

**REPORT OF THE COMMISSION  
ON THE SELECTION OF  
FEDERAL JUDGES  
1996**

**Miller Center Commission No. 7**

**Preface**

Miller Center Commissions seek to address urgent problems of public affairs by undertaking studies, taking testimony from witnesses, and reporting their findings in the form of recommendations for improving and strengthening some aspect of American governance. This seventh Miller Center Commission addresses problems concerning the process of appointing federal judges.

Although the Clinton administration appointed a larger number of federal judges in its first two years than did preceding administrations in their first two years, the federal judicial system continues to be plagued by a troubling accretion of unfilled judicial vacancies, delays in the appointment process, and backlogs of pending appointments. This Commission addresses the problems currently afflicting the federal judicial appointment process.

The bipartisan Commission is composed of present and former federal district and circuit court judges, former White House counsels to Republican and Democratic presidents, former Justice Department officials, two former U.S. senators, a prominent attorney, and a law school professor. The co-chairmen of the Commission are Nicholas deB. Katzenbach, attorney general in the Johnson administration, and Harold R. Tyler, Jr., a former federal judge and deputy attorney general in the Ford administration. Other members of the Commission include former Senators Howard Baker and Birch Bayh, Washington attorney Lovida H. Coleman, Jr., former counsels to presidents Lloyd N. Cutler and Fred F. Fielding, former federal Judges Leon Higginbotham and Frederick B. Lacey, United States District Judge Kimba M. Wood, and Professor Daniel J. Meador. David M. O'Brien served as part-time reporter. The director and Commission members drafted the final Report with extensive assistance from Professor Daniel J. Meador and Thomas W. Smith. Preliminary drafts were done by Professor David M. O'Brien

The Commission was established in October 1994, and met ten times in the months from 1994 to early 1996. It met monthly during the last half of 1995. The Commission conducted interviews with all the participants involved in the process of appointing federal judges, including representatives from the White House, the Department of Justice, the Federal Bureau of Investigation, the American Bar Association, and the Senate Judiciary Committee. It also invited and received suggestions from federal judges throughout the country. In addition, it considered reports by other bodies, including the Long Range Planning Report of the Judicial Conference of the United States. The Commission report describes the current selection process and its history, identifies problems that call for reform in the 1990s, and makes recommendations to improve the process. The report does not address the unique problems involved in the appointment of Supreme Court justices.

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## **REPORT OF THE COMMISSION ON THE SELECTION OF FEDERAL JUDGES**

### **I. Current Problems in the Selection and Confirmation of Federal Judges**

The present process of selecting and appointing federal judges requires urgent attention for the following interrelated reasons. First, the size of the federal judiciary has increased in recent decades and is projected to grow further in the next century. Thus the president is responsible for nominating, and the Senate for confirming, a larger number of federal judges than in the past. This suggests that, unless the selection and appointment process is streamlined, the problems identified in this report will be exacerbated. Second, as the number of federal judges and appointments has grown, so has the number and average duration of judicial vacancies. A high percentage of judicial vacancies creates serious problems for the work load of federal courts and the prompt administration of justice. Third, the process of federal judicial selection and appointment has become increasingly complex and prolonged, involves a growing number of people, and is in need of simplification and some discipline.

The size of the federal judiciary is increasing because federal jurisdiction has expanded vastly since 1950. Over the 160 years following the Judiciary Act of 1789, the number of district and appellate court judgeships grew gradually to 277. Between 1950 and 1990, however, as Congress created new federal crimes and civil causes of action, annual filings in federal district courts increased by almost 300 percent and Congress legislated a concomitant growth in the number of judges. Congress had authorized increasing federal judgeships to 828 by 1994.

Anticipating continued growth in federal caseloads, the Committee on Long Range Planning of the Judicial Conference of the United States projects needing 1,370 federal judgeships by 2000; 2,350 by 2010; and 4,110 by 2020. While the desirability of increasing the number of federal judgeships is subject to debate, some further growth appears inevitable.

In recent times, presidents have nominated and the Senate has confirmed more federal judges than ever before (Appendix A). President Clinton appointed more federal judges in his first two years than did his two immediate predecessors in their first two years in office. Chief Justice William H. Rehnquist, in his 1994 Year-End Report on the Federal Judiciary, "commend[ed] the President and the Senate for confirming 101 Article III judges during Congress's Second Session, the highest number in a single year since 1980." Still, the creation of additional federal judgeships and the large number the large number that remain vacant are serious problems that, in the words of the chief justice, have "greatly affected court work load in recent years."

The Committee on Long Range Planning of the Judicial Conference of the United States recently observed that, along with the increase in the size of the federal bench and the resulting increase in the frequency and number of vacancies, the time between vacancy and confirmation has also increased. During the last 15 years, the average time between a vacancy and nomination for the federal bench has been over a year; and it usually takes another three months to confirm the nomination (Appendix B).

Unfortunately, delays in nominating and confirming federal judicial appointees appear to be growing. "Emergency judicial vacancies"—vacancies that remain open for more than eighteen months—are increasing and are lasting longer than in the past. In December 1995, for instance, there were 65 vacancies on the federal bench, but only 39 nominees for those vacancies. Of the remaining

26 vacancies, several had originated two to three years earlier.

Over the last few decades the process of selecting, nominating, and confirming federal judges has become increasingly dependent on larger staff operations for screening and investigating potential nominees. The Commission heard testimony from representatives of all entities involved in the nominating and confirming process. Much of that testimony demonstrates how the process of federal judicial appointments has changed and become more complicated during the last few decades. Potential judicial nominees must fill out three lengthy questionnaires and be screened by attorneys in the White House and the Department of Justice. Thereafter, potential judicial nominees undergo extensive investigations by the White House, the Department of Justice, the Federal Bureau of Investigation, the American Bar Association's Standing Committee on Federal Judiciary, and the Senate Judiciary Committee, as well as a number of private organizations—such as the Alliance for Justice and the Free Congress Foundation—that now monitor federal judicial appointments.

However, the Senate has historically forced presidents who are making federal district court appointments to confer with senators from the state in which the judicial vacancy exists. Furthermore, these senators can put a “hold” on nominations they do not approve, and thus ensure “senatorial patronage.” Attorney General Robert F. Kennedy described the process as a senatorial appointment with the advice and consent of the president. However, during the Carter administration, senators were asked to suggest more than one name for each district court vacancy in their home state. That practice and other presidential attempts to curb senatorial patronage over lower federal court judgeships continued under Republican Presidents Ronald Reagan and George Bush, but with limited success.

Having a divided government, with one party in the White House and the other controlling Congress, enhances senators’ abilities to veto district court nominations. Though divided government was uncommon during the 19<sup>th</sup> century, it has become commonplace since the 1950s. Under these circumstances, presidents selecting nominees have sometimes had to consider views from senators of the opposing party. In the 1980s, the Reagan administration tried to gain greater control over the selection of lower court judicial nominees. The Reagan administration's Department of Justice also used more attorneys in the Office of Legal Policy and the litigation divisions of the Department of Justice to review the records of, and conduct extensive interviews with, potential judicial nominees.

Thus, the process of selecting lower federal court judges has changed in three basic ways. There are now more attorneys and resources in the White House and Department of Justice devoted to screening potential judicial nominees. Extensive interviews with potential judicial nominees have also become routine. Finally, White House staff have become more involved in the screening and selection process. These trends in the process of selecting federal judicial nominees largely continued during the Bush and Clinton administrations. At least fourteen attorneys in the White House and the Department of Justice are currently involved in screening and interviewing potential judicial nominees. Other lawyers in the Department of Justice are also called to assist in the interviewing process as needed.

Today the White House no longer encourages senators to recommend three potential nominees for a district court vacancy in their home state. Instead, the Clinton administration has sought only a single recommendation for each vacancy. That policy change, while it reduces the number of candidates to be screened, may further delay nominations to the district courts because considerable time and resources are sometimes expended on a potential nominee who, for whatever

reason, proves undesirable or problematic. The administration is then forced to seek another recommendation.

Judicial nominations are delayed even further because some senators are slow in making recommendations for district court vacancies. Senators may await the recommendations of their own nominating commissions, or be reluctant to choose among several deserving aspirants. This already serious problem may worsen because the number of judicial vacancies is increasing and the process of selecting judicial nominees has become a larger and more time-consuming staff operation.

The process of selecting and nominating candidates for courts of appeals is slightly different. Because federal appellate courts have jurisdictions that span several states, presidents have greater discretion and defer less to individual senators when selecting nominees for circuit courts. When a vacancy appears on a circuit court, however, some senators and governors from the state of the vacating judge often seek to influence the selection of the new nominee. In such cases, presidents may need to take their recommendations into account for political reasons. During the Clinton administration, the selecting nominees for the courts of appeals has been centered in the more politically sensitive White House staff, with much less involvement by Justice Department attorneys.

Although most delays in filling lower federal court vacancies can be attributed to the selection and nomination processes, vetting nominations and scheduling Senate Judiciary Committee confirmation hearings also delay federal judicial appointments. The Commission found that the Senate Judiciary Committee lacks a sufficient number of staff counsel to conduct its investigations of nominees, particularly where there is a large number of nominations. To alleviate that problem, the Department of Justice has at times provided its lawyers to assist in the Senate Judiciary Committee's investigations.

Although the role of the American Bar Association's Standing Committee on Federal Judiciary has been criticized, alternatively by liberals and conservatives, the committee is useful in evaluating the professional qualifications of judicial nominees. While recent administrations have found some of the committee's investigations duplicative and too time consuming, there has been improvement over the past year or so.

Symbolic and illustrative of how "bureaucratized" the federal judicial appointment process has become in recent decades, judicial nominees are required to complete questionnaires for the Department of Justice, the Senate Judiciary Committee, and the American Bar Association. The White House also uses these questionnaires. They ask a broad range of questions concerning professional experience, financial data, physical condition, and judicial philosophy. Filling out these questionnaires is burdensome and often redundant for the potential judicial nominees.

In the Commission's view, the cumbersome and protracted judicial selection process imposes costs on the justice system and on potential appointees. Highly qualified persons may be reluctant to seek or accept nomination because of the burdensome and redundant screening and vetting process. They may also be concerned about personal privacy and low judicial salaries. Moreover, waiting in limbo for many months while nomination or confirmation is pending can be particularly hard on practicing lawyers. They may lose clients and find planning for the future difficult.

Ultimately, the problems inherent in the process of appointing federal judges affect the quality of those serving on the federal bench. Maintaining the high quality of the federal judiciary is essential to the administration of justice. If the problems in promptly filling judicial vacancies with high-caliber appointees are not addressed, dockets will become even more crowded and we will find that justice

delayed is justice denied. As Judge Learned Hand admonished almost a half-century ago, "If we are to keep democracy, there must be one commandment: Thou shalt not ration justice."

## **II. Recommendations**

### **A. Expediting the Selection of Judicial Nominees**

To expedite the nomination process, the Commission offers the following recommendations for consideration by senators and those officials in the administration involved in the process of appointing federal judges.

**1. Senators should identify candidates before a vacancy occurs, and those candidates should be vetted promptly, either before the vacancy occurs or within 30 days thereafter.**

Identifying and vetting potential judicial nominees early is especially crucial in districts with large numbers of judges and, hence, frequent vacancies.

**2. Senators should recommend candidates no later than 90 days after a judicial vacancy occurs.**

**3. Senators should recommend and prioritize two or more names for each vacancy, thereby avoiding delays in case a potential nominee becomes unavailable or undesirable.**

These recommendations are especially important for solving the problems presented by protracted vacancies on district courts that have heavy caseloads and numerous judges. If not promptly filled, the frequent judicial vacancies that inevitably occur on such courts have a particularly deleterious effect on the administration of justice.

With respect to the administration's role in screening and selecting nominees for federal district courts, the Commission makes the following recommendations.

**4. If a senator does not respond to the request for more than one name, then the administration should advise the senator of additional persons whom the administration would like to consider.**

This recommendation is an attempt both to encourage the selection and nomination of the most highly qualified judicial nominees and to avoid unnecessary delays should an initially considered candidate prove undesirable.

**5. Officials in the executive branch who are concerned with the selection of judicial nominees should develop and maintain lists of prospective judicial**

**nominees for district and circuit courts.**

**6. If senators have not made their recommendations within 90 days of a district court vacancy, the president should proceed with the administration's own nominee and, if confirmation is delayed, make recess appointments to the federal bench.**

The Ninth Circuit Court of Appeals recently upheld the constitutionality of a recess appointment of a federal judge in *United States v. Woodley*, 751 F.2d 1008 (9th cir., 1985) (en banc). Admittedly, some nominees may be reluctant to accept a recess appointment because recess appointees might not eventually be confirmed by the Senate. We note, however, that five of the 15 recess appointees to the U.S. Supreme Court took their seats on the bench before their confirmation, including three of Republican President Dwight D. Eisenhower's appointees: Chief Justice Earl Warren, Justice William J. Brennan, Jr., and Justice Potter Stewart. In addition, recess appointments could be attractive to persons of considerable experience, such as lawyers who would be willing to serve temporarily despite the possibility that they may not be confirmed.

**7. The White House, the Department of Justice, the Federal Bureau of Investigation, and the American Bar Association should complete their investigations of potential judicial candidates within 90 days of a senator's recommendation.**

**8. The ABA Standing Committee on Federal Judiciary should provide the administration and the Senate Judiciary Committee with a brief statement of the reasons for its rating.**

A brief explanation of the ABA Committee's rating for a nominee would allow the executive branch, the Senate, and the public to understand its views. By explaining its rating, the ABA Committee can avoid the charge that the Committee is taking ideological or political considerations into account.

**9. The American Bar Association should expand the size of its Standing Committee on Federal Judiciary and have more than one representative for each circuit.**

Given the expanding number of federal judgeships and nominees, the ABA needs to expand the size of its Committee if it is to complete its investigation of judicial nominees within 30 days, as it should.

**10. The White House and the Justice Department should review their current procedures in order to simplify the process. In particular, they should consider reducing the breadth and extent of questions posed to judicial candidates, doing away with duplicative inquiries, and whether personal interviews are really needed.**

The Commission was somewhat surprised to find that the number of persons involved in selecting and nominating candidates for the lower federal courts has significantly increased. Before 1981, only one or two staff people in the Justice Department, apart from the FBI, were involved. Personal interviews were rare and conducted only by the attorney general or deputy to clarify a difficult question such as a health problem. For a brief period, under Attorney General Kennedy, interviews were used to determine whether candidates from the deep South would follow the Constitution in racial matters. Kennedy abandoned these latter interviews when he found them far less reliable than the opinions of outside observers familiar with the candidate and his or her record. The practice of more extensive interviews on a range of issues appears to have begun in 1981. Several Commission members seriously question whether such interviews are relevant or necessary to determine a candidate's integrity, competence, and work habits.

Not only do we question the need for interviews but we believe they may offend some candidates. Moreover, the public, and especially the bar association, may see the effort as an attempt to influence the candidate's judicial views. We are satisfied that this is not the Justice Department's intent, but the perception may exist nonetheless. The participating personnel are either involved in the political process or perceived to be involved, and are thus believed to be interested in more than simply professional competence. Further, relative to the candidates, the persons conducting the interviews are young and inexperienced in litigation. Questions sometimes unintentionally probe personal beliefs and, coupled with the relative inexperience of the interviewer, may offend some candidates.

There is no question that the White House staff, Justice Department attorneys, the FBI, the ABA, and the Senate staff perform duplicative functions. To some extent this may be unavoidable, but efforts to assign more specific and limited roles might prove helpful. For example, the ABA Committee should confine itself to professional experience and competence. By virtue of their own experience and contacts, ABA Committee members can better make those judgments. If the FBI confined its inquiry to personal and financial integrity, health, and similar matters within its particular expertise, duplication could be reduced. Where the selecting officials believe more information is required, they can go back to the ABA and the FBI and request more data. Since the candidate is normally interviewed by an ABA representative and by the FBI, Justice Department attorneys and the White House staff should consider whether those interviews will suffice.

Experience has shown that it is difficult to determine how persons selected for the federal bench will perform. It is nevertheless true that the best indicator of future performance is the candidate's experience, integrity, intellectual capacity, objectivity, and temperament, as judged by his or her professional colleagues. Such judgments are relatively easy to ascertain.

## **B. Expediting the Senate Confirmation Process for Judicial Nominees**

The Commission urges the Senate Judiciary Committee to explore ways to expedite the confirmation process for federal judicial nominees. Toward that end, the Commission makes the following recommendations, intended as objectives and guidelines for the confirmation process.

### **1. The Senate Judiciary Committee should increase the number of its staff**

**attorneys charged with investigating judicial nominees. When there is an unusually large number of nominations pending, the Department of Justice should continue its present practice of lending personnel to the Senate Judiciary Committee in order to expedite investigations.**

**2. If a judicial nominee is noncontroversial, the Senate Judiciary Committee should forego holding a confirmation hearing on the nominee.**

**3. The Senate Judiciary Committee and the Senate should clear nominees for full Senate confirmation within two months of receiving the president's nomination.**

Most hearings for noncontroversial judicial nominees are largely ceremonial. Having to schedule such hearings for times when senators can be present significantly delays the confirmation process. This problem will be exacerbated as the number of federal judgeships and vacancies continues to grow.

### **C. Eliminating Redundancies and Paperwork**

Currently, prospective nominees for district courts and courts of appeals are required to complete two lengthy questionnaires—one for the Justice Department and White House, and one for the ABA Committee. After a nomination is made, the Senate Judiciary Committee requires the nominee to complete yet another lengthy questionnaire. These three questionnaires are duplicative and often overlap. Responding to the questionnaires is unnecessarily time consuming and onerous. A single questionnaire would suffice. The Commission therefore recommends the following modifications.

**1. Prospective nominees for judicial office should be required to complete a single questionnaire which supplies all information sought by the Department of Justice, the White House, the ABA Standing Committee on Federal Judiciary, and the Senate Judiciary Committee. Appendix C contains a consolidated questionnaire that this Commission derived from the three questionnaires now used by the administration, the Senate Committee, and the ABA Committee.**

**2. The Department of Justice, the White House, the ABA Committee, and the Senate Judiciary Committee should explore whether or not it is really necessary or appropriate to obtain all the information presently sought. Appendix D contains the Commission's recommendations as to questions which could be eliminated or modified to make the questionnaire less burdensome and less intrusive without losing relevant information.**

### **D. Timely Notice of Vacancies and Advanced Processing of Nominees**

To maintain a full complement of circuit and district judges, a vacancy should be recognized on the date that a sitting judge becomes eligible for senior status. Although most judges take senior status when they become eligible, some do not and some do not announce their intentions far in advance. If a vacancy were deemed to exist on the date of eligibility, all parties concerned—senators, the Department of Justice, and the White House—could select and vet a nominee to be ready to take office on that date. If the new vacancy had been filled by that date, the number of authorized judgeships would be reduced by one when the judge eligible for senior status takes senior status. The Commission thus recommends that

**Congress should enact a statute providing that an additional judgeship is created on the date an incumbent judge becomes eligible for senior status, if the incumbent judge does not take senior status on that date. If the newly created position has been filled, the number of authorized judgeships would be reduced by one when the incumbent takes senior status, retires, or dies.**

### III. CONCLUSION

It is most important to appoint judges who are learned in the law, who are conscientious in their work ethic, and who possess what lawyers describe as "judicial temperament." That term, though difficult to define, essentially describes a personality that is evenhanded, unbiased, impartial, courteous yet firm, and dedicated to a process, not a result. The law should be fairly read and applied, irrespective of the judge's personal views as to its wisdom. Where the judge is the finder of fact, the facts will be fairly found.

The Commission would be remiss if it did not conclude by acknowledging that, even during the exponential growth of the lower federal courts since the early 1950s, the selection and appointment procedures of the executive and the Senate have usually resulted in high-quality judges. While the Commission has been concerned about delays in filling vacancies, particularly in light of the rapid increase in cases, our focus on that concern in no way indicates dissatisfaction with the quality of the appointments. The quality of the judiciary is clearly far more important than the time taken in the appointment process, and we believe our proposals will enhance that quality.

Nonetheless, this Commission believes there are trends which suggest the possibility of future problems. One is simply the growth of the federal judiciary itself which could possibly lessen the prestige of office and hence the pool of available talent. It is crucial to our system of law and government that the public retain confidence in the high quality, fairness, and impartiality of the judiciary. Due process begins with the reputation and skill of the judges themselves.

As this report recognizes, throughout our history the judicial appointment process has been built on politics. The danger of purely political appointees lacking the necessary competence led Attorney General Brownell to introduce the American Bar Association's participation. At that time—and for some years thereafter—relatively few persons in the executive branch and the Senate or its staff worked on judicial appointments, and rarely were any of them experienced in court practices and procedures. The ABA Committee was designed to fill that shortcoming and insure, insofar as the political process permitted, the high quality of those selected.

The Commission was surprised and concerned to find that today many more persons from the White House staff, the Department of Justice (including the FBI), and the Senate are involved at all stages of the appointment process. Quite apart from the obvious prospect of "over investigating" candidates and unnecessarily invading their personal privacy, the growing number of people raises the specter of excessive bureaucratization. Put differently, it poses the threat of lowering the level at which the nomination and confirmation decisions are actually made. This trend is clearly related to the increased number of judicial appointments and to the resulting fact that each individual appointment is politically less important to senators. In years past, campaign managers or lawyers who raised most of the money and otherwise assisted in electing a senator, often expected a judicial appointment as a reward. Indeed, Attorney General Brownell involved the ABA to assure that a senator's political preference was also a competent lawyer.

In addition to the growing number of appointments, the changing political process has affected who the candidates for judicial office are and whether they will be nominated and confirmed. The increasingly ideological nature of political campaigns, the need for huge sums of money, the growing dependence on contributions from various ideological groups, and the willingness of these groups to launch personal attacks on candidates they ideologically oppose, has the potential to affect the appointment process in unfortunate ways. Even putting aside the cases of Supreme Court nominees such as Robert Bork and Clarence Thomas, where this problem was obvious, there have been some signs of similar ideological controversy creeping into the process of nominating and confirming lower court candidates. While it appears that the present administration has been conscious of the problem and relatively successful in avoiding such ideological controversies, we have learned of occasional episodes where qualified candidates have refused to be considered or have withdrawn from fear of being "Borked."

The Commission believes that it would be a tragic development if ideology became an increasingly important consideration in the future. To make ideology an issue in the confirmation process is to suggest that the legal process is and should be a political one. That is not only wrong as a matter of political science, it also serves to weaken public confidence in the courts. Just as candidates should put aside their partisan political views when appointed to the bench, so too should they put aside ideology. To retain either is to betray dedication to the process of impartial judging. Men and women qualified by training and experience to be judges generally do not wish to and do not indulge in partisan or ideological approaches to their work. The rare exception should not be taken as the norm.

In any case, it is our view that the important process of appointing federal judges need not be as difficult as it now seems. The ultimate question is simply whether or not potential candidates have integrity, good judgment, and the experience necessary to become judicial officers of the United States. Occasional mistakes will be made. But no amount of bureaucratic vetting or ideological testing will achieve perfection, and too complex a process can do more harm than good.

### **Commission Co-Chairmen**

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## Appendix A

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### Number of Judicial Appointments by Presidents from FDR to Clinton

President	Supreme Court	Circuit Court	District Court	Total
Roosevelt	9	52	137	198
Truman	4	27	102	133
Eisenhower	5	45	127	177
Kennedy	2	20	102	124
Johnson	2	41	125	168
Nixon	4	45	182	231
Ford	1	12	52	65
Carter		56	206	262
Reagan	4	78	290	372
Bush	2	37	148	187
Clinton	2	27	138	167

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\*Article III judgeships. President Clinton's judicial appointees are for his first two years in office.

## Appendix B

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### Average Time Required to Fill Federal Judicial Vacancies, 1979-1994

Year	Number of Judges Appointed	Average Number of Days from Vacancy to Nomination	Average Number of Days from Nomination to Confirmation	Average Number of Days to Fill Vacancy
1979	135	219	73	292
1980	64	333	91	424
1981	41	435	34	469
1982	47	310	32	342
1983	32	276	39	315
1984	43	163	36	199
1985	84	321	45	366
1986	44	368	41	409
1987	43	326	102	428
1988	41	284	140	424
1989	15	682	60	742
1990	55	362	81	443
1991	56	289	79	368
1992	66	366	139	505
1993	28	753	51	804
1994*	101	690	87	777
Average (1979-1994)	56	386	71	457

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\*As of October 8, 1994

Source: Senate Judiciary Committee

**Appendix C**  
**JUDICIAL NOMINEE QUESTIONNAIRES**

**SENATE**

**DEPT. OF JUSTICE**

**ABA**

Q#    Substance

Q#    Substance

Q#    Substance

**A. GENERAL PERSONAL QUESTIONS**

I. 1. IV.1	Full name and any former names used.	A. 1. A.2.	Full name and any former names used. Government position sought.	1	Full name and social security number.
I. 2. IV.2	Address (current residence and office).	A. 3. A.4.	Current residence and mailing address. Home and office telephone numbers.	2	Office and home phone numbers and addresses (name of law firm if associated).
I. 3.	Date and place of birth.	N/A	Question not asked.	3 4	Date and place of birth. Naturalized? If so, give place and date.
I. 4.	Marital status and spouse's name/maiden name (if applicable), occupation and employer's name/address.	A. 5.	Marital status, spouse's current employer and also employer(s) for preceding five years (if applicable).	5. a.	Marital status, date of marriage, spouse's name/maiden name (if applicable).
N/A	Question not asked.	N/A	Question not asked.	5. b.	Divorced? If so, give date, moving party, case number, court and grounds.
N/A	Question not asked.	N/A	Question not asked.	5. c.	Names of children; their ages, addresses and occupations.

I. 5.	Education (list each college, law school and date of degree).	N/A	Question not asked.	7	List colleges and law schools attended, degrees received, and reasons for leaving if degree not received.
I. 6.	Employment record (list by year each business or other enterprise since college).	A. 6.	List all jobs held in last 10 years with job title, employer, location and dates.	16	List any occupation not legal, judicial or in public office with dates and details.
I. 7.	Military service (list dates, service, rank, serial number and type of discharge).	N/A	Question not asked.	6	Military service (list dates, branch, rank, serial number and type of discharge).
I. 8.	Honors and Awards of interest to the Committee.	N/A	Question not asked.	28.	List honors, prizes, awards not previously mentioned.

I. 13	What is present state of your health and when was your last physical exam?	B. 8.	What is the condition of your health?	24. a	What is the present state of your health?
		B. 9.	Have you had a physical exam recently?	24. b	In last 10 years have you been hospitalized for injury/illness or prevented from working? If so, give particulars.
				24. c	Suffer from any impairment? If so, give details.
				24.d	When was your most recent exam and who was the doctor?
				24. e	Currently being treated for illness? If so, give details.
				24. f	Ever treated for alcohol or drug dependency? If so, give details.
				24.g	Ever treated for mental illness? If so, give details.

**B. LEGAL EXPERIENCE AND BACKGROUND**

I.9.	Bar Associations (list all legal or judicial committees or conferences with titles and dates).	B. 3.	All memberships and offices in professional, fraternal, scholarly and civic organizations.	26.	All bar associations and professional societies with dates and offices held (including significant committee memberships).
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I. 10	Other memberships in organizations which lobby public bodies.	B. 3.	See above.	27.  J27b  J27c	All memberships in organizations other than bar associations or professional societies.  Judge: also list chairmanships of bar associations and professional societies.  Judge: describe participation, if any, on judicial committees, conferences, and as designated appellate judge.
I. 11	All courts in which admitted to practice with dates and list any lapses. Same information for administrative bodies requiring special admission.	N/A	Question not asked.	8.	All courts in which admitted to practice with dates of admission and the same for administrative bodies requiring special admission.
I. 12	List of all publications with copies of material not readily available and speeches on constitutional law or legal policy with readily available press reports about such speeches.	N/A	Question not asked.	25.	Furnish at least five examples of legal articles, books, briefs, etc. which represent your personal work (for briefs, indicate the degree to which they represent your personal work).

I. 14	State chronologically any judicial offices held with description.	N/A	Question not asked.	14. a J.12  J13  J14.	Give dates and details of any judicial offices held with description.  Judge: Describe your ten most important opinions with cites and appellate review, if any.  Judge: describe any non-judicial office held.
I. 15	Provide citations for your ten most important opinions (if applicable), same for all appellate opinions reversing or criticizing your rulings, and your significant opinions on state or federal constitutional issues with related appellate rulings (if not readily available, provide copies of these).	N/A	Question not asked.	N/A	Question not asked.

I. 16	State any other public offices held with terms of service and descriptions, and list chronologically other candidacies.	B. 6.	List all offices with a political party in the last ten years, and any candidacies during the last ten years.	14. b	Give details of any non-judicial public office ever held, including dates of service and whether elected or appointed.
II.6	Ever play a role in a political campaign? If so, identify particulars, including candidate, dates, and your title/responsibilities.	B.7.	List all contributions to political parties/ election committees during the past six years.	15.	Give details and dates of any unsuccessful candidacies.

<p>I. 17</p> <p>a. 1.</p> <p>a. 2.</p> <p>a. 3.</p> <p>b.1.</p> <p>b.2.</p> <p>c.1.</p> <p>c.2.</p> <p>c.3.</p> <p>c.4.</p> <p>c.5.</p>	<p>Describe chronologically your legal career including:</p> <p>Clerkships.</p> <p>Solo practice.</p> <p>Law firms, companies, and gov't agencies.</p> <p>Describe general character of your practice.</p> <p>Describe former clients and specialities.</p> <p>Frequency of appearances in court? If this varied, give by date.</p> <p>Percentage of appearances in (a) federal, (b) state, and (c) other courts.</p> <p>Percentage (a) civil and (b) criminal.</p> <p>Number of cases tried to conclusion and state your role.</p> <p>Percentage of cases (a) jury and (b) non-jury.</p>	<p>N/A</p>	<p>Question not asked.</p>	<p>9.</p> <p>a</p> <p>b</p> <p>c</p> <p>d</p> <p>10. a</p> <p>b</p> <p>11.</p> <p>a.</p> <p>b.</p> <p>c.</p> <p>d.</p> <p>e.</p> <p>12.</p>	<p>Describe chronologically your law practice including: dates of clerkships.</p> <p>periods of solo practice</p> <p>periods with law firms, companies or gov't agencies with names and phone numbers of those with direct knowledge of your work there.</p> <p>any other relevant particulars.</p> <p>Describe general character of your practice over time.</p> <p>Describe your typical clients and areas of specialization.</p> <p>During last five years:</p> <p>What was frequency of appearances in court? If this varied, describe such variances and give dates for them.</p> <p>What percentage of appearances in (a) federal, (b) state, and (c) other courts?</p> <p>What percentage (a) civil and (b) criminal?</p> <p>Number of cases tried to conclusion and what was your role?</p> <p>Percentage of cases (a) jury and (b) non-jury?</p> <p>Same for prior 5 years.</p>
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I. 18	Describe ten most significant litigated matters you personally handled. Give citation, summary, identify client, detail nature of your participation. Also: (a) date of representation. (b) name of court and judge. (c) names, addresses and phone numbers of co-counsel and principal counsel for other parties	N/A	Question not asked.	13.	Describe ten most significant litigated matters you personally handled. Give citation, summary, identify client, detail nature of your participation. Also: (a) dates of trial. (b) name of court and judge. (c) names, addresses and phone numbers of co-counsel for each of the other parties.
I. 19	Describe the most significant legal activities you pursued (non-trial or non-litigation). Describe the nature of your participation (unless privileged).	N/A	Question not asked.	N/A	Question not asked.

**C. FINANCIAL DATA AND CONFLICT OF INTEREST**

<p>II.1</p>	<p>Sources, amounts and dates of all anticipated receipts from business relationships. Describe arrangements for any future compensation.</p>	<p>E.1.</p>	<p>Describe all financial arrangements for deferred compensation from business relationships.</p> <p>NOTE: DOJ requires financial information as to all household members.</p>	<p>17.</p> <p>a.</p> <p>b.</p>	<p>Are you now an officer or manager of business enterprise?</p> <p>If so, give details including title and term.</p> <p>Do you intend to resign such positions? If not, give reasons.</p>
<p>II.2.</p>	<p>Explain how you will resolve potential conflicts of interest and identify likely areas which may initially pose conflicts.</p>	<p>C.1.</p> <p>(A)</p> <p>(B)</p> <p>(C)</p> <p>D.1.</p> <p>E.2</p> <p>E.3</p> <p>E.4</p>	<p>List all organizations: connected to you in business relationship.</p> <p>in which you have continuing financial relationship (detail).</p> <p>in which you have other financial interests (detail).</p> <p>Will you sever all business connections if confirmed?</p> <p>Describe any business or financial relationship or transaction of the last five years which could result in a potential conflict of interest.</p> <p>Describe any lobbying activity of the last five years.</p> <p>Explain how you will resolve any conflict of interest raised by the responses above.</p>	<p>17.</p>	<p>See Q# 17 above.</p>

II.3.	Do you have plans to pursue outside employment with or without pay if confirmed? If so, explain.	D.2.	Do you have plans to pursue outside employment with or without pay if confirmed? If so, explain.	17.b	See Q# 17.b above.
II.4.	List all sources of income received in the calendar year prior to nomination.	C.2.	Provide a complete net worth statement which includes: (A) itemized assets. (B) liabilities in excess of \$1000. (C) sources and amounts of items of value. (D) copies of last three federal tax returns.	N/A	Question not asked.
II.5.	FINANCIAL STATEMENT REQUIRED		FINANCIAL STATEMENT REQUIRED		

D. INVOLVEMENT IN LEGAL PROCEEDINGS/TAX AUDITS/OTHER CONFIDENTIAL

IV.3	Ever been discharged or resigned due to impending discharge?	N/A	Question not asked.	N/A	Question not asked.
IV.4	Have you and your spouse paid all back taxes? Any tax payments made prior to your nomination? If so, detail.	N/A	Question not asked.	N/A	Question not asked.

IV.5.	Tax lien or collection procedure ever instituted against you? If so, detail.	N/A	Question not asked.	20.	Tax lien ever instituted against you? If so, give particulars.
IV.6	You or spouse ever subject of any tax audit or inquiry? If so, detail.	B.1.	Have your tax returns ever been the subject of an audit or inquiry? If so, explain.	N/A	Question not asked.
IV.7.	You or your spouse ever declared bankruptcy? If so, give particulars.	N/A	Question not asked.	N/A	Question not asked.
IV.8	Have you or any organization you belonged to ever been under investigation for violating any law or regulation? If so, detail.	B.2	Are you currently under federal, state or local investigation for possible violation of a criminal statute? If so, give details.	18.  19.	Ever been arrested, charged or held by federal, state or local law enforcement for violation of any law, regulation or ordinance? If so, give details.  Have you ever been under investigation for possible violation of a criminal statute? If so, give particulars.
IV.9	Have you ever been the subject of a complaint to any group, agency or court for breach of ethics or rule of conduct? If so, give particulars.	B.4.	Ever been disciplined or cited for breach of ethics or unprofessional conduct or been the subject of any such complaint? If so, give full details.	23.	Ever been cited or disciplined for breach of ethics or unprofessional conduct or been the subject of any such complaint? If so, give particulars.

IV.10	Ever been a party to any litigation?	B.5.	Ever been involved in any civil litigation or administrative proceedings appropriate for consideration by the Committee? If so, give details.	21. 22.	Ever been sued by a client? If so, detail.  Ever been a party in any other legal proceeding? If so, give particulars.
IV.11	Please advise the Committee of any other adverse information that may affect your nomination.	B.10	Without details, anything in your personal life which may be of embarrassment to the administration? What about near relatives?	30.	State any other information adverse or positive which should be disclosed in connection with your nomination.

E. GENERAL/OTHER

III.1	Describe your work to provide those disadvantaged with legal services.	N/A	Question not asked.	29.	Describe any pro bono or community service activities undertaken.
III.2	Any membership in a discriminatory organization? If so, what efforts did you make to try to change such policies?	N/A	Question not asked.	N/A	Question not asked.
III.3	Selection committee in your jurisdiction to recommend nominations? If so, did they recommend you? Describe the entire process you underwent.	N/A	Question not asked.	N/A	Question not asked.

III.4	Did anyone involved in your selection discuss any legal case or issue seeking to learn how you might rule? If so, explain fully.	N/A	Question not asked.	N/A	Question not asked.
III.5	Discuss your views on a criticism of judicial activism.	N/A	Question not asked.	N/A	Question not asked.
N/A	Question not asked.	N/A	Question not asked.	J24a b. c. d.	Judge: Did you participate in any proceeding in which you had a financial interest? If so, give particulars. Is there a rule in your court as to sitting on such cases? If so, state the rule and whether you complied with it. Have you, to best of your knowledge, complied with applicable ABA statutes and canons? If no, give particulars. Ever receive outside compensation (other than for teaching)? If so, give particulars.

**Appendix D**  
**CONSOLIDATED QUESTIONNAIRE FOR JUDICIAL NOMINEES<sup>1</sup>**

In answering these questions please use letter size paper. Repeat each question and place your answer immediately beneath it. To expedite matters, send in your completed Questionnaire as soon as possible since it is a prerequisite for the usual process of investigation.

If in response to any question you enclose published articles or judicial opinions, please include on your Questionnaire the full title of the article or the full citation for the judicial opinion.

1. Full name and social security number (include any former names used).
2. Address: List current place of residence and office address(es). Include zip codes, telephone numbers and area codes (include name of law firm, if applicable).
3. Date and place of birth. If you are naturalized, give the place and date of naturalization.
4. Marital status: If you are married, identify your spouse's present employer and his or her employer(s) for the five preceding years with the addresses. Give your spouse's name/pre-marriage name (if applicable).
5. Have you been divorced? If so, please give the date, moving party, case number, court and grounds.
6. Provide the names of your children, their ages, addresses and present occupations.
7. Education: List each college and law school you have attended, including dates of attendance, degrees received and dates degrees were granted. If you left any institution without receiving a degree, provide the reason for leaving.

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<sup>1</sup> This questionnaire also contains changes and deletions suggested by the Commission as possible improvements in keeping with modern developments in the practice of law. These are in bold type and brackets at the end of the relevant questions.

8. Employment record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, including law firms, with which you were connected as an officer, director, partner, proprietor, or employee during the past ten (10) years. Include the job title, description, name of employer and address. If you have ever been engaged in any occupation, business or profession other than the practice of law or holding judicial or other public office, please give details, including dates.

**[Change - insertion of time limitation.]**

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

10. Honors and awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest.

11. What is the present state of your health and when was your last physical exam? In the last ten years have you been hospitalized for any injury or illness, or have you been prevented from working or otherwise incapacitated? If so, please give particulars, including the causes, the dates, the places of confinement, and the present status of the condition which caused the confinement or incapacitation. If you suffer from any impairment of eyesight or hearing or any other physical handicap please give details. Are you currently under treatment for an illness or physical condition? If so, please give details. Have you ever been treated for or had any problem with alcoholism or any related condition associated with consumption of alcoholic beverages, or any other form of drug addition or dependency? If so, please give details. If you have ever been treated for or suffered from any form of serious mental illness, please give details. **[Change to add "serious" in last line.]**

12. Bar associations: List all Bar associations, legal or judicial-related committees 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. List all memberships and offices in any other professional, fraternal, scholarly and civic organizations (include any significant committee memberships) over the past ten (10) years.

**[Change - add to end of second sentence "over the past ten (10) years".]**

13. Other memberships: List any political party and all organizations to which you belong that are active in lobbying before public bodies. **[Change - delete last sentence as repetitive.]**

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

15. Published writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited during the last ten (10) years. Please supply one copy of all published material not readily available. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them. You should furnish at least five examples of legal articles, books, briefs, etc., which represent your personal work (for briefs, indicate the degree to which they represent your personal work). **[Change - insertion of time limitation in first sentence.]**

16. State chronologically any judicial offices you have held with their description, and state whether these positions were elective or appointive.

17. For judges, provide citations for your ten most important opinions, and citations with short summaries of all appellate opinions reversing or criticizing your rulings. Provide any significant opinions you have written on state or federal constitutional issues, and include related appellate rulings (if any of these opinions are not readily available, please provide copies).

18. Public office: State (chronologically) any other 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 elected public office. List all offices with a political party in the last ten years, and list all contributions to and involvement in political parties or election committees during the past six years. Also, please provide the details and dates of any unsuccessful candidacies.

19. Legal career: Describe chronologically your legal career after graduation from law school, including

- a. Whether you served as a clerk to a judge, and if so, the name of the judge, the court, and the dates of your clerkship.
- b. Whether you practiced alone, and if so, the addresses and dates.
- c. The dates, names and addresses of law firms, companies, and government agencies with which you have been connected, and the nature of your connection.
- d. Describe the general character of your practice, dividing it into periods with dates if its character changed over time.
- e. Describe your typical former clients and any of your specialties.
- f. List the frequency of appearances you made in court, and if this varied, describe each variance by year.

g. List the percentage of your appearances in

- i. federal courts;
- ii. state courts of record; and
- iii. other courts.

h. List the percentage of your work in civil and criminal cases.

i. List the number of cases in courts of record that you tried to conclusion, and state your role in each as counsel, chief counsel or associate counsel.

j. List the percentage of your cases which were jury and non-jury.

20. Describe the ten most significant litigated matters in which you participated as sole or lead counsel. Provide the citation, if available, a short summary, identify your client, detail the nature of your participation and give the formal disposition of the case. Also list for each case:

- a. The date of your representation;
- b. The name of the court and judge before whom the case was litigated, including the docket number; and
- c. The names, addresses, phone numbers of your co-counsel and principal counsel for each of the other parties. [**Change - "as sole or lead counsel" after "participate".**]

21. Describe the most significant legal activities you have pursued (which did not involve trial or litigation). Describe the nature of your participation (unless it was privileged).

22. List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stocks, options, uncompleted contracts and other future benefits from previous business relationships in excess of \$10,000.00. Describe any arrangements you have made for future compensation for any business or professional relationship. Also list if you are an officer or

manager of a business enterprise, including your title and term of service. If you intend to resign such position, please explain when, and, if not, provide the reasons. **[Changes - (1) limitation of specific amount; (2) delete third sentence as too broad and intrusive.]**

23. List all organizations

- a. Connected to you in a business relationship;
- b. In which you have any continuing financial relationship through the ownership of stock, stock options, bonds, partnership interests, or other securities. Any interests held indirectly through trusts or other arrangements should be included. Please provide a copy of any trust or other agreement; and
- c. In which you have any other financial interests. Please provide complete details. Please explain whether you will sever all business connections listed if you are confirmed. Explain how you will resolve any conflict of interest raised by the responses above. **[Change - delete third and fourth sentences as being unnecessary.]**

24. Do you have plans, commitments or agreements to pursue outside employment with or without pay if you are confirmed? If so, please explain.

25. Please list all sources of income received in the calendar year prior to your nomination, and for the current year. Include all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500. Complete the attached financial statement for you and your spouse, including a list of each asset valued in excess of \$10,000.00, liabilities in excess of \$1,000.00, any sources or amounts of items of value, and copies of your last three federal income tax returns. **[Changes: (1) insert phrase "for you and your spouse" after "financial statement"; (2) value of asset in excess of \$10,000.]**

26. Have you ever been discharged or resigned from a job due to an impending discharge?

27. Have you or your spouse paid all back taxes? Have you made any tax payments prior to your nomination? If so, please provide details.

28. Has a tax lien or other tax collection procedure ever been instituted against you? If so, please provide details.

29. Have the tax returns of you or your spouse ever been subject to audit for either federal, state or local taxes? If so, please provide details.

30. Have you or your spouse ever declared bankruptcy? If so, please provide particulars.

31. Have you or any corporation of which you were or are an officer or director or any firm of which you are or were a partner ever been under investigation for violating any law or regulation? Have you ever been charged or arrested for violation of any federal law or regulation, state law or regulation, or county law, ordinance, or regulation (do not include traffic violations for which a fine of \$250.00 or less was imposed). If so, please provide details. **[Changes: (1) substitute specific definition of "organization"; (2) raise fine amount to \$250; (3) delete last sentence as repetitive of material in first two sentences.]**

32. Have you ever been the subject of a complaint to any organized bar group, government agency, or court for breach of ethics or rule of conduct? If so, please provide particulars.

**[Change - "any organized bar group, government agency ..."]**

33. Have you ever been involved in any civil litigation or administrative proceeding in which you were found negligent or guilty of fraud? If so, please give details. Also, state whether or not you have ever been sued by a client and, if so, what was the outcome. **[Changes: (1) first sentence revised to refer to negligence or fraud; (2) new last sentence.]**

34. <sup>2</sup>Describe any significant *pro bono* or community service activities you have undertaken during your career. [**Change - insert the word "significant".**]

35. <sup>3</sup>Do you currently belong, or have you ever belonged within the last ten (10) years, to any social, business or professional organization which discriminates on grounds of race, gender, etc.—through either formal membership requirements or in its activities or practices? If so, please list with dates of membership. What have you done to try to change these policies if they still exist? [**Changes: (1) Insertion of time limitation; (2) insert phrase "social, business or professional" before "organization".**]

36. For judges, with respect to your judicial service:

- a. Have you participated in any proceeding in which you have had stock or other financial interest in one of the parties or in the matter in controversy? If so, please give particulars.
- b. Is there a rule or custom in your court as to judges sitting on such cases? If so, state the rule or custom and whether or not you have complied with it.
- c. Have you to the best of your knowledge and belief complied with the applicable statutes and canons of the American Bar Association relative to such matters as were enforced and applicable at the time? If not, please give particulars.
- d. Have you ever received compensation from outside sources for services rendered (other than fees and expenses for lectures or teaching)? If so, please give particulars.

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<sup>2</sup> Old paragraph 34 deleted as being too vague.

<sup>3</sup> Old paragraphs 37 through the end deleted as being either unnecessary or repetitive in concept.

## Appendix E

### Judicial, Professional, and Political Service of the Commission Members, Staff, and Witnesses

#### Co-Chairmen

**Nicholas deB. Katzenbach** was assistant attorney general and deputy attorney general from 1961-1965; attorney general and under secretary of State in the Johnson administration. He taught at Yale and the University of Chicago Law Schools. From 1969-1986 he was a senior vice president and general counsel of IBM. Since his retirement from IBM he has practiced law in New Jersey. He contributed to the conclusions and important sections of the Report.

**Harold R. Tyler, Jr.** was an assistant attorney general, USA from 1959-60. He was a U.S. district judge for the Southern District of New York, from 1962-1975. From 1975-77, he was deputy attorney general, USA and vice chairman of the Administrative Conference of the USA. He has been a member of Patterson, Belknap, Webb & Tyler in New York City since 1977. Judge Tyler took major responsibility for legal research and sections of the Report.

#### Members

**Howard Baker, Jr.** returned to the practice of law at Baker, Donelson, Bearman & Caldwell in Washington after serving in the United States Senate from 1967-1985, and as President Reagan's chief of staff, from February 1987 to July 1988. He was vice chairman of the Senate Watergate Committee and served two terms as minority leader and two terms as majority leader in the Senate.

**Birch Bayh** is the senior partner with the law firm of Bayh, Connaughton & Malone, P.C. in Washington, D.C. He served three terms as a United States Senator from Indiana. He was ranking member of the Senate Judiciary Committee.

**Lovida H. Coleman, Jr.** is partner in the Washington law firm of Sutherland, Asbill & Brennan. She is a member of the Litigation Group specializing in white collar criminal matters and civil practice. She was deputy general counsel to the Bush-Quayle '92 re-election campaign and director of Policy Issues. From 1977-1980, she served in the Department of Justice as special assistant to the attorney general.

**Lloyd N. Cutler** is partner in the Washington law firm of Wilmer, Cutler & Pickering. In 1979-1980 he served as counsel to the president of the United States, and from March-September 1994 he was special counsel to the president of the United States. He also served as special counsel to the president on ratification of SALT II Treaty, 1979-1980,

and as a member of the President's Commission on Strategic Forces (Scowcroft Commission), 1983-1984. He played a significant editorial role in the Report.

**Fred F. Fielding** is senior partner in the Washington law firm of Wiley, Rein & Fielding where he serves as head of the firm's Corporate Services, Government Affairs, and Crisis Management—White Collar litigation practices. From 1981-1986, he served as counsel to the president of the United States; deputy counsel to the president, 1972-1974; and assistant counsel, 1970-1972.

**Leon A. Higginbotham, Jr.** has been of counsel since 1993 to the New York City law firm of Paul, Weiss, Rifkind, Wharton & Garrison. From 1964-1977, he was judge of the U.S. district court for the Eastern District of Pennsylvania, and from 1977-1993, was a judge on the U.S. Court of Appeals for the Third Circuit. Since 1993, he has also been a professor at the Kennedy School of Government at Harvard University.

**Frederick B. Lacey** is a senior partner at LeBoeuf, Lamb, Greene & MacRae in New York City. He was a United States district judge from 1971-1986, while also serving as a member of the United States Foreign Intelligence Surveillance Court and the United States Temporary Emergency Court of Appeals; United States attorney 1969-1971; a judicial adviser to the Department of Justice Delegation to the United Nations Meeting on Organized Crime in Milan, Italy, 1985.

**Daniel J. Meador** is James Monroe Professor of Law Emeritus at the University of Virginia. He was assistant attorney general, Office for Improvements in the Administration of Justice, U.S. Department of Justice, 1977-1979; chairman, ABA Standing Committee on Federal Judicial Improvements, 1987-1990; member of the Board of Directors, American Judicature Society, 1975-1977, 1980-1983; and member of the Board of Directors, State Justice Institute, 1986-1992. Professor Meador played a key role in editing the various drafts of the Report.

**Kimba M. Wood** is United States District Judge for the Southern District of New York. Previously, she was with the law firm of LeBoeuf, Lamb, Leiby & MacRae in New York City. From 1989-1991, she was judicial representative to the ABA Section of Antitrust Law; member of the New York State Bar Association House of Delegates in 1984; chairman of the ABA Antitrust Law Section from 1983-1984; and member of the American Law Institute. Judge Wood did important research for the Report.

#### **Miller Center Staff**

**Kenneth W. Thompson**, coordinator of the Commission, is director of the Miller Center of Public Affairs and J. Wilson Newman Professor of Government in the Woodrow Wilson Department of Government and Foreign Affairs at the University of Virginia. He served as vice president of the Rockefeller Foundation from 1961-1973. He is the author of some twenty-five books on government and international relations.

**David M. O'Brien**, part-time reporter of the Commission, is a member of the faculty of the Department of Government and Foreign Affairs at the University of Virginia specializing in American Government and Constitutional Law. He is the author of *Storm Center: The Supreme Court in American Politics*. He prepared the first drafts of large portions of the Report.

**Thomas W. Smith**, acting assistant professor of Government at Wake Forest University and ABD graduate student in the Department of Government at the University of Virginia, assisted the Commission throughout the project with editing and revisions of the Report.

### **Witnesses Before the Commission**

**Victoria Radd**, Office of the White House Counsel

**William Willis**, chairman, American Bar Association Standing Committee on Federal Judiciary

**Eleanor Acheson**, assistant attorney general, Office of Policy Development, Department of Justice

**Edward Whelan, III**, Senate Judiciary Committee Staff

**Dick Hildreth, Thomas Coyle, and Thomas Kelley**, Federal Bureau of Investigation