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WITHDRAWAL SHEET

Ronald Reagan Library

Collection Name LOZANO, DIANA: FILES

Withdrawer

KDB 11/2/2010

File Folder O'CONNOR, SANDRA [WOMEN IN JUDICIARY] (2)

FOIA

F07-0122/02

Box Number 10773

FLOWERS, P

11

DOC NO	Doc Type	Document Description	No of Pages	Doc Date	Restrictions
1	MEMO	ELIZABETH DOLE TO EDWIN MEESE AND JAMES BAKER RE ATTACHED MATERIAL	1	9/21/1982	B6
2	MEMO	RENEE SZYBALA TO EDWARD WILSON (PARTIAL)	1	8/4/1981	B6

Freedom of Information Act - [5 U.S.C. 552(b)]

B-1 National security classified information [(b)(1) of the FOIA]

B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]

B-3 Release would violate a Federal statute [(b)(3) of the FOIA]

B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]

B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]

B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]

B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]

B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

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1 MEMO

1 9/21/1982 B6

ELIZABETH DOLE TO EDWIN MEESE AND JAMES
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DIRECTOR OF THE MINT
WASHINGTON, D.C. 20220

*File:
Resumes.*

September 7, 1982

Ms. Diana Lozano
Special Assistant to
the President
The White House
Washington, DC 20500

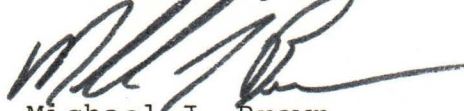
Dear Diana:

Very pleased with your interest in our efforts to have Mrs. Batchelder appointed to the bench. I have talked with Representative Batchelder and they will contact you directly. Incidentally, Mrs. Dole was in their area at a fundraiser earlier this year for the Ashland County Republican Party.

Enclosed you will find a clipping on the Director's recent speech before the Ohio Women's Hall of Fame.

Thanks again.

With Best Regards,



Michael J. Brown
Special Assistant to
the Director

Enclosure

WILLIAMS AND BATCHELDER

ATTORNEYS AT LAW
105 WEST LIBERTY STREET
P. O. BOX 394

MEDINA, OHIO 44258

TELEPHONES
AREA CODE 216
(MEDINA) 725-6666
(CLEVELAND) 225-1300

WM. G. BATCHELDER, JR.
C. NEVADA JOHNSON, JR.
WM. G. BATCHELDER III
ALICE M. BATCHELDER
ROBERT J. BUX

FRANK HEATH (1852-1931)
JOHN A. WEBER (1895-1958)
HAROLD L. WILLIAMS (1907-1981)

September 9, 1982

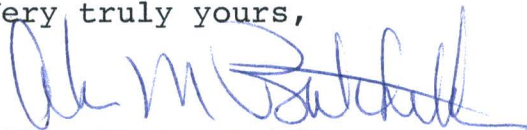
Ms. Diana Lozano
Special Assistant to the President
The White House
Washington, D.C. 20500

Dear Ms. Lozano:

Enclosed please find the resume which we discussed yesterday on the telephone. The expanded resume section was put together in part to comply with a request from the White House and, somewhat later, to provide a somewhat more expanded overview of my practice. If there is anything more which I can provide, I will, of course, be more than happy to do so.

It certainly was a pleasure to talk with you yesterday and I will keep in touch as you suggested.

Very truly yours,



Alice M. Batchelder

AMB:lm

Enclosure (1)

EXPANDED RESUME

ALICE M. BATCHELDER

Political Activity on behalf of President Reagan:

In January 1976, a group of us who wanted the President to enter the Ohio primary met with some of the Reagan strategy people to urge them to enter the primary early enough for us to select capable delegates and to mount an effective campaign. When the decision to enter the Ohio primary was finally made, I raised the money for a mailing to the Republican voters in Medina County. I wrote the copy, arranged for the printing, coordinated the addressing and stuffing of a countywide letter in support of Ronald Reagan.

In 1980, we contributed \$500.00 to the Ohio Delegates for Reagan Committee. My husband was a member of the official seven-member Steering Committee for the Ohio Reagan for President Campaign and General Counsel for the Ohio Reagan for President Committee. I was actively involved in assisting him as counsel, although without any official position, and I also did background research work for him relative to his serving on the Platform Committee. I also campaigned actively, both during the primary and general election campaigns on behalf of President Reagan, including appearances before various women's and other groups where I spoke in opposition to the ERA and in support of President Reagan's position regarding it.

Conservative Organizational Activities:

I am currently counsel to and a member of the board of trustees of Birthcare of Medina, Inc., a Medina County organization which offers alternatives to abortion. I have been instrumental in the growth of this organization which provides assistance to women with unwanted pregnancies, including financial assistance, counselling, and private placement of infants for purposes of adoption pursuant to Ohio law.

I have served for several years on Medina County's Mental Health Board where I have within the past two years been in a position to advance the President's concept of New Federalism by joining with several other Board members to compel the major recipient of tax monies disbursed by the Board to reorganize in order to provide real accountability for funds received by them and to function subject to greater local control. I am also serving as counsel to a new local organization which will provide, in the private sector, screening, referral and aftercare for chemically dependant youth.

Professional Activities:

Ohio Board of Bar Examiners 1975-1980

As one of the twelve members of the Ohio Board of Bar Examiners, I was responsible for drafting essay questions covering the

entire range of laws included on the Ohio Bar Examination, and for grading the responses of the examiners. From 1978-1980, I was one of the Senior Examiners; our responsibility was to review and revise each question which appeared on the examinations. The Ohio Bar Examination is given twice each year, and each examination is composed entirely of new questions. The work of drafting and reviewing these questions requires meticulous research and great precision and clarity; the work of grading requires objectivity, consistency and patience, as well as a good grasp of the law.

Constitutional Law Drafting Committee of the Multi-State Bar Examination 1980-present

This committee consists of three professors of constitutional law and two practicing attorneys, of which I am one. The work of the committee is to draft the questions on constitutional law which appear on the Multi-State Bar Examination, now being given by more than 35 states, either as part of the respective state's bar examination or as the state's only bar examination. Each member of the committee is required to draft his own individual questions which are then reviewed and revised by the committee at its semi-annual meetings. This work requires not only a thorough and detailed knowledge of constitutional law, but dedication to precision and clarity because the questions are multiple-choice in form.

Quasi-judicial experience:

I have been designated by the Ohio Department of Education pursuant to state law and P.L. 94-142 as an independent hearing officer to preside over the due process hearings provided for in situations of disagreement between the school and the parents of a handicapped child over the child's placement in classes or programs for the handicapped. In one case, I was appointed to preside over the due process hearing demanded by Cleveland's Legal Aid (Legal Services Corporation) on behalf of a child with multiple handicaps, in which Legal Aid was seeking a precedent in a wide-ranging remedy with vast financial implications for local schools. After two days of trial and negotiations, I was able to fashion a remedy for the specific child which was satisfactory to both the child's legal representatives and the school district, and which avoided the sweeping precedent initially sought by Legal Aid.

Nature of law practice:

I am a member of a 103-year-old firm whose basic thrust over the years has been a vigorous advocacy of judicial restraint and a vigorous defense against the spread of judicial activism. A significant portion of our practice is the representation of insurance companies in personal injury defense work. For example, I served as one of two trial counsel and the sole appellate counsel for one of two defendants through argument and ultimate victory in the Ohio Supreme Court in a case in which the plaintiff was attempting to expand liability by imposing strict liability on owners or keepers of cattle for injury caused by the animals'

escape onto the highway, and to extend that liability to absentee landlords. I was successful in obtaining a ruling from the Ohio Supreme Court that the Ohio Legislature had declined to legislate strict liability in such circumstances, and that the Court could not impose it judicially.

Another aspect of our law practice has been the representation of various financial institutions. In a much publicized multi-million dollar insolvency of a developer we represented two of more than half a dozen thrift institutions, both of which sought our counsel and agreed to our representation of both in the litigation. Judgments in foreclosure were obtained for both after the start of trial by stipulation of all of the parties, and the trial court ordered separate trial of the developer's counterclaims. The developer then attempted, through numerous changes in counsel and finally pro se, to relitigate the issues adjudicated in the foreclosure proceedings. I prepared the litigation and the appellate briefs through the more than five years of collateral attacks by the developer. Our consistent insistence on limitation of litigation mandated by the doctrine of res judicata finally prevailed. This was one of the more important lawsuits in our county in some years, and involved counsel from four counties.

Over the years I have developed an expertise in Ohio's statutory enactment of the Uniform Commercial Code, the pre-eminent purpose of which is to provide a clear and predictable application of the law governing commercial transactions. Noteworthy among the UCC matters with which I have dealt was a complex case in which the Ohio Court of Appeals for our district agreed that my client, a sand and gravel operation, had not made a firm offer and therefore could not be held to performance under the Uniform Commercial Code. The Appellate Court then went on to hold, with complete disregard for the Code and its underlying purposes, that vague principles of equity demanded that my client be required to perform regardless of the UCC provisions. Despite my urging, my client declined to appeal this matter to the Ohio Supreme Court.

I have on many occasions had the opportunity to represent clients whose cause has been dependent upon a strict construction of legislative enactments. This is the philosophical position with which I am most comfortable. The legislature's function is to make the law; the courts' should be to apply it. In one such case I served as counsel to the Committee of Petitioners attempting to place a municipal cable television franchise ordinance on the ballot in the form of a referendum. The Committee intervened in an original action filed by the franchisee in the Supreme Court of Ohio seeking to prevent the referendum from appearing on the ballot on the grounds that cable television was a public utility and thus governed by a more stringent referendum statute. I prevailed in convincing the Supreme Court that a strict construction of Ohio's public utility statute was proper, even though most of the attributes of a utility are present in a cable television franchise, and since cable television is not specified in the statute, it is not a public utility.

I served as counsel in a case in which we prevailed against Medina County as we urged strict construction of the civil service laws of the State of Ohio. The County attempted

to discharge an employee who was, under a strict reading of the statutes, a classified employee in the civil service. The County prosecutor argued the matter before the administrative hearing board, the Court of Common Pleas and the Court of Appeals, urging that the statute be broadly construed to exclude the employee from the classified civil service. The County Commissioners finally instructed the Prosecutor to withdraw the appeal from the Ohio Supreme Court, thereby upholding our literal reading of the statute.

As indicated hereinbefore, our firm has always had an extensive personal injury defense practice, and in that regard I have had excellent trial preparation experience, as well as actual trial experience, both as sole counsel and co-counsel. As in any successful defense practice, the majority of these actions do not actually proceed through an entire trial but are settled, frequently on the day of trial. Many are tried, however, and they vary in size and complexity. A representative sampling of our defense work would include the following:

Defense of the driver of one of the automobiles involved in a two-car collision resulting in injury to the plaintiff driver of the other automobile and death of plaintiff's passenger, and prosecution of the defendant's counterclaim for personal injury. The case was tried to a jury, which found in favor of our defendant on the complaint and against him on his counterclaim. Of particular interest in the case was our successful effort to keep from the jury the potentially damaging but irrelevant fact that our client made his living as a professional gambler. The plaintiff, by contrast, was a home-town young man who had just picked his fiance up from church at the time of the accident.

Defense of a young driver driving under a probationary license, and his mother, who had signed for the license, in a situation in which the defendant, driving a light weight pick-up truck, rear-ended a much heavier truck. The plaintiff claimed substantial injuries and no prior accidents. As a result of our cross-examination of him regarding prior accidents, the plaintiff was subsequently indicted and tried for perjury.

Defense of the driver of an automobile who struck a youngster riding a bicycle. The plaintiff suffered extremely serious injury and scarring, including third degree burns over one side of her body. I handled all of the trial preparation, including extensive depositions, and the case was finally set for trial some four years after the accident occurred. The discovery had raised a significant question as to the liability on the part of our defendant, and the plaintiff finally agreed to a settlement, substantially below the insurance policy limits.

My practice has included a wide variety of other types of matters which have come to trial or arbitration and resulted in judgment, as well as matters which have, as a result of preliminary motions, been disposed of by means such as summary judgment; many of these have also been taken through the appellate courts. All of this practice has enabled me to develop a facility with the Rules of Civil Procedure, both Ohio and Federal.

In a matter which was eventually, after several years, tried in arbitration, I represented a home-owner in a claim filed by a contractor for monies he claimed were due and unpaid for work performed. I successfully invalidated the contractor's mechanic's lien, won a summary judgment on the suit filed on the defendant's promissory note, and won a summary judgment on the subsequent suit filed in quantum meruit. The second summary judgment was overturned on appeal on a technical point involving a supporting affidavit, but on remand, I tried the case to a panel of arbitrators who found in favor of my clients.

Another example of a matter which proceeded through the Court of Appeals as a result of motion practice was a matter in which I represented a plumbing contractor in a suit against an apartment complex owner for monies owed him for extensive repairs done over a period of many months. I took a default judgment which was attacked by the defendant. The trial court after hearing refused to set aside the judgment and I was successful in having that judgment affirmed in the Court of Appeals.

I tried a case recently in Guernsey County for an insurance company against one of its agencies and the agency president personally, for defalcation and breach of contract. The jury brought in a verdict for the insurance company and against the agency, and answered the interrogatories which we propounded to them to the effect that the defendant agency president had personally directed the expenditure of the funds in breach of the trust imposed by the agency contract, but refused to find against the agency president personally. My client declined to appeal, due in part to the financial position of the defendant, who appeared to be judgment proof.

I have for some time represented a partnership whose sole enterprise is the purchase and management of real estate, and recently, after an unsuccessful attempt on the part of the majority of the partners to effect an amicable dissolution of the partnership, I handled the trial of their complaint for judicial dissolution. Of particular interest in the trial was the novel argument of opposing counsel that fair market value for property cannot be established in a bad economic situation. Although the Court did not seem to be impressed by his approach, we are still awaiting a judgment in the case.

I was co-counsel in a somewhat similar case involving a partnership which owned a valuable parcel of industrial property in Cuyahoga County, part of which was burdened by a long-term lease at below-market rental, to a company owned by one of the partners, not our client. Our client had come to us originally in regard to a most restrictive covenant-not-to-compete contained in an employment contract, which covenant we succeeded in modifying to the point that it no longer restricted our client's activity and livelihood. The subsequent partnership dispute resulted in the filing of a lawsuit in Cuyahoga County against our client, seeking judicial dissolution of the partnership. After discovery work involving the partnership books and records over a period in excess of ten years, and protracted negotiation, we succeeded

in settling the matter so that our client's interest in the part of the partnership property not burdened by the lease was purchased for a sum greatly exceeding what she had originally been offered for her entire interest, and at the same time, the existing lease on the remaining partnership property was amended to substantially increase in rent. The partnership was not dissolved.

I have handled a number of cases involving real estate development, contractor's claims, mechanic's lien claims and the like. One of these matters involved the development of an apartment complex in which the contractor massively defaulted, finally abandoning the job altogether, leaving mechanic's liens, unpaid bills, false contractor's affidavits and generally shoddy workmanship in his wake. I represented the property owners, filed suit, accomplished the settlement of many of the legitimate claims of subcontractors, laborers and materialmen, and was entirely prepared for the trial of the case in chief against the contractor when an acceptable offer of settlement was made immediately prior to the scheduled commencement of trial. As a result of the settlement the property owners succeeded in completing the project substantially as it was originally contracted for, without suffering financial loss.

In another matter involving a mechanic's lien problem, and an academically more challenging one, I represented a home owner whose property had been liened by a material supplier after the abandonment of the construction by the general contractor. I prepared the case for trial, and at the commencement of trial, the lienholder offered to submit the case to the Court on stipulations of fact and trial briefs on the law. I prepared our trial brief and was successful in invalidating the mechanic's lien as a matter of law, using the supporting affidavits submitted by the lienholder to prove his failure to comply with the complex requirements of Ohio mechanic's lien law.

I represented a purchaser in Wayne County who contracted with a general contractor for the construction and purchase of a residence to be built on the contractor's lot. The contractor, after much delay, defaulted prior to completion and I filed suit. After considerable discovery work and fruitless negotiating in an attempt to settle, the contractor left the state on the eve of trial, leaving his attorney with the authority to settle the case at the figure I had been demanding. As a result, my client obtained clear title to the property and a substantially completed home at considerably less than the original contract price.

I did the trial preparation work, including the discovery for a case in which we represented a property owner who contracted with a local general contractor for construction of a home from blueprints furnished by and previously used by the property owner. The contractor substantially completed the home, but attempted to charge the owner some \$40,000.00 more than the contract price. The jury gave our client a verdict awarding the contractor the contract price to the penny. This was the first victory for the homeowner in our county in such a matter that the judge was able to remember.

I have occasionally represented a plaintiff in a personal injury matter, although as a matter of policy our firm prefers not to undertake such cases. In one such case, I represented a seventeen-year-old girl who, as a pedestrian, was the victim of a hit-and-run driver who later was apprehended. The plaintiff suffered multiple injuries, fractured pelvis, internal injuries, and leg injury resulting in disfiguring scarring. Immediately prior to the scheduled trial, the case was settled for close to the defendant's insurance policy limits.

I have considerable experience in zoning and land use matters, having done work for various townships as well as representing developers in obtaining the requisite governmental approval of subdivisions. I have handled various phases of several lawsuits involving zoning, including the defense of landowners charged with violation of the local zoning ordinances and the representation of citizens challenging the validity of zoning ordinances. I have also been involved in suits over the annexation of territory to municipalities, including one action which I took successfully through the trial and appellate courts, and succeeded in keeping out of the Ohio Supreme Court.

In addition, I have tried or participated in the trial of numerous mortgage foreclosure actions. One of those actions involved the purchase by a group of men of a prime piece of developable real estate from a local physician at a price most advantageous to the purchasers, financed by the seller, and grounded on a representation that the spokesman for the purchasers (a long-time friend of the seller) intended to make his home on the property. The property was promptly transferred into a trust, subdivided into lots along the road frontage, and those lots sold. The purchasers then defaulted on the mortgage, leaving only landlocked backland to be foreclosed upon. Halfway through the trial of the foreclosure action, the purchasers agreed to a settlement, which, if abided by, will at least yield the original purchase price to the seller, although without the investment return that he would have realized had the mortgage been paid timely.

For several years I represented a corporation which had moved into our area from a large metropolitan area. When that corporation and its individual shareholders entered into a series of contracts for the sale of the business and continued employment of the principals by the acquiring company, they did not come to us to represent them, but instead consulted the large firm which had previously represented them in the city from which they had moved. However, when the acquiring corporation (a subsidiary of a large German firm) began to systematically dismantle the business, the principals came to me to try to resolve the problems. I filed suit for breach of all of the contracts, and eventually, after months of negotiations which also involved the participation of the firm which had approved those contracts for my clients, we were able to obtain a settlement which permitted my clients to rescind their unfavorable employment contracts and to obtain a reasonable sum in satisfaction of the remaining obligations of the purchasing company.

I recently represented an out-of-state company which was sued in our common pleas court for monies claimed to be due from it to a sub-contractor on a large paving job. The matter was particularly interesting because all of my client's employees and principals who had had any significant personal knowledge of the job had since died, and the representative of the sub-contractor who had been the foreman on the job had also died. After extensive discovery, the president of the corporation which I represented, concluded that the information which had been given him by his people prior to their deaths had been less than accurate, and the matter was amicably resolved at his request.

I am currently representing a client in a suit in federal court involving the operation of a municipal airport and the claims of a group of glider pilots that the regulations governing the airport and, in particular, the operation of non-motorized aircraft, are an infringement of the glider operators' civil rights. My client is the association which leases and operates the airport, and of importance in the case will be the underlying authority of my client to operate the airport and to enforce regulations governing its use.

I am currently representing a metal fabricating company in a suit involving unauthorized use of trade secrets and breach of contract by a sales representative. We are presently waiting to see whether the matter will be removed to federal court because of diversity.

Another substantial part of my practice, and that of our entire firm, is estate work, both in the probate court, and in the area of estate and tax planning. I have participated in the trial of will contest actions, declaratory judgment actions for the construction of wills, actions to remove an executor or administrator, and similar matters. I have represented estates in federal estate tax audit proceedings, and most recently, obtained a 10% reduction in the estate tax originally assessed against an estate consisting almost solely of real estate, the value of which was vigorously challenged by the Internal Revenue Service.

I am currently engaged in representation of a charitable beneficiary in two separate actions in the probate court, both involving the same will, one demanding a will construction and the other raising the question of the applicability of the Ohio Mortmain statute. If these matters, or either of them proceed to trial, I will be responsible for trying them.

As part of my probate practice I have prepared innumerable wills, trusts, both testamentary and inter vivos, and comprehensive estate plans with explication of the federal tax ramifications. I have worked out successful programs of gifts and/or sales of property to accomplish the transfer of substantial amounts of property to succeeding generations without gift or estate tax or minimizing those taxes.

Our practice includes also a considerable amount of real estate work, and I have excellent experience in reviewing appraisals and valuation of real property, drawing sales contracts, including

sophisticated installment sale contracts, drawing deeds, mortgages and land contracts, and, as noted hereinbefore, litigation involving such matters. I have also done some work in the developing area of condominium law, and one of the cases which I have tried involved a condominium owner who had nearly completed construction of a minor addition to her unit, after having obtained the approval of the Board of Managers as required by the Owners' Association By-Laws. She was subsequently sued by an adjoining owner and enjoined from completing the addition. We successfully defended her and obtained a dismissal of the injunction, and, in the process, caused a revision of the By-Laws in order to insure that the definitions and procedures set forth, particularly in regard to common areas and improvements by owners, conformed to the requirements of Ohio law.

I have also done a good deal of the appellate work for our firm in cases tried by other members of the firm. I have prepared the briefs and presented the oral arguments in a wide variety of cases, including personal injury, zoning, annexation, and commercial matters, in appeals from judgments of common pleas and municipal courts. I have a matter pending currently in the court of appeals involving a dispute over the legal beneficiary of a life insurance policy.

A small part of my practice over the years has been the representation of mothers in the private placement and adoption of their infants. In the course of this practice I have had to forcefully assert the rights of the biological mother, over the objections of various elements of the bureaucracy such as social workers and probate court and welfare department employees, to place her child in a family of similar religious and moral persuasion. This pro-family position has put me at odds with innumerable bureaucrats in spite of the Ohio Legislature's clear statutory enactments in favor of private placements.

While this general overview of my practice does not begin to be exhaustive, it is presented to assist in evaluating the nature and breadth of my experience. I believe that it clearly demonstrates that I have had the advantages of a small-city practice, in which I have had the opportunity to develop skills and experience in a very wide variety of areas including litigation, appellate work, document drafting and direct relationships with clients. Some of this experience has been in conjunction with one or more other attorneys; much of it has been as sole counsel. All of it has contributed to my general competence as an attorney and my confidence in my abilities in the practice of law.

RESUME

ALICE MOORE BATCHELDER

LEGAL EDUCATION

Akron University Law School
Akron, Ohio
Juris Doctor Degree 1971

Class Rank

Top 10% of Class

Honors

Editor-in-Chief of Akron
Law Review 1970-71
Law Review Staff 1969-70
Recipient of several
academic awards

LEGAL EXPERIENCE

Williams and Batchelder
Attorneys at Law
Associate 1971-present

Ohio Board of Bar Examiners
1975-1980

National Conference of Bar
Examiners
Constitutional Law Committee
1980-present

Impartial Hearing Officer
appointed by Ohio Department
of Education pursuant to
P. L. 94-142 - numerous
appointments since 1979

PREVIOUS EMPLOYMENT

Medina County Schools
Buckeye High School
1967-68, teacher of
English and Speech

Upper Arlington Schools
Jones Junior High School
1966-67, teacher of
English and History

Franklin County Schools
Plain Local School District
1965-66, teacher of English,
History and Speech

PRIOR EDUCATION

Ohio Wesleyan University
1961-64

Degree

B.A. History; Minor English

High School

Frank B. Willis High School
Delaware, Ohio 1957-1961

COMMUNITY ACTIVITIES

Medina United Fund
Budget and Admissions Comm.,
1970, 1972-74
Member of Board of Directors
1971-1975

Franklin Sylvester Library
Board of Trustees
1975-present

Medina County Mental
Health Board
1979-present

PERSONAL

Birthdate

August 15, 1944

Marital Status

Married to William G. Batchelder III

Children

Two

Washington Post
9/10/82

Reagan Judiciary: Mostly White, Mostly Men

By Nicholas D. Kristof
Washington Post Staff Writer

During his first 19 months in office, President Reagan has substantially reduced the proportion of women and blacks being appointed to federal judgeships.

All but four of the 72 judges Reagan has appointed to federal trial and appellate courts by mid-August are white men. Three women have been appointed federal trial court judges and one black federal judge has been elevated to a circuit court of appeals.

This record contrasts with that of his predecessor, President Carter, whose 260 appointments to federal judgeships included 41 women and 37 blacks. During the 1980 campaign against Carter, Reagan promised, "I will also seek out women to appoint to other federal courts in an effort to bring about a better balance on the federal bench."

A review of their backgrounds shows the Reagan appointees to be predominantly graduates of prestigious law schools with successful careers in law firms or academia. Even critics of the pattern of Reagan appointees say his nominees are competent and qualified, although generally conservative in legal and political outlook.

Deputy Attorney General Edward C. Schmults said the administration looks at merit rather than race or sex in selecting judges, but has searched for qualified women and minority lawyers. "We certainly intend to do better and appoint more women and minorities," Schmults said. "It means we're going to have to work harder."

Federal judges, who are paid \$70,300, to \$74,300 annually, historically have been mostly patronage appointees, often suggested by the senior senator of the president's

party in the state where the court vacancy is located.

But the Reagan administration has been searching for its own candidates for appellate courts, in addition to considering recommendations from U.S. senators, according to Associate Deputy Attorney General Bruce E. Fein. He said the administration continues to give great weight to senators' suggestions for federal trial court judges, and Schmults said Republican senators would be asked to find more women and black candidates.

"We choose our appointments based on one quality: their credentials and their capacity to administer even-handed justice with the philosophy of the attorney general and the president," Fein said.

Two of the most prominent nominees, Richard A. Posner and Robert H. Bork, tell something of what the administration is looking for in appellate judges.

Posner, 43, formerly a professor of law at the University of Chicago, is by all accounts brilliant; according to critics, dangerously brilliant and lacking in social conscience. After graduating first in his class at Harvard Law School, he clerked for Supreme Court Justice William J. Brennan Jr. and after a few years embarked on an academic career. A Republican, he has written 11 books and pioneered economic analysis of the law, which has emerged as a new area of jurisprudence.

Posner argues in his books that economic analysis can be used to explain areas of the law not directly related to financial questions and that economic thinking underlies most judicial opinions. Posner contends that while judges have been guided, consciously or otherwise, by the notion that one usually renders "justice" by maximizing wealth and economic efficiency, most legislators have not. As a result, he has written, many regulations, such as those providing for a minimum wage and for health and safety in the workplace, are counterproductive.

Bork, 55, was a professor of law at Yale who was named solicitor general by President Nixon. He fired Watergate Special Prosecutor Archibald Cox in 1973 on Nixon's orders in the famous "Saturday night massacre."

When the Carter administration took office, Bork returned to Yale where he was professor of law. In 1981 he joined the Washington firm of Kirkland & Ellis.

Reagan nominated Posner to be a judge on the 7th U.S. Circuit Court of Appeals and Bork to the U.S. Court of Appeals for the District of Columbia. Both were confirmed by the Senate.

While critics have complained that the Reagan administration has failed to consult organizations representing women and minorities, as Carter did, some anti-abortion activists are upset because they have not been consulted.

"In terms of the judicial appointments, it has been almost a complete washout," said Dr. Jack C. Willke, president of the National Right to Life Committee. "We have not had any impact prior to appointments, and we hear that the questions apparently are not even being asked. This has been a total disappointment to us."

The women selected for federal trial court positions are Cynthia Holcomb Hall, 53, a U.S. tax court judge chosen for the central district court in California; Elizabeth A. Kovachovich, 45, a state judge in Florida chosen for the middle district court there; and Carol Los Mansmann, 40, a Duquesne University law professor chosen for the western district of Pennsylvania.

The only black selected so far is Lawrence W. Pierce, 57, a U.S. district judge from the southern district of New York who was elevated to the 2nd U.S. Circuit Court of Appeals.

As of last month, the administration had 27 federal judicial vacancies to fill, 22 in trial courts and five at the appellate level.

Washington Post
9/10/83

Reagan's Court Appointments To District, Circuit Positions

In addition to those mentioned above, the administration's appointments for U.S. district and circuit court positions as of last month include:

- D. Brook Bartlett, 45, an attorney in Kansas City, Mo., to the western district of Missouri.
- Clarence A. Beam, 52, an attorney in Lincoln, Neb., to the district of Nebraska.
- Edward R. Becker, 49, a U.S. district judge for the eastern district of Pennsylvania, to the 3rd U.S. Circuit Court of Appeals.
- Walter E. Black Jr., 56, an attorney in Baltimore, to the district of Maryland.
- James C. Cacheris, 49, a Virginia circuit judge, to the eastern district of Virginia.
- William W. Caldwell, 56, a county judge in Harrisburg, Pa., to the middle district of Pennsylvania.
- Richard J. Cardamone, 46, a justice of the New York Supreme Court, to the 2nd U.S. Circuit Court of Appeals.
- Robert F. Chapman, 56, a U.S. district judge for the district of South Carolina, to the 4th U.S. Circuit Court of Appeals.
- John L. Coffey, 60, a Wisconsin supreme court justice, to the 7th U.S. Circuit Court of Appeals.
- Leroy J. Contie Jr., 62, a U.S. district judge for the northern district of Ohio, to the 6th U.S. Circuit Court of Appeals.
- John C. Coughenour, 51, an attorney in Seattle, to the western district of Washington.
- Emmett Ripley Cox, 47, an attorney in Mobile, Ala., to the southern district of Alabama.
- Robert E. Coyle, 52, an attorney in Fresno, Cal., to the eastern district of California.
- Sam A. Crow, 56, a U.S. magistrate in Topeka, to the district of Kansas.
- Conrad K. Cyr, 50, a bankruptcy judge from Bangor, Maine, to the district of Maine.
- Robert G. Doumar, 52, an attorney in Norfolk, Va., to the eastern district of Virginia.
- Jesse E. Eschbach, 61, a U.S. district judge of the northern district of Indiana, to the 7th U.S. Circuit Court of Appeals.
- Harold M. Fong, 44, an attorney in Honolulu, to the district of Hawaii.
- J. Owen Forrester, 43, a U.S. magistrate in Atlanta, to the northern district of Georgia.
- Richard A. Gadbois Jr., 50, a superior court judge in Los Angeles, to the central district of California.
- William L. Garwood, 50, an attorney in Austin, Tex., to the 5th U.S. Circuit Court of Appeals.
- John R. Gibson, 56, appointed in 1980 to be U.S. district judge for the western district of Missouri, and in 1982 to the 8th U.S. Circuit Court of Appeals.
- Israel Leo Glasser, 58, dean of Brooklyn Law School, to the eastern district of New York.
- Clyde H. Hamilton, 48, an attorney in Spartanburg, S.C., to the district of South Carolina.
- William T. Hart, 53, an attorney in Chicago, to the northern district of Illinois.
- Hayden Wilson Head Jr., 47, an attorney in Corpus Christi, Tex., to the southern district of Texas.
- J. Lawrence Irving, 47, an attorney in San Diego, to the southern district of California.
- Thomas Penfield Jackson, 45, an attorney in Washington, D.C., to the U.S. District Court in the District of Columbia.
- E. Grady Jolly, 54, an attorney in Jackson, Miss., to the 5th U.S. Circuit Court of Appeals.
- John Bailey Jones, 55, a South Dakota circuit judge, to the district of South Dakota.
- Michael S. Kanne, 43, a circuit judge in Rensselaer, Ind., to the northern district of Indiana.
- Jackson L. Kiser, 53, an attorney in Martinsville, Va., to the western district of Virginia.
- Alvin I. Krenzler, 61, an Ohio judge, to the northern district of Ohio.
- Robert D. Krupansky, 60, a U.S. district judge for the northern district of Ohio, to the 6th U.S. Circuit Court of Appeals.
- William C. Lee, 44, an attorney in Fort Wayne, Ind., to the northern district of Indiana.
- Eugene F. Lynch, 50, a superior court judge in San Francisco, to the northern district of California.
- Paul A. Magnuson, 45, an attorney in South St. Paul, Minn., to the district of Minnesota.
- Joseph M. McLaughlin, 49, dean of Fordham Law School, to the eastern district of New York.
- A.J. McNamara, 46, an attorney in New Orleans, to the eastern district of Louisiana.
- Glenn E. Mencer, 57, a judge in Smethport, Pa., to the western district of Pennsylvania.
- Jenny A. Mentz Jr., an attorney in Hammond, La., to the eastern district of Louisiana.
- Michael M. Mihm, 39, an attorney in Peoria, to the central district of Illinois.
- Roger J. Miner, 48, a justice on the New York Supreme Court, third judicial district, to the northern district of New York.
- James T. Moody, 44, a U.S. magistrate in Hammond, Ind., to the northern district of Indiana.
- John H. Moore II, 53, a Florida appeals judge, to the middle district of Florida.
- John P. Moore, 48, a U.S. bankruptcy judge in Denver, to the district of Colorado.
- John A. Nordberg, 57, a circuit judge in Chicago, to the northern district of Illinois.
- James R. Nowlin, 44, an attorney and state legislator from San Antonio, Tex., to the western district of Texas.
- David V. O'Brien, 50, an attorney in the Virgin Islands, to the district of the Virgin Islands.
- Jaime Pieras Jr., an attorney in San Juan, Puerto Rico, to the district of Puerto Rico.
- Maurice M. Paul, 50, a circuit judge in Orlando, to the northern district of Florida.
- John W. Potter, 63, an appeals judge in Toledo, to the northern district of Ohio.
- Robert D. Potter, 59, a county commissioner in Charlotte, N.C., to the western district of North Carolina.
- George C. Pratt, 54, a U.S. district judge for the eastern district of New York, to the 2nd U.S. Circuit Court of Appeals.
- David L. Russell, 50, a U.S. attorney in Oklahoma City, to the eastern, western and northern districts of Oklahoma.
- Harold L. Ryan, 59, an attorney in Weiser, Idaho, to the district of Idaho.
- Antonin Scalia, 46, a University of Chicago law professor, to the Court of Appeals for the District of Columbia.
- John C. Shabaz, 51, an attorney and minority leader in the Wisconsin State Assembly, to the western district of Wisconsin.
- Joseph E. Sprizzo, 47, an attorney in New York, to the southern district of New York.
- Joseph E. Stevens Jr., 54, an attorney in Kansas City, Mo., to the eastern and western districts of Missouri.
- Michael A. Teslesca, 52, a judge in Rochester, N.Y., to the western district of New York.
- H. Franklin Waters, 50, an attorney in Springdale, Ark., to the western district of Arkansas.
- Henry R. Wilhoit Jr., 47, an attorney in Grayson, Ky., to the eastern district of Kentucky.
- William W. Wilkins Jr., 40, a prosecuting attorney in Greenville, S.C., to the district of South Carolina.
- Ralph K. Winter Jr., 47, a Yale law professor, to the 2nd U.S. Circuit Court of Appeals.

File

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

DATE: February 25, 1982

TO: Elizabeth Dole

VIA: Red Cavaney

FROM: Wendy Borchardt *W.B.*

SUBJECT: Process for Selection of United States Attorneys and Judges

I am aware that you met with Helene von Damm and that she explained the process to you. However, hopefully the following will be the supplemental information that you require.

Fred Fielding's Office explained the process:

1. In the Republican States (States where there are Republican Senators):
 - a. The Senator appoints a panel to select five candidates for consideration. This panel submits five names to the Department of Justice.
 - b. For individuals recommended to the Bench, the American Bar Association is contacted.
 - c. The Justice Department does a preliminary check of the names submitted and then submits their recommendation to the Federal Judicial Selection Committee, comprised of officials from the Justice Department and White House Senior Staff (Ed Meese, Jim Baker, Fred Fielding, Ed Rollins, Pen James and Ken Duberstein). This Committee meets each Thursday and discusses the Department of Justice recommendations.
 - d. After this Committee approves a name, there is a full field investigation. After the completion of the field check, the names goes to the President through Fred Fielding's office. (Fred Fielding acknowledges each letter of recommendation and then forwards them to the Justice Department.

2. In any state where there is not a Republican Senator, if there is a Republican Congressman, he is contacted. Occasionally a Governor is consulted where there is no Republican Congressman, or, as in Hawaii, the Chairman of the Republican State Committee suggests candidates. However, the process is different for each state.

Additionally, there is a different process for the Superior Court of the District of Columbia (which has previously been explained to OPL), and the process is again different for the selection of Circuit judges.

For your further information, the following women have been appointed:

Cynthia Holcomb Hall	United States District Judge Central District of California
Elsie L. Munsell	United States Attorney Eastern District of Virginia
Sarah Barker	United States Attorney Southern District of Indiana
Elizabeth A. Kovachevich	United States District Judge Middle District of Florida
Carol Los Mansmann	United States District Judge Western District Pennsylvania

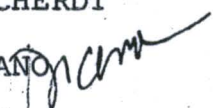
SUMMARY: I feel that women are given every consideration when the recommendation goes to the Federal Selection Committee. In many states, the Republican Senators do consult with the Party officials. However, the legal profession has been traditionally male, and unfortunately women often do not have the years on the bench in the lower courts or the extensive legal experience necessary to qualify for judgeships. Hopefully in the years ahead, this will change.

RECOMMENDATION: A letter from the President to all Republican (perhaps all?) Senators would be a most constructive and effective encouragement to them to try to identify capable women for consideration.

THE WHITE HOUSE

WASHINGTON

February 25, 1982

MEMORANDUM FOR: WENDY BORCHERDT
FROM: DIANA LOZANO 
SUBJECT: Women Judges

Elizabeth is interested in doing whatever is possible to encourage the appointment of more women judges.

She would like you to research the process by which the U.S. and district judges are appointed. Apparently, the Senate has a great deal of control over the selection, with only a minimal input from the White House.

Once we clarify the process, would you please recommend the best method to proceed to encourage these appointments. For example, would a Presidential letter to selected Senators be appropriate? Do we have a list of qualified women, etc.

Would you please give this your priority attention and report your findings and recommendations by cob Friday, Feb. 26 .

Thanks

WASH POST

Wednesday, January 13, 1982

JUDY MANN

SMEARED

Judith Whittaker is, by all informed accounts, an outstandingly qualified person to be nominated to the 8th U.S. Circuit Court of Appeals. She was, in fact, outstanding enough to be the Reagan administration's first female nominee to the appeals court, until she became the target of a New Right smear campaign. Then, in a real show of principle, the administration dropped her like a hot potato.

Whittaker, a Kansas City lawyer who graduated first in her class at the University of Missouri Law School, is associate general counsel of Hallmark Cards and a trustee of Brown University and the University of Missouri in Kansas City. The American Bar Association has deemed her to be a fully qualified candidate for a seat on the appeals court, which is just below the level of the Supreme Court. She is a Republican. She has publicly supported the Equal Rights Amendment. Her views on abortion are not publicly known, but that did not deter her opponents from engaging in a poisonous campaign.

Quite purely and simply, they lied. They expanded her support for ERA into a political stereotype and lobbied against her with White House political director Lyn Nofziger. They labeled her a "liberal Democrat," and a "strong feminist" in a right-wing newsletter. They claimed she was not even a Republican. They said she was liberal on abortion.

Instead of telling them to buzz off, the White House listened and the next thing you know you have Deputy Attorney General Edward Schmults acknowledging that Whittaker has been dropped as a potential nominee because there was not enough "broad-based

support for her." This brings to mind a picture of Schmults placing his hand over the heads of three judicial nominees to see which one gets the highest rating on the audience applause meter. That may be the way we pick television game show winners, but it is not the way we are supposed to pick judges for the federal bench.

Whittaker's treatment has now prompted support for her from The New York Times and The Kansas City Star, which called it a "sorry episode," and declared that a "handful of irresponsible people should not be allowed to influence important government matters in such a negative and underhanded way."

And it has provoked an extraordinary letter from Donald P. Lay, chief judge of the 8th Circuit, which covers Missouri, Arkansas, Iowa, Minnesota, Nebraska and the Dakotas. The letter was written to each of the United States senators representing those states and copies have been sent to the chief justice of the U.S. Supreme Court, a number of appeals court judges, members of the Senate Judiciary Committee, the attorney general, and others, including presidential counsel Fred Fielding, who acknowledged in an interview with The Washington Post that "the abortion issue most often comes up in regard to potential women candidates."

In case anyone thinks that all that is at stake here is a lawyer's reputation and career, or just another example of how the Reagan administration treats female nominees, a few paragraphs of Judge Lay's letter ought to set the record straight. "We are now going into our 25th month of vacancy, with no appointment," he wrote and underlined. "Until recently our court maintained the highest ranking in the nation in disposing of cases. However, for the past 12 months we have faced a dire emergency through the lack of judicial manpower...."

"I have recently learned there has been an organized campaign by a certain political faction both in and out of Missouri to oppose [Whittaker]," wrote Judge Lay. "Because of this fact, I am informed that her candidacy has now been withdrawn and that 'sometime' after the first of the year they [Sen. John Danforth, the White House and others] would start to develop a new list of names. It is incredible to me and my colleagues that such an attack can be effective so late in the day. Mrs. Whittaker has appeared before our court, and is an outstanding lawyer possessing the qualities to become a great and gifted judge."

Judge Lay is rightfully concerned about the court's work and has used this situation as an example of how the selection process impedes the courts. The delay in finding another nominee, he wrote, "is intolerable." So, to anyone interested in fair play, is the administration's spineless response to the reprehensible attacks on Whittaker.

Reagan Nominates Woman For U.S. Attorney in N. Va.

By Philip Smith

Washington Post Staff Writer

Federal magistrate Elsie L. Munsell is President Reagan's choice to become the next U.S. attorney in Alexandria, the White House announced yesterday.

If confirmed by the Senate, Munsell, a 42-year-old Republican, will be the first woman to hold the \$50,100-a-year post in Virginia.

"I think history is being made," said Sen. John Warner (R-Va.), who recommended Munsell, after a three-month search for judicial and prosecutor candidates. He said Munsell was "unquestionably one of the most outstanding, professional people" he had interviewed for the job.

Warner, who stressed repeatedly he was searching for women and blacks to recommend for federal ju-

dicial positions, said he had discussed a judgeship with Munsell, but that Munsell felt she needed more experience.

Munsell said she got the news in a note handed to her on the bench yesterday as she conducted a jury trial in Alexandria. She will replace Justin Williams, who has headed the office since June 1979.

A 1972 graduate of the Marshall Wythe School of Law at The College of William and Mary, she worked for a year as an assistant prosecutor in Alexandria before joining the same U.S. Attorney's office she will soon head if approved by the Senate.

Munsell was chief of the office's civil division before becoming a magistrate in 1979. Her husband, George Williams, currently holds the same

See PROSECUTOR, C4, Col. 1

Reagan Chooses Woman for Post

PROSECUTOR, From C1

position in the federal prosecutors' office and will be leaving upon her appointment, Munsell said yesterday.

Warner said that decision, which he called a "tremendous sacrifice," was made before he submitted Munsell's name to Justice early in the summer.

Also on Warner's list for the prosecutor's job were William F. Davis, 59, chairman of the Suffolk school board; Frank W. Dunham Jr., 38, of Alexandria, an attorney; Kenneth L. Foran, 39, of Alexandria, former counsel to the Senate Judiciary Committee, and Barry R. Poretz, 37, a former Alexandria assistant prosecutor.

Warner said yesterday he understood from the White House that the name of Fairfax Circuit Judge James C. Cacheris is "moving ahead quite favorably" for a vacancy on the federal bench in Alexandria. He declined to say when Cacheris' name might be placed in nomination by the president.

White House counsel Fred Fielding attributed any delay to a policy of waiting for FBI checks.

THE WHITE HOUSE
WASHINGTON

File

August 21, 1981

MEMORANDUM FOR: ELIZABETH H. DOLE
FROM: DIANA LOZANO *Diana*
Subject: Judicial Appointments--Status of Women

As you suggested, I have obtained a status report on the progress of appointments of women to judicial posts so far in this Administration. The available figures follow:

Judgeships

- *Supreme Court--One vacancy; one woman nominated.
- *United States Courts of Appeals--Twelve vacancies, for which eleven individuals have been tentatively identified. One of these is a woman.
- *United States District Courts--There are 48 vacancies, for which 28 individuals are tentatively identified. Three are women.

Other Judicial Officers

- *United States Attorneys--There are 49 vacancies, with an additional 18 resignations submitted, for a total of 67. Individuals have been tentatively identified for 66 of these positions. Two are women.
- *United States Marshals--We do not have a count of the number of vacancies. However, we do know that no women are under consideration.

"Tentatively identified" in the figures above means that the individual has at least reached the stage that his or her name has been proposed to the selection committee.

While there was significant impact from the O'Connor nomination, a view of the number of women considered to date for Federal judgeships is less heartening. Five women so far have been identified for the existing 61 vacancies. This is eight percent--less than half the percentage purportedly appointed during the Carter Administration (18 percent).

As you know, the National Women's Political Caucus and other groups are closely monitoring this process. Unless the proportion of women selected increases substantially, the O'Connor nomination may well be labeled as mere tokenism and not truly reflective of any trend in this Administration toward increased recognition and participation of women.

The President's campaign commitment to seek out women to appoint to Federal courts is not supported by the statistics to date, and this should be taken into consideration prior to any further selection of individuals. It is unfortunate that the number of vacancies has been substantially diminished. However, there appear to still be a number of openings at the District Court level. Primary attention should probably be focused on this area.

*File -
woman -*

REMARKS OF

FRED F. FIELDING

COUNSEL TO THE PRESIDENT OF THE UNITED STATES

PRESENTED TO THE
JUDICIAL ADMINISTRATION DIVISION
OF THE
AMERICAN BAR ASSOCIATION

NEW ORLEANS, LOUISIANA

AUGUST 7, 1981

ABA/5

THAT "POLITICS" SHOULD PLAY NO PART IN THE SELECTION PROCESS . . . THAT JUDGES SHOULD BE CHOSEN SOLELY ON THE BASIS OF "MERIT" -- A TERM SELDOM DEFINED BY THOSE WHO PRESS THIS VIEW. OTHERS ADOPT A MORE CYNICAL APPROACH REMINISCENT OF THE SPOILS SYSTEM, AND CONTEND THAT TO THE VICTOR GO THE JUDGES ALONG WITH EVERYTHING ELSE. STILL OTHERS ASSERT THAT JUDICIAL APPOINTMENTS SHOULD BE "REPRESENTATIVE," WITH A CERTAIN NUMBER OF SEATS MATHEMATICALLY (OR PRAGMATICALLY) SET ASIDE FOR WOMEN, A CERTAIN NUMBER SET ASIDE FOR BLACKS OR OTHER ETHNIC GROUPS, AND SO FORTH . . . SO THAT THE JUDICIARY, LIKE THE LEGISLATIVE BRANCH, WILL MORE NEARLY REFLECT THE VARIOUS INTEREST GROUPS PRESENT IN A PLURALISTIC SOCIETY.

I SUGGEST THAT EACH OF THESE VIEWS IS SIGNIFICANTLY WIDE OF THE MARK. FURTHER, IN FOCUSING ON ARGUMENTS SUCH AS THOSE I HAVE JUST DESCRIBED, WE HAVE TENDED TO LOSE SIGHT OF THE ROLE THAT "POLITICS," PROPERLY UNDERSTOOD, SHOULD PLAY IN THE JUDICIAL SELECTION PROCESS.

THE FIRST VIEW -- THAT JUDICIAL SELECTION SHOULD WHOLLY IGNORE "POLITICS" IN FAVOR OF SOME PRESUMABLY NEUTRAL CONCEPT OF "MERIT" -- IS SUPERFICIALLY A VERY ATTRACTIVE ONE. BUT I THINK THAT PERSONS IN THIS AUDIENCE KNOW, FAR BETTER THAN MOST, THAT THE ATTRACTIVENESS OF THIS ARGUMENT IS INDEED MAINLY ON THE SURFACE. OBVIOUSLY, THERE ARE ATTRIBUTES OF

TO FORSAKE THE SEARCH FOR THOSE BEST QUALIFIED BY PHILOSOPHY AND ABILITY TO BE JUDGES, IN FAVOR OF RACIAL OR SEXUAL OR OTHER PURELY "REPRESENTATIVE" CRITERIA, IS SOMETHING WE FEEL WOULD BE A DISSERVICE -- NOT ONLY TO THE COURTS AND OUR SYSTEM OF JUSTICE, BUT ALSO TO THE VERY GROUPS MOST INTERESTED IN SEEING THEIR REPRESENTATIVES APPOINTED. THE MORAL AUTHORITY OF OUR COURTS WILL NOT LONG SURVIVE IF THEY BECOME OR ARE PERCEIVED AS BEING, IN EFFECT, A THIRD "POLITICAL" BRANCH OF GOVERNMENT, IN THE SENSE THAT THE TERM "POLITICAL" IS TRADITIONALLY APPLIED TO THE EXECUTIVE AND THE LEGISLATIVE.

MOREOVER, OUR PEOPLE WILL HAVE LITTLE RESPECT FOR JUDGES WHOM THEY BELIEVE WERE APPOINTED "JUST BECAUSE THEY WERE WOMEN," OR "JUST BECAUSE THEY WERE CATHOLIC OR JEWISH," OR "JUST BECAUSE THEY WERE IRISH OR BLACK." THOSE WHO PUSH MOST STRONGLY FOR MAKING APPOINTMENTS ON BASES SUCH AS THESE HAVE FAR TOO OFTEN SUGGESTED, EITHER EXPRESSLY OR BY IMPLICATION, THAT OBJECTIVE CRITERIA OF JUDICIAL COMPETENCE, TRAINING AND ABILITY SHOULD TAKE A BACK SEAT TO THEIR "AFFIRMATIVE ACTION" PRIORITIES. IN SO DOING, THEY HAVE FUELED THE DANGEROUS, INSULTING AND CONDESCENDING NOTION THAT BLACKS, OR WOMEN, OR WHOMEVER, REALLY AREN'T GOOD ENOUGH TO MAKE IT UNDER THE RULES APPLIED TO EVERYONE ELSE.

ABA/15

NO PRESIDENT OF THE UNITED STATES, WHETHER IN MAKING JUDICIAL APPOINTMENTS OR FULFILLING ANY OF HIS OTHER CONSTITUTIONAL DUTIES, SHOULD DO ANYTHING THAT LENDS THE SLIGHTEST CREDENCE TO THIS IDEA. IN THAT REGARD, ONE OF THE SINGLE MOST IMPORTANT FEATURES OF THE PRESIDENT'S NOMINATION OF SANDRA DAY O'CONNOR IS PRECISELY THAT IT CANNOT BE FAIRLY SAID THAT THE PRESIDENT SELECTED HER "JUST BECAUSE SHE WAS A WOMAN." INDEED, MOST COMMENTARY I HAVE SEEN HAS APPLAUDED THE PRESIDENT'S DECISION PRECISELY BECAUSE MRS. O'CONNOR IS SO HIGHLY QUALIFIED IN TERMS OF THE TRADITIONAL CRITERIA THAT HAVE GUIDED THE BEST SUPREME COURT NOMINATIONS.

THIS IS AS IT SHOULD BE -- AND, I HOPE, IS AS IT SHALL BE WITH ALL OF THIS ADMINISTRATION'S JUDICIAL APPOINTMENTS. IT IS CERTAINLY WHAT WE ARE STRIVING FOR, AND IS THE INSTRUCTION AND DESIRE OF THE PRESIDENT.

I KNOW THE PRESIDENT WILL NOT ALWAYS PLEASE EVERYONE WITH THE DECISIONS HE MAKES, WHETHER IN THIS OR OTHER AREAS. SOMETIMES, THOSE OF US WHO ADVISE HIM WILL MAKE MISTAKES; SOMETIMES, TOO, TO PARAPHRASE, IT IS NOT POSSIBLE TO PLEASE ALL THE PEOPLE ALL THE TIME.

THIS AUDIENCE, I KNOW, HAS A VERY SYMPATHETIC OUTLOOK ON THE CHALLENGES THE PRESIDENT FACES IN MAKING GOOD JUDICIAL

Red - Would you please
obtain status report for my
use in early Sept.
AUG 11 1981

THE WHITE HOUSE
WASHINGTON

August 11, 1981

MEMORANDUM FOR: ELIZABETH H. DOLE

FROM: DIANA LOZANO *Diana*

Subject: Appointment of Women Judges

It has come to my attention that the Administration may be heading unknowingly into trouble as it concerns the appointment of women judges. While we have been quite vigilant about monitoring the the executive appointment process, we have overlooked the entire question of judgeships. Inasmuch as the President made a specific campaign commitment to "seek out women to appoint to other Federal courts", we should take a hard look at this question.

I understand that there are approximately 60 vacant judgeships; about 13 are in appellate courts, and the remainder are in district courts. Of the 60 vacancies, 8 candidates have already been nominated--all are men. Many of the remaining vacancies are close to announcement. Of these, only one or two are women.

This information was brought to my attention by Kathy Wilson of the National Women's Political Caucus. She was looking for White House support for Judith Cameron Whittiker, who is a candidate for the Eighth Circuit U.S. Court of Appeals. Ms. Whittiker has come under some fire because of her party affiliation (Independent), and may be shot down.

My concern is not whether or not Judith Whittiker gets appointed per se, but I am worried about the larger issue of women judges as a group. I am told that the Carter Administration averaged 18% women judges. If we don't pay attention to this process, we could find ourselves in an embarrassing situation. The Sandra O'Connor nomination will lose much of its impact if women are seen taking a giant step backward in the lower courts.

Recommendation: Fred Fielding and the Attorney General should be advised of the President's campaign commitment to actively look for women for Federal courts. A quick status report should be compiled, indicating the number of women under consideration for judgeships, and where they are. If the numbers look potentially embarrassing, it may not be too late to influence the process.

SPECIAL GROUPS

b. Equal Opportunity and Job Training

- (1) Establish a liaison with the 50 Governors to encourage them to eliminate, wherever it exists, discrimination against women. (Detroit, 7/17/80)
- (2) Improve early career counseling and job training for girls and young women to widen opportunities for them in the world of work. (Women Today, 10/17/80)
- (3) Consider proposals to encourage the Federal Government, the largest employer of women, to extend job training and education opportunities to displaced homemakers. (Women Today, 10/17/80)
- (4) Support job counseling, education, and training programs that expand the opportunities for women to make advances from entry levels to top management in areas of employment previously closed to women. (Women Today, 10/17/80)
- (5) Re-evaluate the conditions of women workers concentrated in low status, low-paying jobs so that their opportunities can be improved. (Women Today, 10/17/80)
- (6) Support total integration of the work force to bring women equality of pay. (Women Today, 10/17/80)
- (7) Address any remaining inequities in treatment of women under the Social Security system. (Women Today, 10/17/80)

c. Appointments

- (1) Appoint intelligent, committed, qualified and responsible women to important jobs. (Statement, 10/14/80)
- (2) Fill one of the first Supreme Court vacancies with the most qualified woman. (Statement, 10/14/80)
- (3) Seek out women to appoint to other Federal courts. (Statement, 10/14/80)

Dear _____:

Thank you for your letter of support regarding my announcement of Judge Sandra O'Connor's nomination to the United States Supreme Court.

Judge O'Connor's qualifications are exceptional, and I am confident that she will serve with distinction on our highest court.

I appreciate your offer of assistance, and look forward to continued contact on issues of importance over the coming months.

Again, thank you for writing.

Sincerely,

Ronald Reagan

July 10, 1981

The President
The White House
Washington, D. C. 20500

Dear Mr. President:

We are writing to express our deep appreciation to you for nominating Judge Sandra D. O'Connor to the Supreme Court of the United States.

This is a genuinely historic step, which is all the more significant for having been available to your predecessors for decades, all of whom declined the opportunity. The symbolic importance of this nomination to all of the women and young girls of the nation can hardly be overstated.

As Republican women, who represent the views of countless women members of our Party, we want you to know that if there is any way in which you believe we can be helpful in support of Judge O'Connor's appointment, we are prepared and available.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Member, Federal Election Commission

Elizabeth E. Bailey

Elizabeth E. Bailey
Member, Civil Aeronautics Board

Patricia P. Bailey

Patricia P. Bailey
Commissioner, Federal Trade Commission

Catherine Bedell

Catherine Bedell
Commissioner, International Trade
Commission

Patricia A. Goldman

Patricia A. Goldman
Member, National Transportation
Safety Board

Anne P. Jones

Anne P. Jones
Commissioner, Federal Communication
Commission

Ersa H. Poston

Ersa H. Poston
Vice Chair, Merit Systems
Protection Board

Jill S. Ruckelshaus

Jill S. Ruckelshaus
Commissioner, Civil Rights
Commission

Georgiana H. Sheldon

Georgiana H. Sheldon
Acting Chairman, Federal Energy
Regulatory Commission

Janet Steiger

Janet Steiger
Commissioner, Postal Rate
Commission

Mimi Weyforth Dawson

Mimi Weyforth Dawson
Commissioner, Federal Communications
Commission

THE WHITE HOUSE
WASHINGTON

Checked with Fred Fielding's Office re status of women and judgeships.

The person in charge there is Ed Wilson.

He provided the attached memoranda, which were prepared for Jay Moorehead.

Wilson emphasized that the names contained therein are HIGHLY SENSITIVE and not for publication.

We can reveal the numbers only of Blacks, Hispanics, women, etc., under consideration for these positions.

He also expects an update by the First of September on this listing.

Wilson volunteered to send me a copy (when ready) of Fielding's speech to the ABA convention dealing with considerations for appointment to these positions.



8/20

WITHDRAWAL SHEET

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2 MEMO

1 8/4/1981 B6

RENEE SZYBALA TO EDWARD WILSON
(PARTIAL)

Freedom of Information Act - [5 U.S.C. 552(b)]

B-1 National security classified information [(b)(1) of the FOIA]

B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]

B-3 Release would violate a Federal statute [(b)(3) of the FOIA]

B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]

B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]

B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]

B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]

B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

C. Closed in accordance with restrictions contained in donor's deed of gift.



U.S. Department of Justice

Office of the Associate Attorney General

Washington, D.C. 20530

August 4, 1981

MEMORANDUM TO: Edward Wilson

FROM: Renee L. Szybala *RS*
Special Assistant to the
Associate Attorney General

Pursuant to your request concerning minority candidates for United States Marshal and United States Attorney positions who have been cleared for F.B.I. investigation or are beyond that point in the process, we have identified the following:

United States Attorney Candidates:

- ① ✓ Women - Sara E. Barker, Southern District of Indiana
Elsie L. Munsell, Eastern District of Virginia
- ② ✓ Hispanics - Edward C. Prado, Western District of Texas
✓ Jim J. Marquez, District of Kansas
- ③ Blacks - None

United States Marshal Candidates:

- ④ Women - None
- ⑤ Hispanics - Carlos C. Cruz, Southern District of Florida
Julio Gonzales, Central District of California
- ⑥ Blacks - Kernan H. Bagley, District of Oregon
Louie T. McKinney, Eastern District of Virginia
J. Jerome Perkins, Northern District of Indiana
[REDACTED] *b(6)*
William S. Vaughn, Eastern District of Missouri

Resumes are attached.

Attachment

8/5/81 - ONE ADDITIONAL WOMAN FOR DIST. CT. JUDGE.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

July 16, 1981

MEMORANDUM FOR JAY MOORHEAD

FROM: D. EDWARD WILSON, JR.

SUBJECT: Classification of Judicial Appointments

This memorandum responds to your request for a classification of appointments to the federal bench and to the positions of United States Attorney and United States Marshal by sex and national origin.

The following list is to be read in conjunction with the attached status report dated July 15, 1981. Those not listed below are white males. For your information, I have included a brief note on the status of each appointment.

UNITED STATES SUPREME COURT

Sandra Day O'Connor (Undergoing background investigation)

UNITED STATES COURT OF APPEALS

1 Lawrence Pierce (Black) (Second Circuit) (Undergoing background investigation)

1 Judith Whittaker (Eighth Circuit) (To be considered by selection committee on July 16, 1981)

UNITED STATES DISTRICT COURT JUDGE

1 Cynthia Holcomb Hall (C.D. Ca.) (Undergoing background investigation)

UNITED STATES ATTORNEYS

2 Sarah Evans Barker (S.D. Ind.) (Confirmed by Senate on July 15, 1981)

2 Jim J. Marquez (Hispanic) (D. Kansas) (Cleared for pre-nomination on June 11, 1981)

2 Edward C. Prado (Hispanic) (W.D. Tex.) (Confirmed by Senate on July 15, 1981)

2 Elsie L. Munsell (E.D. Va.) (To be considered by selection committee on July 16, 1981)

July 15, 1981

STATUS REPORT

JUDICIAL APPOINTEES

UNITED STATES CIRCUIT JUDGES - 12 vacancies

- 1 nomination at the White House
- 6 individuals under FBI background investigation
- 2 individuals approved by working group (not on FBI BI)
- 1 individual to be included in 7/16/81 material

TOTAL 10 (one additional individual on hold)

UNITED STATES DISTRICT JUDGES - 48 vacancies

- 5 nominations with the Senate
- 20 individuals under FBI background investigation
- 2 individuals approved by working group (not yet under FBI BI)

TOTAL 27

UNITED STATES ATTORNEYS - 49 actual vacancies
18 submitted resignations to become effective

- 3 individuals confirmed by the Senate
- 7 nominations with the Senate
- 10 nominations at the White House
- 42 individuals under FBI background investigation
- 2 individuals coming over in 7/16/81 material

TOTAL 64 (2 additional individuals on hold)

UNITED STATES MARSHALS - 30 actual vacancies
7 submitted resignations to become effective

- 1 individual confirmed by the Senate
- 1 nomination at the White House for signature
- 42 individuals under FBI background investigation
- 2 individuals to be included in the 7/16/81 material

TOTAL 46 (5 additional individuals on hold)

UNITED STATES MARSHALS

Carlos Cruz (Hispanic) (S.D. Fla.) (on hold)

Julio Gonzalez (Hispanic) (C.D. Ca.) (Undergoing background investigation)

J. Jerome Perkins (Black) (N.D. Ind.) (Undergoing background investigation)

William S. Vaughn (Black) (E.D. Mo.) (Undergoing background investigation)

Kernan H. Bagley (Black) (D. Oregon) (Undergoing background investigation)

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

July 7, 1981

The President today announced his intention to nominate Judge Sandra Day O'Connor to be an Associate Justice of the Supreme Court of the United States, filling the vacancy created by the resignation of Justice Potter Stewart. Judge O'Connor presently serves on the Arizona Court of Appeals. The President will forward to the Senate his nomination of Judge O'Connor upon completion of the required background check by the Federal Bureau of Investigation.

Judge O'Connor, age 51, earned both her undergraduate and law degrees at Stanford University. She received her B.A. magna cum laude in 1950, and her LL.B. with high honors in 1952. She was a member of the Board of Editors of the Stanford Law Review and a member of the Order of the Coif. Judge O'Connor was admitted to the Bar of the State of California in the year of her graduation and to the Bar of the State of Arizona in 1957.

Judge O'Connor practiced law in Phoenix, Arizona, for a number of years. She served as Assistant Attorney General of Arizona from 1965 to 1969 and served in the Arizona State Senate from 1969 to 1975.

In 1974, Judge O'Connor was elected to the Superior Court for Maricopa County, Arizona. She served on that court until she was appointed to the Arizona Court of Appeals in 1979.

Judge O'Connor is married to John Hay O'Connor III. They have three children.

#

JUDY MANN

JUSTICE

Chapter Two of the Reagan administration's search for women to appoint to the federal judiciary takes us out to Ohio, where Alice Batchelder, a young, conservative lawyer, is being pitted against state Appeals Court Judge Sam Bell for a seat on the U.S. District Court for Northern Ohio. Both she and Judge Bell, not to mention the public, deserve better.

The story begins last March when, there being no Republican senator from Ohio, the state's Republican congressional delegation endorsed two men for two vacancies on the federal bench. The White House picked a former state Supreme Court justice for one vacancy and indicated it wanted to fill the second one with a woman. The Ohio delegation eventually sent Batchelder's name to the White House, along with Bell's, in case she did not pass muster. Two members of the delegation voted against the substitution and remained firmly in Bell's corner.

But Batchelder, 38, who has practiced law 11 years in Ohio, picked up considerable support from conservative leaders in Ohio where both she and her husband have been longtime Reagan supporters. She is a trustee and legal counsel for Birthcare, a group that provides women with alternatives to abortion, and was not opposed by any antiabortion groups. Her opponents, however, criticized her on the grounds that she has limited trial and no bench experience.

It appears now that her opposition has prevailed: an FBI check has begun on Judge Bell, and not on Batchelder, a clear indication that his name is the more likely to be nominated by the White House.

The Reagan administration's record on appointing women to the federal judiciary is nothing short of miserable. It has appointed 77 men to the federal judiciary and only four women, including Sandra Day O'Connor. The Carter administration appointed a total of 41 women to the federal judiciary, including 11 to the Circuit Courts of Appeal, the level just below the Supreme Court.

But what has happened with the Batchelder candidacy illustrates some of the difficulties the administration is running into. President Reagan is hampered by his commitment to appointing judicial conservatives, which, when combined with a sex requirement and experience requirements, severely limits his pool of talent. Further, the Carter administration had a large number of vacancies at one time as a result of the Omnibus Crime Bill, which added 152 new federal judgeships. This gave the administration bargaining room when dealing with Congress, which the Reagan administration does not have.

Early last year, the Reagan administration was considering appointing Judith Whittaker, a Republican lawyer from Kansas City, to the 8th U.S. Circuit Court of Appeals. Whittaker, who was deemed fully qualified by the American Bar Association, became the target of a smear campaign by antiabortionists and conservatives. Her name was swiftly dropped.

That episode increased pressure on the administration to appoint women, and the upshot of that is that both Batchelder and Judge Bell have been treated rather shabbily. Both have been subjected to months of uncertainty. Bell, by conventional standards fully qualified for such a post, found his name being set aside for a judgeship in an overloaded circuit in favor of a woman who has no experience on the bench.

Clearly, this is no way to do business. Assistant Attorney General Jonathan Rose, who has been intimately involved in judicial nominations, believes that part of the problem the administration is running into could be resolved if women's organizations brought the names of qualified women lawyers and judges to the attention of the appropriate members of Congress at the beginning of the nominating process.

It seems unfair, when Congress has such an important role in selecting judges, to place all of the blame for recent appointments solely on the administration. It would seem both Congress and the White House put too much emphasis on traditional political ties and qualifications and not enough on the need to create a diversified federal judiciary. Surely, in the case of Judith Whittaker, it was a case of politics scoring a resounding triumph over commitment to women judges.

But, regrettably, no matter how committed Congress and the White House become, it may turn out that despite the surge of women into law schools in the '70s, there are still so few qualified female judicial conservatives that the federal bench under Reagan will continue a steady course of resegregation into a white male club.