

on the International Joint Commission, United States and Canada.

FOREIGN SERVICE

PN2230 Foreign Service nominations (152) beginning William Joseph Burns, and ending Michael L. Young, which nominations were received by the Senate and appeared in the Congressional Record of October 8, 2002

PN2231 Foreign Service nominations (144) beginning Jon Christopher Karber, and ending Peter Fernandez, which nominations were received by the Senate and appeared in the Congressional Record of October 8, 2002

NOMINATION OF JOHN M. ROGERS

Mr. LEAHY. Madam President, last night, the Senate voted to confirm the nomination of John Rogers who is nominated to the U.S. Court of Appeals for the Sixth Circuit. By confirming this nomination, we are trying to move forward in providing help to the Sixth Circuit. Earlier this year, we held a hearing for Judge Julia Gibbons to a seat on the Sixth Circuit, who was confirmed by the Senate on July 29, 2002 by a vote of 95 to 0. With last night's vote, the Democratic-led Senate confirmed the 15th judge to our Federal Courts of Appeal and our 98th judicial nominee since the change in Senate majority in July 2001. I have placed a separate statement in the RECORD on the occasion of confirming that many of this President's judicial nominees in just 16 months.

Republicans often say that almost half of the seats on the Sixth Circuit are vacant but what they fail to acknowledge is that most of those vacancies arose during the Clinton Administration and before the change in majority last summer. None, zero, not one of the Clinton nominees to those current vacancies on the Sixth Circuit received a hearing by the Judiciary Committee under Republican leadership. With the confirmation of Professor Rogers, we have reduced the number of vacancies on that court to six, but four of those remaining lack home-State consent due to the President's failure to address the legitimate concerns of Senators in that circuit whose nominees were blocked by Republicans during the period of Republican control of the Senate.

The Sixth Circuit vacancies are a prime and unfortunate legacy of the past partisan obstructionist practices under Republican leadership. Vacancies on the Sixth Circuit were perpetuated during the last several years of the Clinton administration when the Republican majority refused to hold hearings on the nominations of Judge Helene White, Kathleen McCree Lewis and Professor Kent Markus to vacancies in the Sixth Circuit.

One of those seats has been vacant since 1995, the first term of President Clinton. Judge Helene White of the Michigan Court of Appeals was nominated in January 1997 and did not receive a hearing on her nomination during the more than 1,500 days before her nomination was withdrawn by President Bush in March of last year. Judge White's nomination may have set an unfortunate record.

Her nomination was pending without a hearing for more over 4 years—51 months. She was first nominated in January 1997 and renominated and renominated through March of last year when President Bush chose to withdraw her nomination. Under Republican control, the committee averaged hearings on only about eight Courts of Appeals nominees a year and, in 2000, held only five hearings on Courts of Appeals nominees all year.

In contrast, Professor Rogers was the fifteenth Court of Appeals nominee of President Bush to receive a hearing by the committee in less than a year since the reorganization of the Senate Judiciary Committee. In 16 months we held hearings on 20 circuit court nominations. Professor Rogers was being treated much better than Kathleen McCree Lewis, a distinguished African American lawyer from a prestigious Michigan law firm. She never had a hearing on her 1999 nomination to the Sixth Circuit during the years it was pending before it was withdrawn by President Bush in March 2001.

Professor Kent Markus, another outstanding nominee to a vacancy on the Sixth Circuit that arose in 1999, never received a hearing on his nomination before his nomination was returned to President Clinton without action in December 2000. While Professor Markus' nomination was pending, his confirmation was supported by individuals of every political stripe, including 14 past presidents of the Ohio State Bar Association and more than 80 Ohio law school deans and professors.

Others who supported Professor Markus include prominent Ohio Republicans, including Ohio Supreme Court Chief Justice Thomas Moyer, Ohio Supreme Court Justice Evelyn Stratton, Congresswoman DEBORAH PRYCE, and Congressman DAVID HOBSON, the National District Attorneys Association, and virtually every major newspaper in the state.

In his testimony to the Senate in May, Professor Markus summarized his experience as a federal judicial nominee, demonstrating how the "history regarding the current vacancy backlog is being obscured by some." Here are some of things he said:

On February 9, 2000, I was the President's first judicial nominee in that calendar year. And then the waiting began. . . .

At the time my nomination was pending, despite lower vacancy rates than the 6th Circuit, in calendar year 2000, the Senate confirmed circuit nominees to the 3rd, 9th and Federal Circuits. . . . No 6th circuit nominee had been afforded a hearing in the prior two years. Of the nominees awaiting a Judiciary Committee hearing, there was no circuit with more nominees than the 6th Circuit.

With high vacancies already impacting the 6th Circuit's performance, and more vacancies on the way, why, then, did my nomination expire without even a hearing? To their credit, Senator DEWINE and his staff and Senator HATCH's staff and others close to him were straight with me.

Over and over again they told me two things: (1) There will be no more confirmations to the 6th Circuit during the Clinton

Administration[.] (2) This has nothing to do with you; don't take it personally it doesn't matter who the nominee is, what credentials they may have or what support they may have—see item number 1. . . . The fact was, a decision had been made to hold the vacancies and see who won the presidential election. With a Bush win, all those seats could go to Bush rather than Clinton nominees.

As Professor Markus identified, some on the other side of the aisle held these seats open for years for another President to fill, instead of proceeding fairly on the consensus nominees pending before the Senate. Some were unwilling to move forward, knowing that retirements and attrition would create four additional seats that would arise naturally for the next President. That is why there are now so many vacancies on the Sixth Circuit.

Had Republicans not blocked President Clinton's nominees to this court, if the three Democratic nominees had been confirmed and President Bush appointed the judges to the other vacancies on the Sixth Circuit, that court would be almost evenly balanced between judges appointed by Republicans and Democrats. That is what Republican obstruction was designed to avoid, balance. The same is true of a number of other circuits, with Republicans benefitting from their obstructionist practices of the preceding six and a half years. This combined with President Bush's refusal to consult with Democratic Senators about these matters is particularly troubling.

Long before some of the recent voices of concern were raised about the vacancies on that court, Democratic Senators in 1997, 1998, 1999, and 2000 implored the Republican majority to give the Sixth Circuit nominees hearings. Those requests, made not just for the sake of the nominees but for the sake of the public's business before the court, were ignored. Numerous articles and editorials urged the Republican leadership to act on those nominations.

Fourteen former presidents of the Michigan State Bar pleaded for hearings on those nominations. The former Chief Judge of the Sixth Circuit, Judge Gilbert Merritt, wrote to the Judiciary Committee Chairman years ago to ask that the nominees get hearings and that the vacancies be filled. The Chief Judge noted that, with four vacancies—the four vacancies that arose in the Clinton administration the Sixth Circuit "is hurting badly and will not be able to keep up with its work load due to the fact that the Senate Judiciary Committee has acted on none of the nominations to our Court." He predicted: "By the time the next President is inaugurated, there will be six vacancies on the Court of Appeals. Almost half of the Court will be vacant and will remain so for most of 2001 due to the exigencies of the nomination process. Although the President has nominated candidates, the Senate has refused to take a vote on any of them."

However, no Sixth Circuit hearings were held in the last three full years of the Clinton administration—almost his

entire second presidential term—despite these pleas. Not one. Since the shift in majority last summer, the situation has been exacerbated further as two additional vacancies have arisen.

The committee's April 25th hearing on the nomination of Judge Gibbons to the Sixth Circuit was the first hearing on a Sixth Circuit nomination in almost 5 years, even though three outstanding, fair-minded individuals were nominated to the Sixth Circuit by President Clinton and pending before the Committee for anywhere from one year to over four years. Judge Gibbons was confirmed by the Senate on July 29, 2002, by a vote of 95 to 0. We did not stop there, but proceeded to hold a hearing on a second Sixth Circuit nominee, Professor Rogers, just a few short months later in June.

Just as we held the first hearing on a Sixth Circuit nominee in many years, the hearing we held on the nomination of Judge Edith Clement to the Fifth Circuit last year was the first on a Fifth Circuit nominee in seven years and she was the first new appellate judge confirmed to that Court in six years.

When we held a hearing on the nomination of Judge Harris Hartz to the Tenth Circuit last year, it was the first hearing on a Tenth Circuit nominee in six years and he was the first new appellate judge confirmed to that Court in 6 years. When we held the hearing on the nomination of Judge Roger Gregory to the Fourth Circuit last year, it was the first hearing on a Fourth Circuit nominee in three years and he was the first appellate judge confirmed to that court in three years.

A number of vacancies continue to exist on many Courts of Appeals, in large measure because the recent Republican majority was not willing to hold hearings or vote on half—56 percent—of President Clinton's Courts of Appeals nominees in 1999 and 2000 and was not willing to confirm a single judge to the Courts of Appeals during the entire 1996 session.

From the time the Republicans took over the Senate in 1995 until the reorganization of the committee last July, circuit vacancies increased from 16 to 33, more than doubling. Democrats have broken with that recent history of inaction. In the last 16 months, we have held 26 judicial nominations hearing, including 20 hearings for circuit court nominees.

Professor Roger's nomination was also the fourth judicial nomination from Kentucky to be considered by the committee in its first year, and the eighth nomination from Kentucky overall. There are no judicial vacancies left in the State.

Professor Rogers of the University of Kentucky College of Law has experience as an appellate litigator and a teacher, and is a prolific author on a number of difficult legal topics. It is important to note that aspects of his record raise concerns. As a professor, he has been a strong proponent of judi-

cial activism. No Clinton judicial nominee with such published views would ever have been confirmed during the period of Republican control. In his writings, Professor Rogers has called on lower court judges to reverse higher court precedents, if the lower court judge thinks the higher court will ultimately reverse its own precedent. Such an activist approach is inappropriate in the lower federal courts. The Supreme Court itself has noted that lower courts should follow Supreme Court precedent and not anticipate future decisions in which the Supreme Court may exercise its prerogative to overrule itself.

Prognostications about how the Supreme Court will rule often turns out to be wrong. For example, some predicted that the Supreme Court would overturn *Miranda*, but the Supreme Court, in an opinion by Chief Justice Rehnquist, declined to do so. Similarly, people like Professor Rogers have called on the Supreme Court to overturn *Roe v. Wade*, but thus far the Supreme Court has rejected calls to reverse itself in this important decision regarding the rights of women and has resisted calls to return this country to the awful period of dangerous back alley abortions.

Professor Rogers also suggested in his academic writings that lower court judges should consider the political views of Justices in making the determination of when lower courts should overrule Supreme Court precedent. In his answers to the committee, Professor Rogers acknowledged that he had taken that position but he now says that lower courts should not look to the views of Justices expressed in speeches or settings other than their opinions. Also, in his answers to the committee, Professor Rogers said he would give great weight to Supreme Court dicta, or arguments that are not part of the holding of the case. I would like to take this opportunity to urge him to take seriously the obligation of a judge to follow precedent and the holdings of the Supreme Court, rather than to look to dicta for views that may support his own personal views. I would also urge him resist acting on his academic notion that a judge should diverge from precedent when he anticipates that the Supreme Court may eventually do so.

Professor Rogers has assured us that he would follow precedent and not overrule higher courts, despite his clear advocacy of that position in his writings as a scholar. He has sworn under oath that he would not follow the approach that he long advocated. As with President Bush's Eighth Circuit nominee Lavenski Smith, who was confirmed earlier this summer, I am hopeful that Professor Rogers will be a person of his word: that he will follow the law and not seek out opportunities to overturn precedent or decide cases in accord with his private beliefs rather than his obligations as a judge.

I would also note that during his tenure at the Justice Department, Pro-

fessor Rogers appeared to support an expansive view of the power of the executive branch vis-a-vis Congress. I am hopeful, however, that Professor Rogers will recognize the important difference between being a zealous advocate for such positions and being a fair and impartial judge sworn to follow precedents and the law.

When he was asked to describe any work he had handled which was not popular but was nevertheless important, he said that the case which came to mind was one in which he defended the CIA against a lawsuit seeking damages for the CIA's illegal opening of the private mail of tens of thousands of U.S. citizens during this 1970s or 1980s. Those were dark days of overreaching by the intelligence community against the rights of ordinary law-abiding American citizens. Although times have changed forever since the tragic events of September 11, I think it is important that the American people have access to judges who will uphold the Constitution against government excesses while also giving acts of Congress the presumption of constitutionality to which our laws are entitled by precedent.

Professor Rogers has repeatedly assured the committee, however, that he would follow precedent and not seek to overturn decisions affecting the privacy of women or any other decision of the Supreme Court. Senator MCCONNELL has also personally assured me that Professor Rogers will not be an activist but is sincerely committed to following precedent if he is confirmed. I sincerely hope that his decisions on the Sixth Circuit do not prove us wrong.

Mr. HATCH. Madam President, I am particularly pleased today to speak in support of the confirmation of John M. Rogers to the U.S. Court of Appeals for the Sixth Circuit. As we know, there is a judicial vacancy crisis in the Sixth Circuit and the addition of Mr. ROGERS to the bench represents a positive step in alleviating that regrettable situation.

John M. Rogers is currently the Thomas P. Lewis Professor at the University of Kentucky College of Law, where he has taught since 1978. He is a Phi Beta Kappa graduate of Stanford University and an Order of the Coif graduate of the University of Michigan Law School, where he served on the Michigan Law Review. He is an expert in international, administrative, and constitutional law and a respected teacher and scholar.

Prior to teaching, Professor Rogers was an appellate attorney in the Civil Division of the United States Department of Justice. This work, and a later stint at DOJ, led to his being awarded a Special Commendation for Outstanding Service to the Civil Division of the U.S. Department of Justice. Rogers has twice been a Fulbright Senior Lecturer in the People's Republic of China, and is a member of the Council on Foreign Relations. He has also

served this country for 28 years as a reserve officer in the U.S. Army Reserve and the Kentucky Army National Guard.

All of these accomplishments and contributions explain why the American Bar Association has rated Professor Rogers unanimously qualified. I agree with that judgment, I applaud President Bush for making this nomination, and I urge all of my colleagues to confirm Professor Rogers to the Sixth Circuit. I am confident he will serve with distinction as a Federal judge.

NOMINATIONS OF U.S. DISTRICT COURT NOMINEES

Mr. HATCH. Madam President, I rise in support of the fine group of district court nominees who are being confirmed tonight. I have reviewed their individual records and I find all of them to be excellent choices for the Federal bench. Permit me a moment to highlight the merits of each nominee.

U.S. Magistrate Judge Stanley R. Chesler, our nominee to the District Court for the District of New Jersey, received his undergraduate degree from Harpur College. He then went on to do graduate work at Brooklyn College where he accumulated 30 graduate credits in education. While working as teacher during the day, he graduated magna cum laude and first in his class from St. John's University School of Law, receiving no less than 12 American Jurisprudence Awards and consistently making the dean's list.

Upon graduation, Magistrate Judge Chesler joined the Bronx District Attorney's Office and specialized in prosecuting public corruption, organized crime, narcotics and fraud cases. In 1980 he became a Special Attorney for the U.S. Department of Justice's Newark Organized Crime Strike Force, before becoming an Assistant United States Attorney. During his career at the Department of Justice, he was awarded the Special Commendation Award and the Special Achievement Award. The nominee was then appointed by the New Jersey District Court judges to the office of Magistrate Judge in 1987. Magistrate Judge Chesler has also been recognized by his colleagues in receiving an ABA rating of Unanimously Well Qualified.

Rosemary Collyer, our nominee to the U.S. District Court for the District of Columbia, is a graduate of the University of Denver School of Law. She began her career at the Denver firm of Sherman & Howard as an associate in the labor and employment law group. Four years later she was nominated by President Reagan and confirmed by the Senate to be the Chairman of the Federal Mine Safety and Health Review Commission, which reviews decisions of specialized administrative law judges who adjudicate cases dealing with mine safety, health and discrimination claims under Federal law.

In 1984 Ms. Collyer was nominated by President Reagan and confirmed by the Senate to be General Counsel of the

National Labor Relations Board. In this capacity, she served as the nationwide prosecutor of labor law violations, overseeing election processes, representing the NLRB before State and Federal courts, and overseeing agency personnel and budget matters. Since 1989, Ms. Collyer has been a partner at Crowell & Moring in Washington, D.C. Her specialization has been in labor law and employment law.

A July 22, 2002 Legal Times article reported that Ms. Collyer is "well-regarded by her fellow labor lawyers." One colleague asserted, "She cares about getting it right. She is definitely capable of navigating complex cases." Another stated that during her time of government service, "she was an oasis of perceived neutrality. She pandered to no one." These are traits that will undoubtedly serve Ms. Collyer well upon her confirmation to the Federal bench.

Mark E. Fuller, nominated to be a U.S. District Court Judge for the Middle District of Alabama, is an excellent choice for the federal bench. After graduating from the University of Alabama School of Law in 1985, Mr. Fuller joined the firm of Cassidy, Fuller & Marsh, a small litigation firm specializing in all aspects of state and federal practice in rural southeast Alabama. He became a partner in 1986 and remained with the firm until 1996, handling insurance and corporate defense work, and domestic relations, real estate, and corporate law matters.

From 1987 to 1992 and from 1995 to 1996, Mr. Fuller worked as a part-time Assistant District Attorney. In 1996 Mr. Fuller accepted the position of Chief Assistant District Attorney for Alabama's Twelfth Judicial Circuit, serving there until 1997, when he was appointed District Attorney in the same office. While working in the District Attorney's office, Mr. Fuller has represented the people of Pike and Coffee counties in criminal cases, including capital murder trials and juvenile and district court matters. In 1998 Mr. Fuller was elected to a full six-year term as District Attorney. He oversees the operations of the office and continues to handle criminal jury trials.

Daniel Hovland, nominated to the District Court for the District of North Dakota, promises to be an excellent federal judge. Upon graduation from the University of North Dakota School of Law, he served as a law clerk to the Honorable Ralph J. Erickstad on the North Dakota Supreme Court. He then accepted a position with the Office of the Attorney General for North Dakota, working as an Assistant Attorney General and acting as Director of the Consumer Fraud Division from 1980 to 1983.

From there he moved into private practice, working with Fleck Mather & Strutz from 1983 to 1994 and Smith Bakke Hovland & Oppegard from 1994 to the present. As a trial lawyer, Mr. Hovland handles personal injury, wrongful death, medical malpractice,

employment/labor, and product liability cases. While in private practice, Mr. Hovland has gained experience particularly helpful for the federal bench. Since 1994 he has served as an Administrative Law Judge for North Dakota's Office of Administrative Hearings, he currently serves on the North Dakota Parole Board, and he has experience with mediation and arbitration.

Kent A. Jordan, who has been nominated to the U.S. District Court for the District of Delaware, comes fully recommended by Senators BIDEN and CARPER, and I urge my colleagues to support him as well.

Mr. Jordan possesses the experience needed for handling the court's heavy caseload of intellectual property, government corruption, and corporate matters. Following graduation from Georgetown University Law Center in 1984, he served as a law clerk to the Honorable James L. Latchum, judge on the U.S. District Court for the District of Delaware. He then worked in private practice with a Wilmington, Delaware, firm, focusing on corporate and commercial litigation. From 1987 to 1992, Mr. Jordan worked in public service as an Assistant U.S. Attorney for the District of Delaware, advancing to become lead attorney on many civil and criminal issues.

Mr. Jordan currently works as a Vice President and General Counsel for the Corporation Service Company, which provides registered agent, public records filing and retrieval, corporate and intellectual property information management, and litigation information management services.

James E. Kinkeade, nominated to the U.S. District Court for the Northern District of Texas, is a graduate of Baylor University School of Law. Judge Kinkeade began work as a law clerk and then associate for Brewer & Price in Irving, Texas. One year later he became a partner at Power & Kinkeade Law Firm. He represented a large number of closely held businesses and acted as local counsel for several national corporations. In addition, he had an active domestic relations and criminal practice. Judge Kinkeade served as an Associate Municipal Judge for the City of Irving from 1976-1980.

Judge Kinkeade stopped practicing law in January of 1981 to become a judge for the County Criminal Court in Dallas, Texas. In fall of 1981, he became a judge for the 194th District Court of Texas. Since 1988, Judge Kinkeade has served on the State of Texas, 5th District Court of Appeals. In addition, Judge Kinkeade has served as an adjunct professor for over 10 years at the Texas Wesleyan School of Law. He received the Outstanding Adjunct Professor award four times while teaching Professional Responsibility.

Judge Robert Gary Klausner, who has been nominated to the District Court for the Central District of California, graduated from Loyola Law School (Los Angeles) in 1967. Though awarded

a merit scholarship by Loyola he supported himself as a gas station attendant. Upon graduation, he commenced his service as an active duty officer in the U.S. Army, rising to the rank of Captain and receiving the Bronze Star.

After leaving the Army, Judge Klausner worked as a Deputy District Attorney for Los Angeles County. In 1974, he became Court Commissioner to the Pasadena Municipal Court for 6 years. In 1980, he became a Judge to that Court. Judge Klausner then left the Pasadena Municipal Court to become a Judge for the Los Angeles Superior Court. He has been with the Los Angeles Superior Court for the last 17 years. This nominee's life has been dedicated to the people of California and I cannot urge the Senate enough to confirm this well-qualified and well-deserving nominee.

Our nominee to the District of New Jersey, Judge Robert Byron Kugler, graduated from Rutgers, Camden Law School and then clerked for the Honorable John F. Gerry of the United States District Court in Camden, New Jersey. In 1979, he was appointed Assistant Camden County Prosecutor and then one year later he was appointed Deputy Attorney General for the New Jersey Department of Law and Public Safety. In these positions, he prosecuted criminal cases brought by county and/or State law enforcement agencies. As a prosecutor, Judge Kugler tried over 30 cases to jury verdict and over 100 cases to verdict in bench trials.

In 1982 Judge Kugler entered private practice and focused on matters of civil and criminal litigation. While in private practice, he tried as sole counsel to verdict over 50 cases. Before becoming a Magistrate Judge, Judge Kugler qualified for appointment by the New Jersey Supreme Court as a Certified Trial Attorney and Certified Civil Trial Attorney. Since 1992, Judge Kugler has been a United States Magistrate Judge in the District Court for the District of New Jersey. In January of 2002, the Camden County Bar Association presented its most prestigious award, the Peter J. Devine Award, to Judge Kugler and his wife for their service to the community and bar.

Ronald B. Leighton, who has been nominated to the U.S. District Court in the Western District of Washington, is a highly experienced and respected federal trial attorney. Upon graduation from UC—Hastings College of Law, Mr. Leighton clerked for the Honorable Frank Richardson of the California Supreme Court. He then joined the Tacoma, WA, firm of Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim, becoming a partner in 1978. He has remained with the same firm to the present day, working as a trial attorney with emphasis on complex litigation in Federal court.

Mr. Leighton's excellence as a litigator has not gone unrecognized. Among other honors, he is a member of the American College of Trial Attor-

neys, the American Board of Trial Advocates, the International Association of Defense Counsel, and the International Society of Barristers. He has represented clients on both sides of the docket.

Mr. Leighton was nominated by President George H.W. Bush to the same position in the spring of 1992, but the Democrat-controlled Judiciary Committee did not grant him a hearing. I am pleased that we can finally vote Mr. Leighton to the federal court, and I urge my colleagues to join me in my support.

Nominated to the U.S. District Court for the District of New Jersey, Judge Jose Luis Linares immigrated to the United States from Cuba when he was 12 years old. He received his undergraduate degree from Jersey City State University in 1975, where he was a member of the National Honor Society. He then graduated from Temple Law School in 1978. During his studies at Temple, he was on the Dean's List for 2 years and was the recipient of the that law school's Barristers' Society Award for Excellence in Trial Advocacy.

Judge Linares started his career with the New York Department of Investigation, where he supervised white-collar crime and corruption investigations in the City of New York. Later, as an attorney at Horowitz, Bross, Sinnins & Imperial, P.A., he was responsible for the preparation and trial of both civil and criminal cases. In 1982, Judge Linares started his own law firm, litigating both civil and criminal cases with a focus on complex medical malpractice and product liability cases. After 18 years as a partner in his own firm, in its many incarnations, he was appointed as a Judge to the New Jersey Superior Court in Essex County. He currently oversees complex medical malpractice cases in the Civil Division of the court. His fellow attorney's are quite impressed with his record as well. He has received the highest rating by the ABA, unanimously Well Qualified. I am proud to say that I will vote for this nominee and I recommend him without reservation to the Senate.

Nominated to the U.S. District Court for the Western District of Texas, Judge Alia Moses Ludlum, graduated from the University of Texas School of Law in 1986. She continued her law school job as a law clerk in the Travis County Attorney's Office, where she eventually was promoted to Assistant County Attorney. She held a variety of positions in the office, first as Intake Attorney, then as Trial Attorney, and ultimately as Chief of the office's Appellate Division. Her primary responsibility as an Assistant County Attorney was the prosecution of criminal cases at the trial and appellate levels. She also handled all civil expunction suits and some mental health commitment cases, and represented battered spouses in protective order proceedings.

After 4 years at the County Attorney's Office, Judge Ludlum was hired

to work as the sole resident AUSA in the Del Rio Division of the U.S. Attorney's Office for the Western District of Texas. She was eventually elevated to the position of Senior Litigation Attorney, then promoted to Chief of the Del Rio Division. As an AUSA, Judge Ludlum prosecuted an average of 125 felony criminal case per year. In 1997, Judge Ludlum became a part-time magistrate judge for the Western District of Texas, Del Rio Division. She assumed that position on a full-time basis in 2000.

William J. Martini, who has been nominated to the U.S. District Court for the District of New Jersey, has solid prosecutorial and private practice experience, as well as congressional service all of which will serve him well on the federal bench.

A graduate of Rutgers School of Law, Mr. Martini served as a law clerk for the Superior Court of New Jersey, before working as an assistant prosecutor in the Hudson County (New Jersey) Prosecutor's Office. He then took a position as an assistant U.S. Attorney in the U.S. Attorney's Office in Newark, NJ, where he tried a dozen criminal jury trials to completion. Beginning in 1977, Mr. Martini worked as a sole practitioner, initially representing criminal defendants and later branching out into civil litigation, including plaintiff's personal injury suits and commercial contract matters. Following a term serving the people of New Jersey in the House of Representatives, he joined Sills Cummis Radin Tischman Epstein and Gross as partner, focusing on governmental affairs/regulatory law and general litigation.

Magistrate Judge Thomas Wade Phillips, nominated to the District Court for the Eastern District of Tennessee, received his undergraduate degree from Berea College in 1965. After college, he attended Vanderbilt University School of Law on a full academic scholarship. In law school he was an assistant articles editor for the law review and was the recipient of the Dean's Award for Best Senior Dissertation. After graduation, he was commissioned into the United States Army, Judge Advocate General Corps, where he received a Appellate Advocacy Award, Government Appellate Division, in 1973. During that same year, he retired from the military and earned an LL.M. in Labor Law from George Washington University Law School.

Entering private practice, he was an associate at two firms, before becoming a partner at the firm of Baker, Worthington, Cossley, Stansberry & Woolf. During this period, he was elected to and served for nearly fifteen years as the county attorney for Scott County. From 1977 to 1986 he was a partner at two different firms. In 1986, Magistrate Judge Phillips became a Senior Partner in the firm of Phillips and Williams. He held this position until 1991 when he was appointed United States Magistrate Judge for the Eastern District of Tennessee. On October 17, 2000, he was appointed Chief

United States Magistrate Judge for the Eastern District of Tennessee. He continues to serve in this capacity. The ABA has given him their highest rating of Unanimously Well Qualified.

Upon graduation from Drake University Law School, Judge Linda Reade, nominated to the U.S. District Court for the Northern District of Iowa, became an associate with a Des Moines area law firm where she worked on litigation involving federal and state civil law. In 1981, she moved to the Des Moines firm of Rosenberg and Margulies, where she worked for three years litigating federal and state, and civil and criminal law.

From 1984 to 1986, Judge Reade worked on both federal and state, and civil and criminal cases as a partner in that firm. In 1986, she became an Assistant United States Attorney for the Southern District of Iowa. In 1990, she was promoted to Chief of the General Criminal Division in the United States Attorney's Office for the Southern District of Iowa. Since 1993, Judge Reade has served as a general jurisdiction State District Court Judge in Des Moines, Iowa, where she has maintained a low reversal rate. She has also lectured on civil procedure and trial practice (1995-2000) and taught trial practice for two semesters at Drake University Law School (1988 and 1990). Judge Reade is well prepared to serve as a district court judge.

William E. Smith, who has been nominated to the U.S. District Court for the District of Rhode Island, joined Edwards & Angell, LLP, right after law school, and he is a member of the firm's labor, employment, and litigation departments. His practice has included representing management in union contract negotiations, union organizing drives, arbitration proceedings, employment discrimination matters, sexual harassment, wage and hour law, OSHA, OFCCP compliance and investigations, and other Department of Labor investigations.

While at his firm, in 1993, Mr. Smith successfully competed to become City Solicitor of Warwick, Rhode Island (under Mayor Lincoln Chafee). As such, he led a team of lawyers who took over all of the city's legal work for a fixed fee. He was also retained that year to be legal counsel to the Rhode Island Secretary of State, performing labor, employment and other matters. In 1994, he was hired by the Rhode Island Department of Administration as outside labor-litigation counsel for a number of arbitration cases. He also worked for the Rhode Island courts during an organizing drive of clerical employees and a restructuring of the court system and as a judge on the municipal court for 4½ years. Mr. Smith has since returned to private practice with Edwards & Angell.

Jeffery Steven White, who has been nominated to the Northern District of California, is a prime example of the high quality attorneys that President Bush has nominated to the Federal

bench. He received his undergraduate degree from Queens College of the City University of New York in 1977. He then graduated magna cum laude from the State University of New York, Buffalo's School of Law in 1980. During his studies at SUNY Buffalo, he was a Research Editor of the Law Review and graduated first in his class.

Upon graduation, Mr. White became a Trial Attorney for the U.S. Department of Justice, Criminal Division—Management/Labor Section. In 1971 he joined the U.S. Attorney Office for the District of Maryland as an Assistant U.S. Attorney. During his tenure at this position, he was designated as an outstanding Assistant United States Attorney in 1974 and 1976. He then returned to the Department of Justice in 1977 to work as a Senior Grade Trial Attorney in the Public Integrity Section of the Criminal Division. In 1978, Mr. White began a 24 year association with the law firm of Orrick, Herrington & Sutcliffe. He quickly rose to become Chairman of the firm's Litigation Department, a position that he held from 1985 to 2000.

Freda L. Wolfson, who has been nominated to the District Court for the District of New Jersey, is a great choice for the federal court. Upon graduation from Rutgers University School of Law, Judge Wolfson was a litigation associate at Lowenstein, Sandler, Kohl, Fisher & Boylan. Her practice mostly involved commercial litigation and employment litigation. She also represented a habeas corpus petitioner in federal court and represented several criminal defendants as pro bono counsel.

From 1981-1986, she was a litigation associate at Clapp & Eisenberg where she focused on commercial litigation, employment litigation, and defense of ski areas. In addition, she frequently appeared before the New Jersey Casino Control Commission. In 1986, Judge Wolfson was appointed a United States Magistrate Judge, District of New Jersey. Since 1990, she has presided over 32 civil trials, 18 jury trials, and 14 bench trials. She has served on the Third Circuit's Task Force for Indigent Litigants in Civil Cases since 1998.

I am proud to support all of these nominees. They have excellent educational backgrounds, they have terrific legal experience, and they have the temperament to excel on the bench. I urge my colleagues to join me in my unqualified support.

NOMINATION OF JUDGE THOMAS PHILLIPS

Mr. THOMPSON. Madam President, I am very pleased that the Senate is taking up the nomination of judge Thomas Phillips, who is the President's nominee to fill a vacancy on the United States District Court for the Eastern District of Tennessee.

Judge Phillips was born and raised in Scott County, TN, the home county of our former colleague, Senator Howard Baker. His academic record is superb. A Phi Beta Kappa graduate of Berea College in Kentucky, he went on to at-

tend Vanderbilt Law School, my own alma mater, on a full academic scholarship. While at Vanderbilt, he was an editor of the Law Review and received the Dean's Award for Best Senior Dissertation.

Upon finishing law school, Judge Phillips joined the Army Judge Advocate General's Corps, which awarded him its Outstanding Appellate Advocacy Award and the Army Commendation Medal in 1973. While serving in the Army, Judge Phillips also received a master of laws degree from George Washington University Law School here in Washington.

In 1973, Judge Phillips returned to Tennessee and entered the private practice of law. Public service called him back, however, and in 1976, Judge Phillips was elected as County Attorney for Scott County. Between 1976 and 1991, Judge Phillips continued to serve as Scott County Attorney, being re-elected four times, while continuing to engage in private law practice with his own firm in his home town, Oneida. During this period, he tried hundreds of cases.

In 1991, Judge Phillips was appointed by the judges of the Eastern District of Tennessee to serve as a Magistrate Judge in Knoxville, the position he continues to hold. During the time he has served as Magistrate Judge, he has earned the respect of all who have appeared before him for his demeanor, courtesy, and intellect. During the rigorous screening process that Senator FRIST and I undertook to review the records of interested candidates for this judgeship, we heard uniformly and highly favorable comments about Judge Phillips.

I think the record before the committee demonstrates his outstanding qualifications. I cite just one example. In over 11 years on the bench, out of thousands of decisions and recommendations, Judge Phillips has been reversed on just two occasions, and on only one occasion has a District Judge rejected his recommendations.

Judge Phillips has excelled not only in his professional career, but in his commitment to his community as well. He has promoted legal education by serving as a member of the Inns of Court and by teaching at the University of Tennessee Law School. He is an Elder of the Huntsville Presbyterian Church, a member of the American Legion, and a leader of the American, Tennessee, Scott County, and Knoxville Bar Associations. In private practice, Judge Phillips provided extensive pro bono services and served on the boards of Scott County Hospital and Opportunities for the Handicapped.

I would be remiss if I failed to note the importance of moving forward with this nomination. Traditionally, two district judges sit in Knoxville, Tennessee's third largest city. Late last year and early this year, Judge Jordan and Judge Jarvis respectively assumed senior status, leaving the district court in Knoxville with no active judges. I

want to express my thanks and appreciation to both senior judges for the service they rendered for many years on the Federal bench in Knoxville.

I am confident that there is no one better qualified to fill the large hold left by Judge Jordan and Judge Jarvis than Judge Phillips. I am pleased to endorse Judge Phillips and urge my colleagues to support his nomination.

NOMINATION OF EUGENE SCALIA— MOTION TO PROCEED

Mr. GRASSLEY. Mr. President, I move to proceed to consider the nomination of Eugene Scalia to be solicitor for the Department of Labor.

The PRESIDING OFFICER. The question is on agreeing to the motion. The motion is not agreed to.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

IDENTITY THEFT VICTIMS ASSISTANCE ACT OF 2002

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 382, S. 1742.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 1742) to prevent the crime of identity theft, mitigate the harm to individuals victimized by identity theft, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on the Judiciary with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

[Strike the part printed in black brackets and insert the part printed in italic.]

S. 1742

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

[This Act may be cited as the "Restore Your Identity Act of 2001".]

SEC. 2. FINDINGS.

[Congress finds that—

[(1) the crime of identity theft is the fastest growing crime in the United States;

[(2) the Federal Trade Commission reports that between March and June of 2001, the total number of identity theft victims in the Commission's Complaint Clearinghouse System, tallied from November 1999, increased from 45,593 to 69,370;

[(3) consumer inquiries and complaints to the Federal Trade Commission Identity Theft Hotline increased from 68,000 to over 97,000 over the same 3-month period, and consumer calls into the Hotline increased in the same period from 1,800 calls per week to over 2,000;

[(4) the Federal Trade Commission estimates that the call volume to the Identity

Theft Hotline represents only 5 to 10 percent of the actual number of victims of identity theft;

[(5) victims of identity theft often have extraordinary difficulty restoring their credit and regaining control of their identity because of the viral nature of identity theft;

[(6) identity theft may be ruinous to the good name and credit of consumers whose identities are misappropriated, and victims of identity theft may be denied otherwise well-deserved credit, may have to spend enormous time, effort, and sums of money to remedy their circumstances, and may suffer extreme emotional distress including deep depression founded in profound frustration as they address the array of problems that may arise as a result of identity theft;

[(7) victims are often required to contact numerous Federal, State, and local law enforcement agencies, consumer credit reporting agencies, and creditors over many years, as each event of fraud arises;

[(8) the Government, business entities, and credit reporting agencies have a shared responsibility to assist identity theft victims, to mitigate the harm that results from fraud perpetrated in the victim's name;

[(9) victims of identity theft need a nationally standardized means of—

[(A) reporting identity theft to law enforcement, consumer credit reporting agencies, and business entities; and

[(B) evidencing their true identity to business entities and credit reporting agencies;

[(10) one of the greatest law enforcement challenges posed by identity theft is that stolen identities are often used to perpetrate crimes in many different localities in different States, and although identity theft is a Federal crime, most often, State and local law enforcement agencies are responsible for investigating and prosecuting the crimes; and

[(11) the Federal Government should assist State and local law enforcement agencies to effectively combat identity theft and the associated fraud.

SEC. 3. DEFINITIONS.

[In this Act, the following definitions shall apply:

[(1) BUSINESS ENTITY.—The term "business entity" means—

[(A) a creditor, as that term is defined in section 103 of the Truth in Lending Act (15 U.S.C. 1602);

[(B) any financial information repository;

[(C) any financial service provider; and

[(D) any corporation, trust, partnership, sole proprietorship, or unincorporated association (including telecommunications, utilities, and other service providers).

[(2) CONSUMER.—The term "consumer" means an individual.

[(3) FINANCIAL INFORMATION.—The term "financial information" means information identifiable as relating to an individual consumer that concerns the amount and conditions of the assets, liabilities, or credit of the consumer, including—

[(A) account numbers and balances;

[(B) nonpublic personal information, as that term is defined in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809); and

[(C) codes, passwords, social security numbers, tax identification numbers, State identifier numbers issued by a State department of licensing, and other information used for the purpose of account access or transaction initiation.

[(4) FINANCIAL INFORMATION REPOSITORY.—The term "financial information repository" means a person engaged in the business of providing services to consumers who have a credit, deposit, trust, stock, or other financial services account or relationship with that person.

[(5) IDENTITY THEFT.—The term "identity theft" means an actual or potential violation of section 1028 of title 28, United States Code, or any other similar provision of Federal or State law.

[(6) MEANS OF IDENTIFICATION.—The term "means of identification" has the meanings given the terms "identification document" and "means of identification" in section 1028 of title 18, United States Code.

[(7) VICTIM.—The term "victim" means a consumer whose means of identification or financial information has been used or transferred (or has been alleged to have been used or transferred) without the authority of that consumer with the intent to commit, or to aid or abet, identity theft or any other violation of law.

SEC. 4. IDENTITY THEFT TREATED AS RACKETEERING ACTIVITY.

[Section 1961(1)(B) of title 18, United States Code, is amended by inserting ", or any similar offense chargeable under State law" after "identification documents)".]

SEC. 5. TREATMENT OF IDENTITY THEFT MITIGATION.

[(a) INFORMATION AVAILABLE TO VICTIMS.—

[(1) IN GENERAL.—A business entity possessing information relating to an identity theft, or who may have entered into a transaction, provided credit, products, goods, or services, accepted payment, or otherwise done business with a person that has made unauthorized use of the means of identification of the victim, shall, not later than 10 days after receipt of a written request by the victim, provide, without charge, to the victim or to any Federal, State, or local governing law enforcement agency or officer specified by the victim copies of all related application and transaction information and any information required pursuant to subsection (b).

[(2) RULE OF CONSTRUCTION.—Nothing in this section requires a business entity to disclose information that the business entity is otherwise prohibited from disclosing under any other provision of Federal or State law, except that any such provision of law that prohibits the disclosure of financial information to third parties shall not be used to deny disclosure of information to the victim under this section.

[(b) VERIFICATION OF IDENTITY.—

[(1) IN GENERAL.—Unless a business entity is otherwise able to verify the identity of a victim making a request under subsection (a)(1), the victim shall provide to the business entity as proof of positive identification, at the election of the business entity—

[(A) a copy of a police report evidencing the claim of the victim of identity theft;

[(B) a copy of a standardized affidavit of identity theft developed and made available by the Federal Trade Commission; or

[(C) any affidavit of fact that is acceptable to the business entity for that purpose.

[(c) LIMITATION ON LIABILITY.—No business entity may be held liable for an action taken in good faith to provide information under this section with respect to an individual in connection with an identity theft to other financial information repositories, financial service providers, merchants, law enforcement authorities, victims, or any person alleging to be a victim, if—

[(1) the business entity complies with subsection (b); and

[(2) such action was taken—

[(A) for the purpose of identification and prosecution of identity theft; or

[(B) to assist a victim in recovery of fines, restitution, rehabilitation of the credit of the victim, or such other relief as may be appropriate.

[(d) AUTHORITY TO DECLINE TO PROVIDE INFORMATION.—A business entity may decline