



Nomination of Robert J. Conrad, Jr., to the United States Court of Appeals for the Fourth Circuit

October 1, 2007

EXECUTIVE SUMMARY

On July 17, 2007, President Bush nominated Chief Judge Robert J. Conrad, Jr., of the United States District Court for the Western District of North Carolina to a seat on the United States Circuit Court of Appeals for the Fourth Circuit.¹ Chief Judge Conrad was first nominated to his current seat on the North Carolina district court by President Bush in April 2003.² He was unanimously confirmed³ by the Senate in April 2005, and received his commission in June 2005.⁴ He has served as Chief Judge of the Western District of North Carolina since 2006.⁵

Chief Judge Conrad is a judicial nominee with stellar legal experience and strength of character. Notwithstanding his level of expertise and integrity, however, partisans have questioned his ability to apply the law with impartiality and fairness in light of his religious and political affiliations as demonstrated through some of his writings and campaign contributions. In response to such allegations, the following presents a comprehensive look at Chief Judge Conrad's legal career, highlighting his accomplishments while considering the few points of controversy arising from his perspectives as a legal professional, a registered Republican and a devout Catholic.

¹ Nominations Sent to the Senate, <http://www.whitehouse.gov/news/releases/2007/07/20070717-10.html> (last visited Oct. 1, 2007).

² Fact Sheet: Judicial Nominees, <http://www.whitehouse.gov/news/releases/2004/07/20040707-1.html> (last visited Oct. 1, 2007).

³ Burr Applauds Nomination of Robert Conrad to Fourth Circuit Court of Appeals, http://burr.senate.gov/index.cfm?FuseAction=PressReleases.Detail&PressRelease_id=312&Month=7&Year=2007, (last visited Oct. 1, 2007).

⁴ Nominations Sent to the Senate, *supra* note 1.

⁵ Judges of the United States Courts, <http://www.fjc.gov/servlet/tGetInfo?jid=3085> (last visited Oct. 1, 2007).

EDUCATIONAL EXPERIENCE

Robert James Conrad, Jr., was born in 1958 in Chicago, Illinois.⁶ He earned his Bachelor's degree in history,⁷ graduating *magna cum laude*⁸ from Clemson University in 1980.⁹

Conrad's college years were filled with extensive achievements, honors and awards. He was both an Academic All-American in basketball and a Rhodes Scholar nominee.¹⁰ During his senior year at Clemson, Conrad received the Norris Medal, an award "presented to the University's most outstanding student."¹¹ He also received an NCAA post-graduate scholarship, as well as the Atlantic Coast Conference's (ACC) Jim Weaver Award¹² for the "ACC Student-Athlete of the Year,"¹³ an honor recognizing exceptional achievement both in the classroom and on the playing field, irrespective of sport.¹⁴ As a point guard, Conrad succeeded in setting the school record for taking thirty-two charges in a single season,¹⁵ thus demonstrating a knack for remaining "stationery while opposing players literally ran over him."¹⁶ (Interestingly, Washington Post staff writer David A. Vise notes that Conrad has maintained his knack for putting himself in harm's way, as demonstrated by his performance as Chief of the Justice Department's Campaign Finance Task Force some twenty years later.¹⁷) Conrad was known for his excellent passing skills and ability to play gutsy defense.¹⁸ His final season on Clemson's basketball team was the team's most successful season to date.¹⁹ In 1993, Conrad was inducted

⁶ *Id.*

⁷ Clemson World Online, *Federal Judge*, (Summer 2005—Vol. 58, No. 3), available at <http://www.clemson.edu/clemsonworld/archive/2005/summer05/feature3.htm>.

⁸ Robert J. Conrad, Jr., Nominee to the U.S. Court of Appeals for the Fourth Circuit, <http://www.whitehouse.gov/infocus/judicialnominees/conrad.html> (last visited Oct. 1, 2007).

⁹ Judges of the United States Courts, *supra* note 5.

¹⁰ David A. Vise, *Point Guard Turned Prosecutor Is Still Ready to Take a Charge; Conrad Termed Unbiased in '96 Fundraising Probe*, Wash. Post, June 30, 2000, at A29.

¹¹ Bobby Conrad, Clemson Player Profile, http://clemsontigers.cstv.com/sports/m-baskbl/mtt/conrad_bobby00.html (last visited Oct. 1, 2007).

¹² *Id.*

¹³ Jim Weaver (ACC Commissioner), [http://en.wikipedia.org/wiki/Jim_Weaver_\(ACC_Commissioner\)](http://en.wikipedia.org/wiki/Jim_Weaver_(ACC_Commissioner)) (last visited Oct. 1, 2007).

¹⁴ ACC Names 2000 Weaver-James-Corrigan Postgraduate Scholarship Recipients, <http://www.theacc.com/genrel/022900aaa.html> (last visited Oct. 1, 2006).

¹⁵ 2005 Clemson Legend: Bobby Conrad, <http://www.theacc.com/sports/m-baskbl/spec-rel/020405aab.html> (last visited Oct. 1, 2007).

¹⁶ Vise, *supra* note 10.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

into the Clemson University Hall of Fame, thus further attesting to his outstanding overall success as a student-athlete at Clemson University.²⁰

After college, Conrad attended the University of Virginia, where he earned his law degree in 1983.²¹ As a law student, he clerked for Michie, Hamlett, Donato & Lowry, a private practice law firm in Charlottesville, Virginia.²²

PROFESSIONAL EXPERIENCE

Like his college career, Chief Judge Conrad's professional career is characterized by success and achievement. Conrad has served in various integral roles as a legal professional, including U.S. Attorney, Campaign Finance Task Force Chief, and chief judge of a federal district court. He has also received various commendations and awards from the FBI, the Secret Service, the ATF and the U.S. Postal Inspection Service.²³

During the first segment of his legal career, Chief Judge Conrad engaged entirely in the private practice of law. Upon admission to the Virginia Bar in 1983,²⁴ Conrad joined Michie, Hamlett, Donato & Lowry – the same firm for which he had clerked during law school – as a litigation associate.²⁵ He remained with the firm until 1986, handling a variety of issues ranging from corporate investigations and commercial litigation to white-collar criminal defense.²⁶ From 1986 to 1987, Conrad was a partner with Horn & Conrad, another private firm.²⁷ Conrad was admitted to the North Carolina Bar in 1987.²⁸ He then engaged as a sole practitioner from 1987 to 1988.²⁹ In 1988, he joined the Charlotte, North Carolina private firm Bush Thurman & Conrad as a partner and remained there until he became a federal prosecutor in 1989.³⁰

²⁰ Clemson Hall of Fame Members, <http://www.tigermemories.com/cuhof.htm> (last visited Oct. 1, 2007).

²¹ Judges of the United States Courts, *supra* note 5.

²² United States Department of Justice, Robert J. Conrad, <http://www.usdoj.gov/olp/conradresume.htm> (last visited Oct. 1, 2007).

²³ Clemson World Online, *supra* note 7.

²⁴ Hon. Robert J. Conrad, Jr. – A Charlotte, North Carolina (NC) Lawyer, http://pview.findlaw.com/view/1015992_1 (last visited Oct. 1, 2007).

²⁵ Trial Advocacy College at the University of Virginia, Faculty Biographies, http://www.trialadcollege.org/bio_conrad.htm (last visited Oct. 1, 2007).

²⁶ Robert J. Conrad, Jr., Nominee to the U.S. Court of Appeals for the Fourth Circuit, *supra* note 8.

²⁷ President Bush to Nominate One Individual to Serve in His Administration and Six Individuals to Serve as United States Attorneys, <http://www.whitehouse.gov/news/releases/2001/08/20010803-14.html> (last visited Oct. 1, 2007).

²⁸ Hon. Robert J. Conrad, Jr. – A Charlotte, North Carolina (NC) Lawyer, *supra* note 24.

²⁹ United States Department of Justice, Robert J. Conrad, *supra* note 22.

³⁰ *Id.*

In 1989, former U.S. Attorney Thomas Ashcraft hired Conrad as an Assistant U.S. Attorney³¹ for the U.S. Attorney's Office in the Western District of North Carolina, Charlotte Division (WDNC).³² Then, in 1992, Democratic U.S. Attorney Mark T. Calloway appointed him to serve as chief of the criminal division for the office.³³ In 1998, Conrad became the first federal prosecutor to successfully argue for the death penalty³⁴ in a North Carolina federal court after capital punishment had been reinstated in the federal courts ten years earlier.³⁵ The Center for Investigative Reporting asserts that Conrad takes "great pride" in this achievement.³⁶ In response to the verdict, however, Calloway noted that the jury is ultimately responsible for deciding on the verdict.³⁷ Conrad served as criminal division chief from 1992 until 1999.³⁸

In 2000, Calloway told The New York Times that he considered Conrad, a Republican, one of the "most capable prosecutors he had ever worked with," dubbing him a "relentless investigator" with a "high sense of duty and fairness."³⁹ That same year, Calloway informed The Washington Post that he never had any reason to suspect that Conrad's politics might influence the quality or outcome of his work as a prosecutor.⁴⁰ Charlotte defense attorney George Laughrun once complimented Conrad, his frequent opponent in the courtroom, by describing him as the type of prosecutor who "provide[d] appropriate information to the defense prior to trials and [did] not play games in the courtroom."⁴¹ In Laughrun's words, Conrad "would lose a case before he would do something improper or close to the line."⁴² Another of Conrad's colleagues, speaking on condition of anonymity, said that he was aware of Conrad's "far right-wing beliefs," but that he had never witnessed an occasion to suggest that Conrad's political affiliations would influence his decision-making.⁴³ Notwithstanding Conrad's "far right-wing

³¹ *Vise, supra* note 10.

³² United States Department of Justice, *supra* note 22.

³³ John M. Broder, *The 2000 Campaign: The Investigator; A Trial Lawyer Who Is Linked To Jesse Helms*, N.Y. TIMES, June 24, 2000, at A8.

³⁴ Ben Lurie, *The Reinvention of Robert Conrad*, CENTER FOR INVESTIGATIVE REPORTING: BLOG, Aug. 13, 2007, <http://centerforinvestigativereporting.org/blogpost/20070813thereinventionofrobertconrad>.

³⁵ Press Release, Mayer Brown, U.S. Attorney Robert Conrad Joins Mayer, Brown, Rowe & Maw LLP Charlotte Office, <http://www.mayerbrown.com/news/article.asp?id=1404&nid=19> (on file with author).

³⁶ Lurie, *supra* note 34.

³⁷ Death Penalty News – Oklahoma, North Carolina, <http://legalminds.lp.findlaw.com/list/deathpenalty/msg00683.html> (last visited Oct. 1, 2007).

³⁸ Broder, *supra* note 33.

³⁹ *Id.*

⁴⁰ *Vise, supra* note 10.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

beliefs,” however, this anonymous commentator described the Assistant U.S. Attorney as a “very able and experienced prosecutor and a good person to deal with.”⁴⁴

In December 1999, then-U.S. Attorney General Janet Reno appointed Conrad to head the investigation of Al Gore’s fundraising activities during the 1996 election⁴⁵—an investigation that eventually led to Conrad’s deposing both the President and the Vice President of the United States.⁴⁶ Conrad’s appointment to such a post was indeed an honor, but he nevertheless struggled in reaching the decision to accept it. As Calloway explained, Conrad was a family man, and this appointment, though temporary, would take Conrad away from his family for several months.⁴⁷ In spite of this struggle and the desire to be near his family, Conrad accepted Reno’s appointment as head of the Campaign Finance Task Force and left for Washington, D.C. In response to Conrad’s temporary departure, Calloway expressed his confidence that Conrad would “do his job without regard to politics.”⁴⁸ Graham C. Mullen, former Chief Judge of the WDNC, echoed Calloway’s comments, explaining that Conrad was not politically active and that he had “never detected anything about Bob Conrad that was influenced in any way by [his] political leanings.”⁴⁹

While Conrad certainly gained national recognition by virtue of his role as task force chief, he felt the heat of the nation’s spotlight intensify when he specifically called on Reno to appoint a special prosecutor to investigate whether Gore had lied to him during a four-hour interview on April 18, 2000.⁵⁰ Pursuant to the overall investigation, Conrad interviewed Gore under oath for approximately four hours about his knowledge of and involvement in certain fundraising activities.⁵¹ Gore’s “faulty” memory, contradictory and rambling responses, negative body language, and overall defensiveness caused Conrad to doubt the veracity of his

⁴⁴ *Id.*

⁴⁵ Press Release, United States Department of Justice, Attorney General Reno Names New Head of Campaign Financing Task Force, <http://www.usdoj.gov/opa/pr/1999/December/612crm.htm> (on file with author).

⁴⁶ *Vise, supra* note 10.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Viveca Novak, *Gore’s Coffee Stains*, TIME, July 30, 2000, <http://www.time.com/time/magazine/article/0,9171,997333,00.html>.

testimony.⁵² Accordingly, he urged Reno to name independent counsel to investigate what could have amounted to a perjury charge against the former Vice President.⁵³

In a news conference on August 23, 2000, Reno announced that she would not accept Conrad's recommendation to appoint special counsel because a "perjury charge [against Gore] would be impossible to prove." Reno asserted that the transcript of the interview did not reflect the kind of willful falsity on material matters required to sustain an allegation of perjury. At that same news conference, however, Reno lauded Conrad's prosecutorial skills, his management of the task force, his knowledge of the law, and his judgment.⁵⁴ She even credited a great deal of the task force's success to Conrad's leadership and expertise as a prosecutor, further noting that her regard for him had only increased during his time on the task force.⁵⁵ Defending her decision to reject this "excellent prosecutor[']s" recommendation, Reno asserted that "[t]here will always be disagreement among lawyers. The Supreme Court often splits, five to four."⁵⁶

In 2000, David A. Vise compared Conrad's role as Chief of the task force to his role as a Clemson point guard. In both positions, Conrad demonstrated the keen ability to keep his feet firmly planted while being charged by the opposition.⁵⁷ In Vise's estimation, Conrad displayed this ability with particularity when various commentators questioned his motives for recommending special counsel to investigate Gore.⁵⁸ According to suspicious Gore aides, Conrad's recommendation was inspired – or "tainted" – by his Republican ties and political beliefs.⁵⁹ To substantiate their claims, they cited Conrad's \$250 contribution to Senator Jesse Helms' reelection campaign some four years earlier. At the time, the \$250 contribution was Conrad's only campaign contribution. The skeptical aides also noted that Conrad was first hired as Assistant U.S. Attorney in 1989 by Thomas Ashcraft, a former legislative assistant to Helms and former board member of the Jesse Helms Center.⁶⁰ Responding to Conrad's purportedly

⁵² *Id.*

⁵³ CNN.com, Reno: No special prosecutor for Gore, <http://archives.cnn.com/2000/ALLPOLITICS/stories/08/23/gore.reno/index.html> (last visited Oct. 1, 2007).

⁵⁴ United States Department of Justice, News Conference with Attorney General Janet Reno Re: Campaign Finance Task Force, <http://www.usdoj.gov/archive/ag/speeches/2000/0823agavail.htm> (last visited Oct. 1, 2007).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Vise, *supra* note 10.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ North Carolina Institute for Constitutional Law, Board of Advisors, http://www.ncicl.org/Brd_Adv_Stff/advisors.html (last visited Oct. 1, 2007) (Mr. Ashcraft was legislative assistant to Senator Helms from 1981 until 1987.)

audacious conduct as task force chief, however, Wise noted that Conrad has been “[u]niformly described by people who know him as a fair-minded, careful career prosecutor who doesn’t let politics interfere with his work.”⁶¹ Joe LaPlante, one of Conrad’s colleagues on the task force, explained that he was entirely unaware of Conrad’s political persuasions despite having frequently attended daily Mass with Conrad. LaPlante also described Conrad as a “classic aggressive federal prosecutor, who is a quick study on cases, listens to the views of subordinates and then makes up his own mind.”⁶² On a personal note, LaPlante added that when he and his wife had their third child, Conrad was considerate enough to send flowers to the hospital and a congratulatory email to LaPlante’s wife, despite never having met her.⁶³

Incidentally, Conrad was not the first to make such a recommendation to Reno, nor was he the first to have such a recommendation rejected by Reno. In 1998, then-FBI Director Louis Freeh and outgoing task force chief Charles LaBella both urged Reno to appoint independent counsel to investigate potential fund-raising violations under the Clinton administration.⁶⁴ Both recommendations were rejected. Additionally, by the time Conrad suggested that Reno appoint special counsel, a variety of memos had already circulated confirming that “in 1997 and 1998, several top aides recommended that Reno request an independent counsel on the question of Gore’s fund-raising calls from the White House, and whether he lied about their nature.”⁶⁵

Upon the investigation’s completion, Conrad returned to his post as Assistant U.S. Attorney General for the WDNC. In 2001, he was nominated by President Bush to be U.S. Attorney for the WDNC.⁶⁶ At the time, Conrad had already been acting as interim U.S. Attorney,⁶⁷ and he was unanimously confirmed, by the Senate on October 23, 2001. As head of the U.S. Attorney’s Office for the WDNC, Conrad vigorously prosecuted robbery cases, as well as weapons and immigrations cases. While serving in this capacity, he also served on former

⁶¹ Wise, *supra* note 10.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Pierre Thomas, *Reno Aide Recommends Independent Campaign Finance Probe*, CNNPOLITICS.COM, July 23, 1998, <http://www.cnn.com/ALLPOLITICS/1998/07/23/labella>.

⁶⁵ Novak, *supra* note 51.

⁶⁶ President Bush to Nominate One Individual to Serve in His Administration and Six Individuals to Serve as United States Attorneys, *supra* note 27.

⁶⁷ In November 2000, Janet Reno appointed Mark Calloway, U.S. Attorney for the WDNC, as Director for the Executive Office for U.S. Attorneys. It is likely that this vacancy led U.S. Attorney General Alberto Gonzales to appoint Conrad to his position as interim U.S. Attorney for the WDNC. See Press Release, United States Department of Justice, Attorney General Reno Names Mark T. Calloway As Director For the Executive Office for U.S. Attorneys, <http://www.usdoj.gov/opa/pr/2000/November/646eoua.htm> (on file with author).

U.S. Attorney General John Ashcroft's Advisory Committee, chairing Ashcroft's Subcommittee on Gun Crime and Violence.⁶⁸ Under Conrad's leadership, the U.S. Attorney's Office for the WDNC experienced a dramatic increase in the quantity and complexity of white-collar criminal cases that it prosecuted.⁶⁹ Notably, in 2002, the office successfully prosecuted a "Hezbollah terrorist cell . . . obtain[ing] convictions for providing support to a terrorist organization, RICO, money laundering and conspiracy."⁷⁰ This particular trial was the first of its kind nationwide.

On April 28, 2003, President Bush nominated Conrad to a federal judgeship on the U.S. District Court for the WDNC.⁷¹ Former North Carolina Senator John Edwards, however, blocked Conrad's nomination from reaching the Senate Judiciary Committee for consideration.⁷² Edwards alleged that Conrad was one of several Bush nominees whose troubling records demonstrated that they would not be "fair judges to all who come before them, rich or poor, Democrats or Republicans, or any race or background."⁷³ It is interesting to note the ironies inherent to leveling such allegations against a man who is "uniformly described by those who know him as . . . fair-minded" and has been acclaimed as a "relentless investigator" with a "high sense of duty and fairness."⁷⁴ Awaiting the outcome of his nomination, Conrad left the U.S. Attorney's Office for the WDNC in 2004, and reentered private practice as a partner with the prominent Charlotte law firm, Mayer, Brown, Rowe & Maw.⁷⁵

Undaunted by the resistance from Edwards and fellow Senate Democrats, President Bush re-nominated Conrad to the federal bench on February 14, 2005.⁷⁶ During an Executive Business Meeting of the Senate Judiciary Committee on April 14, 2005, Senator Patrick Leahy raised Edwards' prior objections to Conrad's nomination.⁷⁷ Though he ultimately chose to vote for Conrad, he did so "with some reluctance," questioning Conrad's fairness and impartiality.⁷⁸ He

⁶⁸ Robert J. Conrad, Jr., Nominee to the U.S. Court of Appeals for the Fourth Circuit, *supra* note 8.

⁶⁹ Press Release, *supra* note 35.

⁷⁰ *Id.*

⁷¹ Fact Sheet: Judicial Nominees, *supra* note 2.

⁷² CNN.com, Bush brings fight to Edwards' home state, <http://www.cnn.com/2004/ALLPOLITICS/07/07/bush.northcarolina/index.html> (last visited Oct. 1, 2007).

⁷³ Statement of Senator Patrick Leahy Setting The Record Straight On Judicial Nominations In North Carolina And Across The Country, <http://leahy.senate.gov/press/200407/070704a.html> (last visited Oct. 1, 2007).

⁷⁴ Broder, *supra* note 33.

⁷⁵ Press Release, *supra* note 35.

⁷⁶ Judges of the United States Courts, *supra* note 5.

⁷⁷ United States Senate Committee on the Judiciary, Opening Statement of Senator Patrick Leahy, Ranking Member, Senate Judiciary Committee Executive Business Meeting, April 14, 2005, http://judiciary.senate.gov/member_statement.cfm?id=1459&wit_id=2629 (last visited Oct. 1, 2007).

⁷⁸ *Id.*

cited Conrad's "more inflammatory writings," which included a 1988 local newspaper article on Planned Parenthood and a Letter to the Editor on the writings of Sister Helen Prejean.⁷⁹ Leahy asserted that Conrad's view of what Leahy described as a "well-respected family planning organization," as well as Conrad's alleged "contempt for Sister Prejean's compassionate work with condemned prisoners" demonstrated his incapacity for impartiality as a federal judge.⁸⁰

The first of Conrad's "inflammatory writings" appeared in the Charlotte Observer on June 14, 1988, under the title, "Planned Parenthood A Radical, Pro-Abortion Fringe Group."⁸¹ Interestingly, a thorough reading of the article reveals that Conrad's original purpose for penning the article was to demonstrate quite the opposite of what Leahy would assert seventeen years later: in reality, Planned Parenthood is *not* well-respected by mainstream America, and as such, American taxpayers should not be forced to fund the activities of such a controversial, on-the-fringe organization.

Conrad begins his exposé of sorts with the following assertion: "We hear incessantly about the 'small but vocal minority' opposed to public funding of Planned Parenthood. While such statements are rhetorically useful, they do not comport with fact. The evidence shows Planned Parenthood, not its opponents, as the fringe organization."⁸² Conrad cites various cases and general facts about the organization to support his opinion that, in truth, the views posited by Planned Parenthood represent a small but vocal minority. The bulk of Conrad's article stems from his fundamental assertion that "Planned Parenthood is the most radical legal advocate of unfettered abortion on demand," and that as a radical organization, its views are by definition "on the fringe."⁸³ He substantiates this assertion by enumerating the extreme lengths to which Planned Parenthood has gone to advance its pro-abortion agenda in the courtroom. He also emphasizes the organization's aggressive lobbying efforts and further delineates the ideologies of Planned Parenthood from those of the mainstream. Finally, based upon his own experience as a member of the Adolescent Health Task Force in Mecklenburg County, North Carolina,⁸⁴

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ Robert J. Conrad, Jr., *Planned Parenthood A Radical, Pro-Abortion Fringe Group*, Charlotte Observer, June 14, 1988, at 19A.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ The exact timeframe during which Conrad served on this particular task force is unknown. It must have been between 1986 and 1988, however, as the task force was not created until 1986 and Conrad authored this article in 1988. See ConnecTeen, TEEN HEALTH CONNECTION (Carolinas Health Care System, Charlotte, N.C.) http://www.carolinas.org/newsandpub/publications/teen/TEENHEALTH_Jan_2002.PDF.

Conrad notes that Planned Parenthood has utterly failed in its attempts to reduce teen pregnancy. Conrad's message is clear: Americans should not be forced to fund the activities of a radical fringe group.

While Conrad's overall opinion of Planned Parenthood is easily discernible from this article, one cannot rationally argue that Conrad's negative feelings towards the public funding of a controversial family planning organization render him wholly incapable of properly applying current law to reproductive rights litigants. Furthermore, it is unclear how Conrad's unfavorable opinion of one organization's goals (and its methods of reaching those goals) detracts from his overall ability to be fair and impartial as a federal judge. Conrad's conduct and reputation as a legal professional have aptly demonstrated his capacity for impartially enforcing the law. There is no rational reason to believe that this 1988 article demonstrates otherwise. Senator Leahy's allegations on this point are reaching, at best.

The second example of Conrad's purported affinity for inflammatory discourse comes from a Letter to the Editor criticizing Sister Helen Prejean's disrespect for the Catholic Church.⁸⁵ Conveying his disapproval of Conrad's opinions (as well as his failure to read the entire letter), Leahy made the following comments during the April 14, 2005, Executive Business Meeting:

In particular, I am concerned about what some of the things [Conrad] has written say about his ability to be a fair judge, and to give all who come before him a fair hearing. Listen to what he wrote about Sister Helen Prejean, one of the bravest and most caring people I have ever met. He calls her book, "Dead Man Walking," "liberal drivel," and shows nothing but contempt for her compassionate work with condemned prisoners. The rhetoric he uses is heated, and his bias for the death penalty is clear. Will any defendant in a capital case who comes before a Judge Conrad feel that they will get a fair hearing from him? Will he feel that a Judge Conrad can put aside personal prejudices and preconceptions? I hope so.⁸⁶

Like any statement, Conrad's remarks about Sister Prejean are best understood when viewed within their proper context. Conrad wrote his Letter to the Editor in response to a literary review entitled "Gospel of Life or one world nonsense?"⁸⁷ Authored by assistant editor Ellen Rice, the review originally appeared in *The Catholic Dossier*. In the opening line of the article, Rice unabashedly characterizes her piece as a whistle-blowing expedition "on the American

⁸⁵ Robert J. Conrad, Jr., Letter to the Editor, *Habitually Wrong*, CATHOLIC DOSSIER, Jan./Feb. 1999, available at <http://catholic.net/rcc/Periodicals/Dossier/JAN-FEB1999/Letters.html>.

⁸⁶ United States Senate Committee on the Judiciary, *supra* note 77.

⁸⁷ Ellen Rice, Review, *Gospel of Life or one world nonsense?*, CATHOLIC DOSSIER, Sept./Oct. 1998, available at <http://catholic.net/rcc/Periodicals/Dossier/9-10-98/Review.html>.

Church's love affair with Sister Helen Prejean."⁸⁸ Throughout the entire review, Rice criticizes Prejean because of her contempt for the Catholic Church as demonstrated in one of Prejean's recently written short essays. According to Rice, Prejean's essay "reveals some very ugly feelings towards the Magisterium which are enough to can this unofficial spokeswoman [Prejean] of Catholic teaching on the death penalty."⁸⁹ Rice then urges her readers, presumably Catholics, to "can" Prejean "if she won't can herself."⁹⁰ Rice explains that Catholics should not accept Prejean's stance on the death penalty as representative of the Church's stance on the death penalty simply because of Prejean's obvious conflict with the Church, not because of the substantive aspects of her perspectives on the death penalty.

To fully understand the true purpose behind Conrad's Letter to the Editor, one must also consider Prejean's essay that served as the object of Rice's critique. In her essay, Prejean argues that Catholics must no longer look to the Catholic Church for the "clearest unequivocal endorsement" of the right to live and the right not to be subjected to cruelty.⁹¹ Instead, she argues, Catholics must look to the Universal Declaration of Human Rights. According to Rice, Prejean's overall discourse is insulting to the Pope and a disgrace to the Catholic Church because it promotes a general rejection of traditional Catholic beliefs. Rice posits that "[t]hese anti-ecclesial statements are public scandal when coming from the lips of a Catholic nun, and should be enough to make her bishop ask her to either change her attitude or just be quiet."⁹² Rice fears that "unless someone more docile to Evangelium Vitae, tradition, and the Papacy steps forward to truly represent the Church's position on the death penalty, the masses just might follow Sister Prejean right out of the Church in search of a one-world utopia where no one ever dies."⁹³ Rice's concern is not over Prejean's actual perspective of the death penalty, but over Prejean's perspective of the Church and how that taints her representation of the Church's beliefs. Rice concludes her review by making a personal plea to Prejean, asking her to put her ministry on hold to take a "decent course in ecclesiology."⁹⁴ "And if you can't bring yourself to accurately

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

represent the Catholic Church,” Rice continues, “maybe it’s time to bow out and let a convinced apostle present the Gospel of Life to the world.”⁹⁵

Rice’s review evoked several responses, including one from Father Paul Marx of Front Royal, Virginia: “She [Sister Prejean] deserved it! One can only conclude that people like her have lost the Faith – sad indeed!”⁹⁶ Understandably, Conrad, a devout Catholic, commiserated with both Rice and her other readers. He begins his Letter to the Editor, entitled “Habitually Wrong,” by thanking Rice for “blowing the whistle on the American Church’s love affair with” Sister Prejean.⁹⁷ Conrad’s letter is aptly titled since his point in writing was to agree with Rice’s recognition of Sister Prejean’s contemptuous attitude toward the Catholic Church and to further substantiate her point by offering another example of Prejean’s contempt. As both Rice and Conrad make clear, the most troubling aspect of this scenario is the world’s misperception of Prejean’s views as an accurate representation of the Catholic Church’s views. As such, Rice and Conrad classify Prejean’s damaging words as a full frontal attack on their Church. Contrary to Leahy’s assertions, Conrad’s letter does not show contempt for Sister Prejean’s compassionate work with prisoners; it shows contempt for her assault on the Church.

Like Rice used Prejean’s short essay, Conrad uses Prejean’s novel, *Dead Man Walking*, to illustrate her contempt for the Church. He even admits that he was hoping to find a “cogent treatment of” the death penalty issue considering his role as a Catholic prosecutor who had successfully argued for imposition of the death penalty.⁹⁸ As he tells Rice, however, instead of finding persuasive “Catholic” discourse on the issue, he found only “liberal drivel.”⁹⁹ Conrad expresses his general disapproval with the fact that Camus is Prejean’s intellectual inspiration, while the ACLU and Amnesty International are her “guiding lights.”¹⁰⁰ Conrad explains that “[w]hat really dismays is Sister Prejean’s cynical portrayal of the Catholic Church.”¹⁰¹ Conrad uses the remainder of the letter to cite specific examples from the book that demonstrate Prejean’s contempt for the Catholic Church. In closing, Conrad offers the following:

⁹⁵ *Id.*

⁹⁶ Father Paul Marx, Letter to the Editor, “*She Deserved It!*”, CATHOLIC DOSSIER, Jan./Feb. 1999, available at <http://catholic.net/rcc/Periodicals/Dossier/JAN-FEB1999/Letters.html>.

⁹⁷ Conrad, *supra* note 85.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

This surprisingly shallow book wallows in worn-out liberal shibboleths and dated anecdotes. *Perhaps its most damning and damaging characteristics, however, is the near total contempt displayed for the Roman Catholic Church.* The truly fierce irony is that, increasingly, on the issue of capital punishment, the mind of the Church is equated with the voice of this Church-hating nun, resulting in a diminution of its credibility and confusion in and out of the pew.¹⁰²

Conrad could not make it any clearer that his challenge with Prejean stems not from “her compassionate work with condemned prisoners,” but from her blatant disrespect for and misrepresentation of the Catholic Church.¹⁰³ Conrad’s use of the phrase “worn-out liberal shibboleths” reveals his distress over Prejean’s failure to speak like a true Catholic and tendency to speak like a true liberal.¹⁰⁴ When Conrad’s letter is juxtaposed to Rice’s review, it is clear that Conrad is merely expounding upon the point originally posed by Rice. He simply offers another example of Sister Prejean’s bad habit of speaking out against the Catholic Church. After reading both Rice’s review and Conrad’s response, it is also clear that neither article has anything to do with the merits of the death penalty debate. Instead, Conrad’s Letter to the Editor is merely one portion of a literary conversation between author and reader—a conversation in which two devout Catholics bemoan the veritable assault that a Catholic nun has leveled against the Catholic Church.

Leahy’s use of “Habitually Wrong” to cast doubt on Conrad’s impartiality as a federal judge is puzzling. Additionally, it is difficult to argue that “Habitually Wrong” exhibits any bias on Conrad’s part regarding the death penalty, whether for or against it. “Habitually Wrong” is not about Conrad’s opinion of the death penalty; it is about his love for the Catholic Church and his willingness to defend it against what he perceives as an attack. Furthermore, that Conrad even read *Dead Man Walking* in the first place demonstrates a lack of bias on his part since he read the book with a curious and open mind. Considering the vast media coverage surrounding the book after it was made into a major motion picture, it is unlikely that Conrad was unaware of Prejean’s stance on the death penalty prior to his reading the first page. In light of all these factors, one might easily suspect that Leahy either failed to read Conrad’s Letter to the Editor in its entirety or that he simply failed to adequately discern its meaning. One might also reason that

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

Leahy merely fashioned his own meaning by extracting statements from their proper context to substantiate empty allegations against a conservative judicial nominee.

In addition to Leahy's concerns over Conrad's "inflammatory writings," it should be noted that the Center for Investigative Reporting has raised concerns over Conrad's campaign contributions subsequent to his nomination to the federal bench. According to a 2006 report tracing the campaign contributions of Bush's judicial nominees, "Conrad contributed \$2,000 to the Senate campaign of Sen. Burr, whose election in 2004 was key to his confirmation," particularly since Burr replaced Edwards who had stalled Conrad's original nomination.¹⁰⁵ Conrad was first nominated in April 2003, and he contributed to Burr's campaign in October 2004.¹⁰⁶ He was not re-nominated, however, until February 2005.¹⁰⁷ According to the report, Conrad also made a contribution to a Democratic candidate for state attorney general that year and to a Republican candidate for governor.¹⁰⁸ Despite the report's slightly veiled attempt to project unethical behavior on Conrad, the report does nothing more than reveal his bipartisan voting habits. Additionally, it should be noted that there is no rule—ethical or legal—that prohibits nominees to the federal bench from making campaign contributions. In February 2007, the American Bar Association (ABA) modified the Model Code of Judicial Conduct by adding a provision barring federal judicial nominees from making campaign contributions.¹⁰⁹ Even so, Conrad's contributions were made prior to the ABA's adoption of this new provision, and more importantly, the provision is merely hortatory in nature until adopted by the federal judiciary.

Finally, notwithstanding any concerns over his impartiality (or lack thereof), Conrad was unanimously confirmed as a federal judge by the Senate on April 28, 2005.¹¹⁰ He received his commission on June 2, 2005, and left the private practice of law for the second time in his legal

¹⁰⁵ Center for Investigative Reporting, *Money Trails to the Federal Bench: State-by-state report on campaign contributions from federal judges appointed during the Bush Administration*, http://www.centerforinvestigativereporting.org/files/MoneyTrails_FullReport.pdf (last visited Oct. 1, 2007).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ Will Evans, *Money Trails to the Federal Bench*, CENTER FOR INVESTIGATIVE REPORTING, Oct. 31, 2006, <http://centerforinvestigativereporting.org/articles/moneytrailstothe federalbench>.

¹¹⁰ President Bush's Confirmed District (Article III) Court Nominees, http://judiciary.senate.gov/noms/110/District_Ct_Noms.pdf (last visited Oct. 1, 2007).

career.¹¹¹ On June 3, 2006, Conrad was named Chief Judge of the U.S. District Court for the WDNC.¹¹²

Since becoming a federal judge, Conrad has thoroughly exhibited his ability to apply the law fairly and impartially. Upon his nomination to the Fourth Circuit, Conrad received a unanimous committee rating of “well-qualified,” the highest possible rating, from the ABA.¹¹³ The Center for Investigative Reporting now asserts that Conrad has recently tried to detach himself from his “outspoken past,” referring to his Planned Parenthood article and his Letter to the Editor.¹¹⁴ The newsgroup supports its assertion with two statements that Conrad made in 2005: “I believe that my record as U.S. Attorney demonstrates that I have enforced the law impartially,” and “I have had no occasion to study or form views about Planned Parenthood in the past 15 years.” Whether these statements do in fact demonstrate Conrad’s attempt to distance himself from his past is not entirely clear. These statements do, however, indicate his desire to apply the law in fairness and reveal his practice of making informed decisions and judgments.

It is interesting to note the frequency with which these two “inflammatory writings” are cited as reasons for doubting Conrad’s fitness as a judge (even earning him the label from some Senate Democrats as an “activist judge”¹¹⁵) when such writings pale in comparison to those of Supreme Court Justice Ruth Bader Ginsburg prior to her nomination and subsequent confirmation to the D.C. Circuit Court of Appeals in 1980. Consider the following remarks made by Ginsburg in a 1974 report on the Columbia Law School Equal Rights Advocacy Project:¹¹⁶

- “Prostitution, as a consensual act between adults, is arguably within the zone of privacy protected by recent constitutional decisions.”¹¹⁷
- “Sex-segregated adult or juvenile institutions [prisons] are obviously separate and, in a variety of ways, unequal. . . . If the grand design of such institutions is to prepare inmates for return to the community as persons equipped to benefit from and contribute to society, the perpetuation of single-sex institutions should be rejected.”¹¹⁸

¹¹¹ Judges of the United States Courts, *supra* note 5.

¹¹² Hon. Robert J. Conrad, Jr. – A Charlotte, North Carolina (NC) Lawyer, *supra* note 24.

¹¹³ American Bar Association, Ratings of Article III Judicial Nominees 110th Congress, <http://www.abanet.org/scfedjud/ratings/ratings110.pdf> (last visited Oct. 1, 2007).

¹¹⁴ Lurie, *supra* note 34.

¹¹⁵ Statement of Senator Patrick Leahy Setting The Record Straight On Judicial Nominations In North Carolina And Across The Country, *supra* note 73.

¹¹⁶ Ethics and Public Policy Center, “The Legal Status of Women Under Federal Law,” Excerpts from a Ruth Bader Ginsburg Classic, http://www.eppc.org/publications/pubID.2363/pub_detail.asp (last visited Oct. 1, 2007).

¹¹⁷ *Id.*

¹¹⁸ *Id.*

- “This section restricts certain rights, including the right to vote or hold office, of bigamists . . . [T]he provision is of questionable constitutionality since it appears to encroach impermissibly upon private relationships.”¹¹⁹
- “The Boy Scouts and Girl Scouts, while ostensibly providing ‘separate but equal’ benefits to both sexes, perpetuate stereotyped sex roles to the extent that they carry out congressionally-mandated purposes.”¹²⁰
- “Replacing ‘Mother’s Day’ and ‘Father’s Day’ with a ‘Parents’ Day’ should be considered, as an observance more consistent with a policy of minimizing traditional sex-based differences in parental roles.”¹²¹

Not only did Ginsburg publish these radical remarks prior to her confirmation as a federal judge, but at the time of her nomination, she was chief litigator for the American Civil Liberties Union’s (ACLU) women’s rights project. Indeed, from 1973 until her confirmation in 1980, Ginsburg served as general counsel for the ACLU. Conrad, on the other hand, has never made such blatantly radical remarks, nor has he served as general counsel for a controversial activist organization such as the ACLU. Interestingly, Conrad’s accolades have come from both sides of party lines. In light of the apparent double standard at work here, one might ponder the inherent irony of the fact that Justice Ginsburg, champion of equal treatment for all, received preferential treatment during her own nomination and confirmation process as a federal judge.

PERSONAL LIFE

Conrad is married to Ann Conrad, an artist, and has five children.¹²² Despite the demands posed by his many professional obligations, he is known for taking time to pour himself into his family, as well as his community. In a law review article which discusses how the ordinary practice of law can be a religious calling, Conrad describes his calculated attempt “to avoid the compartmentalization and schizophrenia that otherwise comes with fragmenting work and family life” by integrating these ostensibly distinct aspects of life.¹²³ As an example, he recounts that he once took his then-high school age daughter to an intense murder trial that he was prosecuting. Afterwards, when Conrad asked his daughter about her impressions of the day, he found that she was utterly incredulous that the defense attorney was wearing black shoes with a blue dress.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² Christspeak Rx, http://christspeak.spaces.live.com/?_c11_BlogPart_BlogPart=blogview&_c=BlogPart&partqs=amonth%3D7%26ayear%3D2005 (July 25, 2005, 15:30 EST).

¹²³ Robert J. Conrad, Jr., *Can the Ordinary Practice of Law Be a Religious Calling?*, 32 PEPP. L. REV. 551, 555 (2005).

Undaunted by this unexpected response, Conrad, quite simply, offered the following: “one suspects, beneath the veneer of fashion compliance, that she got it – watching a parent engage in meaningful work to the glory of God.”¹²⁴

When Conrad was sworn in as a federal district judge, another of his daughters contributed these remarks as part of a tribute to her father: “He is a storyteller and a reader, an adventurer and a homebody, a jokester and a leader. Bob Conrad is a man of contradictions, two people in one personality—a distinguished career-man and a giving father.”¹²⁵ Inadvertently symbolizing his ability to successfully stave off the compartmentalization of work life and family life, Conrad attended his swearing-in ceremony wearing a walking cast. He had recently suffered a torn tendon while playing in a “Dads v. Sons” basketball game against his son’s eighth grade team. In spite of the injury sustained earlier in the game, Conrad’s resilient and competitive spirit shone through as he landed the final free throws to win the game for the Dads.¹²⁶

After spending many years playing competitive sports, Conrad has also had the opportunity to coach competitive sports.¹²⁷ While Campaign Finance Task Force Chief, he took time off to coach a basketball camp at Clemson that some of his children were attending.¹²⁸ In addition to his time inside the sports arena, Conrad has contributed his time to things outside the sports arena. For instance, Conrad has served as a faculty member at the University of Virginia’s Trial Advocacy College and the Department of Justice’s National Advocacy Center in Columbia, South Carolina.¹²⁹ He is also an active member of his church.¹³⁰

Shortly after he was sworn in as federal judge for the WDNC, Conrad was interviewed by the Mecklenburg County Bar.¹³¹ Throughout the course of that interview, Conrad revealed much about his character as well as his approach to the law and to the bench: “My biggest personal challenge, and commitment, is to set aside the trappings of the office and live daily as a servant of the law, administering justice to the best of my ability.”¹³² He subsequently compared his

¹²⁴ *Id.*

¹²⁵ William L. Esser, IV, *Bob Conrad Sworn in as Western District Federal Judge*, THE MECKLENBURG BAR NEWS, Aug. 2005, <http://www.meckbar.org/newsevents/MCBNews08-05.pdf>.

¹²⁶ *Id.*

¹²⁷ Robert J. Conrad, Jr., Nominee to the U.S. Court of Appeals for the Fourth Circuit, *supra* note 8.

¹²⁸ *Vise, supra* note 10.

¹²⁹ Robert J. Conrad, Jr., Nominee to the U.S. Court of Appeals for the Fourth Circuit, *supra* note 8.

¹³⁰ *Id.*

¹³¹ Esser, *supra* note 108.

¹³² *Id.*

move from the advocacy arena to the federal bench to his move from playing competitive athletics to coaching them, noting that he found the latter more rewarding. When asked what advice he would give attorneys appearing before him, Conrad recommended that lawyers treat every case as though it is their biggest case because to each client, his or her case is the biggest case. He also encouraged practicing attorneys to maintain the civility, professionalism and collegiality that characterize the WDNC and the Fourth Circuit. Conrad told the Mecklenburg County Bar that the words of Micah the prophet are his inspiration in his role as judge¹³³: “to do justly, and to love mercy, and to walk humbly with thy God.” (Micah 6:8). He explained that he hopes his service on the bench reflects “a faithful application of the law, a respect for the human dignity of every person in the process, and a commitment to excellence.”¹³⁴

¹³³ *Id.*

¹³⁴ *Id.*