

Responses of Andre M. Davis
Nominee to the U.S. Court of Appeals for the Fourth Circuit
to the Written Questions of Senator Russell D. Feingold

- 1. Please provide this Committee with a copy of any written communications to or from FREE about your decision to resign from the Board. If your decision was also or instead communicated orally, with whom did you communicate at FREE and what did you tell FREE were your reasons for resigning?**

Response: I have searched my files and I am not able to locate any written communication in connection with my resignation from the Board of FREE. I do not believe there is any such document. My best recollection of what occurred is that I had advised Dr. John Baden, FREE's Chairman, of the fact that I had requested an advisory opinion from the Codes of Conduct Committee and that I would abide by the Committee's advice. Once I received the Committee's opinion, I promptly resigned, and I believe I simply communicated that decision to Dr. Baden orally.

- 2. Have you ever provided a copy of the Committee on Codes of Conduct opinion, in whole or in part, to anyone other than Judge Wilkins and this Committee? If so, to whom, and when?**

Response: To the best of my recollection, I have provided a copy of the opinion only to the following: (1) Judge Wilkins (upon my receipt of the opinion); (2) Office of White House Counsel (in February 2009); and (3) the Senate Judiciary Committee (on April 27, 2009).

- 3. Have you at any time discussed the Committee on Codes of Conduct opinion with any Board member of FREE, anyone else associated with FREE, or any other federal judge? If so, with whom, and when?**

Response: My best recollection is that during a FREE seminar I attended in July 2005, I generally described orally, in a brief conversation with some of the attendees at the seminar, the opinion I had received from the Codes of Conduct Committee. Some of those attendees were probably federal judges, some attendees might well have been Board members of FREE, and, I am reasonably certain, Dr. Baden and members of the FREE staff were probably present. In addition, in connection with the release of the opinion to the Judiciary Committee on April 27, 2009, I briefly discussed the opinion and its release with the current Chair of the Codes of Conduct Committee, Honorable M. Margaret McKeown.

- 4. Do you believe anything in the Committee on Codes of Conduct opinion suggests that service on FREE's Board by another federal judge would not violate the Code of Conduct?**

Response: I do not interpret the Committee's opinion to depend on the identity of the judge who serves on the FREE Board.

5. **Do you believe that federal judges should follow an unequivocal opinion of the Committee Codes of Conduct of which they are aware, even if they have not themselves requested that opinion? Would you follow such an opinion you learned about if it applied to your own conduct?**

Response: Each judge has the personal obligation to be informed of his or her ethical obligations and to act appropriately. I would consider any opinion of the Committee on Codes of Conduct as a critical source of guidance in the conduct of my affairs.