PRELIMINARY REPORT ON THE NOMINATION OF ROBERT J. CONRAD, JR. TO THE FOURTH CIRCUIT COURT OF APPEALS

On July 17, 2007, President Bush nominated Robert J. Conrad, Jr., a judge on the District Court for the Western District of North Carolina, for a seat on the U.S. Court of Appeals for the Fourth Circuit.

Robert J. Conrad has been a district court judge since 2005. He was initially nominated for the position in 2003. However, former Senator John Edwards (D-NC) did not return the blue slip on Judge Conrad, preventing his nomination from being considered by the Judiciary Committee. When Senator Edwards declined to seek reelection, his replacement, Senator Richard Burr (R-NC), supported Judge Conrad's nomination. At the time, senators expressed serious concerns about Judge Conrad's radical views, as illustrated in some of his writings. Nevertheless, Judge Conrad was confirmed to the district court.

Some of Judge Conrad's written work, both prior to his district court confirmation and since, indicate extreme right wing views on abortion, the death penalty and religion. Judge Conrad has not handled any cases dealing with these issues during his time as a district court judge. However, Judge Conrad did sit on one highly controversial environmental case, and he consistently ruled against plaintiffs alleging employment discrimination. Judge Conrad's record on the bench and off calls into question his ability to fairly and justly apply the law.

I. BRIEF BIOGRAPHY OF JUDGE CONRAD

Judge Conrad graduated from Clemson University in 1980 and the University of Virginia Law School in 1983. Judge Conrad served as an assistant United States attorney for twelve years from 1989 until 2001. In 2001, he was confirmed as United States Attorney for the Western District of North Carolina, where he served until 2004. Judge Conrad served two stints in private practice between 1983 and 1989 and between 2004 and 2005.

In 1999, Conrad was named by Attorney General Janet Reno to head her campaign finance task force investigating fund-raising improprieties during the 1996 U.S. election campaigns. He is best known for recommending an independent counsel be named to investigate then-Vice President Al Gore.

II. SCHOLARLY WRITINGS

A number of Judge Conrad's writings raise considerable concerns about his views. He has taken some radical right wing positions in the areas of reproductive freedom and the death penalty. Moreover, he appears unwilling to separate his religious beliefs from his work.

In 1988, Judge Conrad wrote an Op-Ed entitled *Planned Parenthood, A Radical, Pro-Abortion Fringe Group*.[1] In the article, Judge Conrad repeatedly referred to Planned Parenthood's OB/GYNs as "abortionists." He stated that "Planned Parenthood knowingly kills unborn babies, not fetuses, as a method of post conception contraception." He went on to claim that Planned Parenthood had done nothing to reduce teen pregnancy rates and should not receive funding for its contraception services.

In addition to using offensive and extreme language to describe Planned Parenthood, Judge Conrad listed a number of positions that Planned Parenthood had taken to illustrate its supposed "radical" views. However, Planned Parenthood's arguments were adopted by the courts—including the United States Supreme Court—in each of the cases Judge Conrad mentioned.[2] Judge Conrad also described cases in misleading ways. For example, he described Planned Parenthood as arguing that "one can receive public funding only to encourage abortion" in the case of *Planned Parenthood v. Kempiners* In fact, Planned Parenthood had challenged an Illinois funding law which prohibited health clinics which provided abortions from receiving state funding – even if the money would not be used for abortion referrals or services. Planned Parenthood did not argue that other organizations should not receive the funds, only that they should also be eligible for the funding. The District Court for the Northern District of Illinois ruled in their favor, holding that the discrepancy was unconstitutional.

Judge Conrad was asked about this article by Senators Russell Feingold (D-WI), Dianne Feinstein (D-CA), and Patrick Leahy (D-VT) in written questions following his confirmation hearing for his district court nomination. Judge Conrad provided the same answers to each senator. He claimed that the article pertained to a local funding dispute and that he had had no involvement with Planned Parenthood since that time. He went on to discuss abortion clinic bombing cases that he had tried as a U.S. Attorney. However, his explanation did not address the extreme wording and tone of the article, and he did not answer the question of whether he continued to hold those views.

Although Judge Conrad has not written other articles about women's reproductive rights that are as vitriolic, there are other indications in his writings that he would stake out a far right wing stance on issues of reproductive freedom. In a 2005 article entitled *Can Ordinary Practice of Law Be a Religious Vocation? A Panelist's Response*,[3] one example Judge Conrad provided of making legal work a "religious vocation" was when several of his fellow law students started a crisis pregnancy center to "minister to the needs of pregnant women." In the article, Judge Conrad did not say whether he was one of those law students. However, according to his questionnaire, he served on the board of the Charlottesville Pregnancy Center from 1983-1986. The Charlottesville Pregnancy Center operates within the larger network of the Pregnancy Centers of Central Virginia, an organization explicitly founded as "a Christian alternative to

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[1] Robert J. Conrad, Jr., *Planned Parenthood, A Radical, Pro-Abortion Fringe Group*, THE CHARLOTTE OBSERVER, June 14, 1988, 19A.
[2] *Planned Parenthood v. Danforth*, 428 U.S. 52 (1976); *Planned Parenthood League v. Bellotti*, 641 F.2d 1006 (1st Cir. 1981); Planned Parenthood v. Alexander, 1981 U.S. Dist. LEXIS 18617 (D. Tenn. 1981); *Planned Parenthood Asso. v. Kempiners*, 568 F. Supp. 1490 (N.D. Ill. 1983).
[3] Robert J. Conrad, Jr., *Can Ordinary Practice of Law Be a Religious Vocation?,* 32 PEPP. L. REV. 551 (2005).

abortion.[4]" Crisis pregnancy centers often use extreme measures to prevent women from obtaining abortions, including intentionally misinforming and misleading women who are seeking pregnancy-related assistance by providing medically inaccurate information about pregnancy, contraception, or abortion. The Sexuality Information and Education Council of the United States (SIECUS) had this to say about the Charlottesville Pregnancy Center:

> Charlottesville Pregnancy Center has a strong anti-choice message. Its website states, "The unborn child is alive prior to the abortion procedure, and there is strong evidence that the unborn child can feel pain as early as twelve weeks. The abortion procedure is thought to be painful for the unborn child, as no anesthesia is administered to the fetus."
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> The website also includes a section for teens. In one chart, it compares a "SMART SEXUALITY/Chaste Lifestyle" with "RISKY SEXUALITY/Dangerous Lifestyle" and suggests that sexually active teens may face any number of hardships.[5]

Additionally, the website, under the guise of presenting "facts," perpetuates specious medical claims about abortion, including the assertion that "there is evidence that the risk of breast cancer may increase 140% following an abortion.[6]"

In another Op-Ed from 1991, Judge Conrad criticized Magic Johnson's message that safe sex was a way to avoid contracting HIV.[7] Judge Conrad stated "Sexual promiscuity is wrong not because it leads to disease (so if it could be made 'safe' no moral significance would attach), but because it contradicts nature and nature's God." He went on to add, "'Safe sex' is a myopically misconceived liberal 'solution' that fails to address the promiscuity underlying the AIDS disease and others."

While on the district court, Judge Conrad has not heard any cases dealing with reproductive health issues. However, his writings evince a decades-long battle against abortion, contraception and sex education.

Opposing reproductive freedom is not the only area where Judge Conrad has staked out an extreme position. In 1999, Judge Conrad wrote a letter, which was published in the *Catholic Dossier,* entitled *Habitually Wrong*.[8] In it, he heavily criticized Sister Prejean's book *Dead Man Walking*. He referred to the book as "liberal drivel" and to Sister Prejean as a "Church-hating nun." He contended that, "This surprisingly shallow book wallows in worn-out liberal shibboleths and dated anecdotes." In written questions following his district court confirmation hearing, Judge Conrad was asked about this article by Senators Feinstein, Feingold and Leahy.

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[4]The Pregnancy Centers of Central Virginia, *About the Pregnancy Centers of Central Virginia*, *at* http://www.virginiapregnancy.org/about-us.aspx (last visited April 1, 2008).

[5] SIECUS Public Policy Office, State Profile: Virginia, *at* http://www.siecus.org/policy/states/2006/mandates/VA.html.

[6] The Pregnancy Centers of Central Virginia, *Options, Abortion*, *at* http://www.virginiapregnancy.org/option-abortion.aspx (last visited April 1, 2008).

[7] Robert J. Conrad, Jr., *Virtues of Sports and Sex: Play by the Same Rules on Both Fields: Sacrifice, Commitment and Self-Control*, THE CHARLOTTE OBSERVER, Nov. 14, 1991, 13A.

[8] Robert Conrad, *Habitually Wrong*, CATHOLIC DOSSIER, Jan. 1999.

As in his answers to the questions about the Planned Parenthood article, he failed to adequately address the senators' concerns or to explain the extreme language that he used.[9]

Judge Conrad has not adjudicated any death penalty cases while on the district court. However, on his questionnaire, he lists two cases where he successfully argued for the imposition of the death penalty among his ten most significant litigated matters. Listed as number one is *United States v. Barnette*. Judge Conrad described the case as the "first federal capital case tried in North Carolina since capital punishment was reinstated in 1988." In addition, some of the criminal cases that Judge Conrad has handled while on the district court – as discussed below – seem to reveal a tremendous disregard for the rights of criminal defendants.

Judge Conrad has not written any other articles addressing discrete areas of law. Some of his other writings, however, demonstrate his apparent belief that his religion and legal career are indivisible. As noted above, in 2005 he wrote an article about how to make the practice of law a religious vocation. In it, he argued, "We are no longer lawyers who happen to be people of faith but rather God's children who happen to be lawyers." Judge Conrad's apparent inability to separate his religious beliefs from his legal views would undoubtedly impact his rulings in a number of issues beyond abortion and the death penalty, such as the separation of church and state, civil rights protections of minority religious observers, and the rights of LGBT Americans.

As noted above, Senator Edwards blocked Judge Conrad's nomination to the district court when he was initially nominated, presumably because of the ultraconservative views that he had staked out in his writings. When he was confirmed for the district court seat, Senator Patrick Leahy—then ranking member on the Senate Judiciary Committee—expressed significant concerns about Judge Conrad's ability to fairly judge all parties before him. Senator Leahy stated:

> I wish the White House had heeded Senator Edwards' advice and reconsidered these nominations.
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> After reading some of Mr. Conrad's more inflammatory writings, I do not wonder at Senator Edwards' objections. … He calls … "Dead Man Walking," "liberal drivel," and shows nothing but contempt for [Sister Prejean's] 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.
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> Another example is the not-too-subtly titled article, "Planned Parenthood, A Radical, Pro-Abortion Fringe Group." Mr. Conrad's view of the well-respected family planning organization is that it is a "most radical legal advocate of unfettered abortion on demand," and argues they do nothing to reduce teen pregnancy. … His statements make

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[9] In the article, Judge Conrad referred to the ACLU and Amnesty International as Sister Prejean's "guiding lights." In written questions about his Planned Parenthood article, Judge Conrad was asked it there were "other women's rights or civil rights groups that [he thought were] 'radical' or 'fringe.'" Judge Conrad answered no. However, his assessment of the ACLU and Amnesty International seems to imply that he would also place these organizations in that category.

> me wonder whether any person going before a Judge Conrad in a case involving reproductive rights, or indeed any issue related to personal privacy, will feel their arguments have been fairly heard. Will he be able to follow the law as written? Again, for the sake of future litigants and the independence of our judiciary, I hope so.[10]

While Senator Leahy ultimately voted to confirm Judge Conrad to the district court despite the Senator's reservations, the same chance cannot be taken with a Circuit Court seat. Judge Conrad's extremely unconventional views have no place on the Fourth Circuit, which serves as the court of last resort for millions of Americans.

III. RECORD AS U.S. ATTORNEY

In 2001, Judge Conrad was confirmed as United States Attorney for the Western District of North Carolina, where he served until 2004. U.S. Attorneys are nominated by the president and confirmed by the senate, and are tasked with conducting independent investigations into wrongdoing. Though political appointees, they represent the government and the people rather than a particular administration. In at least one instance, Judge Conrad's ability to resist the politicization of his office and put the pursuit of justice above partisan politics was called into question.

As a U.S. Attorney, Judge Conrad oversaw the investigation and eventual prosecutions of Hayes C. Martin, Charles E. "Chig" Cagle, and Thomas Jones, all of whom were implicated in a bank fraud scheme that allowed Mr. Cagle to collect $1.3 million in bad loans from Blue Ridge Savings Bank in North Carolina. Martin and Cagle pleaded guilty to scheming to defraud the bank and to money laundering, and Jones was convicted of bank fraud.[11]

Blue Ridge Savings Bank is owned by Republican Congressman Charles Taylor, who represented the 11th district of North Carolina for 16 years before his loss in 2006 to Congressman Heath Shuler, a Democrat.[12] Congressman Taylor was connected to the defendants both politically and professionally; the congressman owned the bank and served as the head of the bank's board of directors.[13] Mr. Martin served as Congressman Taylor's campaign manager for several years and Mr. Cagle had been chairman of the Republican Party in Congressman Taylor's district. Mr. Cagle told investigators that Congressman Taylor often called him on Thursday nights after returning from Washington to talk politics.[14] During the FBI's investigation, both Mr. Cagle and Mr. Martin implicated Congressman Taylor in the fraud scheme. Mr. Martin told agents that the congressman was a "micro-manager" who, even when he was not chairman of board, attended all the board meetings and "maintained constant contact with the bank, either physically or telephonically—10 to 11 calls per day."[15] Mr. Martin also

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[10] Statement of the Honorable Patrick Leahy, United States Senator , Vermont, April 14, 2005, *available at* http://judiciary.senate.gov/member_statement.cfm?id=1459&wit_id=2629.
[11] Quintin Ellison, Former Sylva attorney indicted: Man accused of stealing from disabled veteran's guardianship account, The Asheville Citizen-Times, Oct. 9, 2003, at 1C.
[12] Jon Ponder, Did a 'Bushie' U.S. Attorney Give a GOP Pol a Pass on Fraud Charges?, Pensito Review, Mar. 23, 2007, available at http://www.pensitoreview.com/2006/05/30/quote-du-jour-36/?p=3788.
[13] Pat Smith, Taylor linked to loan fraud, The News and Observer, July 6, 2003, at A1.
[14] Id.
[15] Damon Chappie, Feds: No Taylor Shield, Roll Call, June 9, 2003.

testified that Mr. Taylor had ordered the removal of a bank employee who was suspected of cooperating with federal investigators who were looking into questionable loans.[16] Despite these accusations, Judge Conrad never questioned Congressman Taylor about the fraud scheme carried out by his political confidants at the bank he owned.[17]

In 2003, lawyers for Mr. Jones filed a motion in federal court formally accusing Judge Conrad of prosecutorial misconduct for failing to question Congressman Taylor about the fraudulent loans.[18] They argued that Judge Conrad, as U.S. Attorney, acquiesced to pressure from then-Attorney General John Ashcroft to stop the FBI investigation of Congressman Taylor, a fellow Republican, who was then a powerful chair of a subcommittee on the House Committee on Appropriations. At the time, Judge Conrad filed a response in which he stated the claims of interference were baseless, and nothing came of the motion.[19]

IV. RECORD ON THE BENCH

Judge Conrad has served on the District Court for the Western District of North Carolina since 2005. During his time on the court, he has issued 163 opinions, the majority of which are one or two page orders that do not provide any indication of his judicial philosophy or legal views. In addition, Judge Conrad has sat by designation on fourteen Fourth Circuit panels, but he has not decided any cases involving the issues of highest concern during his district court confirmation hearing. Nevertheless, some of his opinions while on the district court raise additional concerns about his judicial philosophy, and none of the opinions put to rest earlier concerns about whether he would fairly apply the law in certain subject areas.

Environmental Protection

Ohio Valley Environmental Coalition v. Bulen.[20] In Judge Conrad's only environmental case, a number of environmental organizations sued the Army Corps of Engineers, alleging that it had violated the Clean Water Act when it approved a permit for the discharge of material from mountain-top mining. Specifically, they argued that the Corps had approved a general permit for discharging waste from mountain-top mining, but had not followed the stringent requirements for obtaining a general permit. The district court agreed.

The district court found that the permit was invalid because it conflicted with the unambiguous meaning of a section of the statute. Specifically, it held that the permit defined "a procedure instead of permitting a category of activities," violated sections of the statute which "unambiguously require[d] determination of minimal impact before, not after, the issuance of a nationwide permit," and "unambiguously require[d] that general permits authorize discharges to proceed without further involvement from the Corps," and that the permit process failed to "provide notice and opportunity for public hearing before issuing a permit."

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[16] Id.
[17] Barbara Barett, Inquiry revisits accusations that Justice Dept. protected lawmaker, McClatchy Newspapers, Mar. 20, 2007, available at http://www.mcclatchydc.com/staff/barbara_barrett/story/15822.html.
[18] Id.
[19] Id.
[20] 429 F.3d 493 (4th Cir. 2005).

The Fourth Circuit, in an opinion written by Judge Luttig and joined by Judge Conrad and Judge Niemeyer, reversed. They held that, contrary to the findings of the district court, the Corps did identify a category of activities, determine those activities would have a minimal environmental impact, and provide notice and the opportunity for a hearing.

The full Fourth Circuit voted 5-3 not to rehear the case *en banc*. Judge King, joined by Judges Michael and Motz, dissented from that decision. In his dissent, Judge King argued that the panel decision "eviscerates the important distinction drawn by Congress between individual and general permits …, and it undermines the CWA's primary purpose of protecting the environment." He went on to state that:

> In this case, the Corps failed to make the required determination of minimal environmental impact *before* it issued the general permit at issue. Instead, it set up mechanisms that would work to minimize the environmental impacts of specific projects…. [O]ther than the Corps' bald conclusions that the permitted activities would have minimal environmental impacts, the panel was able to muster from the record sparingly few examples that even suggest the Corps thought about potential environmental effects before it issued the general permit.

<u>Employment Discrimination</u>

Judge Conrad has sat on twelve employment discrimination cases as a judge, ten on the district court and two on the Fourth Circuit.[21] In every case but one (his most recent district court opinion)[22], Judge Conrad wrote or joined an opinion granting summary judgment for the defendant and thereby barring the plaintiff from having his case decided by a jury.

Chacko v. Patuxent Institution.[23] Mathen Chacko, an Indian American, was employed for twenty years at Patuxent, a correctional facility. Over his twenty year tenure, he filed three separate discrimination complaints. After he left, he sued Patuxent for national origin discrimination, alleging that he was "repeatedly ridiculed with derogatory epithets based on his national origin." A jury found in Chacko's favor and awarded him damages. On appeal, Petuxent argued that the proof Chacko offered at trial was outside the administrative charges he had filed as an employee.

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[21] *Moser v. MCC Outdoor L.L.C., 102 Fair Empl. Prac. Cas. (BNA) 423 (4th Cir. 2007); Chacko v. Patuxent Institution*, 429 F.3d 505 (4th Cir. 2005); *EEOC v. Firestone Fibers & Textiles*, 2006 U.S. Dist. LEXIS 65438 (W.D.N.C. 2006); *Cooper v. Charlotte-Mecklenberg Board of Education*; 2006 U.S. Dist. LEXIS 65826 (W.D.N.C. 2006), *Boggess v. Roper*, 2006 U.S. Dist. LEXIS 63057 (W.D.N.C. 2006*); Poteat v. PSC Automotive Group*, 2006 U.S. Dist. LEXIS 71491 (W.D.N.C. 2006); *Ellerby v. Branch Banking and Trust*, 2005 U.S. Dist. LEXIS 26729 (W.D.N.C. 2005); *Mungo v. Consolidated Metco*, 2006 U.S. Dist. LEXIS 63061 (W.D.N.C. 2006); *Scarborough v. Wachovia Bank Corporation*, 2006 U.S. Dist. LEXIS 71221 (W.D.N.C. 2006); *Burnett v. Substance Abuse Prevention Services*, 2006 U.S. Dist. LEXIS 71219 (W.D.N.C. 2006); *Salih El Bey v. Battery Services*, 2007 U.S. Dist. LEXIS 7852 (W.D.N.C. 2007); *Zampogna v. Gaston County Schools Board of Education,* 2007 U.S. Dist. LEXIS 95637(W.D.N.C. 2007).

[22] *Zampogna v. Gaston County Schools Board of Education,* 2007 U.S. Dist. LEXIS 95637(W.D.N.C. 2007) This is Judge Conrad's most recent employment discrimination case decision. It is the only employment discrimination claim he has ever ruled should survive a summary judgment motion.

[23] 429 F.3d 505 (4th Cir. 2005).

The Fourth Circuit, in an opinion authored by Judge Wilkinson and joined by Judge Conrad and Judge Williams, agreed that Chacko had not exhausted his administrative remedies and granted Petuxent's motion for judgment as a matter of law. The majority acknowledged that "if the factual allegations in the administrative charge are reasonably related to the factual allegations in the formal litigation, the connection between the charge and the claim is sufficient." They nevertheless held that the allegations made in litigation did not correspond to those in the administrative charges. Specifically, Chacko argued in litigation that he was subject to ongoing national origin harassment at the hands of his co-workers, whereas his complaints had referred to specific issues with his supervisors.

EEOC v. Firestone Fibers & Textiles.[24] The EEOC sued on behalf of David Wise, arguing that his former employer failed to reasonably accommodate his religious beliefs. Wise was a member of the Living Church of God, which required, among other things, that he not work between sundown on Friday and sundown on Saturday. Due to company reorganization and agreement with the union, Wise was no longer able to be scheduled off on Friday evenings. He used all of the company's time off provisions to cover these times, but when he ran out of time, he did not report to work and he was fired. Judge Conrad found that Firestone sufficiently showed that "it provided reasonable accommodation for Wise's religious beliefs" and dismissed the case.

Boggess v. Roper.[25] Carrie Boggess got a position as an intern and then as on-air personality with Jeff Roper, an award-winning country music personality. Boggess alleged that Roper verbally abused, humiliated and intimidated her, causing her to leave the station and suffer from PTSD. Prior to leaving, Boggess had complained to the Human Resources Director, who spoke to Roper. Roper then attempted to meet with Boggess, but she left the office and never returned. Judge Conrad granted the defendants' motion for summary judgment. He found that "even if Roper intentionally caused a disability to frustrate Boggess's performance," she had not attempted to address the issue or request a reasonable accommodation.

Poteat v. PSC Automotive Group.[26] Following a reorganization of her company, Rose Poteat was removed from her position and replaced by a thirty-three year old male. She was offered an opportunity to start a Business Development Center—the position did not yet have a specific salary or job description. She trained to set up the BDC but when she did not receive commissions she had previously received, she asked her supervisor if there were any other positions available and accepted a position on the sales floor. Her replacement was awarded commissions for the same position. When Poteat's sales numbers were low, she was eventually fired. She claimed that she was discriminated against and constructively terminated.

Judge Conrad granted summary judgment to the defendant. However, in doing so, Judge Conrad clearly appeared to weigh the evidence presented by both sides and credit the evidence of the defendant. First, Judge Conrad argues that Poteat did not make out a *prima facie* case of discrimination, crediting the defendant's testimony that her performance was not satisfactory and discrediting her testimony that it was. Then, assuming Poteat had presented a *prima facie* case of sex discrimination, Judge Conrad then goes on to hold that "the defendant convincingly

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[24] 2006 U.S. Dist. LEXIS 65438 (W.D.N.C. 2006).
[25] 2006 U.S. Dist. LEXIS 63057 (W.D.N.C. 2006)
[26] 2006 U.S. Dist. LEXIS 71491 (W.D.N.C. 2006).

establishe[d] that the difference between Nordyke and Poteat's salary was 'based on factors other than sex,'" a determination that should have been made by a jury.

Polypro, Inc. v. Addison.[27] This case was not an employment discrimination case, but it is one of the few cases Judge Conrad decided which was reviewed by the Fourth Circuit. The Fourth Circuit reversed, finding that Judge Conrad had inappropriately weighed the facts and granted summary judgment, rather than allowing a jury to do so.

Polypro sued Todd Addison and Ultra Flex Packaging Corporation seeking a declaratory judgment that it was not infringing their patents. The defendants counterclaimed that the plaintiff was infringing their patents. Judge Conrad granted summary judgment in favor of Polypro, holding that defendants had lost their right to their patent when they placed their invention on sale more than a year prior to their application for a patent.

On appeal, the Fourth Circuit indicated that the burden was on Polypro to show that Ultra Flex's product was "ready for patenting" at the critical date. Ultra Flex argued that "The bags with chip hooks were not ultimately shipped until after the critical date; thus, although they were conceived before the critical date, the parties dispute whether they were indeed ready for patenting when Ultra Flex made the offer." The Court went on to hold that: "We decline to express a view as to whether a reasonable jury could find in Polypro's …; we merely hold that a reasonable jury could find in favor of Ultra Flex."

Due Process

One of the primary concerns raised about Judge Conrad's views when he was considered for a district court judgeship was how he would handle death penalty cases. Although Judge Conrad has not heard any death penalty cases as a judge, the following cases seem to indicate his opprobrium for the rights of criminal defendants.

United States v. Walker.[28] Eddie Walker was convicted of dealing in stolen goods. On appeal, he argued that the government had improperly created federal jurisdiction by transporting the goods to another state to lure him across state lines. An undercover officer who had established a relationship with Walker insisted on a meeting place across state lines to transfer the allegedly stolen goods. Although Judge Conrad acknowledged that circuit courts "have expressed concern with law enforcement improperly manufacturing federal jurisdiction for the purpose of transforming a local crime into a federal one," he unconvincingly distinguished this case from ones in which the state action was deemed unlawful. He credited the officer's testimony that creating federal jurisdiction was not the "sole reason" for crossing state lines. In addition, he needed to maintain his cover story and was concerned about officer safety and using the defendant's facility for a first time meeting. As a result, Judge Conrad rejected Walker's claims.

United States v. Uribo-Rios.[29] Fausto Uribo-Rios was convicted for drug trafficking. Upon completing his sentence, he was arrested by Immigration and Customs Enforcement Agency

[27] 2006 U.S. Dist. LEXIS 2159 (D.N.C. 2006), *rev'd,* 2007 U.S. App. LEXIS 5919 (4th Cir. 2007).
[28] 2007 U.S. Dist. LEXIS 21052 (W.D.N.C. 2007).
[29] 2006 U.S. Dist. LEXIS 91828 (W.D.N.C. 2006).

officials, who charged him with being found in the United States after previously being deported for a the commission of an aggravated felony. Uribo-Rios argued that the statute of limitations on the crime being to run when he was sentenced to six years in prison and, therefore, expired nine months before his indictment. Judge Conrad rejected his claim, holding that the immigration officials could not be charged with constructive knowledge of his presence in state prison.

United States v. Morgan.[30] Leonard Morgan moved to suppress evidence against him, arguing that the officers coerced his confession and illegally searched his residence and his car. Officers went to the Morgan's mother's house to investigate anonymous tips of drug activity. They spoke to his elderly mother, who was outside on the porch. Then they entered the house and spoke to his girlfriend. Both denied knowledge of any illegal activity. When Morgan arrived home, the officers threatened to smash in the door, possibly break things, and search all areas of the house if they had to come back with a warrant. As a result, Morgan agreed to tell the officers where there were drugs. The officers then threatened to arrest Morgan's girlfriend and possibly cause his mother to lose her house if he did not admit that the drugs were his, which he did. The officers arrested Morgan and took him outside, at which point they asked him if there was anything in his car that they should know about. Morgan admitted there was a gun, after which the officers opened the trunk and took out the gun.

Judge Conrad denied Morgan's motion to suppress the evidence. Judge Conrad acknowledged that police officers' telling someone that they will obtain a warrant if the person doesn't consent has been considered coercive, but distinguished the officer's statement in this case that he would "apply for a search warrant." He also found that "the mere suggestion that damage to the house may result" was insufficient to coerce the defendant. He also held that "threatening his girlfriend and to report his mother to the Charlotte Housing Authority" was not coercive. Finally, he found that Morgan knowingly and voluntarily admitted to having the gun and voluntarily consented to the search of the car, rejecting Morgan's argument that:

> the car was not mentioned in the drug complaints. Nor did the defendant admit that the car contained drugs. It was parked behind the defendant's house, on private property, and was inoperable. And it appears that the defendant's friends and family did not have access to the vehicle's trunk. …[S]ince there was no evidence that the car contained evidence related to his arrest for drug possession, and there were no exigent circumstances, the gun and any statements relating to its possession should be suppressed.

United States v. Coxton.[31] Dion Coxton was a passenger in a vehicle which was stopped at a license checkpoint. The officers discovered cocaine, cocaine base, marijuana and a firearm. Coxton initially indicated that he wanted to speak to a lawyer. The officers then proceeded to question the driver of the car, who was soon arrested. Coxton then told the officers he wanted to speak to them. After waiving his rights, Coxton agreed to a search of his mother's home and his hotel room. He accompanied the officers to his hotel room and was then taken to jail. Twelve hours later, without reading him his rights again, the officers interrogated Coxton at the jail, at which point he confessed.

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[30] 2005 U.S. Dist. LEXIS 26594 (W.D.N.C. 2005).
[31] 2006 U.S. Dist. LEXIS 9015 (W.D.N.C. 2006).

Judge Conrad rejected Coxton's claims that he should have been read his rights again, holding that:

> beyond the passage of time there was no other relevant event that could have lessened the effectiveness of Coxton's *Miranda* waiver. … Certainly, the twelve hours period as well as the change of location between the *Miranda* warnings and the interrogation at the jail, are considerations that might counsel against finding an effective *Miranda* waiver during the March 12, 2005 custodial interrogation. Ultimately, however, these circumstances were not enough to impair Coxton's ability to "consider fully and properly the effect of an exercise or waiver of those rights before making a statement to law enforcement officers."

Employee/Consumer Rights

Judge Conrad has not heard many cases dealing with consumers. In the cases that he has heard, he appears to be more inclined to favor individuals when they are pitted against corporations, but to favor the government against the rights of individuals.

Edwards v. Consumat Environmental Systems.[32] While working as a maintenance worker at Bio-Medical Waste of North Carolina, Charles Edwards was severely injured when a medical waste incinerator he was repairing engaged. He lost both legs from the hip down and suffered serious permanent pain and other injuries. Liberty Mutual paid for Edwards' medical bills and paid him a weekly workers' compensation benefits. Edwards sued the manufacturer of the incinerator and ended up settling the case for $225,000, substantially less than his actual damages. Liberty Mutual and his former employer sued Edwards to try to recoup some of the money that they had paid out for the accident. Judge Conrad dismissed their case and chastised them for bringing it:

> Fair and equitable compensation for the injuries and damages sustained by Plaintiff Edwards far exceeds the amount of all total compensation that has been or will be paid to him or on his behalf from both this settlement and his workers' compensation benefits. Neither the employer nor the workers' compensation insurance carrier initiated, cooperated or participated in prosecuting the Plaintiff Edwards' claim against the third-party defendants in this action. Neither the employer nor its workers' compensation insurance carrier advanced or contributed any part of Plaintiff Edwards' court or litigation costs in prosecuting his third-party action. … Indeed, because Mr. Edwards' past and prospective workers' compensation benefits may be viewed as a reduced payment for his economic losses alone, he is, in effect, receiving only $ 225,000 through this settlement for his non-economic tort damages and this amount is not reasonable, equitable or sufficient to compensate him for these losses. On this ground alone, it is reasonable and just for the Court to strike and extinguish the workers' compensation lien in its entirety.

Collier v. United States.[33] In 1996, the IRS assessed $82,074.71 in unpaid taxes against Charco, Inc. and recorded a tax lien in Mercer County, West Virginia. Meanwhile, Brenda Collier

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[32] 2007 U.S. Dist. LEXIS 23986 (W.D.N.C. 2007).
[33] 432 F.3d 300 (4th Cir. 2005).

obtained a judgment of $121,500 against Charco in a Virginia court. She filed it in West Virginia before the IRS recorded its tax lien, but did not record it until after the tax lien was recorded. In 2000, Charco was placed in involuntary bankruptcy. Both the IRS and Collier filed proofs of secured claims. However, the bankruptcy proceeds from the sale of Charco's property amounted to only $96,275.84. Collier filed for a declaratory judgment that her lien had priority over the IRS' lien. The bankruptcy court ruled that the IRS lien had priority and the district court affirmed.

On appeal, Collier argued that her lien was perfected when she filed her judgment in West Virginia. The Fourth Circuit, in an opinion written by Judge Niemeyer and joined by Judge Conrad, interpreted federal law so that the IRS' lien was perfected first and affirmed the lower court judgments. Judge Luttig dissented, arguing that the majority's interpretation of the statute was contrary to common sense. He stated, "To read the regulation as it is written does not, in any sense that I can discern, produce an absurd result. In fact, it would appear to produce a perfectly reasonable one. However, if perchance it is not the result intended or wished, the Department can simply amend the regulation forthwith."

Gibson v. LTD, Incorporated.[34] Timothy Gibson entered into several different agreements to purchase trucks and secure financing from Lustine Toyota Dodge. After purchasing his second truck—after his first was totaled—Lustine demanded that Gibson return the truck when they learned that he was no longer working. Gibson then sued, alleging a number of violations of the Truth in Lending Act. The district court granted summary judgment to Gibson on two of his claims and awarded him damages and attorneys' fees. Both parties appealed. Gibson argued that his third claim was meritorious; Lustine argued that the alleged violations were included in contracts that were not consummated because Lustine was unable to secure funding for these agreements. The Fourth Circuit, in an opinion written by Judge Niemmeyer and joined by Judge Conrad, found in favor of Gibson on all claims. They rejected Lustine's arguments because Gibson was bound by the contracts from the time that he signed them, even though Lustine was only bound if he secured financing. They remanded the case for a reassessment of the attorneys' fees since he was meritorious on the third claim.

V. CONCLUSION

No nominee is presumptively entitled to confirmation to the federal bench. The Bush administration has striven to fill seats on the courts of appeals—many of which were held open by senators who blocked President Clinton's nominees—with judges who threaten to move the courts decisively to the right. In light of this campaign, the Senate must be especially careful and thorough in reviewing the record of nominees before determining whether they are qualified to receive a lifetime appointment to the federal bench. A nominee must possess not only a superb legal mind and the highest professional integrity, but also a commitment to equal justice and a willingness to apply the law fairly to all Americans. In particular, Judge Conrad's record raises serious questions about his ability to fairly interpret and apply laws and precedent protecting reproductive rights, civil rights, criminal defendants, and the environment. In light of Judge Conrad's extreme record, both on the bench and off, the Senate should reject his nomination to a lifetime appointment on the Fourth Circuit.

[34] 434 F.3d 275 (4th Cir. 2006)