

Testimony of

The Honorable Joseph Famularo

December 10, 2001

Mr. Chairman, Senator Hatch and Members of the Committee, I am pleased to appear before the Judiciary Committee today in enthusiastic support of the nomination of David L. Bunning to be a Judge for the United States District Court for the Eastern District of Kentucky. I am both David's former boss and a Democrat. President Clinton appointed me to be United States Attorney for the Eastern District of Kentucky in 1993, and I served in that capacity for eight years. I was thus David's boss for eight of his ten years in the U.S. Attorneys' Office. I therefore feel that I can provide a very informed and unbiased assessment of his fitness for the office of federal district court judge.

David Bunning has compiled more federal courtroom experience in his career than most people do in a lifetime. I have practiced law for almost thirty-five years, in both the public and private sectors. Based on my extensive experience, it is my considered opinion that most assistant United States Attorneys (AUSAs) have, in reality, more legal experience-and certainly much more litigation experience-than do private practitioners who have been practicing law for an equivalent amount of time. David has at least double the effective experience of a private practitioner, especially in the federal system.

I say at least double because one could easily use a multiplier of three, and maybe as high as five, in considering the effective litigation experience of the career of a typical assistant United States Attorney. And this general rule of thumb applies even more strongly in the case of David Bunning. He has been an assistant United State Attorney for the last ten years, and for the last six years, David has been in court almost every day. He has litigated both civil and criminal matters on behalf of the people of the United States, and he has been successful in over 90% of his cases. As the former United States Attorney in David's office, I can attest that he regularly carried one of the heaviest caseloads in our office, usually placing in the top three or four AUSAs in this category. David has worked long and hard "in the well of the court,"and he is thus extremely familiar with the types of cases over which federal judges in Eastern Kentucky preside.

In his four years in the Civil Division, David was responsible for a wide variety of civil litigation matters. For example, he defended the United States in prisoner litigation, Federal Tort Claims Actions, Bivens actions, civil rights cases, and employment rights cases. All of these types of matters are a mainstay of the daily business of the civil docket of the Eastern District. As a testament to David's litigation skills, he was able to dispose of most of these actions through motion practice. However, he did try two civil actions to a jury. In my considered opinion, David's civil litigation experience alone is at least effectively equal to the civil litigation experience of a private practitioner who has been practicing law for two or three times as long as David.

In David's six years with the Criminal Division, he has tried eighteen cases to verdict. The vast majority of these cases were jury trials. The types of criminal matters David handled-narcotics, violent crime, health care fraud, economic fraud, and forfeiture prosecutions-are cases that make up the bulk of my former office's criminal cases in federal court. David's cases have included some of the more complex matters in the Eastern District, such as major drug and white collar criminal cases. For example, they have involved numerous defendants or have required proving a charge entirely with circumstantial evidence. David also prosecuted one of the first Internet harassment cases in our office. David has been almost completely responsible for his cases, from investigation through indictment through discovery to trial to sentencing and through the appellate stage. His trial skills are superb. David is skilled in federal trial procedure and the Federal Rules of Evidence. He is thus well-equipped to preside over all phases of the criminal matters that will come before him.

David also has extensive appellate experience. Because of David's legal skills, including his research and writing skills, he has often personally handled appeals of his decisions, rather than using our appellate counsel. David has written in excess of fifty appellate briefs, and he has argued before the Sixth Circuit Court of Appeals at least ten times. This appellate experience also far exceeds the experience of most private practitioners. David thus not only knows appellate procedure, but he knows how to make the requisite record for appeal-a skill that is a must for trial judges.

David's heavy caseload not only shows the depth and breadth of his legal experience, it also shows his strong work ethic and efficient case-management skills. Both skills are important attributes for federal trial judges, who must handle large volumes of cases in a timely manner.

Lastly, David Bunning possesses the other attributes which, in my experience, are essential for a good trial judge. He has a great attitude: pleasant, upbeat and enthusiastic. He is easy to deal with, and he treats everyone with respect. David is also dedicated to the legal profession, and he has the fortitude to persevere regardless of whatever difficulties or challenges may face him. In sum, I've appeared before a lot of judges in my career, and I feel I know the qualities that distinguish a good judge from a bad judge. If I were to appear before a judge, I would want him to possess the skills and attributes that David Bunning has. I strongly support his nomination, and I will be happy to answer any questions you might have.

Thank you.