

NOMINATION OF JAMES "JEB" E. BOASBERG

HEARING

BEFORE THE

COMMITTEE ON
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

ON THE

NOMINATION OF JAMES "JEB" E. BOASBERG TO BE AN ASSOCIATE
JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

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JUNE 26, 2002
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NOMINATION OF JAMES “JEB” E. BOASBERG

WEDNESDAY, JUNE 26, 2002

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 3:02 p.m., in room SD-342, Dirksen Senate Office Building, Hon. Richard J. Durbin presiding.

Present: Senators Durbin and Bunning.

OPENING STATEMENT OF SENATOR DURBIN

Senator DURBIN. Good afternoon. The hearing will come to order. I am pleased to welcome all of you to this hearing before the Senate Committee on Governmental Affairs to consider the nomination of James Emanuel (Jeb) Boasberg to be an Associate Judge on the District of Columbia Superior Court.

On May 13 of this year Mr. Boasberg was nominated by President Bush to fill a vacancy created by the retirement of Judge Gregory Mize. Mr. Boasberg is currently an Assistant U.S. Attorney assigned to the homicide and major crimes section of the U.S. Attorneys Office for the District of Columbia. He has been an Assistant U.S. Attorney since 1996. He has prosecuted over 40 jury trial cases and some 25 to 30 bench trials. He has presented 11 appellate arguments in various assignments throughout his 6 years in the office.

Prior to his public service career he was an associate at Kellogg, Huber, Hansen, Todd & Evans in Washington, DC, from 1995 to 1996, and an associate at Keker & Van Nest in San Francisco from 1991 to 1994. He served as a law clerk for the Hon. Dorothy W. Nelson, U.S. Court of Appeals for the Ninth Circuit from 1990 to 1991. Mr. Boasberg is a District of Columbia native, and earned both his bachelor's and law degrees from Yale.

I am certain this is a very special day for you, Mr. Boasberg, as you contemplate this next step in your legal career. I understand you may have some family members with you as well as supportive colleagues and friends. Would you care to introduce them at this time?

Mr. BOASBERG. Yes, thank you very much, Senator Durbin. First of all, thank you so much for having this hearing and acting on my nomination in such an expeditious fashion. I would also like to thank your staff which have been very helpful to me throughout.

I would like to introduce some people—my wife is here, Liddy Manson, and my son, Daniel. We left our 2-year-old twin daughters at home in the interest of public safety. Also, my sister Melissa; my

father and mother-in-law, Gavin Manson and Mary Manson; and then my parents, Sally Boasberg, and the photographer Tersh Boasberg. They are here on a very special day because today is their 42nd wedding anniversary. Finally, there are also a number of friends and colleagues, past and present, from the U.S. Attorneys Office.

Thank you, sir.

Senator DURBIN. I would like to welcome my colleagues, the senior Senator from Virginia, John Warner, and Congresswoman Eleanor Holmes Norton of the District of Columbia, who are both here to offer words of introduction on behalf of Mr. Boasberg.

Senator Warner, please proceed.

**STATEMENT OF HON. JOHN WARNER, A U.S. SENATOR FROM
THE STATE OF VIRGINIA**

Senator WARNER. I thank you, Mr. Chairman. This is one of those moments in my 24 years in the Senate that I look forward to. It is fairly interesting. This fine man who is now 6-foot-4 or 5 inches in height, I have a picture taken of him in my office in the Pentagon when I was Secretary of the Navy. I had my son and the nominee over for some luncheon or something, and I had to leave my office. A photographer slipped in and got a picture of this nominee in my seat, feet on the desk, and one of my big cigars in his mouth, and my son was sitting there hilariously laughing. I feel like he is a member of the family.

It is extraordinary, and the distinguished Chair of the Committee here has already enumerated his history and I will not go over the credentials of this fine individual and all he has achieved.

Our careers have paralleled in the sense that I, too, had the privilege of being a law clerk to a Federal circuit judge, E. Barrett Prettyman, and I was privileged, with the support of the Chair and others, to name the courthouse here in honor of him several years ago. Then I went on from the clerkship to the U.S. Attorney's Office, where you are today, and I tried cases all through basically the same fundamental court structure for 4 or 5 years and then back out into private law practice. So we have had a parallel career although separated, I guess, by 40 years.

So I would just like to take the time of the Committee to read one statement; something I have never done before in my many years in the Senate. I do so as follows, in closing, I would like to end my statement with a few words by my son John in support of Jeb Boasberg.

My son writes, "Since the 4th grade at St. Albans School I have regarded my good friend Jeb Boasberg as the embodiment of the young Abraham Lincoln during our civil war education class; matching him in physical stature, leadership, morality, wisdom, and just plain good looks. Jeb more than once saved me from my own devices at that young age. Not only did he provide a shining example of what a young boy could be to his peers, he also uplifted all his classmates in the eyes of the elder generation."

"He has kept these values intact to this day, and has in fact polished them to a high patina. He is also one heck of a good basketball player, to which his swollen, broken right-hand middle finger will eternally attest."

I think at this point I will make a hasty withdrawal. Mr. Chairman, as you know, I am on the floor managing a small matter of concern to the Senate at this moment. I thank the indulgence of the Chair, the colleagues, and all who are in attendance. You are on your own. Good luck.

Mr. BOASBERG. Thank you.

Senator DURBIN. Thank you, Senator Warner. That small matter he is referring to is the Department of Defense authorization bill, that I certainly know is of great importance. I would just say for the record that Senator Warner's son knows how to play to the crowd since he is speaking of Abraham Lincoln to someone from Illinois.

Congresswoman Norton.

**STATEMENT OF HON. ELEANOR HOLMES NORTON, A
DELEGATE FROM THE DISTRICT OF COLUMBIA**

Ms. NORTON. Thank you, Mr. Chairman. I must say that if a nominee is able to keep his reputation intact with a peer since elementary school, that says a lot for him. I am pleased to support the nomination of James Boasberg. I do so entirely on the merits of a distinguished and professionally relevant career, though I make the disclosure that I have known his parents, Tersch and Sally Boasberg, for many years. They are outstanding Washingtonians, so I can assure you that Mr. Boasberg was raised right.

Mr. Boasberg's career is tailor made for the bench of our city. His extensive experience in jury trials and prosecutions before the grand jury and appeals, his several awards, while he has been an Assistant U.S. Attorney, his civil and white-collar litigation experience here and in San Francisco in private firms, his clerkship on the Ninth Circuit Court of Appeals, his education, magna cum laude from Yale College and then Yale Law School and Oxford.

I think this is precisely the kind of nominee that this Committee would want to confirm and I am pleased to commend his nomination to you at this time, Mr. Chairman.

Senator DURBIN. Thank you, Congresswoman Norton, for your attendance at these hearings with regularity. We are always happy to have you over here. I hope at some future day that you will have to tell us you have to leave because you have a vote on the floor.

Mr. Boasberg, it is customary for this Committee to swear in witnesses. I would ask you to please stand and ask you to raise your right hand.

[Witness sworn.]

Senator DURBIN. Let the record indicate the witness has answered in the affirmative. Do you have any opening remarks which you would like to make?

**TESTIMONY OF JAMES "JEB" E. BOASBERG TO BE AN ASSO-
CIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT
OF COLUMBIA**

Mr. BOASBERG. Just very quickly, Senator. I would like to thank Senator Warner and Congresswoman Norton for their incredibly gracious introductions and their appearance here today. I truly appreciate that.

I would like to finally say that if I have acquired the legal skills required to be a judge, the knowledge of what is just, of how to deal with difficult issues, and what can be done for citizens of this city, I have learned it from my colleagues, many of whom are here today. And if I have the proper temperament to be a judge and can treat all kinds of people with civility, respect, and fairness, I have learned those things from my parents, and I would not be here without all of those people.

Senator DURBIN. Thank you. Well said. As a candidate for this appointment you have been through a thorough screening process, recommended by the D.C. Judicial Nominating Committee, subjected to an FBI background investigation, and subsequently selected and nominated by the President. Since your nomination was received in the Senate you have completed a thorough biographical questionnaire,¹ Committee staff have conducted background checks and interviewed you. I have reviewed your responses and note that you have an extensive and exemplary record of service.

There are three questions that are required of each nominee before this Committee which I will now ask you. Is there anything that you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. BOASBERG. No, sir.

Senator DURBIN. Do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Mr. BOASBERG. No, sir.

Senator DURBIN. Do you know of any reason, personal or otherwise, that would in any way prevent you from serving the full term for the office to which you have been nominated?

Mr. BOASBERG. I do not.

Senator DURBIN. I have had the chance to review your background and I am not going to pretend to manufacture questions here; it is extraordinary. I am glad that you are dedicated to public service. We are lucky to have people like you who are willing to do that, and you are lucky to be part of a family that considers that to be a noble calling. I am sure that Daniel may not remember everything about this day but I hope he will recall that his dad was here and went through this confirmation.

When you consider the fact that you will be appointed, with Senate confirmation, to a 15-year term, I am a little envious. We only get 6-year terms. But there comes, with that appointment, a certain concern based on my personal experience before I was ever elected to Congress. Some have characterized what I am about to describe as black robe-itis, when a judge reaches a lofty pinnacle and proceeds to gaze down on the assembled, unwashed multitude below.

It is a phenomena or perception that once someone has received a long-term appointment as a judge many times, in their own minds, they vault themselves into some pantheon of a god-like creature who is unapproachable by mere humans. It happens, for-

¹The biographical and professional information appears in the Appendix on page 9.

tunately rarely, but it does happen. I think it does a disservice to the administration of justice and the law.

So I would like, even though I know what your answer is going to be, I would like to put you on the record, if you would please, to talk about judicial temperament or what part that might play in your judicial appointment.

Mr. BOASBERG. One of the benefits of being an Assistant U.S. Attorney is that I have appeared in Superior Court every week, and often every day for long stretches over the last 5½ years. During that time, I have had an opportunity to watch many judges, and get an assessment of both their abilities and their temperament.

I would certainly hope that I would be able to act with civility, respect, and decency to everybody who came into that courtroom, be they attorneys, lawyers, victims importantly, witnesses, courtroom staff, and jurors. And that means things like getting onto the bench on time, not keeping jurors waiting, treating court reporters and courtroom staff with decency and courtesy.

I think, in terms of the robe-itis, as you have called it Senator, a feeling of elevation above those who appear before you, I think that I am fortunate enough to know many people and to have good friendships with many people who are judges, who are prosecutors, and who are defense lawyers. And if I even tried to get away with anything like that, they would quickly let me know that I was acting out of character. So I will trust in that backbone of support to never let that occur.

Senator DURBIN. Thank you. Senator Bunning, do you have any questions?

OPENING STATEMENT OF SENATOR BUNNING

Senator BUNNING. I have an opening statement that I would like, first of all, to ask unanimous consent that it be inserted in the record.

Senator DURBIN. Without objection.

[The prepared opening statement of Senator Bunning follows:]

PREPARED OPENING STATEMENT OF SENATOR BUNNING

Thank you, Mr. Chairman.

Today, this Committee is considering the nomination of Jeb Boasberg, a nominee to be an Associate Judge of the D.C. Superior Court.

As I have said before, judges play a critical role in our society.

They have the unique task of enforcing the laws we create, and, more importantly, they're charged with insuring that the basic rights guaranteed to all American citizens are upheld in every case that comes before them.

As an Assistant U.S. Attorney for the District of Columbia working within the homicide and major crimes section, Mr. Boasberg has seen a side of human nature that many of us, God willing, will never encounter, and I hope that Mr. Boasberg will be able to use his experiences both in the private and public sectors to run his courtroom fairly and expeditiously.

I look forward to hearing from Mr. Boasberg today, and gaining his perspective on what will possibly be his new job.

Thank you, Mr. Chairman.

Senator BUNNING. Yes, I have a couple of questions.

Senator DURBIN. Please proceed.

Senator BUNNING. I have had a similar experience that your father is going through today, as I have had a son who was an Assistant U.S. Attorney for 10½ years and just now is a judge in the Eastern District of Kentucky.

I am sure your father will not let you get judge-itis, as I know my son will not get judge-itis, because I am not going to let him either. If you do have a problem, I am sure your peers, particularly on the bench, will straighten you out in a hurry.

I know and have read your record and find you to be highly qualified for this unique position. It is a 15-year term, but with the right attitude and answering all the questions as you have, I am sure you will do a fine job for the District, and I am here to congratulate you, and I would like to lend my support to your nomination.

Mr. BOASBERG. Thank you very much, Senator.

Senator DURBIN. Thank you, Senator Bunning. Thank you, Mr. Boasberg, for your responses. I want to thank your family and friends for joining you today. I know you are anxious to see this confirmation completed and I will go out on a limb and predict that I think it is going to happen.

I note receipt of a statement of support of your nomination from Paul Strauss, which will be included and be made part of the record.

[The prepared statement of Paul Strauss follows:]

PREPARED STATEMENT OF SENATOR PAUL STRAUSS, SHADOW U.S.
SENATOR ELECTED BY THE VOTERS OF THE DISTRICT OF COLUMBIA

Chairman Durbin and Members of the Senate Committee on Governmental Affairs, I am Paul Strauss, the U.S. Senator elected by the voters of the District of Columbia, a position referred to as the Shadow Senator. I am also an attorney practicing in the local courts of the District of Columbia. In each of these capacities, I appreciate the opportunity to provide this statement on behalf of my constituents in the District of Columbia. I wish to express my wholehearted support for the President's nomination of James E. Boasberg to be an Associate Judge of Superior Court of the District of Columbia.

Mr. Boasberg has an accomplished record, having served as Assistant U.S. Attorney for the District of Columbia for the Appellate Division, Misdemeanor Section, Grand Jury Section, General Felony Section, Narcotics Section, Homicide Section, and the newly created Homicide and Major Crime Section. Mr. Boasberg's previous experience in private practice, as an associate with Kellog, Huber, Hansen, Todd and Evans of D.C., where he dealt with business litigation and criminal defense matters, has been of tremendous benefit to the District of Columbia and the citizens he has represented. Moreover, with his experience with specializing in First Amendment defamation work, complex civil litigation, and white-collar criminal defense, he offers the Superior Court a fresh perspective in these matters. His legal career also includes many significant cases such as *United States v. Joseph Mesa Jr.*, *United States v. Thomas Lewis and Raymond Weldon*, and *United States v. Darryl Turner* to name a few. These cases dealt with heinous acts and dangerous criminals. These cases appear to have been handled with the utmost diligence and professionalism by Mr. Boasberg, and also resulted in convictions of the alleged perpetrators.

Mr. Boasberg has also been recognized for his achievements in the field of law, by being awarded the U.S. Attorney's Office Special Achievement Award in 2001, 2000, 1999 and 1998. This obviously shows his competence as a trial lawyer and his future capacity for judicial temperament. Moreover his avid support for developmental programs displays his commitment to his community. For example, he is an 8-year member of the Ellington Development Council, which raises money, promotes community consciousness, and assists students at The Duke Ellington School for the Arts. Mr. Boasberg is also the Chairman and co-founder of the Bishop John T. Walker Fellowship Committee, which grants \$2,500 to St. Albans School students to promote social service in lesser developed countries or poorer areas of the United States.

Based on the information made available to my office, I have concluded that there is no reason not to support James E. Boasberg's nomination. I look forward to his investiture onto the Superior Court bench and I am confident that he will uphold the honor of our justice system. The nominee appears qualified to meet the responsibilities and tasks that an Associate Judge of Superior Court of the District of Co-

lumbia may face. So, today I ask that you vote yes for this nomination on behalf of the District of Columbia residents who do not have anyone in this body who vote on their behalf.

Senator DURBIN. The next step in the process will be prompt consideration at the full Committee markup in the very near future, and then report to the full Senate for final action.

With that, this hearing is adjourned.

[Whereupon, at 3:17 p.m., the Committee was adjourned.]

A P P E N D I X

QUESTIONNAIRE FOR NOMINEES TO THE DISTRICT OF COLUMBIA COURTS COMMITTEE ON GOVERNMENTAL AFFAIRS, UNITED STATES SENATE

I. BIOGRAPHICAL AND PROFESSIONAL INFORMATION

1. Full name (include any former names used).
James Emanuel ("Jeb") Boasberg
2. Citizenship (if you are a naturalized U.S. citizen, please provide proof of your naturalization).
United States
3. Current office address and telephone number.
United States Attorney's Office; 555 4th St., N.W.; Ninth Floor; Washington, DC 20530; 202-514-7395
4. Date and place of birth.
San Francisco, California. February 20, 1963.
5. Marital status (if married, include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).
Married to Elizabeth L. Manson. Business person, Washington Post-Newsweek Interactive, 1515 N. Courthouse Rd.; Arlington, VA 2201
6. Names and ages of children. List occupation and employer's name if appropriate.
7. Education. List secondary school(s), college(s), law school(s), and any other institutions of higher education attended; list dates of attendance, degree received, and date each degree was received. Please list dating back from most recent to earliest.
**Yale Law School, 1987-1990: J.D.
Oxford University, 1985-1986: M.St. in Modern European History
Yale College, 1981-1985: B.A., *magna cum laude*, with Honors in History
St. Albans School, 1972-1981: Graduated**
8. Employment record. List all jobs held since college, other than legal experience covered in question 16, including the dates of employment, job title or description of job, and

name and address of employer. Please list dating back from most recent to earliest. If you have served in the US military, please list dates of service, rank or rate, serial number, and type of discharge received.

Visiting Lecturer, Yale College, New Haven, CT: while in law school in 1989, I taught a seminar to undergraduates on law and literature.
Teacher and Coach, Horace Mann School, 231 W. 246th St.; Bronx, NY (9/86-6/87): I taught European and Medieval History and was the coach of the girls' varsity basketball team

9. Honors and awards. List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

U.S. Attorney's Office Special Achievement Award: 2001, 2000, 1999, 1998
Sutherland Cup (Law School Moot Court Competition): 1990
Dick Derby Award (basketball and scholarship): 1982, 1985

10. Business relationships. List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, or educational or other institution.

None.

11. Bar associations. List all bar associations, legal or judicial-related committees, conferences, or organizations of which you are or have ever been a member, and provide titles and dates of any offices which you have held in such groups.

None.

12. Other memberships. List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, public, charitable, or other organizations, other than those listed in response to Question 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion.

None of the following discriminates on any of the above bases.

Member, Ellington Development Council: raises money for, promotes community consciousness of, and assists students at The Duke Ellington School for the Arts, 1995-present.

Co-founder and Chairman, Bishop John T. Walker Fellowship Committee: Fellowship named in memory of Bishop John T. Walker provides St. Albans School student with \$2,500 annual grant to perform social service in lesser

developed country or in poorer area of United States for a summer, 1990-present.

Secretary, Yale College Class of 1985: Elected position; represents class in all alumni matters, 1995-2000.

Vice-President, Yale Law School Association of D.C.: Yale Law School group that provides speakers and events for alumni, 1997-2001

Member, Yale Alumni Schools Committee: Interviews applicants to Yale College, 1992-2000

13. Court admissions. List all courts in which you have been admitted to practice, with dates of admission and lapses in admission if any such memberships have lapsed. Please explain the reason for any lapse in membership. Please provide the same information for any administrative bodies which require special admission to practice.

California: admitted 1991, voluntarily moved to inactive status in 1997.

District of Columbia: admitted 1996

14. Published writings. List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited.

With Malice Toward None: A New Look at Defamatory Republication and Neutral Reportage, 13 COMMENT 455 (Spring 1991)

Seditious Libel v. Incitement to Mutiny: Britain Teaches Hand and Holmes A Lesson, 10 Oxford J. Legal Studies 106 (1990), *republished with Spanish translation in 28 Comp. Juridical Review* 77 (1991).

I also wrote a brief article for a Washington Legal Foundation publication in 1993 or 1994 defending product placement in movies as permissible commercial speech. I also wrote an article in 1989 for a literary journal about Dickens's depiction of lawyers and courts in *Bleak House*.

15. Speeches. List the titles of any formal speeches you have delivered during the last five (5) years and the date and place where they were delivered. Please provide the Committee with four (4) copies of any of these speeches.

None.

16. Legal career.
- A. Describe chronologically your law practice and experience after graduation from law school, including:
- (1) Whether you served as a law clerk to a judge, and if so, the name of the judge, the court, and the dates of your clerkship;
 - (2) Whether you practiced alone, and if so, the addresses and dates;
 - (3) The dates, names, and address of law firms, companies, or governmental

agencies with which you have been employed.

- 1990: **Graduation from Law School**
- 1990-91: **Law clerk to Hon. Dorothy W. Nelson, United States Court of Appeals for the Ninth Circuit (Pasadena, CA)**
- 1991-94: **Associate, Kecker & Van Nest, 710 Sansome St.; San Francisco, CA 94111**
I was an associate in this 30-40 person law firm, which specializes in litigation. I worked on a variety of complex business and white-collar matters. My specialty was First Amendment defamation law.
- 1995-96: **Associate, Kellogg, Huber, Hansen, Todd & Evans, 1615 M St., N.W.; Ste. 400; Washington, DC 20036**
I was an associate in this 20-30 person law firm, which specializes in litigation and telecommunications. I worked on business litigation and criminal defense matters, including independent counsel investigations.
- 1996-present: **Assistant United States Attorney for the District of Columbia**
I have worked in the following sections at the U.S. Attorney's Office:
Appellate Division: 11 appellate arguments
Misdemeanor Section: 25-30 bench trials, 2 jury trials
General Felony Section: 23 jury trials
Grand Jury Section: numerous indictments, preliminary hearings, presentments
Narcotics Section: 4 federal court jury trials plus long-term investigations
Homicide Section: 13 jury trials.
I am currently assigned to the newly created Homicide and Major Crimes Section.
In addition to this work, I have given training classes in each of the last three years to other AUSAs on topics including opening and closing arguments, demonstrative evidence, and hearsay. I have written the chapter in the office's training manual on demonstrative evidence, and I am also a member of the office's hiring committee.
- B. Describe the general character of your law practice, dividing it into periods with dates if its character has changed over the years.
- C. Describe your typical former clients and describe the areas of practice, if any, in which you have specialized.

- 1991-96: **In private practice, I specialized in First Amendment defamation work, though the largest part of my practice was complex civil litigation and white-collar criminal defense. Typical clients included *The Recorder*, a legal newspaper; NBC; Chubb Insurance; and Health Plus HMO. I also handled a number of *pro bono* cases for clients such as The San Francisco Black Firefighters Association and several indigent individuals charged with criminal offenses.**
- 1996-present: **As an AUSA, my work has been strictly criminal. For the last two years, I have worked exclusively on homicide cases.**

D. Describe the general nature of your litigation experience, including:

- (1) Whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your court appearances has varied over time, please describe in detail each such variance and give applicable dates.

As an AUSA since late 1996, I have appeared in court very regularly, having tried over 40 jury trials and 25-30 bench trials in that time. In private practice, I appeared in court much less frequently – perhaps 2-3 times per month.

- (2) What percentage of these appearances was in:

- (a) Federal courts (including Federal courts in D.C.);

As an AUSA, 15-20% of my appearances are in federal court; in private practice, the percentage was closer to 30-40%.

- (b) State courts of record (excluding D.C. courts);

As an AUSA, I've never appeared outside of D.C.; in private practice, about 60-70%.

- (c) D.C. courts (Superior Court and D.C. Court of Appeals only);

As an AUSA, about 80-85%; in private practice, almost never.

- (d) other courts and administrative bodies.

None.

(3) What percentage of your litigation has been:

(a) civil;

As an AUSA, 0%; in private practice, about 85%

(b) criminal.

As an AUSA, 100%; in private practice, about 15%.

(4) What is the total number of cases in courts of record you tried to verdict or judgment (rather than settled or resolved, but may include cases decided on motion if they are tabulated separately). Indicate whether you were sole counsel, lead counsel, or associate counsel in these cases.

Approximately 40 jury trials and 25-30 bench trials: sole counsel in 90%, co-counsel in 10%.

(5) What percentage of these trials was to

(a) a jury;

65%

(b) the court (include cases decided on motion but tabulate them separately).

35%

17. Describe the five (5) most significant litigated matters which you personally handled. Provide citations, if the cases were reported, or the docket number and date if unreported. Give a capsule summary of the substance of each case and a succinct statement of what you believe was of particular significance about the case. Identify the party/parties you represented and 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 court and the name of the judge or judges before whom the case was litigated; and (c) the name(s) and address(es) and, telephone number(s) of co-counsel and of the principal counsel for the other parties.

A. **United States v. Joseph Mesa, Jr., F-1002-01. Mr. Mesa's trial took place before the Hon. Robert Richter of D.C. Superior Court from April 25 - May 21, 2002. Mr. Mesa's defense counsel was Ferris Bond, Esq., 601 Pennsylvania Ave., N.W.; Ste. 900 South; Washington, DC 20004; 202-638-4100. Mr. Mesa was convicted of fifteen counts, including two counts of First-Degree Premeditated Murder.**

Mr. Mesa is the former Gallaudet University student who murdered two of his

fellow freshman at Gallaudet in September 2000 and February 2001 during the course of burglaries. The case received a great deal of media attention and was of national significance in the deaf community. Mr. Mesa, escalating a spate of robberies and minor crimes, had entered the rooms of fellow freshmen Eric Plunkett on September 27, 2000, and Benjamin Varner on February 1, 2001, and savagely beaten both to death. The trial, at which Mr. Mesa presented an insanity defense, featured novel psychiatric issues and issues peculiar to the deaf community. At trial, I was co-counsel with another AUSA, between whom the witnesses and arguments were evenly divided. After a lengthy trial, the jury convicted Mr. Mesa on all fifteen counts after deliberating for less than three hours. Sentencing is currently set for July 2002.

- B. United States v. Thomas Lewis and Raymond Weldon, F-6780-99 and F-6482-99. Mr. Lewis's trial took place before the Hon. Lee Satterfield of D.C. Superior Court from May 1-21, 2001. Mr. Lewis's defense counsel was John Copacino, Esq., Georgetown Legal Clinic; 111 F St., NW; Washington, D.C. 20001; 202-662-9577. Mr. Weldon's trial took place before the Hon. Robert Richter of D.C. Superior Court from October 9-19, 2001. Mr. Weldon's defense counsel was Kenneth Robinson, Esq., 717 D St., NW; 4th Floor; Washington, D.C. 20004; 202-347-6100. Both men were convicted of First-Degree Murder and other charges.

Mr. Weldon and Mr. Lewis perpetrated one of the most appalling double murders seen in the Homicide Section in some years. The victims were Andrew Smith, a 74-year-old man who had retired from 40 years of service with the State Department and the military, and Bessie Faison, his 77-year-old sister, who had been a cook at Superior Court for her career. The two lived together in their home and presided over an extended family of 67 relatives. Mr. Weldon and Mr. Lewis, during an attempted robbery, ended up stabbing Mr. Smith to death with a variety of weapons and then, when Ms. Faison came to check on the commotion, slitting her throat. Another AUSA and I tried the Lewis case as co-counsel. After conviction, we were able to secure Mr. Lewis's cooperation, and I tried the Weldon case by myself. Mr. Lewis was convicted of First-Degree Felony Murder and several other charges, and Mr. Weldon was convicted of all nine counts, including several counts of First-Degree Murder. Because of his cooperation, Mr. Lewis was sentenced to a term of 35 years to life; Mr. Weldon, however, received a term of 60 years to life.

- C. United States v. Darryl Turner, F-724-98. Trial took place before the Hon. Nan Shuker of the D.C. Superior Court from Sept. 10- Oct. 2, 2001. Mr. Turner's defense counsel were Tanya Chutkan, Esq., and Tamar Meekins, Esq., of the Public Defender Service, 633 Indiana Ave., NW; Washington, DC 20004; 202-628-1200. Mr. Turner was convicted of two rape-murders and other related charges.

Mr. Turner was the person responsible for the highly publicized series of rape-murders in the Petworth area in the mid-1990s. Other AUSAs indicted him on two rape-murders in 1998, and I conducted the grand jury investigation that resulted in

his indictment in 2000 and 2001 on two more. In September 2001, the first two proceeded to trial. The case was significant both because of its community impact, given the fear that this sexual predator had instilled in the Petworth area, and because the case was one of the first prosecutions to be so heavily based on DNA and hair and fiber evidence. I tried the case with another AUSA as co-counsel, and the jury returned guilty verdicts for both victims on both the rapes and the murders. Mr. Turner was sentenced to a term of life without parole.

- D. United States v. Teresa Butts, F-1804-00. Trial before the Hon. Shellie Bowers of the D.C. Superior Court took place from to March 13-28, 2001. Sgt. Butts was convicted of Negligent Homicide. Defense counsel was Harold Martin, Esq., 1140 Connecticut Ave., NW; Suite 1100; Washington, DC 20036; 202-452-8080.

Sgt. Butts, a police sergeant who was driving drunk while off duty, struck and killed a homeless pedestrian named Lionel Tucker on March 12, 2000. The case was significant both because it concerned a police officer charged with a serious crime and because it involved novel crash reconstruction theories. I was the sole attorney who conducted the grand jury investigation of the case and prosecuted it at trial. The case featured sophisticated testimony by crash reconstruction experts on both sides. In addition, all parties, including the victim's family, participated in crafting an alternative sentencing scheme that included community work at a homeless shelter and speeches to alcohol awareness groups, in lieu of a prison term.

- E. United States v. Tommy Hager, F-8602-97. Trial before the Hon. Judith Retchin of the D.C. Superior Court took place from Nov. 28-Dec.12, 2000. Mr. Hager was convicted of First-Degree Murder and other charges. Defense counsel was Richard Gilbert, Esq., 307 G St., NW; Washington, D.C. 20001; 202-898-0857.

In this case, Mr. Hager and another masked man had burst into the apartment where a man, his girlfriend, and their baby were sleeping. In an attempted robbery, the men had shot the man to death while his girlfriend and baby cowered in another room. The case had significance because Mr. Hager was an extremely dangerous person who was being investigated in connection with several murders. His first trial, assigned to another AUSA, had ended in a mistrial with the majority of jurors voting for acquittal. In the second trial, which I prosecuted as sole counsel, he was convicted of all ten counts, including three counts of First-Degree Felony-Murder. Judge Retchin sentenced him to a term of 67 years to life.

- B. Describe the most significant legal activities you have pursued, including significant litigation which did not proceed to trial or legal matters that did not involve litigation. Describe the nature of your participation in each instance described, but you may omit any information protected by the attorney-client privilege (unless the privilege has been waived).

The most significant matter I handled that did not go to trial was United States v. Antoine Jones, F-2518-00. Mr. Jones was the man who perpetrated the Easter Monday shootings at the National Zoo on April 24, 2000, in which seven children were wounded. Another AUSA and I conducted the grand jury investigation into the case and secured an indictment, charging Mr. Jones with numerous counts of Attempted Murder and Assault With Intent to Kill. We ultimately secured a guilty plea to seven of these counts, for which he received a 25-year sentence.

- C. Have you ever held judicial office? If so, please give the details of such service, including the court(s) on which you served, whether you were elected or appointed, the dates of your service, and a description of the jurisdiction of the court. Please provide four (4) copies of all opinions you wrote during such service as a judge.

No.

- A. List all court decisions you have made which were reversed or otherwise criticized on appeal.

20. Have you ever been a candidate for elective, judicial, or any other public office? If so, please give the details, including the date(s) of the election, the office(s) sought, and the results of the election(s).

No.

21. Political activities and affiliations.

- a. List all public offices, either elected or appointed, which you have held or sought as a candidate or applicant.

None.

- b. List all memberships and offices held in and services rendered to any political party or election committee during the last ten (10) years.

None.

- c. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity during the last five (5) years of \$50 or more.

Friends of Doug Gansler (Montgomery County, MD, State's Attorney): \$500 (2001), \$250 (2000), \$250 (1999), \$1000 (1998)

Collins for Congress (Connecticut Democratic Primary): \$500 (2001)

Liddy for Congress (Arizona Republican Primary): \$1000 (2000)

Bradley for President (Democratic Primary): \$250 (2000)

22. To your knowledge, have you ever been investigated, arrested, charged, or convicted (include pleas of guilty or nolo contendere) by federal, State, local, or other law enforcement authorities for violations of any federal, State, county, or municipal law, other than for a minor traffic offense? If so, please provide details.

No.

23. Have you or any business of which you are or were a officer, director or owner ever been a party or otherwise involved as a party in any other legal or administrative proceedings? If so, give the particulars. Do not list any proceedings in which you were merely a guardian ad litem or stakeholder. Include all proceedings in which you were a party in interest, a material witness, were named as a co-conspirator or co-respondent, and list any grand jury investigation in which you appeared as a witness.

In 2000, a defendant named James Crangle, whom the U.S. Attorney's Office had charged with threatening to kill a nun, filed suit in federal court here in the District of Columbia. In claiming his rights had been infringed, he named as defendants the Superior Court Commissioner who had held him without bond for mental observation, the prosecutor who initially investigated the case, and me, as the prosecutor then assigned to the case. When Mr. Crangle failed to file any subsequent pleading, the case was dismissed.

I was also for a time a member of the class of Department of Justice employees that sued DOJ over overtime benefits. I informed the class attorneys in 1999 that I no longer wished to be a party to the suit. I believe the case is still pending.

24. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, bar or professional association, disciplinary committee, or other professional group? If so, please provide the details.

In 1996, while employed at Kellogg, Huber, *et al.*, I represented a company that was in a dispute with one of its former lawyers over documents and fees. The lawyer sued the company for non-payment of fees and refused to return the company's documents until she was paid. The company, believing she had committed malpractice and requiring the return of the documents, countersued her. In revenge for the countersuit, the lawyer filed a complaint with the Virginia and California State Bars, claiming that I had "implied" I was licensed to practice law in Virginia and that, without a Virginia law license, I should not have filed pleadings in Virginia courts. As I could demonstrate that I had always had local Virginia counsel co-sign the pleadings and as I had never held myself out to have a Virginia license, both State Bars dismissed the complaints without a hearing.

II. POTENTIAL CONFLICTS OF INTEREST

1. Will you sever all connections with your present employer(s), business firm(s), business association(s), or business organization(s) if you are confirmed?

Yes.

2. Describe all financial arrangements, deferred compensation agreements, or other continuing dealings with your law firm, business associates, or clients.

None.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest.

If any company in which I have an investment (listed in Part III) appeared as a party before me, it could potentially be perceived that I had a conflict of interest.

4. Describe any business relationship, dealing, or financial transaction which you have had in the last ten (10) years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest other than while in a federal government capacity.

While in private practice from 1991-96, I represented commercial clients, some of which could potentially appear as parties before me.

5. Describe any activity during the last ten (10) years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of legislation or affecting the administration and execution of law or public policy other than while as a federal government employee.

None.

6. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service as a judge? If so, explain.

I have submitted proposals to co-teach a class in Advanced Criminal Procedure as an adjunct professor at Georgetown Law School and George Washington Law School for Fall 2002 or Spring 2003. My co-teacher and I are in discussions with both schools about their potential acceptance of our course, which I would still like to teach, even if confirmed.

7. Explain how you will resolve any potential conflicts of interest, including any that may have been disclosed by your responses to the above items. Please provide three (3) copies of any trust or other relevant agreements.

I am not aware of any current conflicts, but I would follow proper recusal procedures if any arose.

8. If confirmed, do you expect to serve out your full term?

Yes.

III. FINANCIAL DATA

The Answers to the Financial portion of this Questionnaire are available for inspection in SD-340.

IV. DISTRICT OF COLUMBIA REQUIREMENTS

Supplemental questions concerning specific statutory qualifications for service as a judge in the courts of the District of Columbia pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970, D.C. Code Section II - 150 1 (b), as amended.

1. Are you a citizen of the United States?

Yes.

2. Are you a member of the bar of the District of Columbia?

Yes.

3. Have you been a member of the bar of the District of Columbia for at least five (5) years? Please provide the date you were admitted to practice in the District of Columbia.

Yes. 1996.

4. If the answer to Question 3 is "no" –

A. Are you a professor of law in a law school in the District of Columbia?

B. Are you a lawyer employed in the District of Columbia by the United States or the District of Columbia?

C. Have you been eligible for membership in the bar of the District of Columbia for at least five (5) years?

D. Upon what grounds is that eligibility based?

5. Are you a bona fide resident of the District of Columbia? If not, please state when you intend to become a DC resident.

Yes.

6. Please list the addresses of your actual places of abode (including temporary residences) with dates of occupancy for the last five (5) years.

7. Have you maintained an actual place of abode in the greater Washington, D.C. area for at least five (5) years?

Yes.

8. Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nominating Commission?

No.

9. Have you been a member of either of these Commissions within the last 12 months?

No.

10. Please provide the committee with four (4) copies of your District of Columbia Judicial Nomination commission questionnaire.

AFFIDAVIT

James E. Boasberg being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

SUBSCRIBED and SWORN TO before me this 23rd day of Aug, 2002.


Notary Public

Coming 1/31/03