



Stanley's Background

President and CEO, Scholarship America

Executive Vice President, University of Pennsylvania

Major General, U.S. Marine Corps

Instructor, U.S. Naval Academy

White House Fellow

EDUCATION

B.S., Psychology, South Carolina State University

M.S., Counseling, Johns Hopkins University

Amphibious Warfare School

Naval War College

U.S. Marine Corps Command and Staff College

National War College

Ph.D., Education, University of Pennsylvania

this issue:

Clifford L. Stanley, Nominee for Undersecretary of Defense for Personnel and Readiness

Who is Clifford Stanley?

On October 15, 2009 President Obama nominated Clifford L. Stanley to be the Undersecretary of Defense for Personnel and Readiness.

Fn.1. He obviously did not get that job.

He did land a "perfect" job as the executive vice

Stanley seems to have difficulty making and sticking with career decisions. If confirmed, one wonders how long he would remain at the Department of Defense. Furthermore, Stanley seems obsessed with racial issues. Somehow, even as a highly decorated major general, he is convinced that he didn't receive the respect he deserves, due to racism.

One wonders first whether these slights are real or imagined, and—if real—if they might not be better attributed to some other cause.

Stanley has an impressive resume, but he also appears to be indecisive. For example, he "applied for a job with the Philadelphia school system but he withdrew his name from consideration twice."

"Although Stanley served many honorable years in the military, he should not be confirmed. Like Obama, Stanley dithers; and now, with war raging, is not the time for indecision."

-Don Todd, Director of Research, Americans for Limited Government

president of the University of Pennsylvania, but he was having second thoughts as late as the day before he accepted it. As reported by the Philadelphia Inquirer:

"He said the school-district post did not feel like a right fit. 'This one,' he said, 'is perfect'." *Id.*

"Stanley said he still had second thoughts as late as Thursday because the Marines dangled a

promotion that would have made him the top-ranking African American in the corps - with a clear path to further advancement." *Id.*

After eleven months on the job, he resigned with only ten days' notice. His explanation was very brief and attributed his resignation to personal

Continued next page...

What you really need know about Stanley

Continued from first page...

reasons. Other high-ranking officials at the same university gave several months of notice before resigning. Both he and other university officials refused to comment on his resignation.

Five days before his one-year anniversary as Penn's business chief, Clifford Stanley will resign his post on Oct. 10.

Stanley released a statement yesterday that read, "For personal reason, I have decided that now is the time to leave the University of Pennsylvania to pursue other opportunities." He did not return repeated phone calls yesterday. Fn.2.

Did he have some incredible job offer too good to turn down? No. After resigning, he stayed on at the University of Pennsylvania to work on his doctorate. In 2003 Stanley said something very strange for a man who had just left a senior administrative job at one of the most prestigious universities in the country:

"What I really want is a good understanding of the entire system," Stanley said. "I want to really learn how you run a school so that if I can be in a position of leadership one day, I can do that." Fn.3.

Steve Brauntuch, an editorial page writer wrote:

Staff members were surprised. Higher education search firms were confused. West Philadelphia leaders say they never even got the chance to meet with him. The circumstances surrounding Stanley's departure are mysterious at best and disconcerting at worst.

Will he be missed? Probably not, to be honest. Rodin can clearly handle the extra responsibility, and Penn has a very strong group of vice presidents—Fry [Stanley's predecessor] holdovers, by the way—in place that can handle themselves just fine. Fn.4.

Like many of Obama's nominees, Stanley appears to be fixated on race.

Stanley said he hasn't forgotten the Jim Crow laws that barred African Americans from jobs and public places like hotels, restaurants and other facilities. He hasn't forgotten African Americans living in fear of racially motivated violence.

"I still feel it, still see it," Stanley told the multiracial audience. As an African American, he said, "I am blessed to be able to see what others may see, even if I don't experience it myself. For example, I'm the person who goes into the company office and the first sergeant does everything but pay attention to me. I'm the person who goes into supply and the sergeant and his NCOs continue to chitchat and drink coffee, kind of ignoring me. I'm the person who never complains when I'm given all kinds of unfair duties and responsibilities." Fn.5.

Sources for further reading:

Fn.1. James M. O'Neill, *Penn finds its newest top official in Marines; Maj. Gen. Clifford L. Stanley, 55, of Virginia, has been named the university's chief operating officer*, THE PHILADELPHIA INQUIRER, September 7, 2002 at A01.

Fn.2. Spencer Willig, *U. Business chief to step down*, THE DAILY PENNSYLVANIAN, October 2, 2003. Available online at: <http://thedp.com/node/40158>. (Accessed November 30, 2009.)

Fn.3. Blair Kaminsky, *Perspective: Getting the third degree*, THE DAILY PENNSYLVANIAN, October 28, 2003. Available online at: <http://thedp.com/node/40503>. (Accessed November 30, 2009.)

Fn.4. Steve Brauntuch, *Gen. Stanley misfires on all cylinders*, THE DAILY PENNSYLVANIAN, October 16, 2003. Available online at: <http://thedp.com/print/40316>. (Accessed November 30, 2009.)

Fn.5. Rudi Williams, *Some People Uncomfortable With Ethnic Observances, General Says*, AMERICAN FORCES PRESS SERVICES, February 14, 2001. Available online at: <http://www.defenselink.mil/news/newsarticle.aspx?id=45714>. (Accessed November 30, 2009.)

NomineeAlert

THIS ALERT IS A SERVICE OF
AMERICANS FOR LIMITED GOVERNMENT
9900 MAIN STREET
SUITE 303
FAIRFAX, VA 22031
703.383.0880
WWW.GETLIBERTY.ORG

November 2009

NomineeAlert



this issue:

Chai Feldblum, Nominee for
Commissioner on the Equal
Employment Opportunity
Commission

Feldblum's Background

Professor, Georgetown University
Law Center

Director, Workplace Flexibility
2010

Legislative Counsel, American
Civil Liberties Union

Director of Legal Research, AIDS
Action Council

Clerk, Justice Blackmun, U.S.
Supreme Court

Clerk, Judge Coffin, 1st Circuit

Legislative Assistant, Rep.
Barbara Mikulski

Project Coordinator, Population
Resource Center

EDUCATION

B.A., Barnard College

J.D., Harvard Law School

Who is Chai Feldblum?

On September 15, 2009, President Obama
nominated Chai Feldblum to be a Member of
the Equal Employment Opportunity
Commission.

Feldblum is a professor
at Georgetown
University Law Center.

LGBT Issues

In 2005 Ms. Feldblum
started the Moral Values
Project which is
"founded upon the
conviction that a moral
case for sexual and
gender equity is both
possible and

necessary." Fn.1. She claims that when the
state does not pass laws outlawing
discrimination based on sexual orientation it is
making a moral choice that same-sex
orientation is bad. The truly morally neutral
position would be to pass laws protecting
persons from discrimination based on sexual

orientation.

She has also claimed that "when we pass a law

**"Feldblum's
pronouncement that the 1st
Amendment must be
subservient to the whims of
special interest groups is
deeply disturbing. We
need leaders who will
follow the Constitution and
not seek to circumvent it."**

*-Bill Wilson, President
Americans for Limited
Government*

that says you may not
discriminate on the basis
of sexual orientation, we
are burdening those who
have an alternative moral
assessment of gay men
and lesbians.' Feldblum
added: 'You have to stop,
think, and justify the
burden each time.
Respect doesn't mean
that the religious person
should prevail in the right
to discriminate -- it just
means demonstrating a
respectful awareness of

the religious position.'

While Feldblum admitted that when religious
liberty and sexual liberty conflict, she had 'a
hard time coming up with any case in which
religious liberty should win.'" Fn.2.

Continued next page...

What you really need to know about Chai Feldblum

Continued from first page...

Workplace Flexibility 2010

“Workplace Flexibility 2010 is an Alfred P. Sloan Foundation Initiative located at Georgetown University Law Center and directed by Professor Chai Feldblum. First established in November 2003 and subsequently expanded in June 2004, this research, outreach and consensus-building effort is designed to support the development of a comprehensive national policy on workplace flexibility.

To accommodate the flexibility needs of today’s employees, public and private actors must work together to create a national policy that relies on a combination of voluntary efforts by employers and employees and public policy efforts. Workplace flexibility includes the ability to enjoy different forms of part-time work without suffering disproportionate economic or job-related penalties, control over the timing of one’s work (if the particular industry allows for that), and provisions for employees to deal with unexpected emergencies and daily, logistical needs. With an effective policy, such workplaces would exist in all sectors of the economy: public and private, and for-profit and not-for-profit.” Fn.3.

Americans with Disabilities Act

From Ms. Feldblum’s testimony to the HELP Committee of U.S. Senate, July 15, 2008: “From 1988 to 1990, while working for the American Civil Liberties Union, I served as one of the lead legal advisors to the disability and civil rights communities in the drafting and negotiating of the ADA. From January 2008 until now, I have been actively involved in discussions between representatives of the disability and business communities on S. 1881 and H.R. 3195, the ADA Restoration Acts as introduced, to consider changes that would enable members of the business community to support those bills.” Fn.4. She also claims that “the Supreme Court has restricted the reach of the ADA’s protections by narrowly construing the definition of disability contrary to Congressional intent.” *Id.*

Sources for further reading:

Fn.1. The Moral Values Project website. Available online at: <http://www.law.georgetown.edu/moralvaluesproject/>. (Accessed October 30, 2009.)

Fn.2. Bill Berkowitz, *Religious Right Goes After Chai Feldblum*, Talk to Action, October 6, 2009. Available online at: <http://www.talk2action.org/story/2009/10/6/41729/7807>. (Accessed October 30, 2009.)

Fn.3. About Us, Workplace Flexibility 2010. Available online at: <http://www.law.georgetown.edu/workplaceflexibility2010/about/mission.cfm>. (Accessed October 30, 2009.)

Fn.4. Testimony of Chai R. Feldblum before the U.S. Senate Committee on Health, Education, Labor & Pensions, July 15, 2008. Available online at: <http://www.law.georgetown.edu/archiveada/documents/FeldblumTestimonyHELP7-15-08.pdf>. (Accessed October 30, 2009.)

NomineeAlert

THIS ALERT IS A SERVICE OF
AMERICANS FOR LIMITED GOVERNMENT
9900 MAIN STREET
SUITE 303
FAIRFAX, VA 22031
703.383.0880
WWW.GETLIBERTY.ORG

August 2009

NomineeAlert

Berrien's Background

Associate Director-Counsel,
NAACP Legal Defense and
Educational Fund, Inc.

Adjunct Professor of Law, New
York Law School

Program Officer, Governance and
Civil Society Unit, Peace and
Social Justice Program, Ford
Foundation

Staff Attorney, Voting Rights
Project, Lawyers Committee for
Civil Rights Under Law

Staff Attorney, National Legal
Department and Women's Rights
Project, ACLU

Clerk, U.S. District Court Judge
U.W. Clemon

General Editor, Harvard Civil
Rights-Civil Liberties Law Review

Trustee, Oberlin College

EDUCATION

B.A., Oberlin College
J.D., Harvard Law School



Who is Berrien?

On July 16, 2009, President Obama nominated Jacqueline A. Berrien to be Chairman of the Equal Employment Opportunity Commission.

Berrien is an attorney who has spent considerable time litigating issues involving alleged racial discrimination. It appears that she finds racism in everything.

The Equal Employment Opportunity Commission consists of five members who set equal opportunity policy. It would be unacceptable to allow an ideologue like Berrien to

lead the commission that enforces civil rights laws. She has cost taxpayers too much already with her frivolous lawsuits while in the non-profit sector. She certainly should not be given the authority and a \$350 million budget to further hobble struggling businesses and localities.

this issue:

Jacqueline A. Berrien, Nominee
to be Chairman of the Equal
Employment Opportunity
Commission

Racism everywhere...

The following quotes from Berrien reveal her thinking regarding issues of race.

**"Race can't be an
afterthought." Fn.1.**

**"It's time to put the racial
grievance and faux victim-
hood industry out of busi-
ness. Obama's nomination
of Berrien to the EEOC will
not help in this regard."**

*-Bill Wilson, President, Americans
for Limited Government*

"Any law that helps Black people, has been challenged in the last decade or two, as hurting white people." Fn.2.

"[T]he courts are not, and have never been a substitute for the streets." Fn.3.

"[R]ace can't be an afterthought." *Id.*

"An injury to one is an injury to all. And the

example of that, in this context, is really felony disenfranchisement." *Id.*

"We have a current and continuing problem of people being excluded from the political process, and their access to parts of the political

Continued next page...

What you really need to know about Berrien

Continued from first page...

process being determined based on their race, color, national origin, and language proficiency.” *Id.*

“[S]ome of the most effective tools used historically, to thwart African-American voters in their political participation, are still effective and still powerful. And the two that I think deserve particular mention are: discretion of local election officials and intimidation of voters.” *Id.*

“Some of what happened in 2004, in terms of the enforcement of HAVA [Help America Vote Act], shouldn’t have been a surprise, because the way that the law was set up, it always provided for some of the things that were potentially most helpful not to kick in until after the 2004 election. And conversely, some of the things that were most problematic, like photo ID requirements, to kick in before the 2004 election. And, the Legal Defense Fund and other advocates were consistent in opposing that aspect of the law.” *Id.*

Berrien worked alongside the ACLU attorney who served as counsel in *Kentucky v. Welch*, 864 S.W.2d 280 (KY 1993), defending a woman who was prosecuted for child abuse for abusing drugs while pregnant. She has also written on this subject attempting to make the case that drug abuse by pregnant women should never be punished. Fn. 4.

Time and again, when blacks were not elected to office, Berrien alleged racism and sued to change the rules so that blacks would win. She wanted to call expensive special elections and reconfigure districts to her liking. Time and again, her racial arguments were dismissed. In *Dillard v. Baldwin*, she wanted to redraw the districts to try to ensure that blacks were elected—even though blacks make up less than 10% of the voting population and were not concentrated in a compact community. In *Williams v. McKeithen*, she unsuccessfully sought to postpone elections. In *Maxwell v. Foster*, she failed in her effort to redraw districts that had been in place for seven years and were about to be changed in the decennial redistricting. Never satisfied, she alleged in *Jenkins v. Red Clay Consol. Sch. Bd. Of Educ.* that the at-large system of electing school board members unlawfully diluted the voting strength of black voters. On the contrary, the court ruled that the plurality voting scheme did not allow discrimination. In *Mannings v. Sch. Bd.*, she tried to block a school redistricting plan because black children would have to go to a new elementary school with a 40% black population. Apparently, the court did not find that to be much of a hardship and ruled that there was no practicable way to further reduce the percentage of black students. Fn.5.

Berrien also filed a brief on behalf of those trying to destroy the Virginia Military Institute’s character and 150-year heritage by forcing the institution to accept women. Fn.6.

Sources for further reading:

Fn.1. See Fn.3., *infra*.

Fn.2. *Black Labor Calls for New ‘Gary Convention’ National Gathering Planned for Broad Black Agenda*, The Black Commentator, Issue 140, June 2, 2005. Available online at: http://www.blackcommentator.com/140/140_cover_cbtu.html#. (Accessed August 26, 2009.)

Fn.3. Rediscovering Democracy Panel: The Future of Election Law, 2005 ACS Convention, July 29, 2005. Available online at: https://secure.acslaw.org/files/2005%20convention_rediscovering%20democracy_panel%20transcript.pdf. (Accessed August 26, 2009.)

Fn.4. Jacqueline Berrien, *Pregnancy and Drug Use: The Dangerous and Unequal Use of Punitive Measures*, 2 YALE J.L. & FEMINISM 239 (1990).

Fn.5. *Jenkins v. Red Clay Consol. Sch. Dist. Bd. of Educ.*, 1996 U.S. Dist. LEXIS 4747 (D. Del. 1996); *Dillard v. Baldwin*, 292 F. Supp.2d 1302 (M.D. Ala. 2003), *subsequent history* 289 F. Supp. 2d 1315 (M.D. Ala. 2003); *Williams v. McKeithen*, 2005 U.S. Dist. LEXIS 17788 (E.D. La. 2005); *Maxwell v. Foster*, 1999 U.S. Dist. LEXIS 23447 (W.D. La. 1999); *Mannings v. Sch. Bd.*, 1995 U.S. Dist. LEXIS 22267 (M.D. Fla. 1995).

Fn.6. *United States v. Virginia*, 976 F.2d 890 (4th Cir. 1992).

NomineeAlert

THIS ALERT IS A SERVICE OF
AMERICANS FOR LIMITED GOVERNMENT
9900 MAIN STREET
SUITE 303
FAIRFAX, VA 22031
703.383.0880
WWW.GETLIBERTY.ORG

November 2009

NomineeAlert



this issue:

James A. Wynn, Nominee for
Judge on the U.S. Court of
Appeals for the 4th Circuit

Wynn's Background

Associate Justice, North Carolina
Supreme Court

Judge, North Carolina Court of
Appeals

Attorney, Fitch, Butterfield &
Wynn

North Carolina Assistant
Appellate Defender

U.S. Navy JAG Corps, Naval
Service Office

Certified Military Trial Judge, U.S.
Navy Reserves

EDUCATION

B.A., University of North Carolina-
Chapel Hill

J.D., Marquette University School
of Law

L.L.M., University of Virginia
School of Law

Who is James A. Wynn?

On November 4, 2009 President Obama nominated James A. Wynn to be a judge on the U.S. Court of Appeals for the 4th Circuit. Wynn is currently a judge on the North Carolina Court of Appeals.

Wynn is the vice-chairman of the Justice at Stake Campaign, a left-wing group which is bent on weakening the influence of conservatives on the courts. He is obsessed with race, class, and gender and has been endorsed by virtually every liberal group and paper in his state.

The Justice at Stake Campaign vehemently opposes cultural conservatism and has been funded by George Soros' Open Society Institute. Since 2004 Soros has given nearly \$3 million either directly or indirectly to the organization. The Joyce Foundation, on whose board Obama's friend Valerie Jarrett sat for six years, is also a

major contributor. Since 2003 The Joyce Foundation has given over \$1.1 million to the organization. For perspective, the organization's income was less than \$1.5 million in 2006.

**"Wynn is another
Obama nominee who
appears to be more
concerned about the
color of one's skin than
their ability to perform
on the job."**

***-Don Todd,
Director of Research,
Americans for Limited
Government***

Of the judicial elections Wynn has won, two were close and one was uncontested. In 1990 Wynn barely beat his opponent. In 2000 Wynn narrowly prevailed over an opponent who raised only \$2,300. In 2008 Wynn beat his woefully underfunded opponent by less than 9%. North Carolina voters have twice rejected Wynn for the state supreme court, first in 1998 and again in 2004.

Conveniently, Justice at Stake opposes judicial elections. Fn.1.

Like many of Obama's nominees, Wynn appears to obsess about race, class, and gender. In a 2004 law review article Wynn made the following statement, "It is clear, however, that efforts to obtain a diverse bench, whether in a

Continued next page...

What you really need know about Wynn

Sources for further reading:

Fn.1. *Data-Net*, The Program on Public Life, Center for the Study of the American South, University of North Carolina, Issue 44, July 2007. Available online at: <http://southnow.org/southnow-publications/nc-datanel/ncdn44.pdf>. (Accessed November 30, 2009.)

Open Society Institute's search page for grants. Available online at: <http://www.soros.org/grants/research>. (Accessed November 30, 2009.)

The Joyce Foundation Annual Reports for 2003, 2005, and 2007. Available online at: http://www.joycefdn.org/pdf/03_AnnualReport.pdf, http://www.joycefdn.org/pdf/JF_05AR.pdf, and http://www.joycefdn.org/pdf/07_AnnualReport.pdf. (Accessed November 30, 2009.)

See also, Bert Brandenburg and Amy Kay, *Crusading Against the Courts, The New Mission to Weaken the Role of the Courts in Protecting Our Religious Liberties*, Justice at Stake Campaign, May 2007. Available online at: <http://www.gavelgrab.org/wp-content/resources/CrusadingAgainstCourts.pdf>. (Accessed November 30, 2009.)

Fn.2. James Andrew Wynn, Jr. and Eli Paul Mazur, *Perspectives: Judicial Elections Versus Merit Selection: Judicial Diversity: Where Independence and Accountability Meet*, 67 ALB. L. REV. 775, 776 (2004).

Fn.3. Tavis Smiley and Charles Edwards, *Two African-American judges seeking re-election in their states' supreme courts*, National Public Radio, November 1, 2004. (Excerpt from radio political ad.)

Continued from first page...

system of merit selection or popular election, foster the complementary interests of judicial independence and judicial accountability." Fn.2. He complains about the skin color of the members of the bench:

Indeed, the American judiciary is disproportionately white and male. These white men disproportionately make judgments affecting African-Americans, women, and other minorities. Scholars have detailed how this disparity between the judges and the judged creates a crisis of legitimacy because our courts are perceived by much of the public as biased "instruments of oppression." More important than a perception of bias, however, is that the absence of diversity creates (in fact) a judicial partiality to the values and stories of the groups overrepresented - white men - in its midst. Although the vast majority of white male judges are not repositories of racial animus, one commentator notes that they are, nevertheless, "steeped in and bound by narratives which appear not to be narratives at all because they are cloaked in the transparency of whiteness." *Id.* at 782.

He states further:

The life experiences of judges are overwhelmingly white, male, and affluent. This homogeneity poses a significant challenge for a judicial system that disproportionately passes judgment on issues affecting African-Americans, women, and other minorities. Ultimately, "the finding and evaluation of facts [as well as legal predispositions, are] affected by our judges' lack of connection with the judged." Without diversity, affluent white males have an onerous and lonely challenge to articulate the stories and life narratives of African-Americans alleging police brutality, women claiming sexual harassment, and Native Americans demanding greater autonomy, just to name a few.

If impartiality is the heart and soul of the merit-selection movement, then proponents of judicial appointment must address the enduring home-field advantage of affluence, whiteness, and manhood in the American judiciary. Fn.2. at 785-6.

Applying these views to his own situation, Wynn ran an explicitly racial campaign to win a judicial election in North Carolina. While Wynn refused to take positions on the burning issues of the day, he did tout his race as a reason to vote for him:

This election year is the 50th anniversary of the Brown vs. Board of Education decision that ended segregation in America's education system. And ironically, here in North Carolina, we still have a segregated Supreme Court. There are no African-Americans on the state's highest court. But with your help, we will change that on November 2nd, 2004.

Fn.3.

Apparently his racial appeals fell flat, and Wynn lost the election by over 74,000 votes.

NomineeAlert

THIS ALERT IS A SERVICE OF
AMERICANS FOR LIMITED GOVERNMENT
9900 MAIN STREET
SUITE 303
FAIRFAX, VA 22031
703.383.0880
WWW.GETLIBERTY.ORG



this issue:

Louis B. Butler, Nominee for
 Judge on the U.S. District Court
 for the Western District of
 Wisconsin

Butler's Background

Justice in Residence and
 Lecturer, University of Wisconsin
 Law School

Justice, Wisconsin Supreme
 Court

Judge, Wisconsin Circuit Court

Judge, Milwaukee Municipal
 Court

Adjunct Professor of Law,
 Marquette University Law School

Public Defender

Attorney, Independence Bank of
 Chicago

EDUCATION

B.A., Lawrence University

J.D., University of Wisconsin Law
 School

Who is Louis B. Butler?

On September 30, 2009 President Obama nominated Louis B. Butler for a position on the U.S. District Court for the Western District of Wisconsin.

Butler has twice been rejected for a position on the Wisconsin Supreme Court. After losing an election in 2000 Butler received an appointment to that court in 2004 when President Bush elevated a sitting Justice Sykes to the U.S. Court of Appeals for the 7th Circuit. Butler sat on the Wisconsin Supreme Court from 2004 to 2008. His tenure was so bad that the voters of Wisconsin voted him out of office, the first time a sitting justice had lost a retention election in over four decades.

"As consolation prizes go, Louis Butler can't complain. After being twice rejected by Wisconsin voters for a place on the state Supreme Court, the former judge has instead been nominated by President Obama to a lifetime seat on the federal district court. If he is confirmed, Wisconsin voters will have years

Loophole Louie...

to contend with the decisions of a judge they made clear they would rather live without." Fn.1.

During Butler's career he has earned the nickname

"Wisconsin voters have twice rejected Butler for a seat on the state supreme court, a seat limited to a few years duration. Obama should not now force these same voters to endure Butler as a federal judge with lifetime tenure."

*-Bill Wilson, President,
 Americans for Limited
 Government*

"Loophole Louie" due to his reputation for soft on crime. See Fn.1. He even embraced this nickname because it was "affectionate." Fn.2.

However, it was mainly his voting on tort cases that resulted in the voters tossing him from office:

In *Ferdon v. Wisconsin Partners*, he drew the rage of doctors and others when he dismantled the state's limit on noneconomic

damages in medical malpractices cases—the kind of tort reform that had been serving the state well. Business groups were likewise floored by his decision in *Thomas v. Mallet*, which allowed "collective liability" in lead paint cases—making any company a potential target, regardless of whether they made the paint in question. See Fn.1.

Continued next page...

What you really need to know about Butler

Continued from first page...

This lead paint case made Wisconsin the only state in country a "collective liability" standard in these types of cases.

Justice Butler soon wrote the infamous decision in *Thomas v. Mallet*, which created a guilty-until-proven-innocent approach to product liability. Wisconsin became the only state to adopt a "collective liability" theory in lead paint cases: Whether a company actually produced the lead paint that harmed a claimant was irrelevant to its guilt or innocence. See Fn.2.

The court's analysis in striking down damage caps in medical malpractice cases has been strongly criticized as allowing the court to strike down any law it doesn't like.

Then came *Ferdon v. Wisconsin Patients*, declaring unconstitutional the state's cap on noneconomic damages in medical malpractice cases. It argued that the caps bore "no rational relationship to a legitimate government interest." That conclusion was bizarre, since the legislature had specifically passed the caps to make malpractice insurance "available and affordable," and the caps worked. In 2004, the American Medical Association judged Wisconsin to be one of only six states not in a medical malpractice crisis. Marquette University law professor Rick Esenberg concluded that under the court's reasoning in that case, "almost any law is subject to being struck down." See Fn.2.

Even more amazing is the court's notion that the rationality of a statute can change over time.

The court justified its inquiry, in part, by stating that a statute that is rational when enacted may be made irrational by events and presuming that policing this "devolving rationality" is a judicial responsibility. Fn.3.

During Butler's tenure his actions as part of the court's liberal majority also drew strong criticism for their decisions on search and seizure law as well as their apparent desire to micromanage the police.

Justice Butler wrote a majority opinion finding that the state constitution provided greater protection to suspected criminals, even though its wording virtually mirrored that of the U.S. Constitution. See Fn.2.

Although the court declined the petitioner's invitation to adopt a per se rule of exclusion of all confessions by children under sixteen who have not been given an opportunity to consult with a parent or interested adult, the court did order that, henceforth, "all custodial interrogation of juveniles in future cases be electronically recorded where feasible, and without exception when questioning occurs at a place of detention." Presumably any evidence obtained from unrecorded custodial interrogations will be excluded. See Fn.3.

This overreaching went beyond what is required by either the U.S. or Wisconsin constitutions and demonstrates a lack of respect for the judiciary's proper role.

Sources for further reading:

Fn.1. *The White House Butler*, THE WALL STREET JOURNAL, November 19, 2009, at A20.

Fn.2. John Fund, *Wisconsin's Judicial Revolution*, THE WALL STREET JOURNAL, April 5, 2008. Available online at: http://online.wsj.com/public/article_print/SB120735975782591721.html. (Accessed December 7, 2009.)

Fn.3. Rick Esenberg, *A Court Unbound? The Recent Wisconsin Supreme Court*, The Federalist Society for Law and Public Policy, May 2007, at 4. Available online at: http://www.fed-soc.org/doclib/20070329_WisconsinWhitePaper.pdf. (Accessed December 7, 2009.)

NomineeAlert

THIS ALERT IS A SERVICE OF
AMERICANS FOR LIMITED GOVERNMENT
9900 MAIN STREET
SUITE 303
FAIRFAX, VA 22031
703.383.0880
WWW.GETLIBERTY.ORG

June 2009

NomineeAlert

Schroeder's Background

Professor, Duke University School of Law

Of Counsel, O'Melveny & Myers, L.L.P.

Impeachment Trial Counsel, Sen. Joe Biden

Deputy Assistant Attorney and Special Counsel, Office of Legal Counsel, U.S. Department of Justice

Chief Counsel, Senate Judiciary Committee

Partner, Armour, Schroeder, St. John & Wilcox

Director, Energy and Environment Project, Earl Warren Legal Institute, University of California, Berkeley

EDUCATION

B.A., Princeton University

M.Div., Yale University

J.D., University of California,

Berkeley (Boalt Hall)



this issue:

Christopher Schroeder, Nominee for Assistant Attorney General for the Office of Legal Policy

Who is Christopher Schroeder? Saving you from yourself...

On June 4, 2009, President Obama nominated Christopher H. Schroeder to be the Assistant Attorney General for the Office of Legal Policy.

Schroeder's general philosophy regarding regulation seems to be a desire to regulate the risk out of everything while simultaneously punishing those who engage in risky behavior even if no harm actually occurs from that behavior.

The Office of Legal Policy at the Justice Department handles the

Department's significant policy initiatives and other special projects while working with the Office of Legislative Affairs to get its agenda through Congress.

Schroeder is another of Obama's nominees who has a "regulate first, ask questions later"

approach to governing. One of the tools typically used by administrative agencies in promulgating regulations is to examine the

costs of the regulation versus its benefits. Schroeder is opposed to performing this type of analysis in the rulemaking process but instead advocates that if such analysis is necessary it can be accomplished after the regulation is finalized. On this point Schroeder has stated, "Studying the cost and benefits before a regulation is promulgated slows the rulemaking process to produce

information that is not useful to the agency's mandate. Assuming that it is useful to study the efficiency of regulations, this delay can be avoided by undertaking retrospective cost-benefit studies." Fn.1

"Schroeder's advocacy of a regulate first, research later philosophy in governing is deeply troubling. Americans need and deserve leaders who do the opposite, leaders who think first and then act, not the reverse."

-Bill Wilson, President, Americans for Limited Government

Continued next page...

Sources for further reading:

Fn.1. Sidney A. Shapiro, and Christopher H. Schroeder, *Beyond Cost-Benefit Analysis: A Pragmatic Reorientation*, HARVARD ENVIRONMENTAL LAW REVIEW, Vol. 31, 2008; Wake Forest Univ. Legal Studies Paper No. 1087796. Available online at SSRN: <http://ssrn.com/abstract=1087796>. (Accessed June 8, 2009.)

Fn.2. Christopher Schroeder, *CPR Perspective, The Precautionary Principle*, undated. Center for Progressive Reform. Available online at: <http://www.cprblog.org/perspprecaution.cfm>. (Accessed June 8, 2009.)

Fn.3. Michele Morrone's book review of *A New Progressive Agenda for Public Health and the Environment*, Christopher H. Schroeder and Rene Steinzor (eds.) Durham, NC: Carolina Academic Press, 2005, Vol. 15, No. 5, May 2005, LAW AND POLITICS BOOK REVIEW, Law and Courts Section, American Political Science Foundation, 2005. Available online at: <http://www.bsos.umd.edu/gvpt/lpbr/subpages/reviews/schroeder-steinzor505.htm>. (Accessed June 8, 2009.)

Fn.4. Interview of Schroeder by Patrick Adams, *Homeland Insecurities*, Vol. 88, No. 5, July –August 2002, DUKE MAGAZINE. Available online at: <http://dukemagazine.duke.edu/dukemag/issues/070802/depqa.html>. (Accessed June 8, 2009.)

Fn.5. Brian Friel, Gray Areas, GovernmentExecutive.com, January 29, 2007. Available online at: <http://www.govexec.com/dailyfed/0107/012907ol.htm>. (Accessed June 8, 2009.)

Walter Dellinger and Christopher Schroeder, *The Purse Isn't Congress' Only Weapon*, THE NEW YORK TIMES, March 14, 2007, at A23. Available online at: <http://www.nytimes.com/2007/03/14/opinion/14dellinger.html?> (Accessed June 8, 2009.)

What you really need to know about Christopher H. Schroeder

Continued from first page...

Schroeder wants to reduce the influence of cost-benefit analysis in the regulatory process by including the analysis from other branches of academia other than just economics. He views cost-benefit analysis as an obstacle to regulation and wants to reset the balance between left-wing advocacy groups and regulated entities. He thinks that regulated entities should have to prove that they won't harm others, rather than require victims to prove that regulated entities did harm them. He also wants to advance the agenda of animal rights activists as well as environmentalists and others. He thinks that cost-benefit analysis should only be used to reduce the severity of regulations if it was written into law by Congress.

Schroeder would like to punish people for risky behavior without waiting for the risky behavior to actually cause harm. He wants to employ the precautionary principle and regulate before there is certainty that there is a problem. "There is a general sense that recognition of the precautionary principle will mean more regulation and tighter controls." Fn.2.

Other Views Held by Schroeder:

- He believes that voluntary environmental programs are harmful. Fn.3.
- He believes in forcing expensive technology on industries for environmental controls with little regard to cost. *Id.*
- He believes that conservatives in general, conservative judges, and regulated industries are enemies of the environment and public health. *Id.*
- He doesn't believe that overregulation is a problem. *See Fn. 1.*
- He thinks that terrorists should have access to our courts. Fn.4.
- He believes that Congress can regulate war. Fn.5.

NomineeAlert

THIS ALERT IS A SERVICE OF
AMERICANS FOR LIMITED GOVERNMENT
9900 MAIN STREET
SUITE 303
FAIRFAX, VA 22031
703.383.0880
WWW.GETLIBERTY.ORG



this issue:

M. Patricia Smith, Nominee for
Solicitor of Labor

Who is M. Patricia Smith?

President Obama's payoff to Big Labor for their valuable campaign support started immediately after he was sworn in. First Obama signed several union friendly executive orders that among other things deprived union members of previously mandated information about their rights. Next his Labor Department began work to gut financial and conflicts of interest disclosures required from unions and their officers. Now the controversial enforcement practices in the current work of M. Patricia Smith raises serious questions as to whether she should be confirmed.

Smith has been nominated to be Solicitor of Labor, the third highest official and the person with the final word on all legal advice in the Department.

Smith is currently an official in the New York State Department of Labor. Smith Serves as Commissioner of Labor.

Smith's nomination is troubling for among other reasons because of an initiative she devised in her current position, the "Wage Watch." Fn.2. This initiative could very likely be a model used by Smith on a national level if she is confirmed. If so, it could turn tens of thousands of "community organizers" into raving vigilantes nationwide.

The enforcement initiative essentially deputizes

private entities, such as ACORN, to do enforcement work through "formal partnerships" with the state. Groups participating in this initiative are given a specific geographic zone to patrol, are provided with training and literature, and are assigned a designated contact person to which they provide "referrals" when they find what they decide are violations of wage and hour laws.

The press release announcing the initiative made the case that the state needed help stating, "We are enforcing the law as creatively and aggressively as we can, but the government cannot do it alone." In short, the Obama Administration may soon be sending out the order to "round up the posse"—and sick it on unsuspecting business owners.

“ The image painted by the Department in its January 26 release is of a posse of activists, duly deputized by the weighty imprimatur of the Department, demanding access to any employer in the state whom they have chosen either at random, by will, or by prejudice. ”
Fn.1.

The vast majority of the groups participating in this initiative are either labor unions or labor union affiliated entities. The notion of labor bosses patrolling a beat instead of Labor Department officials has caused New York business groups to take note and express serious concern. A group of business associations made their concerns known stating,

“To give quasi-enforcement capabilities to
Continued next page...”

Smith's Background

Commissioner, N.Y. State
Department of Labor

Bureau Chief, Labor Bureau, N.Y.
State Attorney General's Office

EDUCATION

Trinity College
N.Y. University School of Law

What you really need to know M. Patricia Smith

Continued from first page...

certain, seemingly hand-selected constituencies sets a troubling precedent that could spread among the spectrum of state agencies. We wonder how such an effort can create an atmosphere of anything other than vigilantism where every honest employer will have a legitimate concern for the preservation of his or her rights as a taxpaying business owner in the state of New York. The image painted by the Department in its January 26 release is of a posse of activists, duly deputized by the weighty imprimatur of the Department, demanding access to any employer in the state whom they have chosen either at random, by will, or by prejudice." See *Fn. 1*.

What these business groups fear are hardball union organizing tactics such as "corporate campaigns" that often occur when a union knows that it can't convince the employees to join the union, so it engages in a strong-arm public relations and legal campaign against the employer. The campaign continues until the employer caves in and agrees to help corral its employees into union membership.

Imagine the pressure that a small employer would feel when confronted with a skilled union organizer who walks in, flashes a copy of his government-granted "formal partnership," and then proceeds to casually mention that he need not take a look at the employer's books if he gets help convincing employees to join the union. Meanwhile a recalcitrant employer next door is paying immigrant workers less than the minimum wage and because the employer is not an organizing target they go unnoticed. Or worse, the union knows that this employer next door is engaging in illegal activity, the employer buys peace by funding a union affiliated group, and no Labor Department referral occurs.

The New York Post recently editorialized against the Wage Watch initiative, pointing out the very real potential for union corruption stating, "One needn't have lived in New York very long to understand where *that* presently will lead: kangaroo-court proceedings against companies that refuse to buckle under to activist pressure." *Fn. 3*.

The Post added, "No reasonable person objects to state efforts to fairly, fully enforce the law. But empowering interest groups between the state and the citizen can quickly distort the law's purpose. After all, the organizations the Labor Department has teamed up with are *hardly* disinterested parties." Well said.

If this is how Obama's nominees run operations at the state level, there can be little doubt that this practice of deputizing activist organizations will also likely occur at the federal level. After all, this President cut his teeth on Saul Alinsky-style "community organizing."

During the past eight years, the U.S. Department of Labor obtained over 900 criminal convictions against corrupt union officials, mostly for crimes such as embezzlement. *Fn. 4*. Placing union officials into a position where they are engaged in quasi-law enforcement activities virtually begs irresponsibility at best, and malfeasance at worst.

Little wonder there is a widespread feeling the Obama Administration should not allow enforcement actions to be leveraged for the collateral purpose of union organizing. Enforcement actions should be handled by Department officials alone, not by union organizers and community activists who have a conflict of interest in seeing a particular employer penalized.

The problems discussed above coupled with Smith's unwillingness to give the Senate complete answers lead Sen. Enzi, Ranking Member on the Senate Committee on Health, Education, Labor, and Pensions to demand Smith's withdrawal. On this issue Sen. Enzi stated:

"The nomination of Patricia Smith to be Solicitor of Labor brings me great concern," said Enzi. "Her lack of candor during her hearing and responses to subsequent questions posed by the Committee has resulted in a lack of confidence regarding her ability to effectively run the Solicitor's office. This breach of our trust cannot be brushed aside by claiming the questions involve a pilot program or that the responsibility rests solely with her Deputy." *Fn. 5*.

Sources for further reading:

Fn. 1. Business coalition letter to M. Patricia Smith, Commissioner, New York Department of Labor, February 9, 2009. Available online at: <http://www.nyacs.org/documents/09wagewatch.pdf>. (Accessed December 9, 2009.)

Fn. 2. *LABOR DEPARTMENT INITIATIVE EMPOWERS ORDINARY PEOPLE TO JOIN THE FIGHT AGAINST WAGE THEFT: New York Wage Watch, the Only One of its Kind in the Nation, to Roll Out in New York City and Long Island*, New York State Department of Labor press release, January 26, 2009. Available online at: http://www.labor.state.ny.us/pressreleases/2009/Jan26_2009.htm. (Accessed December 9, 2009.)

Fn. 3. *Vigilante Labor "Justice,"* NEW YORK POST, February 2, 2009, at 22. Available online at: http://www.nypost.com/seven/02022009/postopinon/editorials/vigilante_labor_justice_153134.htm. (Accessed December 9, 2009.)

Fn. 4. *2008 Annual Report*, Office of Labor-Management Standards, U.S. Department of Labor, at 2. Available online at: http://www.dol.gov/olms/regs/compliance/highlights_08.pdf. (Accessed December 8, 2009.)

Fn. 5. *Enzi Stands Firm in Opposition to Solicitor Nominee*, Press Release, Office of Sen. Mike Enzi, October 7, 2009. Available online at: http://help.senate.gov/Min_press/2009_10_07.pdf. (Accessed December 9, 2009.)

NomineeAlert

THIS ALERT IS A SERVICE OF
AMERICANS FOR LIMITED GOVERNMENT
9900 MAIN STREET
SUITE 303
FAIRFAX, VA 22031
703.383.0880
WWW.GETLIBERTY.ORG

August 2009

NomineeAlert



this issue:

Craig Becker, Nominee to be
Member of the National Labor
Relations Board

Becker's Background

Associate General Counsel,
Service Employees International
Union

Associate General Counsel,
AFL-CIO

Professor of Law, University of
California, Los Angeles

Professor, University of Chicago

Adjunct Professor, Georgetown
University Law School

Attorney, Kirschner Weinberg &
Dempsey

Law Clerk, U.S. Court of Appeals
for the 8th Circuit

EDUCATION

B.A. Yale College

J.D. Yale Law School

Who is Craig Becker? No right to not have a union...

On July 9, 2009, President Obama nominated Craig Becker to be a member of the National Labor Relations Board (NLRB).

Becker is a longtime union activist and counsel who has spent considerable time advocating for reduced rights of workers and greater rights for unions.

"The right to strike has been gutted by the federal courts and the National Labor Relations Board (NLRB). Due to restrictions on its scope and content, the strike guarantee now appears illusory." Becker argues for higher protection for striking workers including

expansion of the definition of the term strike to include activities beyond the "naked act of stopping work." He would include activities such as intermittent work stoppages, sit-ins, etc. Fn.2.

Becker complains about how difficult is it to bring

class action lawsuits under the Fair Labor Standards Act. He complains about the requirements to opt-in to these lawsuits stating that

"Just as U.S. citizens cannot opt against having a congressman, workers should not be able to choose against having a union as their monopoly-bargaining agent."
Fn.1.

"Becker's likening of unions to government is dangerous. Obama should withdraw Becker's nomination and appoint someone who will look out for workers instead of unions."

*-Bill Wilson, President,
Americans for Limited Government*

individual prospective plaintiffs are hard to locate and that even when potential plaintiffs are located that they do not always want to get involved in these lawsuits. On this point he states as follows: "If Congress wishes to truly adopt a Class Action Fairness Act, will amend section 16(b) to remove the opt-in requirement and thereby harmonize the law of collective actions under the FLSA with the rules applied to virtually all other causes of action brought on behalf of a class in the federal and state courts."

Fn.3.

Becker in a law review article advocates the complete removal of employers from any standing or say in the process of unionizing workplaces.

Continued next page...

What you really need to know about Becker

Sources for further reading:

Fn.1. See Fn.6., *infra*.

Fn.2. Craig Becker, "Better Than a Strike": Protecting New Forms of Collective Work Stoppages under the National Labor Relations Act, 61 U. CHI. L. REV. 351, Spring 1994.

Fn.3. Craig Becker and Paul Strauss, *Representing Low-Wage Workers in the Absence of a Class: The Peculiar Case of Section 16 of the Fair Labor Standards Act and the Underenforcement of Minimum Labor Standards*, 92 MINN. L. REV. 1317, May 2008.

Fn.4. Craig Becker, *Democracy in the Workplace: Union Representation Elections and Federal Labor Law*, 77 MINN. L. REV. 495, February 1993.

Fn.5. Craig Becker, New Labor Forum, Fall/Winter 1998.

Fn.6. *National Right to Work Newsletter*, May 2009. Available online at <http://www.nrtwc.org/blog/wp-content/uploads/2009/05/bho-personnel-alert-becker1.pdf>. (Accessed August 5, 2009.)

Fn.7. See Fn.4.

See also: U.S. Chamber of Commerce's July 24, 2009 letter on Becker. See: http://www.uschamber.com/NR/rdonlyres/et-txevxhnek3wkr3cgek7c6frknxbzziu52m3jmw74itsnltljywtuk4qflaqvvhz2ij4l2mh3fsozqka3xz44dzc/090724_becker.pdf. (Accessed August 5, 2009.)

Continued from first page...

On this point he states, "employers should be stripped of any legally cognizable interest in their employees' election of representatives." Fn.4. The article approaches union representation elections from the viewpoint that every workplace should be unionized that that without union representation workers are essentially disenfranchised as concerns the terms and conditions of their employment, thus analogizing that non-union workers are similar to "non-voting member[s] of a society." *Id.*

Another element of this view is that the Constitution in Article IV, section 4 guarantees "a republican form of government" to the states and that "the preservation of industrial democracy [is] essential to the preservation of the republican form of government." *Id.* Becker believes that workers do not have the right to choose to not be represented by unions. "At first blush it might seem fair to give workers the choice to remain unrepresented. But, in providing workers this US labor law grants employers a powerful incentive." Fn.5. He compares the workplace to the country as a whole and states, "Just as U.S. citizens cannot opt against having a congressman, workers should not be able to choose against having a union as their monopoly-bargaining agent." Fn.6.

Ironically Becker acknowledges that elections are the safest way to ensure workplace democracy. In a section of this article while discussing the NLRB's decision in the 1930s to only certify unions where an election had occurred he stated as follows: "In the face of bitter antagonism to its incipient efforts to impose a system of representation on industry, the Board shifted course and resorted exclusively to the most unimpeachable democratic instrument -- the election." Fn.7.

In discussing the relationship between employers and their employees' union representatives Becker points out that "Employers have no standing to assert their employees' right to fair representation." *Id.* He tries to dovetail this to the question of representation in the first place stating, "Similarly, employers should have no right to raise questions concerning voter eligibility or campaign conduct." *Id.*

Becker further states on the issue of union representation, "On the questions of unit determination, voter eligibility, and campaign conduct, only the employee constituency and their potential union representatives should be heard." *Id.*

Becker advocated taking away the right of employers to petition the NLRB for a representation election when confronted with a union that claims to have the support of workers. This would be done by completely stripping employers of their status as parties. On this point Becker states, "This redefinition of the parties to labor representation proceedings would eliminate or, at least, greatly simplify long-standing controversies concerning election timing, constituency, and review of results. The question of timing would be answered decisively: Employees and unions alone could influence the Board's election scheduling, a result the law has intended all along." *Id.*

Becker believes that taking employers out of the process of determining union representation would among other things bring more equity. On this point he states, "Finally, denying employers standing to contest each ruling issued in representation cases would both streamline and bring equity to the review of election results." *Id.*

NomineeAlert

THIS ALERT IS A SERVICE OF
AMERICANS FOR LIMITED GOVERNMENT
9900 MAIN STREET
SUITE 303
FAIRFAX, VA 22031
703.383.0880
WWW.GETLIBERTY.ORG

August 2009

NomineeAlert



this issue:

Mark G. Pearce, Nominee to be
Member of the National Labor
Relations Board

Pearce's Background

Founding Partner, Creighton,
Pearce, Johnsen & Giroux

Attorney, Lipsitz, Green,
Fahringer, Roll, Salisbury &
Cambria L.L.P.

Attorney and District Trial
Specialist, National Labor
Relations Board

Board of Directors of the Lawyers
Coordinating Committee of the
AFL-CIO

EDUCATION

B.A., Cornell University
J.D., State University of New York

Who is Pearce?

On July 9, 2009, President Obama nominated Mark G. Pearce to be a member of the National Labor Relations Board (NLRB).

Pearce spent most of his early career in the Buffalo office of the National Labor Relations Board and has practiced law in the private sector since leaving the Board in 1994. Pearce's representation of corrupt union leaders who embezzled union members' money and neglected the duty to represent members begs the question of whether he will be an advocate for unions or for union members if confirmed to the Board.

Given his taste in art, Pearce seems more suited to an appointment to the National Endowment for the Arts than the National Labor Relations Board. Fr.1. He describes himself as follows: "One could describe me as an artist immersed in the

Artist trapped in lawyer's body...

practice of law. That kind of sounds like I'm drowning and about to go under, doesn't it? A good friend described me as a lawyer with the soul

"Pearce's representation of corrupt union leaders at the expense of workers makes him unsuitable for this position. The NLRB needs members who are committed to protecting workers and not the union thugs who steal from them."

*-Bill Wilson, President,
Americans for Limited Government*

of an artist. I think that sounds better, although the former description might be more accurate. While I enjoy the law, I struggle at fulfilling my desire to help bring beauty to the world. Art is my best vehicle to do this (or life raft, if we want to continue the metaphor). I strive to make my often competing passions complement each other for the bread and for the roses. I'll let you know if I ever succeed. [sic]." *Id.*

Pearce served as counsel to Frank Ervolino and his unions, among them HERE Local 4. In 1995, dissidents within the union wanted to see the union's financial records and were rebuffed, with Pearce's assistance. Pearce pushed back against the 500 union members who asked to see the

Continued next page...

What you really need to know about Pearce

Continued from first page...

records stating as follows: "In its present form, this demand appears to be no more than a means of harassing the current administrations of the respective unions named therein, by engaging in a 'fishing expedition.'" Fn.2. Ervolino himself stated, "[w]e have nothing to hide, but as I said before, our lawyer, Mark Pearce, is handling that." *Id.* He was right about one part, his lawyer Pearce did handle that. He lied about everything else; he did in fact have plenty to hide. Ervolino became the subject of an investigation by the U.S. Department of Labor's Office of Labor-Management Standards. Ervolino and his wife Anna May were indicted on March 16, 2000 on multiple counts of embezzlement and conspiracy. Ervolino died before he could be tried, but Anna May plead guilty on March 12, 2002 and made restitution of \$144,470.79 to the union's benefit plans. Fn.3.

The National Labor Relations Board exists to protect workers. Because Pearce has been nominated for a position on the Board it is fitting to take a look at how Ervolino's union treated workers. Here is a sample of the things said about this union by members and officials:

- "The old union reps considered the workers to be nuisances, just in the way."
- "All the reps were instructed never to tell the workers what went on at bargaining. That clearly disempowers them in terms of waging a struggle in the workplace."
- "The committee would negotiate a deal and then come out and say 'here, vote on it.'" Fn.4.

Other Cases Pearce Handled

Dunbar v. Local Union No. 71, Sheet Metal Workers International Association, 1997 U.S. Dist. LEXIS 1512; 156 L.R.R.M. 2189 (W.D.N.Y.). Pearce's client was found to have committed an unfair labor practice by engaging in recognitional picketing. The court enjoined any further picketing.

DeCarlo v. Salamone, 977 F. Supp. 617 (W.D.N.Y. 1997).

A union member had complaints against the union's officers which he made widely known. The member attempted to bribe fellow members with \$20 each for their vote in a union officer election. Member was brought up on charges for slander and the attempted bribery pursuant to the union constitution and was suspended from membership for three years after the slander charges were dropped. The member appealed to the Carpenters International which upheld the suspension. Pearce represented the Carpenters. The member sued claiming a violation of the Bill of Rights found in the Labor-Management Reporting and Disclosure Act. The court held that a violation occurred on the part of the local stating as follows: "Thus, I find that the Local 85 defendants violated DeCarlo's free speech rights under Section 101 (a)(2) by charging and prosecuting him for slander and libel, despite the fact that the charges ultimately were dismissed."

Apparently the Carpenters with Pearce's counsel do not believe in free speech or the union member bill of rights.

Sources for further reading:

Fn.1. "Artwork" by Mark G. Pearce. Available online at: <http://mysite.verizon.net/vze2bntj/markgastonpearce/>. Accessed August 5, 2009.)

Fn.2. Michael Beebe, *Nurse Presses Complaint Against Ervolino; Leads Coalition Seeking Union President's Ouster in October Vote*, THE BUFFALO NEWS, June 19, 1995, at 1B.

Fn.3. *Criminal Actions, 2002*, Office of Labor-Management Standards, U.S. Department of Labor. Available online at: http://www.dol.gov/esa/olms/regs/compliance/criminal_enforce/criminal_actions_2002.htm. (Accessed August 5, 2009.)

Fn.4. Anna Geronimo Hausmann, *In Order to Form A More Perfect Union The Reform of the AFL-CIO Hospital and Nursing Home Council*, BUFFALO SPREE MAGAZINE, November/December 2000. Available online at: http://www.buffalospreemag.com/archives/2000_1112/111200union.html. (Accessed August 5, 2009.)

NomineeAlert

THIS ALERT IS A SERVICE OF
AMERICANS FOR LIMITED GOVERNMENT
9900 MAIN STREET
SUITE 303
FAIRFAX, VA 22031
703.383.0880
WWW.GETLIBERTY.ORG



this issue:

Dawn Elizabeth Johnsen,
 Nominee for Assistant Attorney
 General for the
 Office of Legal Counsel

Johnsen's Background

Professor of Law, Indiana
 University Maurer School of Law

Acting Assistant Attorney
 General, Office of Legal Counsel,
 U.S. Department of Justice

Deputy Assistant Attorney
 General, Office of Legal Counsel,
 U.S. Department of Justice

Legal Director, NARAL Pro-
 Choice America (National
 Abortion Rights Action League)

Staff Counsel, American Civil
 Liberties Union Reproductive
 Freedom Project

EDUCATION

B.A., Yale University
 J.D., Yale Law School

Who is Dawn Elizabeth Johnsen?

On February 11, 2009 President Obama nominated Dawn Elizabeth Johnsen to be the Assistant Attorney General for the Office of Legal Counsel in the U.S. Department of Justice.

The Office of Legal Counsel provides the final word on legal advice for the U.S. Department of Justice and the federal executive departments and agencies.

Johnsen previously served as acting head of the Office of Legal Counsel. She is now an academic and has engaged in bitter sniping at Bush Administration lawyers. An example of this sniping follows:

With a handful of admirable exceptions, President Bush's lawyers have failed to

live up to these best practices where it has most mattered. They have not provided honest appraisals of the laws relevant to

the president's most controversial policies, at least none that have been made public. They have not publicly disclosed executive actions that violate federal statutes, forcing Congress and the public to rely upon leaks for essential information. Fn.1.

Johnsen has also reportedly been injecting herself into the hiring decision of the Office of

Legal Counsel, even though she has not been confirmed.

The controversial nomination of Dawn Johnsen to Office of Legal Counsel at the

"Statutes that curtail abortion choice are disturbingly suggestive of involuntary servitude, prohibited by the Thirteenth Amendment." Fn.3.

-Dawn Johnsen in a brief to the U.S. Supreme Court

Continued next page...

What you really need to know about Dawn Johnsen

Continued from first page...

Department of Justice seems to be going nowhere. But from what I hear from reliable sources, Johnsen has been involving herself in OLC's decisions on hiring junior lawyers. If those reports are accurate, Johnsen's actions would seem a serious violation of the Senate's understanding of pre-confirmation etiquette—an etiquette that is especially punctilious for nominees who have generated controversy—and would give senators additional reason to oppose her nomination.] Fn.2.

Johnsen is also a fierce opponent of any restrictions on abortion. The organization Fidelis issued a report on Johnsen on April 2, 2009 detailing Johnsen's advocacy on this issue. They uncovered incredibly startling language used by Johnsen in a brief to the U.S. Supreme Court in *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989). Among Fidelis' findings are the following:

Johnsen made the following statements in that brief:

o "Statutes that curtail [a woman's] abortion choice are disturbingly suggestive of involuntary servitude, prohibited by the Thirteenth Amendment, in that forced pregnancy requires a woman to provide continuous physical service to the fetus in order to further the state's asserted interest."

o "Legal abortion remains safer than childbirth."

o A comparison of abortion restrictions to conscription: "She is constantly aware for nine months that her body is not wholly her own: the state has conscripted her body for its own ends." And restrictions "reduce pregnant women to no more than fetal containers."

o "By singling out only women to sacrifice their bodies and autonomy to protect the mere potentiality of life, abortion restrictions both reflect and reinforce the stereotype that breeding children is women's 'natural role.' And "requiring women to sacrifice their bodies and their liberty in ways that the state never demands of men, state laws manifest the stereotype that it is women's 'natural role' to bear children." Fn.3.

Sources for further reading:

Fn.1. Dawn Johnsen, *How should the president's lawyers advise a reluctant White House?*, SLATE, June 8, 2007. Available online at: <http://www.slate.com/id/2167985/pagenum/all/#p2>. (Accessed December 10, 2009.)

Fn.2. Ed Whelan, *OLC Nominee Dawn Johnsen and Pre-Confirmation Etiquette*, BENCH MEMOS BLOG, NATIONAL REVIEW ONLINE, October 23, 2009. Available online at: <http://bench.nationalreview.com/post/?q=ZWFIMDY3ODcxZGRkMmQzYmZjZjA2NGY1YTAYNmYzZTM=>. (Accessed December 10, 2009.)

Fn.3. *Research Brief of Dawn Johnsen, Nominee for the Office of Legal Counsel*, Fidelis, April 2, 2009. Available online at: http://www.scribd.com/full/13904433?access_key=key-115fniqczuv3xis8cl9b. (Accessed December 10, 2009.)

NomineeAlert

THIS ALERT IS A SERVICE OF
AMERICANS FOR LIMITED GOVERNMENT
9900 MAIN STREET
SUITE 303
FAIRFAX, VA 22031
703.383.0880
WWW.GETLIBERTY.ORG