



# The Court Legacy

The Historical Society for the United States District Court  
for the Eastern District of Michigan ©2012

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## The Best Man for the Job: A History of the Nomination and Appointment Process of Women to the Bench of the United States District Court for the Eastern District of Michigan

By Susan H. Patton

*[Ed. Note: This is the second of two articles. The article covering the confirmation process for Judges Cornelia G. Kennedy, Patricia J. Boyle, Anna Diggs Taylor and Barbara K. Hackett appeared in the October 2012 issue of The Court Legacy. The title of the article is a reference to President Richard M. Nixon's statement in 1971 – a year after he nominated Judge Kennedy to this Court – upon hearing of the retirement of Supreme Court Justices Black and Harlan: "I promise to appoint the best man for the job."]*

The nominating process for federal district judgeships has changed dramatically over time. These articles are about the history and evolution of the judicial selection process for Article III judges, as applied to the eight women who have served on the bench of the Eastern District of Michigan. The articles are intended to show the evolutionary changes to the nomination process from the time of Presidents Nixon through Clinton, between whose terms the eight women of the bench of the Eastern District of Michigan were commissioned. Changes in the judicial appointment process during this period were triggered by convulsions in the gender and racial politics and sociology in the United States. As a result, each of these remarkable women had a different nomination experience on their road to the bench. The history of these times is reflected in their nominations.

### George H. W. Bush Years

- George H. W. Bush 1989-1993
- Yeltsin
- Iraq Invasion of Kuwait / Desert Storm
- Average Income \$28,960
- Depletion of the Ozone Layer is discovered above the North Pole
- Nelson Mandela released from prison and becomes leader of the African National Congress (ANC)
- East and West Germany reunite
- The Simpsons airs for the first time
- Space Shuttle Discovery places the Hubble Space Telescope

### Nancy Garlock Edmunds



George H. W. Bush (Republican) was the first sitting Vice President to be elected to the Presidency in 152 years.<sup>1</sup> He continued Reagan's approach to the judicial nomination process, including the rigorous pre-screening of District Court nominees. Nancy Garlock Edmunds (Republican) was nominated by

President Bush on September 11, 1991, to a seat vacated by Richard F. Suhrheinrich when he was appointed to the Sixth Circuit.<sup>2</sup> Edmunds was confirmed by the Senate on February 6, 1992, and received her commission on February 10, 1992. At that time, there were 82 women Article III judges on the federal bench.<sup>3</sup>

Edmunds' confirmation was a refreshing pause from the gridlock in the Senate created by partisan politics following the failed Bork nomination. Edmunds' Senate confirmation hearings started on January 30, 1992. Both of Michigan's Democratic Senators, Riegle and Levin, were in attendance, as were two of Michigan's Congressmen, William Broomfield (Republican) and Bob Carr (Democrat). Riegle began the statement in support of Edmunds with the following observation: "I think the fact that we all appear together representing both parties is an important statement about the quality of the two candidates that we are presenting to you this morning."<sup>4</sup> Riegle went on to summarize her qualifications and biographical information. Riegle continued: ". . . I am pleased that the President has nominated a woman to serve on the Federal court in Michigan. I have long believed that we would have a better judiciary if more women were given the opportunity to serve, and I am very pleased that she has come forward as a nominee."<sup>5</sup> Levin entered his statement of support after Riegle.

After their Senate colleagues, each of the Congressmen present made statements of support for Edmunds. Broomfield said: "As the dean of Republicans in Michigan, I can say that both of the candidates you have before you have unanimous backing . . . I am delighted to be here on an occasion when Republicans and Democrats can get together in the interest of justice."<sup>6</sup> Carr endorsed Broomfield's remarks.

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Riegle added a final word. "Back years ago when President Carter was elected, as the senior Senator from our State at that time, I had the principal responsibility to forward nominations to the administration of Federal judge candidates. We established at that time a citizens screening panel process so that people were encouraged who sought judgeships to make their interest known: that they could be treated on the same footing with everybody else, and that a distinguished panel of citizens of both parties would look at these respective candidates and forward from a small group, then, final recommendations of those that they thought most qualified. And I want to say that Congressman Broomfield, to his great credit, has pressed ahead with that, along with others. So these two candidates are people who come out of a competitive process and an evaluation process that was, as I understand it, quite open and, therefore, I think, represent also, as a result of a process like that, candidates that I think meet a somewhat higher test than might otherwise be the case. We are proud of that system in Michigan that we have it and it is being operated, and these two folks are a product of that process."<sup>7</sup>

Edmunds, who was addressed by the Committee as Ms. Edmunds, introduced a large contingent of family members and friends causing Senator Leahy to joke to laughter: "Is there anybody left in Michigan?"<sup>8</sup> Edmunds later gave substantial sworn testimony in response to substantive questions from Senators Leahy and Thurmond about the exercise of power and the importance of not abusing power.<sup>9</sup> The public portions of the Questionnaire for Judicial Nominees concerning biographical information were read into the record. These exceeded eight pages of information, attesting to the level of pre-nomination vetting then required of judicial nominees.<sup>10</sup> Edmunds went on to be confirmed by unanimous voice vote of the partisan Senate, a further testimony to her qualifications and ability to garner bipartisan support in a divided Senate. Edmunds continues to serve on the bench of the Eastern District of Michigan.

## The Clinton Years

- William Jefferson Clinton 1993-2001
- Yeltsin (1993) Putin (2000)
- Don't Ask: Don't Tell (1993) VT legalizes same sex unions (2000)
- Average Income \$31,230(1993) \$40,343 (2000)
- The Maastricht Treaty formally establishes the European Union (1993) Panama Canal handed over to Panama (2000)
- Islamic Fundamentalists bomb World Trade Center (1993) USS Cole is badly damaged by two suicide bombers (2000)
- Beanie Babies (1993) Tiger Woods wins Grand Slam (2000)
- World Wide Web was born at CERN (1993) Y2K passes without the anticipated serious, widespread computer failures (2000)
- Jurassic Park/ Sleepless in Seattle (1993) Meet the Parents / Gladiator(2000)

President William J. Clinton (Democrat), like Carter, wanted to increase diversity on the federal bench. Clinton claimed that diversity, rather than ideology, was the motivation behind his judicial appointments.<sup>11</sup> Clinton dismantled G. H. W. Bush's judicial appointment infrastructure and reverted back to advisory mechanisms similar to Carter's.<sup>12</sup> During his first year in office, more than half of Clinton's nominees for federal judgeships were women or minorities. In Clinton's eight years of Presidency, of 366 federal judicial appointments, 104 were women.

## Denise Page Hood



Three women were appointed to the bench of the Eastern District during Clinton's term. Ten months after his appointment of Ruth Bader Ginsberg to the United States Supreme Court, Clinton nominated Denise Page Hood (Democrat) to a seat vacated by George Woods. Hood was one of 61 judges of color appointed by Clinton. The slowdown in conducting Senate hearings of Democratic nominations by Republicans in the Senate during Clinton's administration, due to partisan gridlock, began to surface during this time period.<sup>13</sup> Hood was nominated by Clinton on March 9, 1994.

Hood's hearings began May 25, 1994. As a sitting judge, Hood was addressed by the Committee as "Judge." Levin was the first to introduce Hood, followed by a written statement of support by Senator Riegle and statements of support by Representative John Conyers, Jr. (Democrat) and Representative Barbara-Rose Collins (Democrat). After summarizing Hood's education, training and judicial experience, Levin noted: "She was recommended from a long list of qualified candidates to Senator Riegle and myself, from the Citizen Merit Selection Committee that gave us a list of possible nominees. She was on everybody's list, and it was a real easy job, actually, for us to select her from that list."<sup>15</sup>

While Senator Levin's statement was sex and race neutral, Senator Riegle made mention of both. He noted her recent accomplishments, including that ". . . she was sworn in as the first African American woman President in the 157 year history of the Detroit Bar Association . . ." When asked how she felt about [this], Judge Hood replied: "Never mind that I am the first. What's important is that I'm not the last. I hope that we can get to a point where we don't talk about first women, first African American, or first anything." Riegle continued: "And that sums up the true mark of her integrity as a person."<sup>15</sup>

Representative Conyers's statements also specifically addressed sex and race. "Let me note that she is the first African American to come back on the Federal Judiciary in our circuit in a dozen years, and that is a wonderful

sign. By being a woman on top of it, this gives us the kinds of qualities, one of which I would like to make. Her concerns about family violence have served her well on the various committees inside the bar."<sup>16</sup> Representative Collins noted that Governor James Blanchard (Democrat) had elevated her to sit on the Recorder's Court from her position on the 36th District Court, where she remained, until she was elected to the Wayne County Circuit Court. Collins noted that "She has spent the better part of her life being a positive example to young women of color in the City of Detroit."<sup>17</sup>

Concluding the portion of the hearing dealing with qualifications, endorsements and introductory remarks, Senator Levin addressed the Chairman to laughter from the attendees: "If I can give assurance, now that Senator Simpson [Republican] is here, Senator Simpson is a great fan of the Detroit Tigers and I want to assure him that Judge Hood qualifies in that regard as well." To which Senator DeConcini replied: "The judge will be questioned very heavily on that, I am sure."<sup>18</sup>

In the testimony portion of the hearing, Hood introduced her extended family and many friends and colleagues prompting Senator DeConcini to state: "Judge Hood, thank you. Do you run for office?"<sup>19</sup>

The portion of the hearing devoted to questions from the Committee reflects both the continuing interest of the Reagan/Bush Republicans and of the Democrats with judicial temperament, judicial activism, strict constructionism, and commitment to precedent. The length of the hearing and depth of the questioning, in comparison to past practices, is evidence of the growing importance to both parties in having a full, informed understanding of the nominees' positions on these issues, in light of their lifetime appointments. The first cluster of questions concerned judicial temperament. Hood replied in part: "I also try to remember, though, that even through, I am sitting at the bench and hear cases day-in and day-out, that for the people that are out there on the other side of the bar, this may be the only time they come to court. I may be the only judge they see, and what they think about all the rest of the judges in my community is what I do there and how I treat people, including the lawyers, the litigants, the witnesses, and on down to the – well, not down to, but up to, probably – the jurors and the staff people."<sup>20</sup>

With respect to judicial activism, Hood concurred with earlier nominees' testimony that judicial activism and legislating from the bench were inappropriate and that a personal agenda or personal bias had no place. She went on to state: "I think judicial activism is also deciding something beyond what the case requires you to decide, to resolve it on the merits of the case and the law that applies to those facts.

I agree that there is a limit to what the judge should do in any case, and what the judge should do is to follow the law and apply that law to the facts. If you do that, which is what we everyday tell our jurors to do, you won't be involved in that kind of activity."<sup>21</sup> Hood expressed her commitment to follow precedent and carry out what the Constitution and the laws require.

In the late 1970s and 1980s, NOW, the NAACP and numerous other organizations exerted pressure to address the issue of discrimination in membership in private clubs and organizations.<sup>22</sup> Canon 2C of the 1990 American Bar Association Model Code of Judicial Conduct provides: "A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or national origin."<sup>23</sup> Canon 2C is not the only limitation on a judge's membership in organizations. All of a judge's off-the-bench activities must conform to the requirement in Canon 4A(1) that the judge's conduct not "cast reasonable doubt on the judge's capacity to act impartially as a judge."<sup>24</sup>

Senator Simpson, the Detroit Tigers' fan, was highly invested in the issue of private club memberships, both historically and in Hood's hearing. In relative comparison to previous female nominees to the Eastern District bench, Hood was highly involved in civic, community service and bar activities. Senator Simpson latched onto these activities. The final group of questions was posited by him and concerned possible invidious discrimination in Hood's club and organizational memberships.<sup>25</sup> Simpson started: "One of the things that has come up through the years in the Committee . . . I note that there are various clubs listed with all of you. [There were 3 other judges being questioned at the same time.] Are any of these clubs discriminatory by gender or by race, these various clubs? I see women's clubs and black judges' clubs. This comes up on a regular basis, at least such a regular basis we even did a resolution on it once. In fact, they even said that the Masons were racist, so I had to retool my thinking on that, but that wouldn't be the first time . . . Do any of the clubs that you mention here . . . are they discriminatory in any way?"<sup>26</sup> Hood replied: "None of the organizations or clubs that I belong to discriminate either."<sup>27</sup> Simpson countered: "By gender?"

Judge HOOD. No. I do belong to a club that is a mothers' club, but I am sure that we would welcome any father who wanted to belong. [Laughter.]

Senator SIMPSON. That is what the League of Women Voters did, too, years ago, and that is all right with me. But there are no women-only clubs that you belong to?

Judge HOOD. There are none that discriminate against men. There are some in which there are only women members, but not because they discriminate against men.

Senator SIMPSON. See, that is the funny part about all of that. People choose to associate, and I have sat here for 15 years and watched men's clubs receive criticism and women's clubs receive criticism just because they chose to associate, and that is what you are saying you do.

Judge HOOD. As I said, I am sure if a father came through and wanted to be a member, we would be happy to have him. The nature of the organization that I am referring to is that it is a group of women who do activities for their children and other children, kind of a community service group and also a service to our own children.

We haven't had a circumstance yet where there were some children in the club, which is really for them, who, for some unfortunate reason, no longer had a mother. I think in that instance, we would very much welcome their fathers to participate. Really, in the scheme of things, it is a club for families. We encourage the fathers to go on the outings that are planned for the children.

Senator SIMPSON. We have been in so many of those with regard to the issue of invidious discrimination, which is much different than sometimes innocent association, and we have to deal with that regularly. It is an appalling exercise.

Judge HOOD. I don't think any of these are clubs that discriminate against the men.

You mentioned a black judges' association. I was the president of it once, and it also had some non-African-American members, including at least one Hispanic and one Caucasian, at least, that I am aware of at the time I was president.<sup>28</sup>

This concluded Senator Simpson's private club questioning. Five pages of biography were inserted into the hearing record.<sup>29</sup> Hood was confirmed by the Senate on June 15, 1994. She received her commission the next day.

## Victoria A. Roberts



In 1997, Republicans controlled the Senate, and the Clinton administration's judicial nominees were going nowhere. In a fundraising letter signed by former Reagan-appointed, failed Supreme Court nominee, Robert Bork, the conservative public interest group, The Judicial Selection Monitoring

Project, raised the clarion cry that Clinton's judicial legacy would be an "out of control judiciary prone to judicial activism."<sup>30</sup> The Republican-controlled Senate responded to Bork's assertion with a slowdown in scheduling

hearings on Clinton's judicial nominees and in a slowdown on confirmation proceedings overall. The slowdown soon hit crisis proportions.

The consequences became so dire that on New Year's Eve in 1997, Supreme Court Chief Justice William Rehnquist (Republican credentials<sup>31</sup>) felt compelled to admonish Congress in his annual 1997 Year-End Report on the Judiciary that "serious delays in the appointment process" threatened the quality of the federal judiciary.<sup>32</sup> Rehnquist asserted that the judicial system was imperiled by the Senate's inaction. "If Federal jurisdiction remains at its current level – or, worse, increases – judicial vacancies will aggravate the problem of too few judges and too much work. Currently, 82 of the 846 Article III judicial offices in the Federal judiciary – almost 1 out of every 10 – are vacant. Twenty-six of the vacancies have been in existence for 18 months or longer and on that basis constitute what are called 'judicial emergencies.' "The Senate is surely under no obligation to confirm any particular nominee," he said, "but after the necessary time for inquiry, it should vote him up or vote him down to give the president another chance at filling the vacancy."<sup>33</sup> The Republican-controlled Senate got Rehnquist's message. Clinton nominated Victoria A. Roberts (Democrat) on July 31, 1997 to a seat vacated by George LaPlata.<sup>34</sup> The scheduling of Roberts' hearing was initially caught up in the slowdown. Roberts' confirmation hearings were delayed almost an entire year, along with other Clinton nominees. Following Rehnquist's report to Congress, a truce was temporarily called, and Roberts' hearing before the Senate Committee on the Judiciary was finally held on May 14, 1998.

In January 1998, there were 158 women on the Article III bench.<sup>35</sup> Throughout 1998 alone, Clinton appointed an additional 19 women to the bench and saw their nominations clear the Senate.<sup>36</sup> Roberts was Clinton's second African American female appointee to the bench of the Eastern District of Michigan, four years after Hood's appointment.

Roberts and other Clinton nominees were beneficiaries of the temporary truce in processing nominees in the Republican-controlled Senate, as a result of Rehnquist's plea to Congress. Roberts was presented to the Senate Committee on the Judiciary in virtually the last strong bipartisan show of support by Michigan's representatives. This reflected on Roberts' extraordinary qualifications and experience, as well as a chastened Senate. Senator Levin introduced Roberts as well-known to the people of Michigan as the president of the State Bar of Michigan and an individual with a "breathtaking amount of experience."<sup>37</sup> Throughout the hearings, Roberts was addressed as Ms.

Following Levin was Senator Spenser Abraham (Republican) who noted Roberts' work on the transition

team of Detroit Mayor Dennis Archer and her service as the first black female president of the State Bar of Michigan. He also mentioned that she was a recipient of the Wolverine Bar Association's Damon J. Keith Community Spirit Award, among numerous other awards and community service.<sup>38</sup>

Senator Orrin A. Hatch (Republican), the Chairman of the Committee, acknowledged Roberts' bipartisan support adding: "Thank you Senator Abraham. I think that is high praise, indeed, for both Senators to come and do this. I think Fred [Upton]; you are here for the same nominee."<sup>39</sup> Representative Fred Upton (Republican) echoed the remarks of both Senators and added "a Republican voice to this too."<sup>40</sup> Continuing to request "that I think that she would be a valuable addition to our State, and I would urge that the Committee favorably report her to the Senate floor for quick confirmation,"<sup>41</sup> Senator Patrick Leahy (Democrat) added: "Usually Congressman and I agree, sometimes disagree, but I think we both agree that she would make a great judge."<sup>42</sup>

In the portion of the hearing reserved for personal statements, Roberts introduced her mother, sister, daughter, boyfriend and a former law partner. Roberts was questioned on substantive matters, including her willingness to impose the death penalty and on issues involving the equal protection clause of the 14th Amendment.<sup>43</sup> Reflecting the temporary pause in grilling nominees, post-Rehnquist's admonition to Congress, Hatch observed: "I haven't asked you many tough questions. But that is not the purpose, either." He picked up the earlier Republican theme of judicial activism. "I think the purpose is to just get your commitment to really live up to the rule of judging and the moral and ethical positions that judges really ought to live up to as you take these very, very important positions. I think they are the closest positions to godhood in this life."<sup>44</sup> A full 17 pages of biographical information, was inserted into the record followed by additional pages of financial disclosures.<sup>45</sup> Hatch was as good as his word to "do my best to get you all through . . ."<sup>46</sup> Roberts was confirmed by the Senate on June 26, 1998, and she received her commission on June 29, 1998.

## Marianne O. Battani



The year 2000 was a Presidential election year. Presidential election years tend to trigger slowdowns in the judicial appointment process, as the party out of power has incentive to stall, in the hopes of winning a majority and gaining control over nominations. Conversely, the party holding the Presidency has the incentive to push as many nominees

through as possible to preserve the Presidential legacy and agenda through these lifelong appointments.<sup>47</sup> As of January 2000, there were 183 women judges on the Article III bench.<sup>48</sup>

Marianne O. Battani (Republican<sup>49</sup>) was nominated by President Clinton only a year after Roberts' confirmation, to a seat vacated by Anna Diggs Taylor. Unlike Kennedy's hearing back in 1970, which took a mere 10 minutes in its entirety, Battani's hearing spanned 187 pages of Senate hearing transcript.<sup>50</sup> Senator Leahy noted: This afternoon, the Judiciary Committee holds only its second confirmation hearing for judicial nominees this year."<sup>51</sup> She was addressed as "Judge." Senators Levin and Abraham introduced Battani in a bipartisan show of support, noting that Battani had emerged as one of two candidates recommended by Levin to Clinton following a long screening process. She was one of two chosen from six finalists from an initial field of 60. Following the introduction of Battani's mother, sister and daughter, Levin noted the group of supporters was small but that nothing was to be read into this, to which Chairman Thurmond replied: "It is quality rather than quantity."<sup>52</sup>

Michigan's admirable defiance of the national trend of partisan hostility to the other party's nominees is reflected in the statement of Senator Abraham, to whom Levin yielded his right to introduce Battani: "We are very pleased today to jointly present these two nominees to the committee. I also want to publically acknowledge Senator Levin's approach to the process. I think in the selection of these two individuals to recommend to the White House, he not only observed, I think, the appropriate and highest level of scrutiny in terms of the committee that made recommendations in its efforts, but also the involvement and consultative relationship with our office and with me and I appreciate that very much, Senator."<sup>53</sup>

Among Battani's many accomplishments, she was a former President, Women Lawyers Association of Michigan, a member of the National Association of Women Judges, and a member of both the Michigan Supreme Court Task force on Gender Issues in the Courts and the State Bar of Michigan Task Force on the Racial/Ethnic and Gender Issues in the Courts.<sup>54</sup>

Battani was questioned by Thurmond about her reasoning in holding that a Michigan statute capping pain and suffering damages in a medical malpractice case was unconstitutional under both the Michigan and United States Constitutions, in a case for which there was no Michigan precedent. Battani was also questioned by Thurmond regarding her approach to handling the very backlog in federal cases occasioned by the slowdown in the Senate's confirmation of Clinton's judicial appointees. Battani's reply was to suggest the use of arbitration and mediation and to follow the docket control methods she had used in the past.<sup>55</sup>

It might be speculated that the comparatively light questioning during the hearing was a byproduct of her ostensibly Republican credentials before a Republican-controlled Senate, despite being nominated by a Democratic President.

However, Battani was subject to seven post-hearing written follow-up questions posed by Senator Bob Smith (Republican New Hampshire). Smith has been described as the most conservative Senator from the Northeast.<sup>56</sup> It may be speculated that Smith initiated this procedural variation because he was concerned that Battani might turn into the proverbial "wolf in sheep's clothing," despite her Republican credentials, because she came before the Senate by Levin's recommendation to Clinton's White House and because of her judicial approach to the constitutional issues in the case lacking precedent.

Battani was the first Michigan female nominee to be subjected to written post-hearing questions. The seven questions concerned the meaning of "advise and consent" in Article II, Section 2, of the Constitution, her positions on adherence to precedent, judicial activism and how she would decide, if she were a Supreme Court Justice, the 1856 case of *Dred Scott v. Sandford*.<sup>57</sup> Her replies were in writing and were entered into the hearing transcript.<sup>58</sup>

Battani was confirmed by the Senate on May 24, 2000, and she received her commission on June 2, 2000. She assumed senior status on June 9, 2012.

## The Next Nominees

Once again, the United States is in an election year – 2012 – and endures a contentious, divided government. As of January 1, 2012, there were 289 women judges on the Article III bench.<sup>59</sup> Our nation's judicial appointment history since Nixon has guaranteed that lifetime court appointments to the Eastern District of Michigan will continue to be dictated by the political and social concerns of the day, including nominees' political and judicial ideologies, gender and race. It is to be hoped that Michigan's elected representatives continue their practice of bipartisan support of nominees and the use of merit selection committees to continue to find the best candidates for the job: men and women of all experience and backgrounds. ■

## About the Author

Susan H. Patton is Of Counsel at Butzel Long, a professional corporation, in its health care law group. Ms. Patton served as law clerk to the Honorable James P. Churchill in the United States District Court for the Eastern District of Michigan for two years: 1979-1981. Ms. Patton then served as law clerk to the Honorable Cornelia G. Kennedy in the United States Court of Appeals for the Sixth Circuit for two years: 1981-1983.

## End Notes

1. Biographical Directory of Federal Judges.
2. Biographical Directory of Federal Judges.
3. Federal Judicial History Office, supra n. 13.
4. Reproduced from the National Archives, Transcript of the United States Senate, Committee on the Judiciary, Washington D.C., Thursday, January 30, 1992 p. 2. David W. McKeague was the other nominee.
5. Id.
6. Id. 4.
7. Id. 6.
8. Id.
9. Id. 24-27.
10. Id. 125-136, 142.
11. Robert A. Carp & Donald Stidman, *Judicial Process in America* 243 (1998).
12. John Anthony Maltese, *Confirmation Gridlock: The Federal Appointment Process Under Bill Clinton and George W. Bush*, 5 J. App. Prac. & Process 1, 15 (2003) [Confirmation Gridlock].
13. Sarah Wilson, *Appellate Judicial Appointments During the Clinton Presidency: An Inside Perspective*, 5 J. App. Prac. & Process 29, 47 (2003). *Confirmation Gridlock*, supra n. 87, 15.
14. Reproduced from the National Archives, Transcript of the United States Senate, Committee on the Judiciary, Washington D.C., Wednesday, May 25, 1994, 928.
15. Id. 928.
16. Id. 929.
17. Id.
18. Id.
19. Id. 944.
20. Id. 947.
21. Id. 949.
22. At the time of Judge Kennedy's commission to the Eastern District of Michigan, women, including Judge Kennedy, were excluded from membership at the all-male Detroit Athletic Club and were required to enter through a side entrance.
23. *1990 American Bar Association Model Code of Judicial Conduct*. "Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired. Section 2C refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. Id. Commentary: The principle that a judge should not be a member of an organization that practices invidious discrimination was first formally adopted by the judiciary in a resolution passed by the United States Judicial Conference in March 1981. The resolution stated that a "judge should carefully consider whether the judge's membership in a particular organization might reasonably raise a question of the judge's impartiality in a case involving issues as to discriminatory treatment of persons on the basis of race, sex, religion, or national origin." In 1980, the American Bar Association House of Delegates amended the commentary to Canon 2 of the 1972 model code to add: "It is inappropriate for a judge to hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or national origin. Membership of a judge in an organization that practices invidious discrimination may give rise to perceptions by minorities, women, and others, that the judge's impartiality is impaired. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on the history of the organization's selection of members and other relevant factors. Ultimately, each judge must determine in the judge's own conscience whether an organization of which the judge is a member practices invidious discrimination." Id.
24. Based on that restriction, judges have been cautioned against belonging to organizations such as the Fraternal Order of Police (*see, e.g., Alabama Advisory Opinion 78-35*); an association of defense lawyers or plaintiffs' lawyers (*see, e.g., Louisiana Advisory Opinion 91 (1991), Georgia Advisory Opinion 98 (1987)*); the League of Women Voters (*Washington Advisory Opinion 95-14*); and the Anti-Defamation League of B'nai B'rith, the Sierra Club, and the National Association for the Advancement of Colored People (*U.S. Advisory Opinion 40 (1975); U.S. Advisory Opinion 62 (1980)*).
25. [http://articles.chicagotribune.com/1990-06-08/news/9002160867\\_1\\_private-clubs-union-league-club-women-or-minorities](http://articles.chicagotribune.com/1990-06-08/news/9002160867_1_private-clubs-union-league-club-women-or-minorities)
26. Id. 951.
27. Id.
28. Id.
29. Id.
30. *Confirmation Gridlock*, supra n. 87, 17-18.
31. Between 1953 and 1969, Rehnquist was active in the Republican Party and served as a legal advisor to Barry Goldwater's 1964 presidential campaign. He was appointed to the United States Supreme Court by President Nixon.
32. Id.
33. <http://www.nytimes.com/1998/01/01/us/judiciary-report-congress-is-prodded.html?pagewanted=2&src=pm>
34. Biographical Directory of Federal Judges.
35. Federal Judicial History Office, supra n. 14.
36. Id.
37. Reproduced from the National Archives, Transcript of the United States Senate, Committee on the Judiciary, Washington D.C., Thursday, May 14, 1998 p 1.
38. Id. 3.
39. Id.
40. Id.
41. Id. 4.
42. Id.
43. Id. 17.
44. Id. 23.
45. Id. 104-138.
46. Id. 23.
47. Jason Eric Sharp, *Constitutional Law – Separation of Powers – Restoring the Constitutional Formula to the Federal Judicial Appointment Process: Taking the Vice Out of "Advice and Consent"* Hein Online, 26 UALR L. Rev. 747 (2003-2004), 767, citing Michael J. Gerhardt, *The Federal Appointment Process* 135, 301 (2000).
48. Federal Judicial History Office, supra n. 13.
49. Battani was a Michigan circuit court judge who had been first appointed to the bench of the Common Pleas Court of the City of Detroit by Governor Milliken, a Republican, in 1981, who then again appointed her to the Wayne County Circuit Court in 1982.
50. Reproduced from the National Archives, Transcript of the United States Senate, Committee on the Judiciary, Washington D.C., Thursday, March 23, 2000, 187.
51. Id.
52. Id. 192.
53. Id.
54. Id. 288.
55. Id.
56. [http://en.wikipedia.org/wiki/Robert\\_C.\\_Smith](http://en.wikipedia.org/wiki/Robert_C._Smith)
57. Id. 374.
58. Id.
59. Federal Judicial History Office, supra n. 13.

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