

Testimony of

The Honorable Joseph Hood

December 10, 2001

To the United States Senate Committee on the Judiciary
Patrick Leahy, Chairman

Senator Leahy and the Members of the Committee:

I have known David L. Bunning since his appointment as an Assistant United States Attorney for the Eastern District of Kentucky over a decade ago. I thank you for inviting me to share my thoughts about him with you.

Although my contacts with Mr. Bunning have been essentially professional, I am aware of his reputation for honesty and integrity in the area where he lives and practices. Those who know him, both personally and professionally, consider him to be above reproach as the report submitted by the Federal Bureau of Investigation surely reflects.

In addition to representing the government in numerous pre-trial motions and sentencing proceedings, Mr. Bunning has tried four criminal cases to verdict in front of me. He comes to court knowing the facts and law applicable to his case. His witnesses have been interviewed. He is aware of potential evidentiary objections to their testimony and the rules of evidence which apply to those objections. He makes succinct and cogent arguments. He knows the importance of making a record and does not become noticeably upset when a ruling goes against him. He has looked numerous jurors in the eyes and asked them to return a verdict favoring his client, a request which has always been granted in the cases he has tried before me.

One case which Mr. Bunning prosecuted to verdict is United States v. Galloway, which involved a conspiracy to import a large amount of the so-called party drug Ecstasy into this country from Holland. An unusual feature of this case was the requirement imposed by 18 U.S.C. § 3505 concerning the admission of foreign business records. He handled this evidentiary issue, one not frequently seen in the Eastern District of Kentucky, without hesitation.

Mr. Bunning has demonstrated to me that he has a "feel" for the judicial process that is quite unusual for someone of his age and experience. Just like a good card player has a "feel" for when to play his cards, I believe that a good trial lawyer has a "feel" for a trial. It is an innate, unquantifiable trait that very few attorneys possess. In the Galloway case, Mr. Bunning displayed this "feel" by electing to save an item of evidence for rebuttal instead of introducing it in his case-in-chief. In so doing, he eviscerated the defendant's theory of the case.

Mr. Bunning is a man of substance. Recently, in United States v. Overby, he promised the defendant in a plea agreement that he would recommend a sentence below the mandatory minimum and at the lower end of her guidelines if she cooperated with the government in the prosecution of her co-defendant. Although the defendant's actual guidelines were higher than the original, non-binding estimate of the probation officer, Mr. Bunning stood by his promise and

recommended that the defendant be sentenced to the originally calculated lower term, something he was not legally obligated to do.

Yes, Mr. Bunning is young, but I personally know others younger and with less professional experience than him who have gone on to be highly-respected federal trial judges. Based on my quarter of a century experience as a federal magistrate and district judge, I believe that Mr. Bunning, if confirmed, will become such a judge in a very brief period of time, one whom I would be proud to have as a colleague.