become out of touch with the community. They become out of touch with the people whom they dealt with before.

And I'd just like for you to maybe talk a little bit, in turn, about any kind of judicial temperament.

MR. SIRAGUSA: I think --

SEN. DEWINE: Let me, let me just, before I give you the substantive questions, let me ask you now to stand, and we'll actually swear you in, which is the normal procedure of the committee.

(Nominees sworn in.)

MR. SIRAGUSA: Mr. Chairman, I think I think there's three basic qualities that go into a good judicial temperament. But the first is commitment.

I think that you have to be committed to be the very best judge you can be.

That involves a commitment to work hard, a commitment to demand no more of attorneys who appear in front of you, than you demand of yourself.

It involves a commitment to, a judgeship is not just a profession, but really a way of life, to excel the best you can.

I think the next broad trait would be dedication. You have to be dedicated to the oath that you take. I have been a trial judge, and you have to understand the responsibility of the trial judge is to resolve the cases and controversies that come in front of you, and not to think of yourself as a talisman to solve the social ills that plague society.

The third, I think, is humility. I think you have to have an appreciation that it's the position that's important and not the individual. I've tried a lot of cases as a litigant. I've had interaction with a lot of judges following my election, and I think there's a danger that sometimes people get what I refer to as robitis, that because you put on the robe it doesn't make you a better person. It's well to remember, and perhaps it's most important, that it is the position that's important, and not the individual.

Thank you.

SEN. DEWINE: Certainly none of us have ever known anybody in that position. Mr. Marbley.

MR. MARBLEY: Certainly one of the advantages of going second, Mr. Chairman, is that you can adopt --

SEN. DEWINE: Mr. Casey's the most -- (laughter) -- he gets the last shot at this thing. He doesn't know we're going to start with him next time.

MR. MARBLEY: -- the testimony of Judge Siragusa, but I think that one of the

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key traits that a judge has to have, is a commitment to fairness. I think that a judge has to be fair to the litigants who appear before him or her. I think that another key consideration is the quality of being courteous. You have to be courteous to the litigants, and I think that that will permeate your courtroom.

Once you've established that you're going to be courteous, and that civility will carry the day, the litigants who appear before you, understand that they are to perform their behavior accordingly. So we won't have the problem of non-civility in an otherwise charged, adversarial relationship.

I think that humility is perhaps one of the most single important qualities because you have to realize that you have within your hands, often, the ability to affect the course of events, or alter people's lives. So you have to be humbled with that type of responsibility.

And finally, I think you have to be thoughtful. When someone has reposed the faith in you to allow you to sit in that position, and be a neutral arbiter of cases of controversy, the least you could do is to be very thoughtful in your deliberation.

I think all of those qualities in addition to the qualities that Judge Siragusa pointed out, make a sound judicial temperament.

SEN. DEWINE: Kimball.

MR. KIMBALL: Thank you, Senator. I certainly agree with what the two gentlemen have said. A judge must be fair, a judge must be impartial, a judge must be patient, a judge must be well prepared and informed, and render timely and thoughtful, well-explained decisions.

I believe the best example of judicial temperament I know is the judge I hope to replace, Judge David Winger (sp), and one of the reasons he is such a great judge is because he has always remembered that, as he said, what it is like on the other side of the bench, from the lawyers, and the participants, the party side of the bench. And I would hope to be as he is.

Thank you.

SEN. DEWINE: Judge.

MR. GWIN: Thank you.

I think it's -- I would adopt just by referencing the comments made earlier.

But I've also been impressed with, it's so important for judges and people in the judicial system to understand that for most litigants, they come before a court, one time in their life, perhaps two or three times.

And if those people have gone away from the court believing that their concerns, their claims, their defenses that they've given, got short shrift, I think that they walk away with a diminished respect for our legal system.

So I think it's extremely important in every case that all the participants, but especially the judge, give our concern to that, and treat people with respect and treat people with an open mind.

So those would be the qualities I would hope to bring to the bench for the Northern District of Ohio?

SEN. DEWINE: Mr. Casey.

MR. CASEY: Senator, I love the profession of the law, and I have the greatest admiration for it, and affection.

The Southern District of New York, it's where I started, and I'm going to be fortunate enough that, if I'm confirmed, to be with several colleagues that I started out with.

But I think what has made me love being a trial lawyer is the wonderful experiences before some great judges in that district. There's nothing quite

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as pleasurable for a trial lawyer as to try a case before a intelligent judge, who has compassion and understanding, at the same time he understands his function, and moves the administration of justice along. But just as important, one who has the sense of humor that we all need in life. And I would hope to emulate some of those that I've had the pleasure of appearing before, over the years.

SEN. DEWINE: Thank you very much.

Let me turn to my second question. Mr. Casey, I will start with you if that's all right.

If each one of you is confirmed you will be taking over a specific court, with a docket. And I would ask you to maybe reflect, have to have given it some thought about some of the things you want to do.

And what I'm looking for is not substance, in the sense of how you decide cases, but I'm looking at more procedure. How you would run the court.

What you've observed in federal courts, or in other courts that works, that does not work. What you like. What you don't like. What you, how you would really run your court. Because one of the things that litigants want is a disposition. They want the case resolved. And so the speed of which cases can be brought to trial is important, or if they can be resolved in some way is important. So if you can just really comment on that, maybe reflect on the use of support staff, reflect on the use of law clerks, reflect on the use of arbitration, or whatever the local rule might allow.

That's the type response I'm looking for -- what have you thought about that, and what is important to you, what is not important.

MR. CASEY: Well, Senator, I think one thing, at least in the course of my experience, I spend a substantial amount of time, in private practice, at least, involved in major securities litigation.

And I would think that a major step to handle the administration of the court, if I were to be confirmed, is to get involved early, especially in large cases, to get a handle on the issues of the case are before things can get out of hand, in order that you can move them along.

I have served on committees involving discovery reviews and I think much of that can be prevented, if the judge is to get in early, get his or her hands on the case, assist the lawyers in setting the discovery schedule, and move the case along, and always, of course, keep in mind that an early trial date frequently helps things to move along, as well.

As far as the staff, certainly, it's a team effort with the law clerks and everyone involved. I would certainly keep a keen eye to things that various judges I know in the Southern District have experimented with, as to how they move their dockets along. And I would certainly try to inquire of them, and utilize all their experience as well.

SEN. DEWINE: Mr. Gwin.

MR. GWIN: I think it's so terribly important that cases move along to an expeditious conclusion.

After conversations with numerable people who have been involved in litigation, I find that one of their biggest concerns is how destructive and debilitating it is to have litigation pending. That's true for individuals. It's perhaps equally, or more true for businesses. It's just to have the uncertainty of a litigation pending -- it's very damaging.

So I think it's extremely important for litigation to move along swiftly. I think the ways we do are well known, in so far as an early intervention by the judge, in terms of setting a reasonable, but firm date for preparation of motions and trial.

It requires a judge can stick to those dates, it requires the judge to quickly

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supervise discovery disputes. And it requires the judge to quickly rule and supervise dispositive motions.

The things that move the case along, I think are well known, but it does require the hands-on effort of the judge. And those are things I would like to have an opportunity to give to the Northern District.

Finally I would comment, I am a big believer in alternative dispute resolution. And I find that in many cases it can help us narrow the differences between the parties, even if it's not able to bring about a conclusion of the matter.

So that would be another area where I would give emphasis.

SEN. DEWINE: Mr. Kimball.

MR. KIMBALL: Thank you, Senator.

I agree with Judge Gwin that the litigation process can be very destructive in people's lives and it's very important that it move along.

I would also say it can be very, very expensive. And some of that expense can be saved by good management by judges, and that ought to be done.

I've been an arbitrator. I've been a mediator. I've represented clients in front of arbitrators and in front of mediators, and I would encourage the voluntary, but not mandatory, use of those ADR processes.

I believe in the early intervention and management that has been discussed.

Perhaps there's no more important case management technique than timely and well explained decisions. And I would hope to be able to render those.

I believe it's important to utilize the magistrate judges. And I consider myself a good manager and would utilize the various management techniques for moving things along and keeping them orderly, that I've utilized in my last docket.

SEN. DEWINE: Marbley.

MR. MARBLEY: Thank you, Mr. Chairman.

Perhaps the single most important feature is the early entry of the judge into the fray. That is important because the judge can counsel the litigants on the expense of litigation, perhaps reach an early resolution of the matter, and settlement, or otherwise -- judges tend to be able to help the parties close the gap and resolve their differences.

Also the judge, I think, should counsel the litigants about the advantages of alternative dispute resolution. And I know that in our district there are options in that respect. And so that would be another method to move the cases along.

Third, I think that it would be important to resolve motions that are pending, particularly discovery motions, or dispositive motions.

Certainly magistrate judges can be used for that. And those magistrate judges who perhaps have their own backlog cannot do it, you certainly can rely on your law clerks to get much of that research done to resolve pending motions.

And finally, and perhaps most importantly, is to establish a reputation for setting realistic discovery deadlines, and file dates, and sticking to them. A judge who has a reputation for having firm trial dates, is a judge who moves his docket along with a great deal of dispatch.

And I think that once the litigants in your district realize that you are going to adhere to those trial dates, and that they are firm, then you will see a lot more motion terms of getting matters resolved.

SEN. DEWINE: Judge.

MR. SIRAGUSA: As I listen to my colleagues, the old maxim of, justice delayed is justice denied, comes to mind. And I think it's true. And I think the ultimate responsibility is with the presiding judge to manage his caseload.

Certainly the techniques that have been suggested are good ones, but I think it starts with a judge who is actively involved in his case, who utilizes scheduling orders, and I agree to set realistic demands and not grant

adjournments unless there is a legitimate reason.

Certainly, in federal court, the use of magistrate judges to deal with both non-dispositive, and dispositive motions.

I agree that it's important for a judge to establish a reputation that the judge is prepared and willing to do the work. And I think you do that by rendering prompt decisions.

I found that attorneys can live with a decision that goes against them because then they can proceed to the next step. What they can't live with is decisions that pend for months upon end.

And certainly the use of mediation, or alternative methods of dispute resolution is something that I think can be utilized to deal with our backlog.

Thank you.

SEN. DEWINE: Judge, let me continue with you, if I could. You, in April of this year, had a writing that had to do with cameras in the courtroom. Do you want to tell us about that?

MR. SIRAGUSA: Sure, I--

SEN. DEWINE: And the conclusions you reached.

MR. SIRAGUSA: I was careful not to give any conclusions in the presentation.

But basically I was asked, as part of a continuing education program, to present both the pros and cons on cameras in the courtroom. And I made that presentation. I'd be glad to comment on it.

I should preface it by saying, in June of this year, the New York experiment on cameras in the courtroom ceased. There is no legislation now, so since I am a sitting judge, I'll speak to what my experience has been on cameras in the courtroom.

In New York the purpose of promulgating rules on cameras in the courtroom was a recognition by the legislature that it was important to enhance the citizens' understanding of our criminal justice system, and thereby promote both confidence in the judiciary, but also to promote the fair administration of justice. And that's why these rules for cameras in the courtroom were initially enacted back in 1987.

In my experience, in New York, both in trying cases that were, some televised live, and in presiding on cases, the goals of the experiment have been approached. But it think it primarily depends --

SEN. DEWINE: The goals have been --

MR. SIRAGUSA: Approached.

SEN. DEWINE: Approached.

MR. SIRAGUSA: Approached. I'm not going to say --

SEN. DEWINE: What does that mean?

MR. SIRAGUSA: Well, I mean I think that it might be naive to say that we've achieved exactly what the legislature intended, but I think that in New York they've been approached. And it think it largely falls because of three reasons, the responsibility of the media, the responsibility of the attorneys, and the responsibility, of course, of the judge.

In my experience in Monroe County, the media has been responsible about not being intrusive in the positioning of cameras, and following the dictates of the judge.

The litigants have not engaged in histrionics. There hasn't been theatrics. They haven't been playing to the cameras.

And I hope, myself as a judge, and certainly the judges who have presided that I've tried in public sight, have kept control of their courtrooms and were consistent in the demeanor that was established in the courtroom, whether the presentation was televised or not.

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SEN. DEWINE: Any unintended consequences, based on either your personal experience, or what you found out?

MR. SIRAGUSA: No, I think the, to share an aside, I mean, and why I said the goal was approached. When I was in the DA's office, I tried a case that was televised live for 12 weeks, and after the case was over, more than one citizen came up and said they were impressed by the professionalism both of the prosecutor, the defense attorneys, and the judges.

And I think that speaks toward the purpose of approaching the goal.

SEN. DEWINE: Mr. Kimball, let me refer to something that you wrote a few years ago, I believe, "The Constitutional Convention, Its Nature and Powers, and the Amending Procedure," Utah Law Review. It's been a few years ago --

MR. KIMBALL: A lot of years ago.

SEN. DEWINE: And I guess maybe the lesson that people take away from these hearings is, don't ever write anything and you won't have questions. I hope that's not the lesson.

But, considering the job that you have been nominated for, I wonder what you learned from that, the research for that law review article that might be on any relevance to your service on the federal bench.

MR. KIMBALL: As I recall, that law review article, it was basically about state Constitutions and the amending process and problems that arose, and how conventions were called, and what powers they had, and so on.

I think I gained a greater respect for both what the Constitution says, and what the people say through their, whatever it be, whether it's the writing of the Constitution or the writing of the legislation. That that has to be given great deference by a judge, that's one thing I learned through writing that article.

SEN. DEWINE: Let me ask each one of you, we'll start with Mr. Casey.

You had the opportunity, I think you all were in the room when the circuit court nominees were here. And we engaged in a series of questions, in regard to a problem that federal court judges have to deal with. Frankly quite often, which has been my experience, and that is state prison systems.

And I wonder if, based on what you heard today, you have any additional comments about that, about your philosophy and how you approach that type of a case.

And I understand that -- I'm not asking you -- please understand, I'm not asking you to comment about any particular case. I'm not asking you, obviously, to comment about anything we've already discussed. I would just like your approach, in general.

And you had the opportunity to hear the two judges talk earlier, and I wonder if you have anything to add to that.

Mr. Casey.

MR. CASEY: Well, Senator, I was very interested by the comments of the two candidates. It is a problem which I think many members of the court in the Southern District are concerned about.

However, it is the responsibility of the judge, regardless of who the litigants are, to give them a fair and reasonable hearing, just as they would to anyone else.

SEN. DEWINE: Mr. Gwin.

MR. GWIN: I would generally think that in all cases there are to be differentiated management, and so I think it's important for the judge on the case to take an early perspective on the case, the claims made, and put it on the track that leads to a final disposition commensurate with the claims made and the defenses asserted.

I use that as background to say that I think it's important for judges to separate the wheat from the chaff, in terms of this type of litigation and

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others, and to set these type of cases of a path where they come to final disposition fairly, but not running a case that should be resolved quickly through a long history of litigation before a final resolution is reached. So I would comment, Mr. Chairman, I think that's important in all civil litigations. And I think it applies equally to a prison litigation. It applies similarly to habeas corpus litigation.

SEN. DEWINE: The prison cases are, to some extent, unique, in the sense that we have had experience with special masters who -- it goes on and on for years. And I know that's not totally unique to prisons. It happens to other areas as well. It might happen in a school district. But some of these cases go on, and on, and on.

And, you know, that is something that I think I have some sensitivity to because of the previous position I had, and some of the problems that I saw.

And I know it's very difficult to comment in general about that.

Mr. Kimball.

MR. KIMBALL: I agree with what these two gentlemen on my left have said.

But I would also say that it seems to me that it would be a very unusual and unique set of circumstances that would require, or even allow, a judge to really get into the management business, which I think is part of what you're talking about.

I don't really see that as part of the job description.

SEN. DEWINE: Mr. Marbley.

MR. MARBLEY: Yes. I think that I can answer your question in two respects.

First, these matters have to be dealt with expeditiously because they are administrative matters, and an early resolution is important to everyone involved, the inmates as well as prison officials.

Secondly, and perhaps importantly, they have, you have to subject them to the same type of analysis that you would most other cases. You start with whatever existing precedent is, and then, as far as the issues that were discussed here today, it appears that as long as there are no suspect classifications involved, you'd use a rational relationship test. And in doing so, you give substantial deference to officials who are enacting a particular program, or whatever the issue may be before the court.

So, as long as you take that sort of analytical approach that we, as lawyers, are trained to do, and abide by a doctrine of stare decisis, as we as Article 3 judges are obligated to do, I think that you can pretty much dispose of that litigation expeditiously and fairly.

SEN. DEWINE: Judge.

MR. SIRAGUSA: Again, I don't know if I'll add anything new, but, I do believe that deference should be given to administrative decisions. Obviously, if there's a rational basis for an administrative decision affecting an inmate, it should be upheld.

If cases get to the court system, then I think it's the responsibility of the judge, where possible, to separate the frivolous lawsuits out, and to deal with them expeditiously.

SEN. DEWINE: Let me thank each one of you for your patience today and for coming. And I will again state that the record will remain open, and you may get additional questions.

If any of you want to supplement any of your answers, you're more than welcome to do that by contacting somebody's staff. And you can do that in writing. And, again, I appreciate it, and appreciate the patience of the members of your family, and particularly the young members of your family.

MR. CASEY: Senator.

SEN. DEWINE: Thank you.

MR. CASEY: Senator, could I just -- because I have to ride home with them on

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the plane -- that I ask the chair to recognize Mr. and Mrs. Dahl (sp), who came with me, too.

That would be a long ride home.

SEN. DEWINE: It would be. Thank you, Mr. Casey, very much.

Thank you.

(Bangs gavel.)

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