



# AMERICAN BAR ASSOCIATION

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**STATEMENT**

**of**

**STEPHEN L. TOBER**

**and**

**DOREEN D. DODSON**

**on behalf of the**

**STANDING COMMITTEE ON FEDERAL JUDICIARY  
of the  
AMERICAN BAR ASSOCIATION**

**concerning the**

**NOMINATION OF  
THE HONORABLE VANESSA L. BRYANT**

**to be**

**JUDGE OF THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT**

**before the**

**COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE**

**July 19, 2006**

**(Resubmitted for the Hearing on September 26, 2006)**

## **STATEMENT OF STEPHEN L. TOBER**

Mr. Chairman and Members of the Committee:

My name is Stephen L. Tober. I am a practicing lawyer in Portsmouth, New Hampshire, and I am the Chair of the American Bar Association's Standing Committee on Federal Judiciary. I am submitting this written statement for the hearing record to present the Standing Committee's peer review evaluation of the nomination of Judge Vanessa L. Bryant to be a United States District Court Judge for the District of Connecticut. This statement is divided into two sections. In this first section, I am pleased to summarize the Standing Committee's investigative procedures and present an overview of the investigation of the nominee. In the second section, Doreen D. Dodson, a former member of the Committee who conducted this investigation, explains the basis for our rating of Judge Bryant.

After careful investigation and consideration of her professional qualifications, a substantial majority of our Committee is of the opinion that the nominee is "Not Qualified" for the appointment. A minority found her to be "Qualified."

### **A. Procedures Followed By the Standing Committee**

Before discussing the specifics of this case, I would like to review briefly the Committee's procedures. A more detailed description of the Committee's procedures is contained in the Committee's booklet (commonly described as our *Backgrounder*), *Standing Committee on Federal Judiciary: What It Is and How It Works* (2005).

The ABA Standing Committee investigates and considers only the professional

qualifications of a nominee -- his or her competence, integrity and judicial temperament. Ideology or political considerations are not taken into account. Our processes and procedures are carefully structured to produce a fair, thorough and objective peer evaluation of each nominee. A number of factors are investigated, including intellectual capacity, judgment, writing and analytical ability, knowledge of the law, breadth of professional experience, courtroom experience, character, integrity, open-mindedness, courtesy, patience, freedom from bias, commitment to equal justice under the law and general reputation in the legal community.

The investigation is ordinarily assigned to the Committee member residing in the judicial circuit in which the vacancy exists, although it may be conducted by another member or former member. In the current case, Ms. Dodson, in her capacity as a former member, was kind enough to undertake this investigation because the current Committee member from the Second Circuit was unavailable to do so.

The investigator starts his or her investigation by reviewing the candidate's responses to the public portion of the Senate Judiciary Committee questionnaire. These responses provide the opportunity for the nominee to set forth his or her qualifications, including professional experience, significant cases handled and major writings. The investigator makes extensive use of the questionnaire during the course of the investigation. In addition, the investigator examines the legal writings of the nominee and personally conducts extensive confidential interviews with those likely to have information regarding the integrity, professional competence and judicial temperament of the nominee, including, where pertinent, federal and state judges, practicing lawyers in both private and government service, legal services and public interest lawyers,

representatives of professional legal organizations, and others who are in a position to evaluate the nominee's professional qualifications. This process provides a unique "peer-review" aspect to our investigation.

Interviews are conducted under an assurance of strict confidentiality. If information adverse to the nominee is uncovered, the investigator will advise the nominee of such information if he or she can do so without breaching the promise of confidentiality. During the personal interview with the nominee, the nominee is given a full opportunity to rebut the adverse information and provide any additional information bearing on it. If the nominee does not have the opportunity to rebut certain adverse information because it cannot be disclosed without breaching confidentiality, the investigator will not use that information in writing the formal report and the Standing Committee, therefore, will not consider those facts in its evaluation.

Sometimes a clear pattern emerges during the interviews, and the investigation can be briskly concluded. In other cases, conflicting evaluations over some aspect of the nominee's professional qualifications may arise. In those instances, the investigator takes whatever additional steps are necessary to reach a fair and accurate assessment of the nominee.

Upon completion of the investigation, the investigator submits an informal report on the nominee to the Chair, who reviews it for thoroughness. Once the Chair determines that the investigation is thorough and complete, the investigator then prepares the formal investigative report, containing a description of the candidate's background, summaries of all interviews conducted (including the interview with the nominee) and an evaluation of the candidate's professional qualifications. This formal report, together with the

public portion of the nominee's completed Senate Judiciary Committee questionnaire and copies of any other relevant materials, is circulated to the entire committee, composed of fourteen "circuit" members and the Chair. After carefully considering the formal report and its attachments, each member submits his or her vote to the Chair, rating the nominee "Well Qualified," "Qualified" or "Not Qualified." An investigator who is not a current member of the Standing Committee does not vote, and the Chair votes only in case of a tie.

I would like to re-emphasize that an important concern of the Committee in carrying out its function is confidentiality. The Committee seeks information on a confidential basis and assures its sources that their identities and the information they provide will not be revealed outside of the Committee, unless they consent to disclosure or the information is so well known in the community that it has been repeated to the Committee members by multiple sources. It is the Committee's experience that only by assuring and maintaining such confidentiality can sources be persuaded to provide full and candid information. However, we are also alert to the potential for abuse of confidentiality. The substance of adverse information is shared with the nominee, who is given a full opportunity to explain the matter and to provide any additional information bearing on it. If the information cannot be shared with the nominee, it is not included in the formal report and is not considered by the Committee in reaching its evaluation.

#### **B. The Investigation of the Nominee**

Judge Bryant was nominated on January 25, 2006. Ms. Dodson, whom I assigned to the investigation, began her effort on March 9, 2006, six days after receiving the

nominee's responses to the public portion of the Senate Judiciary Committee questionnaire.

On April 26, 2006, Ms. Dodson submitted her informal report to me, reflecting the results of her investigation, including summaries of all of her confidential interviews and a description of her interview with the nominee. I carefully reviewed the report with Ms. Dodson and was satisfied with the quality and thoroughness of the investigation and the report. On April 27, 2006, Ms. Dodson's formal report was transmitted to all of the members of the Committee. Those who had questions were encouraged to contact Ms. Dodson directly.

After all of the Committee members had an opportunity to study the report and all the attachments, each member reported his/her vote regarding the rating of the nominee to the chair. A substantial majority of the Committee found the nominee "Not Qualified" and a minority found her "Qualified." This vote was reported to you in a timely manner on May 4, 2006.

**STATEMENT OF DOREEN D. DODSON**

My name is Doreen Dodson. I have practiced law in St. Louis, Missouri for over thirty years and was the Eighth Circuit representative to our Committee from August, 2001 to August, 2004. During that time I conducted many investigations in the Eighth and other Circuits and participated in the evaluation of approximately 230 nominees to the U.S. Courts of Appeal and the U.S. District Courts. As an alumna of the Committee, I was asked to conduct the investigation of the qualifications of Judge Vanessa Lynne

Bryant for appointment to the United States District Court, District of Connecticut.

Our Committee has concluded that Judge Bryant is Not Qualified for appointment to the Federal District Court. This conclusion was reached after a careful review of the written submissions of Judge Bryant, my personal interview with her, and confidential interviews of 35 Federal and State court judges, both trial and appellate, and over 30 practicing lawyers in Connecticut. I also initiated contact with another 11 judges and lawyers who either did not return my detailed messages after several attempts or who told me that they preferred not to comment. Another 29 judges and lawyers who were contacted told me that they did not know Judge Bryant well enough to comment. In total, I contacted over 100 lawyers and judges and interviewed 65 of them.

During my conversations with those who consented to an interview, I inquired about the context in which the person knew the nominee and what the person knew about the nominee's integrity, judicial temperament and professional competence that would impact her qualifications to serve on the Federal court. I also inquired if they knew any reason the nominee was not qualified to serve. I solicited information from diverse members of the legal community, including lawyers in private and government service, legal services lawyers and public defenders, prosecutors and representatives of professional organizations, including specialty bar associations. I also made a particular effort to locate judges and lawyers who had had trials before the nominee or other significant interaction with her in her legal capacity. Of the 65 persons I interviewed, over 50 were in that category. I also reviewed other pertinent materials, including opinions the nominee selected and various articles and publications in the public domain.

In addition to those interviews I spent approximately 2 ½ hours with Judge Bryant

in her chambers. During the course of our meeting I raised the principal concerns that had been identified during my investigation and Judge Bryant was given an opportunity to rebut or provide context for these concerns and to provide any additional information that she desired to offer.

None of the interviewees had any concern about her integrity. A majority (but not all) of those interviewed, both lawyers and judges, raised concerns about Judge Bryant's judicial temperament and many raised additional concerns about her professional competence.

On the issue of judicial temperament, the Committee's "Backgrounder" states that "in investigating judicial temperament, the Committee considers the nominee's compassion, decisiveness, open-mindedness, courtesy, patience, freedom from bias and commitment to equal justice under the law."

During Judge Bryant's years on the bench she principally has held administrative positions, as either presiding judge or administrative judge. Lawyers in all areas of practice, both civil and criminal, reported that they found Judge Bryant formal but pleasant and cordial outside the court. But, when she was engaged in court business, they said she was rigid, unbending and unreasonable in her adherence to scheduling and other trial issues, was impatient with lawyers and was sometimes rude and inconsiderate to lawyers and litigants. Some interviewees said this attitude extended to court personnel. While I understand, and took into account, that trial lawyers like to control their docket, often feel that continuances should always be granted and may not be fond of a judge who does not grant them, our Committee could not discount the number of complaints from judges and from lawyers in all areas of practice about the nominee's temperament.

Comments from judges and lawyers included statements such as: “very rigid, tough, formalistic”; “immovable and intractable”; “very hard on staff”; “curt, difficult and unreasonable”; “impatient”; “ill-tempered and short with those appearing before her”; “domineering and exasperated with lawyers”; “arrogant and unreasonable”; “contentious and short-tempered”; “tough and stern”; “makes up her mind quickly, won’t change her opinion, brusque”; “erratic”; “rushes to judgment and difficult to change her mind”; “arbitrary”; “impatient and short”; “can be spitting angry”; “pretty unpleasant and imperial”; “condescending to lawyers and litigants”.

A small minority of attorneys who have appeared before the nominee did not report having any problems with her and several reported having had positive experiences. However, a substantial majority of the Committee felt these comments did not make up for the large number of adverse comments concerning her judicial temperament. It was particularly significant to the Committee that temperament concerns were expressed about her from her early days on the bench up to the present day.

A judge who is trying to run an efficient courtroom and who is appropriately concerned with moving cases will almost certainly irritate some lawyers or litigants at some point. Even the most gracious judge can become impatient or irritated occasionally, perhaps particularly when they hold an administrative position and are hearing motions for continuances. However, the negative comments concerning the nominee’s judicial temperament were so widespread and were from so many judges and lawyers in every practice area, that our Committee could not discount them.

In addition, many lawyers and judges interviewed, including lawyers who have appeared before the nominee as well as some of her colleagues on the bench, expressed

concerns about the nominee's professional competence. According to the Backgrounder, "professional competence encompasses such qualities as intellectual capacity, judgment, writing and analytical ability, knowledge of the law and breadth of professional experience." Many of those interviewed expressed substantial concern about these factors.

Judge Bryant was appointed to the Connecticut Superior Court in September, 1998, a little less than eight years ago. Prior to her appointment, her career was principally that of a bond attorney. Her only experience in a courtroom, prior to her appointment to the bench, consisted of handling three paternity cases as an associate at her first law firm; second chairing, as local counsel with no courtroom responsibilities, a Boston firm in a contract case; and serving as a Chapter 13 Trustee for two years. The Committee rightfully believes that substantial courtroom and trial experience are particularly important for nominees to the District Court, a trial court. A District Court judge must apply the Federal Rules of Civil and Criminal Procedure and the Rules of Evidence, an understanding of which is developed over time. Judge Bryant had almost no trial experience before she was appointed to the state court bench.

The Backgrounder states that the lack of substantial courtroom and trial experience can be compensated for by the presence of other experience that is similar to trial work (or by significant evidence of distinguished accomplishments in the field of law). In her case, that other experience arguably could have been her years of experience on the state trial court. However, Judge Bryant has served on the bench principally in an administrative capacity, having been either a presiding judge in a specialty court or a presiding or administrative judge in several civil divisions. In those roles, she chiefly has

heard and ruled upon preliminary motions, held sentencings, presided over a drug court and handled scheduling matters for the efficient operation of the courts. She has not had much opportunity to preside over jury trials, civil or criminal.

Many of those interviewed made comments regarding her professional competence such as: “opinions poorly done, confused”; “overwhelmed by complex issues”; “written opinions difficult to decipher”; “cases she handled did not require much skill”; “makes up her mind quickly and difficult to change”; “may not bother to do legal research, gets a take and that’s how she goes”; “little in the way of a significant body of work”; “very serious concerns... about her judgment, quality of work”; “lacks significant trial experience”; “criminal law is not her strong suit, very unfamiliar with the field”; “serious concerns about the way she handled criminal evidentiary matters”; “unfamiliar with family law”; “nervous, uncertain in certain areas”; “inexperience and inability to make up her mind in some evidentiary issues”; “lack of confidence”; “not a heavyweight”; “significant delays in writing opinions”, “made snap judgments (at trial) without thinking about implications”; “hard time getting her to submit... questions to a jury even though law was clear”; “problem with her ability to grasp certain legal concepts”; “because of her lack of trial experience as a lawyer, she doesn’t read situations very well with attorneys”. Comments such as these were common in the over 65 interviews I conducted. Judge Bryant did provide ten opinions, some of which were the basis for certain of the comments listed above, from lawyers and/or judges involved in those cases. As presiding or administrative judge, she has not had an opportunity to write a large volume of opinions and has not done other legal writing. In general, most of the submitted opinions demonstrate adequate to good legal analysis and writing in fairly

standard cases. One of the opinions, which did involve complex issues, was confusing. Another was written by the nominee only after she was ordered to do so by the Appellate Court and after a subsequent Motion to Compel was filed.

Federal judges today face massive criminal dockets and Judge Bryant has almost no experience in criminal matters, either on or off the bench. Federal judges also often face complicated and challenging legal and factual issues. A district court judge must make instant decisions in the courtroom, during trial, that require a solid grounding in substantive and procedural law and experience with juries. As reported by the interviewees, the nominee, even after nearly eight years on the Court, has little experience to prepare her for this task, due to her assignments as a presiding or administrative judge whose principal role is to move cases.

I note that it was not necessarily the same interviewees who had concerns about the nominee's temperament and competence. In the majority of interviews conducted, the interviewee expressed concerns about competence or judicial temperament but not both. I was careful to probe the specific bases for their concerns and many had experienced one, but not the other, problem.

Our Committee, after reviewing my report on the nominee, could not discount the number of complaints about the nominee's temperament or the number of complaints about the nominee's professional competence, both of which appeared consistently through her years on the bench. As a result, after careful consideration, a substantial majority of the Committee found the nominee "Not Qualified" for appointment to the United States District Court for the District of Connecticut.

I note in closing that many interviewees stated they knew many other lawyers or

judges with negative opinions who refused to have their names given to me by those who did consent to be interviewed. This resulted in a longer than usual investigation to assure myself that I was hearing from all diverse facets of the bench and bar, and that the interviewees were, as discussed above, representatives of plaintiffs and defendants, prosecutors and public defenders, large and small firms, minority groups, persons of color, those with current and past experience with the nominee and from all the areas in Connecticut where she has presided. Our Committee takes most seriously its responsibility to conduct an independent examination of the professional qualifications of judicial nominees. There is no bright-line test as to whether a specific nominee is qualified or is not. We do not weigh the comments, positive and negative on a scale for a particular nominee. Rather, in making our evaluation, we draw upon our previous experience, the information and knowledge we gain about the nominee during the course of the investigation and our independent judgment. We apply our standards and criteria impartially to each nominee.

Thank you for inviting us to share our views with you.