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S. Hrg. 1009, Pt. 3

# CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

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## HEARINGS

BEFORE THE

## COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

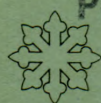
CONFIRMATION HEARINGS ON APPOINTMENTS TO THE FEDERAL  
JUDICIARY AND THE DEPARTMENT OF JUSTICE

JULY 21, SEPTEMBER 11, OCTOBER 20  
AND 22, 1987

Part 3

Serial No. J-100-8

Printed for the use of the Committee on the Judiciary



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# CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

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## HEARINGS BEFORE THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE ONE HUNDREDTH CONGRESS

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STATEMENT BY SENATOR PAUL TRIBLE  
INTRODUCING T.S. ELLIS, III  
BEFORE THE SENATE JUDICIARY COMMITTEE  
JULY 21, 1987

MR. CHAIRMAN:

IT'S A PLEASURE TO JOIN MY COLLEAGUE, SENATOR JOHN WARNER, IN PRESENTING TO THE COMMITTEE MR. TIM ELLIS.

MR. ELLIS HAS ALREADY COMPILED A LONG AND DISTINGUISHED RECORD. HE HAS SPENT NEARLY TWO DECADES IN PRIVATE PRACTICE. HE HAS LECTURED AT THE COLLEGE OF WILLIAM AND MARY, AND HAS PUBLISHED EXTENSIVELY ON SUBJECTS RANGING FROM ANTITRUST LAW TO THE TREATMENT OF HANDICAPPED INFANTS.

HE IS ALSO A FORMER NAVY PILOT, WHO RECEIVED HIS UNDERGRADUATE DEGREE FROM PRINCETON UNIVERSITY AND HIS LAW DEGREE FROM HARVARD LAW SCHOOL.

ALL OF THOSE EFFORTS HAVE BEEN MARKED BY STRONG COMMITMENT, HARD WORK, AND GREAT SUCCESS. I'M CERTAIN THAT MR. ELLIS WILL COMPILE A SIMILAR RECORD AS A FEDERAL JUDGE.

HE HAS RECEIVED THE HIGHEST RECOMMENDATIONS FROM A BROAD CROSS SECTION OF VIRGINIANS. I SHARE THEIR BELIEF THAT HE IS WELL-QUALIFIED TO SERVE ON THE FEDERAL BENCH, AND I URGE THE COMMITTEE TO ACT SWIFTLY AND FAVORABLY ON HIS NOMINATION.

Senator WARNER. Governor Robb offered to come today to join us, as did State Supreme Court Justice John Charles Thomas, who is, I understand, a classmate and longtime friend of the nominee.

Senator LEAHY. And the support of all of them will be noted here.

Senator WARNER. Thank you, Mr. Chairman. I will submit my statement for the record. I would, however, like to note the presence of members of his family. His mother, Mrs. Jacob Woodward, is here. His wife, Martha Ann, and his sons, Alexander and Parrish, are all here today.

Mr. Chairman, I have set forth in great detail in my statement the many reasons why I, and I am certain the Senate as a whole, will give their unqualified endorsement of this fine, outstanding American who is eminently well qualified to take on the heavy responsibilities of U.S. district court judge.

I thank the Chair and the distinguished ranking member.

Senator LEAHY. Well, I might just add on a personal note, John, the personal conversations I had with you and Chuck, both gentlemen I consider good friends and both gentlemen I admire greatly, had an awful lot to do in influencing me.

We will get back to Mr. Ellis' hearing, but thank you very much, Senator Warner, for being here today.

Senator WARNER. Thank you, Mr. Chairman.

Senator THURMOND. Mr. Chairman, if Senator Warner recommends him, there should not be any question.

Senator WARNER. Thank you very much.

Senator LEAHY. That is what he told us, Senator Thurmond.

[Prepared statement follows:]

STATEMENT OF SENATOR JOHN WARNER  
BEFORE THE SENATE JUDICIARY COMMITTEE  
IN SUPPORT OF THE NOMINATION OF T.S. (TIM) ELLIS, III  
JULY 21, 1987  
SD-226

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, IT IS MY GREAT PLEASURE TO COME BEFORE YOU TODAY TO INTRODUCE MR. T.S. "TIM" ELLIS, III TO THE SENATE JUDICIARY COMMITTEE FOR HIS CONFIRMATION AS A JUDGE FOR THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF VIRGINIA.

MR. ELLIS IS JOINED TODAY BY FOUR MEMBERS OF HIS FAMILY- HIS MOTHER MRS. JACOB WOODARD, HIS WIFE MARTHA ANN, AND HIS SONS ALEXANDER AND PARRISH.

MR. ELLIS RECEIVED HIS UNDERGRADUATE DEGREE IN AERONAUTICAL ENGINEERING FROM PRINCETON UNIVERSITY, WHERE HE WAS A NROTC SCHOLARSHIP STUDENT.

HE THEN SERVED FOR SIX YEARS AS AN AVIATOR IN THE U.S. NAVY, AND WAS HONORABLY DISCHARGED HAVING ACHIEVED THE RANK OF LIEUTENANT.



HE GRADUATED MAGNA CUM LAUDE FROM HARVARD LAW SCHOOL AND THEN RECEIVED A DIPLOMA IN LAW FROM MAGDALEN COLLEGE AT OXFORD UNIVERSITY.

SINCE 1969, MR. ELLIS HAS BEEN ASSOCIATED WITH THE OUTSTANDING VIRGINIA LAW FIRM OF HUNTON AND WILLIAMS WHERE HE HAS DISTINGUISHED HIMSELF AS A TRIAL ATTORNEY, SPEAKER AND AUTHOR.

MR. ELLIS' EXTENSIVE LITIGATION EXPERIENCE IN BOTH STATE AND FEDERAL COURT COVERS A BROAD SPECTRUM OF THE LAW.

HE HAS ALSO BEEN INVOLVED IN NUMEROUS STATE AND FEDERAL ADMINISTRATIVE PROCEEDINGS.

HE HAS AUTHORED MANY PUBLICATIONS ON A VARIETY OF TOPICS, AND HAS LECTURED IN LAW AT SEVERAL UNIVERSITIES.

HIS SERVICES TO COMMUNITY GROUPS AND HIS CHURCH ARE EXTENSIVE, PARTICULARLY HIS EFFORTS TO HELP VIETNAM REFUGEES WHO LOCATED TO THE RICHMOND AREA.

FROM HIS EXPERIENCE AS A LITIGATOR, A PUBLISHED AUTHOR AND SPEAKER, THIS JUDICIAL NOMINEE POSSESSES THE IDEAL COMBINATION OF CREDENTIALS NECESSARY TO BE A SUPERIOR JUDGE.

MR. ELLIS IS A MAN OF PRINCIPLE WHO WILL CONTINUE TO DISTINGUISH HIMSELF ON THE FEDERAL BENCH JUST AS HE HAS THROUGHOUT HIS ENTIRE CAREER.

MR. CHAIRMAN, A CONFIRMATION HEARING IS, AS YOU KNOW, A MOST IMPORTANT PROCEEDING, AND THE COMMITTEE'S ADVICE TO THE SENATE IS ONE OF ITS MOST SERIOUS DUTIES.

I AM PROUD TO HAVE THE OPPORTUNITY TO INTRODUCE TO THE COMMITTEE A DISTINGUISHED VIRGINIAN WITH SUPERIOR CREDENTIALS, WHO HAS EARNED THE RESPECT OF HIS COLLEAGUES IN THE LEGAL COMMUNITY AS AN ATTORNEY AND A MAN OF INTEGRITY.

TIM ELLIS WILL BE A GREAT ASSET TO THE FEDERAL JUDICIARY.

THANK YOU MR. CHAIRMAN, AND MEMBERS OF THE COMMITTEE.

Judge WOLLE. I believe that the court, once the order is entered, should monitor and make sure it is being enforced. I think that the court should, of course, look to the executive branch to see that law and order is maintained with respect to orders that are entered.

Of course, the U.S. Marshals Service would provide invaluable service. But, essentially, I believe that the court has a duty to see that the order is carried out as between the parties and that it does not necessarily impinge on persons who were not parties in the action.

Senator THURMOND. Judge Wolle, where, in your view, does a conscientious judge draw the line between judicial decisionmaking and legislative decisionmaking, and what are the criteria that you would consider in resolving whether or not a decision was the type that should be made by a judge as opposed to an elected legislative body?

Judge WOLLE. As an experienced trial lawyer, I focus on the parties before the court and the law as applied to those parties. I believe that when in doubt in terms of whether it is the court's appropriate function or whether it is a matter that the legislature has as its proper role, the court should yield to the democratic process and to the legislative body.

I guess in terms of activism or restraint, as that is a spectrum, I would be at the restraint end of the spectrum.

Senator THURMOND. I wish you a happy tenure on the bench.

I have nothing else, Mr. Chairman.

Senator LEAHY. Thank you very much, Senator Thurmond.

Judge WOLLE. Thank you very much.

Senator LEAHY. Thank you very much, Mr. Wolle.

Mr. Ellis, would you step forward and would you raise your right hand? Do you solemnly swear that the testimony you shall give in this proceeding shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. ELLIS. I do.

Senator LEAHY. And you also have family here. I know you have introduced them once before, but just for the record of this proceeding, could you do it again, please?

**TESTIMONY OF T.S. ELLIS III, RICHMOND, VA, TO BE U.S.  
DISTRICT JUDGE FOR THE EASTERN DISTRICT OF VIRGINIA**

Mr. ELLIS. Yes, sir. Thank you, Senator. I should like to introduce to the committee my wife, Martha Ann, who is here.

Senator LEAHY. How do you do?

Mr. ELLIS. I also wish to introduce the other members of my family who are here today. My mother, Mrs. Woodard; my two sons, Alexander, who is 15, and Parrish, who is 12. And we have two house guests from Paris—perhaps they win today's long-distance award—Charles and Benjamin Patou.

Senator LEAHY. From Paris?

Mr. ELLIS. Yes, sir, they are spending a portion of the summer with us in Virginia.

Senator LEAHY. Bien venue.

Mr. ELLIS. If I may, Senator, I also have two law partners here today whom I want to recognize and introduce to the committee,

Taylor Reveley from Richmond, and John Adams from Washington; and a former law partner, Tony Earley, who is here from New York.

Senator LEAHY. Well, we thank you all very, very much for being here. I am delighted that these young men have a chance, also, to be here visiting our country. I might note in that regard you have had the time to attend Oxford on sabbatical.

I was at Magdalen College back about 3 or 4 weeks ago with my wife and daughter just walking through there and having a delightful time. The day before it had been terribly rainy. We got down to Oxford and the sun came out and it was gorgeous. We walked around and I mentioned how much I wish we had a similar thing here, but the sabbaticals we get in the Senate tend to come with great surprise usually some time in the first week of November.

Also, please tell my neighbor and friend, Governor Robb, that you were here today.

Mr. ELLIS. I will, indeed.

Senator LEAHY. Let me go into an area that interests me. You are a litigator. You have done a lot of litigation in one of Virginia's largest law firms, but you have been involved in a lot of pro bono activities. Tell me about that. How do you get involved in pro bono activity? What would you consider your most significant pro bono activity?

Mr. ELLIS. Well, I think I consider my most significant pro bono activity to be the work that my wife and I have done with Vietnamese refugees. I have also done pro bono work in connection with representation of indigents in criminal trials in Federal court.

It has always been my view that it is absolutely essential that legal services be provided to the entire spectrum of the population and that the private bar has an obligation to provide these services. I would prefer to see the private bar furnish these services rather than to have bureaucracies established to do it.

I have learned a great deal in my pro bono work and gained a lot from it and made some very good friends, particularly among the Vietnamese. I think the Vietnamese work would be the most significant, but I must say that, however much time—and I have spent a very large amount of time on that; my wife has spent at least twice, if not three times that amount of time on refugee resettlement work.

Senator LEAHY. Is this a general practice within your firm to set time aside for pro bono work or is this something you have been specifically involved in?

Mr. ELLIS. No, sir, it is not limited to me. The firm encourages all lawyers, particularly the younger lawyers, to become involved in pro bono work both through the Bar Association of the City of Richmond and through the Federal court, and we have recently been discussing among ourselves and with the Virginia Poverty Law Center a means of institutionalizing large firm participation in pro bono work.

Senator LEAHY. I remember the first law firm I went to out of law school. There was a tough, conservative senior partner and he just absolutely insisted that everybody, himself included, devote a

specific amount of time to pro bono work, probably more than just about any other law firm in the State.

He drilled this into every one of us lawyers there. He said, "no matter how long you stay in the law, do not forget you have got an obligation to give some of this back." I agree, and I just hope that more and more lawyers will realize that.

You have also talked about the complex cases you have tried, the protracted proceedings before the Nuclear Regulatory Commission involving a nuclear power plant in New York State. I am glad to see that kind of experience because I think the Federal courts are getting more and more complex cases.

Senator THURMOND. There is a vote on.

Senator LEAHY. Thank you.

Again, I would strongly urge the administration in looking for nominees and Senators in recommending people for the bench that they look to those lawyers who have had some experience in such complex cases. We are getting more and more of them not just in the district you would be going to, but throughout the country.

I have some questions I will submit for the record.

[Aforementioned material follows:]

**RESPONSE TO SUPPLEMENTAL QUESTIONS**

**T. S. Ellis, III  
Hunton & Williams  
P.O. Box 1535  
Richmond, Virginia 23212  
(804) 788-8453**

**July 24, 1987**

**RESPONSE TO SUPPLEMENTAL QUESTIONS**

- (1) In your response to the Committee's questionnaire, you describe some of the complex cases you have tried such as the protracted proceeding before the NRC involving a nuclear power plant in New York State. As a judge, you will be called upon to manage complex litigation fairly and expeditiously. What have you learned from your experience in trying complex cases that will be of most assistance to you in presiding over such cases?

My experience in trying complex cases has led me to conclude that it is vitally important that judges act purposefully and firmly to manage these cases. Complex litigation must be carefully planned. It is not enough simply to permit the parties to move the litigation at the pace they choose and in directions they choose, for there is invariably no agreement on pace or direction.

The Manual for Complex Litigation (1985) identifies the important principles underlying management of complex litigation. First, there must be early identification and control of such litigation. This, in my experience, can be achieved only by the assignment of the case to a single judge. It is also my experience that a judge can avoid significant delay by careful and focused use of magistrates and masters. My experience also suggests that appropriate supervision of complex litigation typically calls for the imposition of a schedule and deadlines for completion of discovery, depositions and certain trial testimony. Reasonable limits on the length of depositions and trial testimony may also be appropriate.

One of my experiences vividly illustrates this. In an NRC proceeding, cross-examination by one party threatened to go on interminably. The judge, recognizing this, imposed a limit on the time counsel would have to cross-examine certain witnesses. The judge instructed counsel to do the best he could in the time allotted and the judge would then reconsider whether additional time was warranted. Under this discipline, cross-examining counsel took care to get to the heart of the matter rather briskly and the cross-examination was completed in a matter of weeks, rather than months.

My experience in complex, multi-party litigation also underscores the necessity to select with care the lead or liaison counsel and committees. It is also my experience that fair and expeditious proceedings, at minimum expense to the court and the parties, occur only where the supervising judge makes unmistakably clear at the outset his or her determination to tolerate no unwarranted deviation from deadlines, nor any refusal on the part of all counsel involved to cooperate wherever possible and to behave with courtesy and civility.

- (2) In 1984, you took a sabbatical leave from your law firm which you spent as a Temporary Member of the Senior Common Room at University College, Oxford University. Specifically, what did you do during your sabbatical year, and how will this experience aid you in performing your duties as a United States District Judge?

My sabbatical at University College, Oxford, was devoted to reading, reflecting, discussing and teaching in the areas of evidence and Fourth and Fifth Amendment constitutional issues in criminal procedure. In this connection, I helped teach an evidence seminar for graduate students. The seminar was led by a Fellow of University College, Oxford, who in years past had been a classmate of mine at Oxford. My limited role was to give talks to the students on the development of constitutional issues under the Fourth and Fifth Amendments so that they might compare the development of law in these areas in the United States with the analogous law in the United Kingdom. Quite apart from the benefit of having been able to read and reflect on important issues of constitutional law, the opportunity for a focused and rigorous review of current search and seizure and confession issues should prove helpful if I am confirmed. As a result of the sabbatical, I will not only be more familiar with these issues, but I will also have a comparative perspective that will prove useful. In addition to the constitutional search and seizure and confession issues, I also devoted a substantial amount of time to certain of the Federal Rules of Evidence that were of interest to the students in the seminar, including, specifically, the rules relating to the admissibility of evidence of criminal convictions and past bad acts.

Beyond the time devoted to the evidence seminar, I also spent a substantial amount of time reading and discussing with faculty members various issues in the areas of jurisprudence and medical-legal issues. In jurisprudence, I focused chiefly on whether there exists a determinative link between theories of ethics on the one hand, and theories of law on the other. I was privileged to have a number of discussions on these topics with Professor H. L. A. Hart (University College), Joseph Raz (Balliol College) and Adrian Zuckerman (University College). In the medical-legal area, I did comparative research on treatment decisions related to severely afflicted newborns and spoke on this subject at Notre Dame's Law School in London and at London's Hammersmith Hospital. In addition, I spoke to groups of barristers and solicitors in Birmingham concerning several aspects of American litigation, including discovery and jury trials.



- (3) Your resume as a practitioner is impressive, but there is one experience that it does not include. You have never before been a judge, nor have you occupied any quasi-judicial post. What do you think will be the most challenging aspect of putting aside your career as an advocate and assuming a new role as a judge?

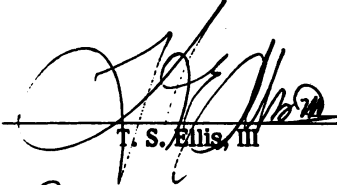
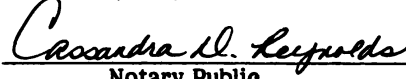
If I am confirmed, many challenges await me as a judge. I have, however, had a glimpse of some of these by virtue of my service as an arbitrator on the American Arbitration Association's Panel of Arbitrators. In this capacity, I have arbitrated a number of construction cases, in some instances as sole arbitrator and, in others, as chairman of a panel of three arbitrators. This experience and my trial experience suggest to me that maintaining impartiality and the appearance of impartiality constitute one of the principal challenges I will face in assuming the judicial role. Trial lawyers always and everywhere are enthusiastic advocates for one or another cause. This zealous advocacy is the antithesis of judicial behavior. Far from being an advocate, judges must be wholly disinterested and impartial. Equally important, judges must appear to be so. As Lord Devlin cogently noted, an impartial judge may reach the right result for which he may be blessed in heaven, but on earth he is worthless unless he also appears impartial and appears to do justice. Thus, an important challenge to a trial lawyer who assumes a new role as judge is to be ever mindful that impartiality and the appearance of impartiality, not zealous advocacy, are the essence of a judge's role.

My experience as an arbitrator has also taught me that a judge must be a skilled and patient listener, a talent not often thought central to advocacy. In this vein, one experience I had as an arbitrator stands out. In a construction case in which I sat as a sole arbitrator, one counsel sought to put on evidence by an expert witness which seemed to me to be unnecessary and not very probative. Nonetheless, I agreed to hear the testimony within strict time limits, thinking that I might be wrong and that the party should feel that he had had his day in court. As it happened, the testimony proved relevant and probative, thereby teaching me the lesson that judges must listen attentively to the evidence and avoid premature judgments.

Finally, I am also specially mindful of a judge's responsibility to decide cases based on the facts and laws, not on the skills or brilliance of the lawyers arguing the cases.

**AFFIDAVIT**

I, T. S. Ellis, III, swear that the information provided in this statement is true and correct to the best of my knowledge.

  
T. S. Ellis, III  
  
Cassandra L. Reynolds  
Notary Public

My Commission Expires August 3, 1990

July 24, 1987

Senator LEAHY. I want to yield to Senator Thurmond, who has noted that we have a 15-minute roll call vote, and maybe we can complete this before we vote.

Senator THURMOND. Thank you very much.

Mr. Ellis, I want to congratulate you upon being appointed by the President to be a U.S. District judge for the Eastern District of Virginia.

Mr. ELLIS. Thank you, Senator.

Senator THURMOND. I also want to congratulate the State of Virginia for having a man like you to go on the bench.

Mr. ELLIS. Thank you, Senator.

Senator THURMOND. Sometimes I wonder, though, if such a good lawyer like you maybe should not go on the bench, just stay and serve the people as a lawyer. But at any rate, I wish you well.

Mr. ELLIS. Thank you.

Senator THURMOND. I believe you have tried some cases in my State.

Mr. ELLIS. Yes, sir, I have. It was a great pleasure.

Senator THURMOND. You made a fine impression down there.

Mr. ELLIS. Thank you.

Senator THURMOND. I just have two questions. The phrase "judicial activism" is often used to describe the tendency of judges to make decisions on issues that are not properly within the scope of their authority.

What does the phrase "judicial activism" mean to you?

Mr. ELLIS. Well, it has a number of meanings, but I think that is the meaning it would have to me, which is that a judge should not usurp functions which are not part of the judicial function and I would certainly seek to avoid that.

Senator THURMOND. Now, are there ever any circumstances where you would consider it appropriate to decide a case on some basis other than one where the intent of the framers of legislation or constitutional provisions can be detected either through the text of a provision or its surrounding legislative history?

Mr. ELLIS. Not that I can think of, Senator.

Senator THURMOND. I wish you well on the bench. I hope you have a happy tenure of service on the bench.

Mr. ELLIS. Thank you very much, Senator Thurmond.

Senator LEAHY. Mr. Ellis, there are other questions and I will submit them for the record.

We have kidded a little bit about those recommending you, but I should emphasize again as I did before, that Senator Warner and Governor Robb both went out of their way to talk to me personally about you. Their statements were very strong and very positive ones, and they are not people known to do that just for the heck of it. I think that has had a significant impression on me, and I know on Senator Thurmond.

Mr. ELLIS. Thank you.

Senator LEAHY. I thank you very much for being here.

Mr. ELLIS. Thank you, Senator Leahy.

Senator THURMOND. Mr. Chairman, I think you have handled it well and I have enjoyed being with you.

Senator LEAHY. Thank you. Strom, if you could just hold a minute, I want to publicly thank Steve Metalitz from my staff who has worked very, very hard in trying to move these along.

Strom, I want to thank you and Duke and the others who have worked hard with us to try to get these through. We have been in the last several weeks in situations where we have had early morning to midnight sessions in the Senate. We go home at midnight, but a lot of the staff stays here after we leave and they have been working very hard to get these hearings together.

Sometimes the public does not realize this. We may just ask two or three questions here, but hours and hours, and sometimes days of work by the staff, by people like Steve Metalitz and others, have gone into making it possible to say nothing about all the time that the nominees have taken in answering our questionnaires.

I just wanted to note for the record that if it was not for the superb staff we have here in the Judiciary Committee, we would not be able to move along this quickly. I want to thank you, Strom, for all your cooperation.

Senator THURMOND. Thank you, Mr. Chairman. I am wondering if we could get them on the next agenda before the full committee, those six we have heard today.

Senator LEAHY. Let me speak with the Chairman and move just as quickly as we can.

Senator THURMOND. Thank you very much.

Senator LEAHY. We stand in recess.

[Whereupon, at 4:14 p.m., the committee was adjourned.]

**QUESTIONNAIRE FOR JUDICIAL NOMINEES****I. BIOGRAPHICAL INFORMATION (PUBLIC)**

- (1) **Full name (include any former names used).**  
Thomas Selby Ellis, III (Tim)
- (2) **Address. List current place of residence and office address(es).**  
Home: 4267 Cheyenne Road  
Richmond, Virginia 23235  
Office: Hunton & Williams  
707 East Main Street  
Post Office Box 1535  
Richmond, Virginia 23212
- (3) **Date and place of birth.**  
May 15, 1940  
Bogota, Colombia, South America  
Born to U.S. citizens and registered at the U.S. Embassy.
- (4) **Marital Status (include maiden name of wife or husband's name). List spouse's occupation, employer's name and business address(es).**  
Martha Anne Reed Ellis  
Homemaker and volunteer
- (5) **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**  
1957-61: Princeton University  
B.S.E. (Aeronautical Engineering)  
NROTC Scholarship student  
1966-69: Harvard Law School  
J.D. magna cum laude  
Awarded Knox Fellowship for study at Oxford University  
1969-70: Magdalen College, Oxford University  
Diploma in Law

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

1969-present: Partner since 1976  
Hunton & Williams  
Richmond, Virginia

1985-present: Vice President and Member, Board of Directors  
Treasurer 1986-87  
Princeton Association of Virginia  
Richmond, Virginia

1984-present: Member, Advisory Council to Dept. of Astrophysics  
Princeton University  
Princeton, New Jersey

1984-present: Member, Board of Directors  
Virginia Poverty Law Center  
Richmond, Virginia

1982-present: Member, Board of Directors  
Science Museum of Virginia  
Richmond, Virginia

1981-present: Partner  
Irevell Associates  
Real estate partnership

1980-present: Member, Board of Directors  
American Lung Association of Virginia  
Richmond, Virginia

1979-present: Partner  
Revell Associates  
Real estate partnership

1978-present: Member, Boyd-Graves Conference  
Chairman 1980-84  
(For a description of the Conference, see response to question 19-A.)

1983-85: Chairman, National Schools Committee  
Princeton University  
Princeton, New Jersey

1982-84: Member, Executive Committee of Alumni Council  
Princeton University  
Princeton, New Jersey

1981-83: Lecturer in Law  
College of William and Mary  
Williamsburg, Virginia

1975-79: Chairman, Vietnamese Resettlement Committee  
St. Paul's Church  
Richmond, Virginia

1973-81: Chairman, Local Schools Committee  
Princeton University  
Richmond, Virginia

Summer 1968: Summer associate  
Wilmer, Cutler & Pickering  
Washington, D.C.

1967-69: Chairman, Board of Student Advisers  
Harvard Law School  
Cambridge, Massachusetts

Summer 1967: Summer associate  
Brydges, Broyles & McKenry  
Virginia Beach, Virginia

1966-69: Foreign Service Officer (FSO-7)  
U.S. Department of State  
(On leave without pay to attend law school)

Summer 1966: Summer school mathematics teacher  
Norfolk Academy  
Norfolk, Virginia

1961-66: Active duty Naval Officer  
Naval aviator  
Final Rank - Lt., USN

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

1957-61: NROTC midshipman, Princeton University

1961-66: Active duty as Naval Officer; final rank Lt., USN  
Service included duty as a Naval aviator with fighter squadrons of the Atlantic Fleet.

Serial No: 647251

Status: Honorably discharged January 1973

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

Knox Fellowship from Harvard University for study at Magdalen College,  
Oxford University  
Institute of Aeronautic Sciences Lecture Award, Princeton University, 1961  
Law degree awarded from Harvard Law School magna cum laude  
Elected as a Temporary Member of the Senior Common Room,  
University College, Oxford  
Chairman, Board of Student Advisers, Harvard Law School

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

**Federal Bar Association**

**American Bar Association**

**Antitrust Section**

- \*Robinson-Patman Act Committee
- \*Private Antitrust Litigation Committee
- \*Monograph Series Committee
- \*International Trade Committee

**Litigation Section**

- \*Committee on the Trial of Antitrust Cases
- Committee on Trial Evidence

**Virginia Bar Association**

Continuing Legal Education Lecturer on federal discovery rules

Civil Litigation Committee (Chairman 1981-84)

Title 8.01 Subcommittee (Chairman 1979-81)

Local (Federal) Rules Committee

Chairman, Federal Procedure Committee

- \*Advisory Member, Senate Courts of Justice Subcommittee on Reform of Virginia Tort Claims Act and Virginia Tort Law
- National Moot Court Competition (brief judge in 1976 and 1978)

**Boyd-Graves Conference** (formerly the Tides Inn Conference)

(Chairman 1980-84), a state-wide, select group of experienced trial lawyers, law professors and judges organized to consider and propose improvements in statutes and rules relating to civil litigation

**Bar Association of the City of Richmond**

- \*Committee on Legal Economics and Professional Responsibility
- \*Committee on Unprofessional Conduct
- \*Committee on Admissions
- \*Committee on Attorney-Client Relationships



**American Arbitration Association**

**Virginia Trial Lawyers Association**

**Virginia State Bar Association**

**\*Committee to Study Uniform Rules of Evidence  
International Law Section**

**District of Columbia Bar**

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\*      **Former member.**

- (10) **Other Memberships:** List all organizations to which you belong that are active in lobbying before public bodies. Please list any other organizations to which you belong (such as civic, educational "public interest" law, etc.).

Member, Board of Directors, Science Museum of Virginia Foundation  
 Member, Board of Directors, Virginia Poverty Law Center  
 Member, Board of Directors, American Lung Association of Virginia  
 Chairman, Scientist and Industrialist of the Year Banquet and  
 Awards Committee (1987)  
 St. Paul's Church (Episcopal)  
 Republican Party (state and national)  
 Harvard Law School Association  
 Maymont Foundation (nonprofit organization devoted to the preservation of  
 a park, animal preserve and historic buildings for public enjoyment)  
 Bon Air Community Center (neighborhood recreation facility)  
 Planned Parenthood (wife)  
 Richmond Urban Forum (nonprofit organization devoted to improving  
 racial harmony)  
 Foster Parents Plan  
 Subscriber, Hastings Center Report  
 Subscriber, NRL News  
 Subscriber, Policy Review  
 Subscriber, Philosophy and Public Affairs

- (11) **Court Admission:** List all courts in which you have been admitted to practice, with dates of admission. Give the same information for administrative bodies which require special admission to practice.

1970	Virginia Supreme Court
1970	Fourth Circuit Court of Appeals
1970	U.S. District Court, Eastern District of Virginia
1970	U.S. District Court, Western District of Virginia
1976	Fifth Circuit Court of Appeals
1977	U.S. Tax Court
1979	U.S. Supreme Court
1980	D.C. Circuit Court of Appeals
1980	Tenth Circuit Court of Appeals
1981	Third Circuit Court of Appeals
*1977	Virginia Division of Motor Vehicles
*1978	U.S. Environmental Protection Agency
*1982	U.S. Nuclear Regulatory Commission
*1985	U.S. National Labor Relations Board
*1986	South Carolina Department of Health
*1986	South Carolina Coastal Council

- \* These years reflect the approximate time periods during which I first practiced before these agencies. I do not recall whether any of these agencies require special admission to practice within the meaning of this question.

- (12) **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other published material you have written. Please supply a copy of any significant speech by you on constitutional law or national policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Chapters analyzing Federal Rules 706, 803(7) and 803(10) and their state counterparts published by the ABA in Evidence in America: The Federal Rules in the States (1987) (coauthored with Karen Adams)

A Case For The Abolition Of Jury Exemptions In Virginia, 20 University of Richmond Law Review 971 (1986) (coauthored with Tom O'Brien)

Infant Brain Death: Some Comments, 2 Notre Dame Journal of Law, Ethics and Public Policy 661 (1986)

Reporting On A Reporter (Book Review), 19 University of Richmond Law Review 881 (1985)

Letting Defective Babies Die: Who Decides?, American Journal of Law & Medicine, Vol. 7, No. 4 (Winter 1982)

Antitrust Law, The Virginia Law - A Basic Handbook (1981) (coauthored with William F. Young)

A Primer On Settling Uncertified Class Actions, Virginia Bar Association Journal (Fall 1980)

Legal Aspects Of SIDS, Medical College of Virginia Quarterly, Vol. 15, No. 4 (1980)

Initial Requests Under The Freedom Of Information Act, Virginia Bar Association Journal (Spring 1979)

A Survey Of Government Control Of Mergers In The United Kingdom, Part I, 22 Northern Ireland Legal Quarterly, No. 3 (1971)

A Survey Of Government Control Of Mergers In The United Kingdom, Part II, 22 Northern Ireland Legal Quarterly, No. 4 (1971)

In Defense Of In Pari Delicto, 56 American Bar Association Journal (1970)

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

Excellent  
April 21, 1987

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

None, except that I am a member of the American Arbitration Association's panel of arbitrators and have served in cases as both a single arbitrator and as chairman of a panel of three arbitrators.

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

Not applicable.

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

Not applicable.

- (17) **Legal Career:**

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

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;
2. whether you practiced alone, and if so, the addresses and dates;
3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

I joined Hunton & Williams as an associate in the Richmond, Virginia office in 1969 and have been with the firm continuously since that time with two exceptions. First, in 1969-70, I took leave from the firm to take up a Knox Fellowship for law study at Magdalen College, Oxford University. This Fellowship was awarded to me by Harvard University. Second, in 1984, I was granted a sabbatical leave by the firm, which I spent as a Temporary Member of the Senior Common Room at

University College, Oxford. Apart from these temporary absences, I have practiced litigation law continuously at Hunton & Williams, where I became a partner in 1976. Throughout this period, I have been a member of the firm's Litigation Section, where I have engaged in a general litigation practice.

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

My practice since 1969 is best described as a general litigation practice. While I have never specialized, there have been periods in my practice where I have devoted more significant periods of time to certain kinds of litigation. During my first five years, I spent more time on federal antitrust and trade regulation matters than on others. There was also a period of time in the mid- to late-1970s when I spent a considerable period of time on federal environmental litigation of various types. There was also a brief period of time in which I focused considerable attention on Freedom of Information Act matters. During the early period, I also devoted substantial time to medical malpractice issues. More recently, since 1982, I have devoted a very substantial proportion of my time to nuclear licensing matters before 3-judge trial and appellate panels of the NRC.

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

Many of my clients during my years at this firm have been large, medium and small corporations, including large banks (Bank of Virginia, now Signet Bank, and United Virginia Bank), utilities (Virginia Power and Long Island Lighting Company), manufacturers (Pulaski Furniture Corp., Ford Motor Co., General Motors and Ethyl Corporation), health care providers (Charter Medical Corporation, Westbrook Hospital and Stuart Circle Hospital) and municipalities and counties (City of Virginia Beach, City of Richmond and Dinwiddie County Water Authority).

In addition, I have represented a number of individuals in personal injury and business or contract claims. I have represented indigent individuals in federal court on criminal charges, Vietnamese refugees in a variety of civil matters, including a competency and commitment hearing, and two prison inmates.

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

For approximately the first twelve years of my practice, I appeared in court with reasonable regularity. Over time, the cases I participated in grew in size and the frequency of court appearances diminished. Significantly, however, I have been constantly and intensely involved in the entire litigation process, including specifically discovery and deposition practice, and negotiation.

In the last six years, the bulk of my time has been spent before 3-judge trial and appellate panels of the NRC. These proceedings have been massive, involving more than 100 days of trial hearings and prehearing conferences, dozens of trial witnesses, dozens of discovery depositions and more than 30,000 pages of transcript. The 3-judge trial and appellate panels were composed of one lawyer and two lay judges who were experts in various technical areas. The presence of two lay judges gave these proceedings something of the character of a jury trial.

In addition to these appearances, during the last six years, I have also appeared in federal courts in Virginia and New York and state administrative agencies in South Carolina. I also was chiefly responsible for substantial Michigan hazardous waste cases, including one before an EPA Administrative Law Judge. These matters were resolved on motions and briefs.

2. What percentage of these appearances was in:
- (a) federal courts
  - (b) state courts of record
  - (c) other courts.

My best estimate is that 70-75% of my appearances (80-90% in the last six years) have been in federal courts, including the 3-judge federal NRC hearings, with the remainder divided between state courts of record and administrative agencies.

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

The great majority (95%) of my litigation experience has been civil in nature. Over the years, however, I have handled indigent criminal matters in federal trial and appellate courts and represented clients who were targets or potential targets before a federal grand jury.

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

My records for the past 17-18 years are not sufficiently complete to permit me to give precise numbers in response to this question. My best estimates are as follows:

Cases tried to verdict as:	
Associate counsel	10
Chief counsel	26
Sole counsel	<u>7</u>
Total	43

These figures may include one or two jury trials that were settled before the actual verdict was rendered. Also worth noting is that in the

last six years, the great bulk of my time has been devoted to the very large litigations before the NRC. A thumbnail sketch of the massive nature of these litigations is given in response to questions 17 c-1 and 18 c-2.

Of course, many other matters in which I have been involved have settled before judgment, but not before substantial litigation activity, including depositions and oral arguments on motions.

5. What percentage of these trials was

- (a) jury
- (b) non-jury.

Jury	40% (approx.)
Non-jury	60% (approx.)

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

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

1. **City Council of Richmond v. Golding**

Chief Counsel for City of Richmond

Trial Date: Late 1978

Supreme Court of Virginia; Chief Justice Lawrence P'Anson  
(804-397-4926)

Opposing Counsel: R. Harvey Chappell, Jr., Mutual Building,  
Richmond, VA 23219 (804-644-7851) and William A.  
Dervishian, 600 North Boulevard, Richmond, VA 23220  
(804-355-2121)

This case was unique in many respects. It was the first time that an elected City Council member's eligibility to serve had been challenged by other members of City Council on the basis of failure to meet statutory office-holding requirements. The arguable failure to meet these qualifications did not become apparent until after the election and until after the individual had been sworn in and taken his seat. The proceeding was also significant because it involved the filing of a writ directly with the Supreme Court of Virginia. The Supreme Court granted expedited argument and resolved the matter within hours of argument in light of its importance to the governance of the City.

As the partner in charge, I was chiefly responsible for this litigation. I was assisted by my colleague John Charles Thomas, who thereafter became the first Black Justice of the Supreme Court of Virginia. I was primarily responsible for preparation of the briefs and for oral argument. Justice Thomas (804-786-6404) and I both argued before the Supreme Court of Virginia. The result was favorable to our client, the City of Richmond. Mr. Golding was unseated. City Council was held to have the power to name a successor.

2. **LILCO (Quality Assurance and Systems Interaction Litigation)**

Chief Counsel for LILCO

Citation: 18 N.R.C. 445 (1983); 20 N.R.C. 1102 (1984)

Judges: Lawrence Brenner (202-653-5052), Dr. James H. Carpenter and Dr. Peter A. Morris (301-492-4331)

Opposing Counsel: Bernard Bordenick (301-492-9586), Richard Rawson (201-221-4352), and Edwin Reis (301-492-7505) for NRC, Washington, D.C. 20555 and Lawrence Lanpher for Suffolk County, 1900 M Street, N.W., Washington, D.C. 20036 (202-452-7011)

**LILCO (Emergency Diesel Generator Litigation)**

Chief Counsel for LILCO

Citation: 21 N.R.C. 1637 (1985); 22 N.R.C. 776 (1985)

Judges: Lawrence Brenner (202-653-5052), Dr. Peter A. Morris (301-492-4331) and Dr. George A. Ferguson

Opposing Counsel: Bernard Bordenick (301-492-9586), Edwin Reis (301-492-7505) for NRC; Alan R. Dynner for Suffolk County (202-452-7044)

Hearing Dates: Listed below are some of the hearing dates for both litigations.

1982:	March 9-10 April 14 May 4-7, 25-28 June 1-4, 8-11, 15, 17-18, 22-25 July 6-9, 13-16, 20-22, 27-30 August 3-5, 24-27 September 14-17, 21-24 October 27-29 November 2-5, 9-12, 16-19, 23, 30 December 1-3, 7-10, 14-17, 20-22
1983:	January 10-13, 17-20, 24-27, 31 February 1, 22-24 April 5-8 June 10
1984:	February 22 March 27 September 10-13, 17-20, 24-26 October 1-4, 22-24, 29-31 November 1-2, 7-9, 13-16, 20
1985:	February 12-14, 19-21 March 5-8, 11-12 September 26



As noted previously, the NRC litigations in which I have been involved have been massive. They involved months of hearings, dozens of witnesses, tens of thousands of pages of transcript and thousands of pages of briefs and findings. As chief counsel, I prepared and conducted the cross-examination of a large number of witnesses and was principally responsible for all the direct testimony, the oral arguments and the preparation of findings of fact, briefs, motions and supporting memoranda. This case was significant not only for what was at stake — the licensing of a \$5 billion nuclear power plant — but also because it raised legal and technical factual issues that were both difficult and novel.

These large litigations both ended in lengthy decisions in favor of our client. Copies of the opinions are attached. Both decisions were appealed, and I argued both appeals. The appellate decisions were also favorable and are attached. No further appeal has been filed.

3. **National Indian Youth Council v. Andrus**  
 Chief Counsel for Consolidation Coal Co.  
 Trial Date: January-February 1980  
 Citations: 501 F. Supp. 649, 623 F.2d 694 (10th Cir. 1980)  
 U.S. District Court, New Mexico/Judge Santiago Campos  
 Opposing Counsel: John J. Kelly, Lubber, Hughes & Kelly,  
 Albuquerque, New Mexico

This case involved the right to surface mine coal on the Navajo Indian Reservation in the Four Corners area of Arizona, New Mexico, Utah and Colorado. The case raised difficult and novel issues under the National Environmental Policy Act of 1970, the Surface Mining Control and Reclamation Act of 1977, the Historic and Archeological Data Preservation Act of 1974 and The National Historic Preservation Act of 1966. It was also significant to me because it required taking depositions and hearing testimony from witnesses who spoke only the Navajo language and therefore required an official translator as well as translators acting on behalf of the various parties.

After a full hearing on the injunction, the District Court ruled in favor of our client and the matter was appealed to the Tenth Circuit, which affirmed. As the supervising lawyer, I had overall responsibility for the preparation, direction and trial of the case. At trial, I shared with my then-associate (now partner) D. Alan Rudlin (804-788-8459) the various trial tasks. I examined a number of expert witnesses and argued many of the issues to the court.

4. **Brown v. Cameron-Brown Company**  
 Chief Counsel for United Virginia Bank and Allstate Enterprises  
 Citations: 92 F.R.D. 32 (E.D. Va.), 652 F.2d 375 (4th Cir. 1981)  
 Liaison Counsel: James C. Roberts, Mays & Valentine,  
 P.O. Box 1122, Richmond, VA 23208 (804-644-6011)  
 U.S. District Court, Richmond/Judge D. Dortch Warriner

Opposing Counsel: Calvin W. Breit, Norfolk, VA  
(804-425-7052), Arnold Levin, Gordon Gelfond  
and Michael D. Fishbein, Philadelphia, PA  
Other Counsel: Conrad M. Shumadine, Kaufman & Canoles,  
Norfolk, VA (804-628-5525) and Michael W. Smith,  
Christian, Barton, Epps, Brent & Chappell, Mutual  
Building, Richmond, VA 23219 (804-644-7851).

This case raised for the first time the question whether the custom of mandatory tax and insurance escrows for residential mortgages constituted a violation of the federal antitrust laws. The matter was decided favorably to my clients and the other defendants by way of summary judgment. The Fourth Circuit affirmed.

This case involved a large number of parties. We selected James C. Roberts, Mays & Valentine, 1111 East Main Street, Richmond, VA 23219 (804-644-6011) as our liaison counsel. Because so many lawyers were involved, we established a Drafting Committee to develop the litigation strategy and to draft the appropriate pleadings. I served on this Committee and played a substantial role in those tasks.

5. Commonwealth of Virginia v. United Air Lines, Inc.

Chief Counsel for United Air Lines, Inc.

Trial Date: 1977-78

Citation: 248 S.E.2d 124

Circuit Court of Richmond/Judge Alexander H. Sands, Jr.  
(804-353-5112)

Opposing Counsel: Anthony F. Troy (then Attorney General),  
Mays & Valentine, 1111 East Main Street, Richmond, VA  
23219 (804-644-6011) and John G. MacConnell (then  
Assistant Attorney General), McCarthy & Durette, 700  
East Main Street, Richmond, VA 23219 (804-780-0505)

This case raised important and novel questions concerning the applicability of Virginia state sales tax to the activities of interstate airline carriers. It raised for the first time the question of the power of the State of Virginia to impose state sales and use taxes on activities that occurred at Washington National Airport, a federal reservation. It also raised important issues of federal law, including construction of the Airport and Airways Development Act of 1970, Public Law No. 91-258 § 210.

As the partner in charge of this matter, I was chiefly responsible for trial preparation, including selection and preparation of witnesses, and I personally conducted the examination and cross-examination of witnesses and argument to the trial court. The trial court decided the matter favorably to our client, United Air Lines. The matter was appealed to the Supreme Court and again, as the partner in charge of the case, I had overall responsibility for, and played a substantial role in, the preparation of the appellate briefs and preparation for oral argument. My retired partner, H. Brice Graves, argued the matter. The Supreme Court affirmed in part, reversed in part, and remanded.

6. Chessie v. ICC  
 Co-counsel for Chessie  
 Trial Date: 1974  
 Citation: 392 F. Supp. 358 (E.D. Va. 1975)  
 Three-Judge U.S. District Court, Richmond/Judge Merhige,  
 Judge Butzner and Judge Warriner; direct appeal to  
 U.S. Supreme Court  
 Opposing Counsel: David G. Lowe, (then Assistant  
 U.S. Attorney), U.S. Magistrate, Richmond, VA  
 (804-648-1913)

This case was significant for it raised an issue of first impression concerning whether the Interstate Commerce Commission could place conditions on the approval of a tariff.

I was the principal lawyer from this firm on this case. In this connection, I did the research, prepared the briefs and argued the matter before the 3-judge District Court. We prevailed there. I also successfully argued the TRO/preliminary injunction. The matter was appealed directly to the Supreme Court of the United States where I again was the principal drafter of the brief. While I participated in the preparation for argument before the Supreme Court, the matter was argued by the General Counsel of the Chessie Railroad. The Supreme Court reversed.

7. General Electric Co. v. Commonwealth of Virginia  
 Chief Counsel for General Electric Co.  
 Trial Date: approximately 1982  
 Circuit Court of Richmond/Judge Willard Walker  
 Opposing Counsel: Kenneth W. Thorson, Assistant Attorney  
 General, P.O. Box 6-L, Richmond, VA 23220

This case was significant because it presented for the first time in Virginia the question whether conformity in Virginia permitted a corporation to exclude from its Virginia income tax the income attributable to its subsidiary Domestic International Sales Corporation (DISC).

As the partner in charge of this matter, I directed the trial preparation. At trial, I conducted the examination and cross-examination of the witnesses and, together with the associate who was assisting me in this matter, I argued it to the trial court. We prevailed, and the matter is now on appeal to the Supreme Court of Virginia.

8. Orlich v. Larus  
 Chief Counsel for Orlich  
 Trial Date: approximately 1981  
 Circuit Court of Richmond/Judge James E. Sheffield  
 (804-783-2909)  
 Opposing Counsel: Carl F. Bowmer, Christian, Barton,  
 Epps, Brent & Chappell, Mutual Building, Richmond,  
 VA 23219 (804-644-7851)

This case was, at the time, the longest civil jury trial in the Circuit Court for the City of Richmond. It lasted almost four weeks. It raised a number of difficult evidentiary issues, including whether inadvertent waiver of attorney-client privilege was sufficient to permit the use of a document at trial.

As the partner in charge of this litigation, I directed trial preparation and, together with my then-associate John Charles Thomas, now a Justice of the Supreme Court of Virginia, I examined and cross-examined witnesses and made numerous arguments to the court. The jury returned a verdict of approximately \$815,000 in favor of our client. After further briefing and argument lasting several weeks, the trial judge set aside the verdict and granted a new trial. In the course of preparing for the new trial, the matter was settled.

9. **Ethyl Corporation v. United States**  
U.S. District Court, Richmond/Judge Richard L. Williams  
Opposing Counsel: Robert L. Gordon, Department of Justice  
(202-724-6438)

This case concerned the valuation of the water rights in the James River and Kanawha Canal. In the early 1970s, various of these rights were owned by Ethyl, Veeco and the C&O Railway. By agreement, the C&O Railway and Veeco transferred their rights to Ethyl to enable Ethyl to donate the complete package of rights to the City of Richmond. Ethyl then sought to take a charitable deduction in an amount equal to Ethyl's appraisal of the fair market value of the rights. The IRS disallowed the deduction, and litigation ensued before Judge Williams. After considerable discovery and negotiation, the matter was settled, and Ethyl and its partners received a refund in the \$5-6 million range.

This case is significant because it raised difficult and novel issues of water rights valuation and an interesting factual and legal issue concerning recovery of costs and attorneys' fees from the United States.

As the partner in charge of this case, I was responsible for and conducted the discovery, trial preparation and negotiation with opposing counsel.

10. **Folts v. City of Richmond**  
Chief Counsel for City of Richmond/Majority of City Council  
Trial Date:  
Circuit Court of Richmond/Judge Wright  
Opposing Counsel: William R. Cogar, Mays & Valentine,  
1111 East Main Street, Richmond, VA 23219

This reapportionment case raised the novel question whether reapportionment was required more often than once every decade where, as was true here, reliable evidence of malapportionment became available prior to the next decennial census. As the partner in charge of this case, I participated with my associate, John Charles

Thomas (now a Justice of the Virginia Supreme Court), in all research and trial preparation aspects. I also argued the matter to the trial court. The trial court decided that, notwithstanding available, reliable evidence of gross malapportionment, redistricting was not necessary until the next decennial census, some two years or more away. This was contrary to the position we had taken, but our client, the City of Richmond, did not elect to take an appeal. The case also involved an unsuccessful attempt to remove to federal court. See Folts v. City of Richmond, 480 F. Supp. 621 (E.D. Va. 1979).

In connection with this matter, I advised the City on numerous Voting Rights Act issues.

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

- A. **Law Reform Activities.** The Boyd-Graves Conference (formerly the Tides Inn Conference) is a select group of 80-90 experienced trial lawyers, law professors and judges from throughout Virginia dedicated to civil litigation law reform. I have been a Conference member since its founding in 1978, and I served as its Chairman from 1980-84. The Conference is organized into subcommittees and study groups that focus on various areas of civil litigation and recommend specific statutory or rule changes. Recommendations are then debated and voted on at the Conference's two-day meetings. Successful proposals are then presented to the General Assembly of Virginia or the Judicial Conference. In connection with my Conference duties, I have participated in developing law reform proposals, drafting bills and rule changes, and advocating these before the appropriate General Assembly committee. The most recent examples of this activity involved reform of Virginia's statute on exemptions from jury service and efforts to provide law clerks for Richmond's state circuit judges. For a description of the nature of the juror exemption effort, see the first article listed in response to question 12. For a description of the (successful) law clerk effort, call Chief Judge Thomas N. Nance (804-780-4959) or Judge Melvin R. Hughes (804-780-8315) of the Circuit Court for the City of Richmond.

Other law reform activities include service as Chairman and member of the Virginia Bar Association's Civil Litigation Committee and member of the Select Committee on Rules of Evidence. As a member of the American Bar Association's Litigation Section, I coauthored with my colleague Karen Adams three papers comparing certain Federal Rules of Evidence with their counterparts in various states. These are published in the ABA's Evidence in America: The Federal Rules in the States (1987).

- B. Law Teaching. During the academic years 1981-83, I taught a trial practice seminar at the Marshall-Wythe School of Law at the College of William and Mary. Currently, I am serving as a faculty member for the summer session of the National Institutes of Trial Advocacy (NITA). I have also served as a lecturer at Virginia Bar continuing legal education programs.
- C. Pro Bono Work. I include my involvement in pro bono work among the significant legal activities I have pursued. These pro bono activities are described in response to question III(2). In general, I have, on several occasions, represented indigents accused of crimes in federal court. Together with my former partner, John Charles Thomas (now Justice of the Supreme Court of Virginia), I have also provided pro bono services to minority litigants in various kinds of cases. Also, in connection with my efforts to resettle a large number of Vietnamese refugees in the Richmond area, I have provided a wide range of pro bono legal services to these refugees, including representation in civil commitment hearings, landlord-tenant, personal injury, insurance, employment discrimination and family reunification efforts.
- D. Other Cases. I have participated in several cases which are not listed in response to question 18, but which nonetheless may merit mention.
1. Mullins v. Ford Motor Co. I was chief counsel in defending this nationwide class action, inter alia, under the Magnuson-Moss Warranty Act. After considerable deposition and document discovery, I negotiated a settlement with representatives of an uncertified class and obtained appropriate court approval.
  2. Ethyl Corp. v. Internal Revenue Service. I was second in command of a team of lawyers representing Ethyl in a tax refund suit growing out of the then-mammoth merger of Ethyl Corporation into the Albemarle Paper Co. At the time, this was one of the largest Section 334(b)(2) cases to reach litigation.
  3. Fleischer Development Co. v. Vepco. This large antitrust case tested whether an electric utility's sponsorship of underground distribution in neighborhoods constituted a violation of the federal antitrust laws. I participated in the jury trial as an associate lawyer and conducted examination and cross-examination of witnesses. A favorable verdict was obtained.
  4. Cope Allman v. Ethyl Corp. This large antitrust action involved hundreds of aerosol valve patents in this country and Europe. Agreements concerning these patents were alleged to constitute a division of world territories and other antitrust violations. I participated as an associate lawyer in all phases of discovery and trial preparation, including depositions, document productions and plant inspections in Europe. The matter was ultimately settled.

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

- (1) Describe all financial arrangements, stock options, deferred compensation agreements, future benefits, and other continuing relationships with business associates, clients or customers.

At present, my wife and I are partners in Revell Associates and Irevell Associates, two small real estate partnerships. The other partners are two current law partners and their spouses. Specifically, W. Taylor Reveley, III and his spouse are my partners in Revell Associates and W. Taylor Reveley, III and Donald P. Irwin and their spouses are my partners in Irevell Associates. Each partnership owns one piece of rental real estate which together involve five apartments. I am planning, for financial reasons, to sell my interests in both of these partnerships if I am confirmed.

- (2) Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

In all cases, I will comply with the applicable rules, regulations, statutes and advisory opinions published for the federal judiciary concerning conflicts of interest. (See, e.g., Code of Judicial Conduct for United States Judges, 101 F.R.D. 389.) In appropriate instances, I will also seek guidance from the Advisory Committee on Codes and Conduct of the Judicial Council.

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

No.

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

No.

- (5) If applicable, please describe the arrangements you have made to dissolve your financial interest in your law firm. What time period is involved? What arrangements have you made to be compensated for your work on pending litigation?

If I am confirmed, I will sever all relations with my law firm. It is also my current plan to take my financial interest in the partnership in a lump sum

payment rather than a payout for any period. However, if financial considerations dictate that I should receive this interest over some time period, I will not make that time period any longer than three years. Also, if I am confirmed, I will withdraw from the firm's retirement plan and place the amount due me from this plan in another suitable plan or fund independent of the law firm.

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

**See attached financial statement.**



### III. GENERAL (PUBLIC)

- (1) Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

- (a) A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- (b) A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- (c) A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- (d) A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- (e) A tendency by the judiciary to impose 'tself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

In the main, the duties of a district judge involve the impartial, disinterested application of known law to adjudicated facts. Ascertaining the law from the body of statutes and decisions of our legal tradition is precisely the kind of task for which I have trained all my professional life. This task and the application of law to adjudicated facts should rarely, if ever, give rise to issues of judicial activism as described in this question. Indeed, probably far more important in the everyday life of a federal district judge is the necessity to ensure not only impartiality, but the strict appearance of impartiality. Only judges who are actually impartial, and who also appear to be impartial, can be effective in discharging their awesome responsibilities.

Beyond this, the following may also be responsive. Federal courts are countermajoritarian institutions; judges are unelected and tenured for life. Mindful of this, I think it appropriate that federal judges should focus sharply on resolving only the actual controversies properly presented to them and avoid broad, sweeping policy decisions. As countermajoritarian institutions, courts are suited not for setting policies or finding expedient resolutions for widespread social problems, but for articulating and applying on a case-by-case basis the enduring principles or values found in our rich heritage of legal precedents, statutes and the Constitution. Judicial activism, in its popular pejorative sense, should certainly be avoided. At the same time, however,

judicial restraint should never be an excuse for judicial timidity in the face of violations of personal freedoms and rights or any other transgression of the law.

(2) **What actions in your professional and personal life evidence your concern for equal justice under the law? Describe what you have done to provide pro bono legal representation to the disadvantaged.**

- A. Over the years, I have volunteered to represent indigents accused of crimes in federal court. Among the cases I have handled as a result are:

United States v. John Mack Smith  
United States v. Otha Miles Salmon  
Landman v. Rovster  
United States v. Michael Myers

The Myers case was entirely on a pro bono basis. Some time was also donated pro bono in other cases, although some fees (at the statutory rate) were also charged.

- B. Since 1975, I have been involved in resettling a number of Vietnamese refugees (approximately 80) in the Richmond area. These resettlement efforts have spanned a wide range of legal and non-legal activities, all pro bono. On the non-legal side, my resettlement activities have included such matters as locating jobs and living accommodations, tutoring in English and other subjects, assistance in college admissions, providing temporary accommodations in our home, making arrangements for medical care and schooling and simply being a friend in times of stress and crisis. On the legal side, I have provided a range of pro bono legal services in a variety of civil matters, including commitment proceedings, landlord-tenant, personal injury, insurance and employment discrimination issues. Also, I, with the assistance of others in my firm, have rendered legal advice and aid in connection with refugee family reunification efforts.
- C. Together with my former partner, John Charles Thomas (now Justice, Supreme Court of Virginia), I have, on occasion, provided pro bono litigation services to minority litigants. In particular, we litigated a breach of contract and fraud suit in Norfolk Circuit Court in an ultimately successful effort to save our client's home from imminent foreclosure. We also provided pro bono legal services to a minority church threatened with loss of its charitable tax status and to a litigant in a property dispute.
- D. In 1978-79, I undertook, with the assistance of my then-partner Justice John Charles Thomas, the then-unpopular representation of the Black members of Richmond's City Council, including the mayor. This representation included litigation of a novel reapportionment issue as well as advice on issues under the Voting Rights Act and the Fourteenth and

Fifteenth Amendments to the Constitution. These services were not rendered pro bono.

- E. I serve as the Virginia Bar Association's designated representative member on the Board of Directors of the Virginia Poverty Law Center. The Center was established in 1978 to provide Virginia's legal aid programs with legal skills training, management training, legal assistance and legislative and administrative proposals affecting the poor. The Center also responds to requests from legal aid advocates throughout Virginia to assist with pending cases. In connection with my services on the Center's Board, I have advocated increased involvement of the private bar in pro bono work, and indeed have volunteered my firm to participate in several cases.
- F. With the aid of my firm colleagues, I have provided substantial pro bono legal services to the Science Museum of Virginia, a charitable foundation.
- G. The Bar Association of the City of Richmond, the Metropolitan Richmond Women's Bar Association and the statewide Old Dominion Bar Association (Virginia's bar association of Black lawyers) all endorsed my candidacy for the federal bench. This may reflect the judgment of others regarding my concern for equal justice under the law.

THOMAS S., III AND MARTHA ANNE ELLIS

**Financial Statement**

**June 30, 1987**

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 CERTIFIED PUBLIC ACCOUNTANTS

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 THE VIRGINIA BUILDING  
 ONE NORTH FIFTH STREET  
 RICHMOND, VIRGINIA 23219

Thomas S., III and  
 Martha Anne Ellis  
 Richmond, Virginia:

We have compiled the accompanying statement of financial condition of Thomas S., III and Martha Anne Ellis as of June 30, 1987, in accordance with standards established by the American Institute of Certified Public Accountants.

A compilation is limited to presenting in the form of financial statements information that is the representation of the individuals whose financial statements are presented. We have not audited or reviewed the accompanying statement of financial condition and, accordingly, do not express an opinion or any other form of assurance on it. However, we did become aware of a departure from generally accepted accounting principles that is described in the following paragraph.

Generally accepted accounting principles require that personal financial statements include a provision for estimated income taxes on the differences between the estimated current values of assets and the estimated current amounts of liabilities and their tax bases. The accompanying statement of financial condition does not include such a provision, and the effect of this departure from generally accepted accounting principles has not been determined.

*Keiter, Stephens, Hurst, Gary & Shreaves*  
 Keiter, Stephens, Hurst, Gary & Shreaves

July 7, 1987

Exhibit ATHOMAS S., III AND MARTHA ANNE ELLISStatement of Financial Condition  
June 30, 1987Assets

Cash and cash equivalents		\$ 120 885
Investments in marketable investments and securities (note 2)		117 289
Investment in limited partnerships (note 3)		4 008
Real estate (Schedule 1):		
Personal residence	\$ 145 000	
Other	550 000	695 000
Interest in business partnership (note 4)		171 838
Cash value of life insurance		7 931
Vested interest in partnership retirement plan (latest valuation date of March 31, 1987)		215 090
Automobiles and sailboat (note 5)		11 200
Personal effects		30 000
<b>Total assets</b>		<b><u>\$1 373 241</u></b>

Liabilities and Net Worth

Accounts and charge card balances		\$ 1 000
Mortgages payable (Schedule 1):		
Personal residence	\$ 24 445	
Other	116 357	140 802
<b>Total liabilities</b>		<b>141 802</b>
<b>Net worth (assets less liabilities)</b>		<b><u>1 231 439</u></b>
<b>Total liabilities and net worth</b>		<b><u>\$1 373 241</u></b>
Contingent liabilities (note 7)		

See accompanying notes and accountants' report.

Schedule 1THOMAS S., III AND MARTHA ANNE ELLIS

Real Estate  
June 30, 1987

	<u>Owner</u>	<u>Date Acquired</u>	<u>Estimated Fair Market Value</u>	<u>Mortgages Payable</u>
<b>Personal residence:</b>				
4267 Cheyenne Road Richmond, Virginia	Joint	1971	\$145 000	\$ 24 445
			<u>145 000</u>	<u>24 445</u>
<b>Other:</b>				
Duplex 2311 Hatton Road Virginia Beach, Virginia	MAE	1981	160 000	81 397
Building lot Lynncove Lane Virginia Beach, Virginia	MAE	Gift	170 000	-
Vacation property 11th Avenue Southern Shores, North Carolina	Joint	1978	125 000	19 096
One-half interest Residential rental property Richmond, Virginia Revell Partnership	TSE III		55 000	-
One-Sixth interest Residential rental property Richmond, Virginia Irevell Partnership	MAE		20 000	7 932
One-Sixth interest Residential rental property Richmond, Virginia Irevell Partnership	TSE III		<u>20 000</u>	<u>7 932</u>
Total other			<u>550 000</u>	<u>116 357</u>
Total real estate and mortgages payables			<u>\$695 000</u>	<u>\$140 802</u>



THOMAS S., III AND MARTHA ANNE ELLISNotes to Financial Statement

## (1) Summary of significant accounting principles:

The accompanying financial statement includes the assets and liabilities of Thomas S., III and Martha Anne Ellis. Assets are stated at their estimated current values, and liabilities at their estimated current amounts.

## (2) Investment in marketable securities and investments:

The estimated current values of marketable securities are reflected at their quoted closing prices as of June 26, 1987 and consist of the following:

<u>Investment</u>	<u>Shares or Face Value</u>	<u>Market Price</u>	<u>Value</u>
Amax, Inc.	112	19.875	\$ 2 226
American Express Company	600	36.000	21 600
Amn. Info. Tech. Corporation	16	88.250	1 412
American Tel. and Tel.	111	28.375	3 149
Bell Atlantic Corporation	22	69.625	1 531
Bellsouth Corporation	49	41.750	2 045
Borden, Inc.	300	61.250	18 375
Eastman Kodak	75	88.000	6 600
Lehman Corporation	397	16.875	6 699
Nynex Corporation	22	71.000	1 562
Pacific Telesis Grp.	44	27.250	1 199
Reynolds Metals Com.	100	75.250	7 525
Southwestern Bell Cp.	33	39.625	1 307
Sterling Drug, Inc.	150	58.000	8 700
Union Carbide Corporation	300	30.625	9 187
U.S. West, Inc.	22	54.000	1 188
Union Cbde. Cp. Spl. Div. Rt.	100	.400	40
Grant Co. Wash Pub. Util.	1,000	83.100	831
Exxon Corporation	104	91.500	9 516
Robins A. H. Company, Inc.	100	26.500	2 650
Unisys Corporation	40	126.750	5 070
Colorado Intst. 1JN8X89RG	3,000	98.103	2 943
Caro Tel. 10T9 125X00RG	2,000	96.719	1 934
Dt. 002 Columbia Riv. Rev. May56 03.875XNov01			
Total market value			<u>\$117 289</u>

THOMAS S., III AND MARTHA ANNE ELLISNotes to Financial Statement, Continued

## (3) Investment in limited partnerships:

Thomas S. Ellis, III has invested in three oil and gas limited partnerships. Two of these limited partnerships have changed status to "Master Limited Partnerships" enabling these investments to trade on the open market. The market value of the third investment is not determinable; therefore, its value reflects only the December 31, 1986 capital account balance (book value). Accordingly, estimated values are as follows:

<u>Name of Partnership</u>	<u>Basis for Valuation</u>	<u>Value</u>
Unit 1980 Oil and Gas Program	OTC	\$1 667
Unit 1981 Oil and Gas Program	OTC	2 227
BDOL 1979 Program Ltd.	Book Value	114
Total value		<u>\$4 008</u>

## (4) Interest in business partnership:

Thomas S. Ellis, III is a partner in the law firm of Hunton & Williams, Richmond, Virginia. His interest in the firm is comprised of his capital account as well as an interest in the receivables of the firm. As of June 30, 1987, his capital account reflected a balance of \$6,709. His interest in the receivables of the firm approximated \$165,129, thus resulting in a total value at June 30, 1987 of \$171,838. Although this combined value is reflected in the Statement of Financial Condition, the Executive Committee of Hunton & Williams has the right to increase or decrease this value as they so determine at the withdrawal date.

## (5) Automobiles and sailboat:

Estimated values at June 30, 1987 are as follows:

1980 Volkswagon Rabbit	\$ 1 200
1984 Volvo Station Wagon	9 500
13 Foot Sailboat	500
	<u>\$11 200</u>

## (6) Sources of income:

Total sources of income for the years ended December 31, 1986 and 1985 consist of the following:

	<u>1986</u>	<u>1985</u>
Interest income from municipal bonds and financial institutions	\$ 1 432	\$ 1 817
Dividend income from publicly traded stocks and bonds	6 186	5 100
Hunton & Williams	<u>209 089</u>	<u>188 387</u>
	<u>\$216 707</u>	<u>\$195 304</u>

THOMAS S., III AND MARTHA ANNE ELLIS

## Notes to Financial Statement, Continued

## (6) Sources of income, continued:

Sources of income do not reflect net income or loss from rental property or investments in limited or general partnerships other than Hunton & Williams.

## (7) Contingent liabilities:

Thomas S. Ellis, III is contingently liable for Firm and real estate partnership debts, as well as the following notes endorsed for others:

To United Virginia Bank in the amount of \$7,000 made  
to Gavie Nienabel

To United Virginia Bank in the amount of \$2,500 made  
to John Robinson

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