

Testimony of

# **The Honorable Karl Forester**

December 10, 2001

Senator Leahy and the Members of the Committee:

On behalf of the United States District Court for the Eastern District of Kentucky, I wish to thank the Committee for its prompt attention to the three vacancies which existed on our Court. To date one of the vacancies has been filled, one has been favorably reported out of Committee and is awaiting Senate action, and now the Committee is acting on the nomination of David Bunning.

Over a period of ten years I have personally observed David Bunning. He has appeared in my Court as an Assistant United States Attorney representing the United States in numerous civil and criminal matters including one criminal trial which was submitted to a jury. It is from the unique perspective of a trial court judge that I am able to report to the Committee with regard to Mr. Bunning.

In my 13½ years of experience as a trial court judge, I have observed hundreds, if not thousands, of attorneys from across the country -- the good, the mediocre, and the bad. My personal relationship with Mr. Bunning is extremely limited. However, I am familiar with his reputation in the community where he lives among those who know him, and it is excellent in all respects. I can personally advise the Committee that his professional character is beyond reproach. Moreover, he is industrious, diligent and an all-around hard worker. He possesses a strong intellectual capacity which I have personally observed. His analytical and writing ability and knowledge of the law is outstanding. Moreover, while he is a strong advocate for the government, he is fair and compassionate. All the factors I have considered lead me to believe his judicial temperament will also be outstanding.

An issue I believe may be of concern to the Committee is Mr. Bunning's experience. I suggest that his years of experience should be of little concern to the Committee. A litigation attorney in the Office of the United States Attorney for the Eastern District of Kentucky has much more courtroom experience than most attorneys with many more years of practice. Let me speak personally on this. Prior to my appointment as a federal judge, I practiced law for 22 years. A substantial part of my practice consisted of litigation in the state and federal court. However, a major part of my practice involved non-litigation matters such as appearances before administrative agencies, real estate matters and counseling with corporate clients.

The point I am trying to make here is Mr. Bunning has had more courtroom experience in ten years than I had in 22 years of practice. I am personally familiar with several federal judges who were practicing lawyers less than ten years. These judges have been outstanding and two have been elevated from a trial court to an appellate court. Also, I have known several able and competent judges who came to the Court from academia, who had little or no practice experience. It is my opinion that Mr. Bunning has all the attributes necessary to be an

outstanding judge on our Court. He is uniquely qualified for the position and will be a great asset. As the members of this Committee are well aware, a federal district court's docket normally consists of a high percentage of matters in which the United States Attorney's Office plays a key role. In fact, in the last year my docket in the Eastern District of Kentucky at Lexington consisted of at least 50% criminal matters. David Bunning has had experience handling all these matters laboring for the United States in the trenches, so to speak, as a federal prosecutor.

Finally, I would mention to you that the Eastern District of Kentucky has a great tradition of federal prosecutors being appointed to the bench early in their careers. Judge Mac Swinford was appointed by President Franklin D. Roosevelt; Judge Bernard T. Moynahan, Jr. was appointed by President John F. Kennedy; Judge Eugene Siler was appointed by President Gerald Ford; and within the last month Judge Karen Caldwell was appointed by President George W. Bush. The experience of all four of these judges as federal prosecutors provided a fertile training ground for their future roles as federal judges. Mr. Bunning's ten years' experience as a prosecutor provide him with actual working knowledge of the procedural rules of the federal courts and the local rules of the Eastern District of Kentucky that would serve him well as a judge.

Mr. Chairman, the fact that three judges are present today underscores our belief that there is a critical need for the position to be filled as soon as possible. We are mindful that the Constitution gives us no voice whatsoever in the selection of judges; however, we deem it appropriate that we respond to the request of the Committee to appear personally.

Once again, we thank the Committee and its Chairman for the attention given to the needs of the Eastern District of Kentucky.