

# An Interview with Eleanor Dean Acheson

*Editor's Note: This interview was done about two weeks before the U.S. Senate completed its work for 1998, with some activity still in progress on judicial nominations. The current state of judicial vacancies — and the final numbers on confirmations by the 105th Congress — are shown in tables accompanying the interview.*

Eleanor Dean (“Eldie”) Acheson is the Assistant Attorney General in charge of the Office of Policy Development at the Justice Department. She is responsible for a broad range of policy initiatives within the Justice Department, as well as the Justice Department’s role in the selection of federal judges. Prior to her nomination and August 1993 Senate confirmation as Assistant Attorney General, she was a litigation partner in the Boston law firm of Ropes & Gray. As her name suggests, she is the granddaughter of Dean Acheson, who, as Secretary of State from 1949 to 1953, was a principal architect of American foreign policy at the start of the Cold War. Additional biographical information about Eleanor Dean Acheson is available on the Justice Department Internet site at <http://www.usdoj.gov/offices/edawebbio.htm>.

**Court Review:** First, would you start by just telling us briefly what it is the Office of Policy Development does? It’s one of those strange titles that could mean anything, and perhaps sometimes it does.

**ACHESON:** The Office of Policy Development ... has two separate or distinct functions, and they’re both very important. One is to accomplish the Department of Justice’s role in the federal judicial appointment process, and

the second is to ... undertake policy work, which can mean everything from developing legislation that the administration may want to proffer, developing or assisting in the development of grant programs or ideas for grant programs.

It can mean reacting to proposals for



programs or legislation from components within the Department of Justice, from other agencies within the federal agency group, [or] from the Hill. It can mean wrestling with implementation questions. For example, when the Crime Act of 1994 was passed, the Office of Policy Development worked ... to figure out exactly how the department was going to implement the many, many different pieces of that plenary crime bill, both its creation of new crimes, new sentences, new programs through funding, who was going to do it, and how we were going to do it.

Major hate crimes initiatives the department has undertaken, we’ve been integrally involved with from the beginning. We’ve worked with the Office of

Justice Programs a lot on developing regulations when they’re called for and other kinds of guidance if regulations are not required to implement grant programs that the Congress has established.

**CR:** How would you say your time is split up between the one role, working on choosing and getting federal judges nominated and confirmed, and the other, working on general policy issues?

**ACHESON:** ... I probably spend roughly a third of my time on the judicial appointment front and probably two-thirds of my time overall on the policy area and the various, indeed many, projects that are in that bailiwick. And the office is similarly split.

[T]here are not separate staffs. There is one individual at any given point in time whose job it is to run on a day-to-day basis the various jobs and tasks that need to be accomplished on the judicial appointment front. All the other lawyers in the group, ... that’s basically about 30 people, work part time on the judges, and the rest of their time on policy issues. And indeed we have other lawyers from other components within the department who help us out on the judges front, so it’s not just the same group from the Office of Policy Development who work on the various judges’ issues.

We have a good mix of experience and perspective and other important factors by having lawyers who are indeed practicing in components around the department to assist with that work, which is very, very good. ....

**CR:** Let me ask you about the current state of appointments and openings. At the beginning of this year there was quite a bit of public attention to the large number of unfilled vacancies in the federal courts. Chief Justice Rehnquist said one of every ten federal judgeships then

was vacant, and the number of judges confirmed declined from 101 in 1994 to 17 in 1996 and 36 in 1997.

In the Ninth Circuit there were then 10 openings on a 28-member court, and Chief Justice Rehnquist concluded that vacancies could not remain at such high levels indefinitely without eroding the quality of justice. How have things gone this year?

**ACHESON:** I think at least in part because of the Chief Justice's ... comments and the force of his comments, particularly in the context of the vacancy situation we were facing, the whole process has worked a lot better. And indeed we've had a very constructive year ... from the perspective of the Administration, which had always been sending nominations, but perhaps not as quickly as some would like, and as the vacancy rate really sort of demanded, for a variety of reasons that didn't have anything to do with a lack of interest.... You can face tremendous political and administrative obstacles in doing this, and we've had a couple of years of very serious problems on that front.

We seemed to break through that, at least those aspects of the problems we had control over. We have sent up a number of nominations. There have been a lot of confirmations this year. I think the number at the moment is ... 44 confirmations this year of Article III judges, and ... that includes ten circuit court confirmations ... so far, which is three more than we had last year, and fully ten more than we had in 1996. So we're doing quite well. ....

There were five vacancies in the Second Circuit at one point, which is not all that big a circuit, and we filled three of them. We have a nominee pending, and we do not yet have a candidate for the fifth position, but we've made significant progress. And that was very, very good productive, constructive work with the New York senators, with the committee, and then with the full Senate.

And we have also sent to the Ninth Circuit, which has had absolutely gaping vacancy rates, as many as 10 out of 28 judges this year alone. Nobody was confirmed last year to the Ninth Circuit, and this year we had one, two, three, four people confirmed. ....

**STATEMENT OF JANET RENO  
U.S. Attorney General  
October 22, 1998**

I'd like to acknowledge the great work of Senators [Orrin] Hatch and [Patrick] Leahy, and the Judiciary Committee, and to Senators [Trent] Lott and [Tom] Daschle on the floor, and this Congress, in securing the confirmation of a number of judges. Yesterday, the Senate confirmed 24 of the federal judicial nominations pending on the floor. Included in that number were 18 federal district court nominees, and all six of the U.S. Court of Federal Claims nominees, thus filling all the vacancies on that Court.

We intend to work very hard to begin the 106<sup>th</sup> Congress with as many candidates for nomination as possible, so that we can continue to work with the Senate to ensure a full bench of outstanding judges to hear important federal cases. I really appreciate the efforts of the Senate, and I think it will have a great impact on the federal bench.

And now before the Senate, ... ready to be voted on any time between now and [adjournment] ... are five additional circuit court nominees, ... one of whom is for the Second Circuit, and two of whom [are] for the Ninth Circuit, which - if those three people got confirmed - [it] would go a long, long way.

And then there are ... 13 district court judges awaiting confirmation by the Senate. So let's be conservative and say that instead of five of the circuit court people getting through, let's say three do and ten of the 13 - that would put us [to] 57 [confirmations this year], which is pretty significant.

And then on top of that, we're having a hearing on Thursday for five additional district court nominees, and I think there's a very strong likelihood that at least four of those five if not five of those five will be confirmed before they go out on [final adjournment], which could put us ... into the high 50s, and there's a possibility of a couple of more judges.

**CR:** Back in February after the Chief Justice's remarks, you had commented

that civil business in the courts had all but been shoved off the active docket in many areas, and the Ninth Circuit was certainly one area in which the chief judge had indicated 600 hearings had been canceled in the last year, and civil trials had been pushed back. Do you have any sense of what the current impact of the vacancies is in the federal courts on handling of cases?

**ACHESON:** ... I can't offer really anything specific on that question. It's very hard to get a handle - short of working with the Administrative Office of the U.S. Courts on virtually a circuit-by-circuit, district-by-district basis to determine what is happening.

At the time I made that statement, we had in fact done that, and I think that we had a vacancy rate of over a hundred vacancies in an 844 - [judge] Article III judiciary, and there were significant impacts in the Second Circuit and the Ninth Circuit as I said, and in the district court in a couple of other places. And that level of vacancy rate had persisted for a long time and had been essentially building with very few downward dips since January of 1996.

In January of 1996, which was the end of our first full year working with Senator Hatch as chairman of the committee, we had reduced the number of vacancies in the Article III federal judiciary to 49, which is just extraordinary given sort of the recent modern history of this. Then we had the experience of '96, which really threw us well down the road of disaster, and '97, and they had a huge impact.

This year, we have persistently - we've worked slowly, you know, and hard, but it has been incrementally down, you know, the vacancy rate has come down. It is currently at 72.

And as I say, it's going to be significantly - you know, there could be as many as 15 to 20 additional confirmations, which would bring us well down to close to what ought to be how the system works. If you turn it around and look at it from - not from these huge vacancy numbers we've had but from if the system worked perfectly, if everybody was doing their job candidates being recommended efficiently and quickly to the district courts, the administration coming up with candidates effi-

**ACTION ON JUDICIAL NOMINATIONS - 1997-1998  
105<sup>TH</sup> CONGRESS**

	NOMINATIONS MADE	NOMINATIONS CONFIRMED	NOMINATIONS NOT ACTED UPON
Courts of Appeals	29	20	9
District Courts	90	79	11
Ct. of Intl. Trade	3	2	1
Withdrawn	5		
<b>Total</b>	<b>122</b>	<b>101</b>	<b>21</b>

Source: U.S. Senate Judiciary Committee, data as of October 21, 1998.

Note: Nominations not acted upon in 105<sup>th</sup> Congress must be resubmitted to proceed further.

ciently and quickly [to] the circuit courts — the background work being done quickly and the Senate moving expeditiously, you could argue you should never be more than somewhere between 17 and 23 vacancies behind. You should never really have a vacancy rate over about 23. And that's because of recent history that about every quarter, I think the average has been until recently, [that] roughly 17 Article III judges took senior status.

**CR:** Every quarter?

**ACHESON:** Every quarter. Now, that rate has actually slowed significantly, in part because whole generations of judges have almost sort of come out of the system.... You know, there are not that many Nixon and Carter judges left, although there are some.

But the other thing is many judges are not taking senior status because either their districts are desperate because of other vacancies, people beat them to it, or they are concerned that if they do, ... that their place would not be filled ... relatively soon, [so] they're not willing to do that and put their districts or their circuits in a bad way. So we've seen a significant slowdown.... [Since] the end of 1997, I think there are fewer than eight or nine judges [per quarter] taking senior status.

**CR:** Tell us a little bit about how the process works. How do you go about finding good judges?

**ACHESON:** The process works essentially as follows, ... and let me start with the district court.... Historically, tradition has developed, and this same prerogative or practice is followed in this Administration, that the President

looks to the senior senator from his party party to make ... a recommendation for a district court vacancy.

We don't tell a senator how to do that, and that to some extent differs from the early practice of Bush Administration and the practice of the Carter Administration, which ... had views about how senators should go about their process and how many recommendees should be sent and so forth.

Our message is you choose somebody you want to recommend to the President any way you want to, but be mindful of basically the type of people we're looking for, the standards that we expect any nominee to meet or any candidate to meet with whom we would consider going forward.

And we try and lay those out pretty clearly in conversations with the senator or with staff, and we indicate that if somebody fails to meet those standards, we will decline to send the person forward. Certainly we've have had occasions where we had to say no, but I'm happy to report that those are very few and far between.

In any event, the senator makes a recommendation, we have a fairly elaborate and, we hope, comprehensive and thorough internal — and when I mean internal, I mean internal to the Administration — evaluation of the candidate. We review forms, we essentially develop a pretty three-dimensional profile of somebody's professional life, whether it's in practice or whether it's on the bench or whether it's as a law professor or whether it's something else.

We read all the cases. We read as much as we can about the cases that they've been involved with, the opinions that they've written and all that, and we

call a cross section of practitioners, judges, and others in the professional community that the person works in. And then beyond the professional community, we try to reach out to pro bono organizations, civic organizations with which a candidate has been active, all in an effort to determine the individual's abilities, intellectual and professional, and the regard in which the person is held in the community, the individual's — to the extent that you can judge it in this way — integrity and reputation for reliability and integrity in ... whatever it is that they've been doing professionally.

And finally, ... the whole business of judicial temperament or judicial demeanor — trying to sort of determine from what you can learn about a person in this way how this individual is going to conduct himself or herself on the bench — kind of beyond the sort of [usual questions such as] can they do the work, can they do the job, can they understand the issues, and are they going to be reliable and honest and hardworking — to sort of try and assess the very important, to some extent tangible and [to a] large extent intangible, nature of what kind of presence are they going to be, both ... in the courtroom and then beyond the courtroom. Are they going to provide the kind of leadership and reputation for evenhandedness and fairness and patience, and listening and understanding the position of the parties, and all that sort of thing? That's very important.

If we feel that a candidate ... has a lot of good qualities that go in these directions and certainly seems like they would be a very good candidate, we then go into the external evaluation process, which involves sending the candidate to the American Bar Association for its professional evaluation. And that's a process independent of either the Administration or the Senate.

**CR:** Have you found those reviews useful?

**ACHESON:** Yes, we have found those reviews useful. First of all, we think it's very important to have a group independent of any of the constitutional and sort of public players in the thing making a professional evaluation. It ought to give, and we think it does give,

a strong sense of public confidence about the process....

I should say there seems to be no controversy about whether there should be an independent group performing this function. There has been some controversy about who should do it.

There have been some bars, mostly voluntary bars, that have expressed concerns that the American Bar Association has demonstrated over time too conservative a view about what kinds of experience and qualifications ... make a good federal judge. I think [they] believe that [the ABA] standards are not sufficiently flexible to respond to some of the different types of careers that some of our candidates have had, including some of our women and minority candidates, and thus they may not get a shake at the American Bar Association that fully appreciates the kind of experience that they've had, some of the obstacles they've faced, perhaps some of the experiences they've not been able to have that others have just had no problem with. And also taking into account the fact that plenty of people always, but maybe more in this day and age, don't choose traditional law careers, ... but do some slightly different things or a greater variety of things, and would bring a lot of perspective to the bench....

There's been a lot of discussion about this. I have to say I think by and large the American Bar Association, which currently performs this function and has since I believe either the late '40s or the early '50s, has done overall a very good job, and our experience with the ABA is that it is very responsive both to us and to others who have tried to engage it on this issue of appreciating, and I mean that in the sense of their own standards, the experience that the variety of candidates have brought, which are not so much the traditional pattern, and they've been very responsive.

One kind of noncontroversial, but ... very important area has been the fact that many, many lawyers these days [are] people who might in another time have called themselves litigators or trial lawyers and done a lot of that, [but who] have developed specialties and a lot of expertise as mediators or conciliators or arbitrators or whatever the title may be in the whole vast area of alternative dis-

pute resolution and play various roles there, some of which are sort of judge-like to some extent.

Certainly there are lots of differences. Perhaps the core one is that in that whole discipline, the point is not to come to a yes or no, you know, A- or B-type decision, somebody wins, somebody loses. It's to work something out on sort of a brokered basis or a compromise basis.

But in any event, increasingly you see candidates with a significant element of their professional experience being this kind of work, and this is very, very new, and it's not something that the ABA has sort of dealt with institutionally in the context of their own criteria. And a couple of years ago, when we started to see this and we felt that candidates ... had a very significant set of skills and good, interesting and useful perspectives that were developed from this [type of] practice were — [it] seemed to us — not being ... really given the weight we felt it should be in the context of the ABA process.

The ABA has been tremendously responsive to concerns that we expressed and has developed, I think, a very good approach, a sensitivity to that kind of practice. I think that [there are] plenty of people on the various ABA committees who understand this because they either see this practice developing in their firms or they do it themselves. I think the ABA overall has done quite a good job.

The other thing that happens at the same time the professional evaluation of the ABA is going on is that the files of the candidate are sent to the F.B.I. for the full-field background, which is investigation that focuses largely on somebody's — not their professional life, but their nonprofessional comings and goings and acquaintances and neighbors and so forth in their life to judge the candidate's character, integrity and reputation.

Those two processes each take about a month, six weeks, and at the end of that whole deal, which probably together takes six weeks to two months, you put those various pieces from the point in time we get a recommendation, we make a decision as to whether or not to nominate the person. And when I say

“we,” I mean the Administration, not just the Department of Justice.

Once a nomination is made, the Senate Judiciary Committee has its own process.... They have a rule that a nomination, in most cases, unless they choose to waive the rule, should be at the committee for three weeks before the individual is eligible for a hearing. And quite often there are a lot of nominees, [and] people are up there a lot longer, but the committee also has an opportunity to perform a bit of an investigation.

They clearly read all the paperwork, which involves a detailed questionnaire and the information or at least the recommendation or rating from the ABA, the F.B.I. background report, and, if there are issues that come up based on those papers, the committee has staff who are free to, and they sometimes do, pursue issues with candidates.

And then at some point when all those matters are nailed down, the committee will notice a hearing. Usually, there are somewhere between four to six to seven candidates on a hearing.... Somebody from the majority chairs the hearing, usually there are members from the minority who show up as well, and they ask questions of the candidates.

There now are pretty regularly follow-up written questions once the actual hearing is over that, usually, ... the nominees have anywhere between three or four days to a week to answer depending upon schedule that the committee is working on.

Once outstanding questions are answered, the committee will vote in a business meeting on the nomination. Assuming that the nomination is voted out of committee, it's sent ... to the floor of the Senate. There, the majority leader — as you know, his job is to manage all the business of the Senate, with help from a variety of people, but nominations essentially are one type of business that he is responsible to manage and to work with other senators to get nominations on the calendar in an appropriate way.

If there are no issues with a nomination, it is put on the unanimous consent calendar, and ... if you look away for an instant from watching the television screen, it will pass.... If there are issues

THE FEDERAL JUDICIARY Current Vacancies	
<b>ALL ARTICLE III JUDGESHIPS</b>	
Vacancies	54
Total No. of Positions	843
Percent vacant	6.4%
<b>U.S. COURTS OF APPEAL</b>	
Vacancies	16
Total No. of Positions	179
Percent vacant	8.9%
<b>U.S. DISTRICT COURTS</b>	
Vacancies	37
Total No. of Positions	646
Percent vacant	5.7%
Source: Administrative Office of the U.S. Courts; Data as of December 1, 1998.	

with a candidate and there are senators who would like floor time to raise questions or make speeches against the candidate's confirmation, the majority and the minority leaders work that out, and there is an assigned time for a debate on the nomination of so-and-so for such-and-such.

And you see that played out, and usually at the end of that, ... it has been agreed there will be a vote, and there is a vote, and you know what happens at the end. It's right there. .... We've had a number of candidates who've — some people have voted against, but they've — as a group they have been confirmed. They're not confirmed as a group, but we have not lost anybody on a roll call vote on the floor.

**CR:** At any time during the Administration?

**ACHESON:** Close, but we haven't.

**CR:** Ignoring the Supreme Court, because that could be an entire book unto itself, how would you briefly describe the circuit court process and how that differs?

**ACHESON:** The circuit court process basically differs in that the history and tradition that has evolved and prerogatives as far as choosing ... the person to go forward lies with the President, whereas, as we had discussed, with a district court, it lies, in the first instance at least, with a senior senator of the President's party.

With respect to the circuit courts, the President has basically the choice or the pick, if you will, and our practice has been, and I believe this is quite similar to prior administrations, or at least recent ones, to look to senators, as well as other sources, other people who are interested in the circuit, in the court, in the community that the court serves. You know, it cuts through a whole lot of organizations or bar associations, bar groups, individual lawyers, members of congress, senators — we consult with them about candidates that we're considering, we're happy to get recommendations from them.

Before we actually get to the kind of work I described with our own very thorough internal review and then going on to the ABA and the F.B.I., in the case of the circuit court vacancies, we do try and develop for the President a short list. [It] could ... be as few as two or three people, it could be as many as four or five people. In rare circumstances, it might be even more. With respect to [these people], we develop profiles basically from public record, from all the information available about an individual as a matter of public record through the various databases that exist, without going into the phone calls and all that, and once the President makes a decision about the individual who he wants to go forward with, we dive into the very specific focused work on an individual.

**CR:** Have you covered already every-

thing you think makes a good judge, or are there any important criteria that you would suggest that you haven't listed already?

**ACHESON:** We have treated under the three main categories of professional excellence, integrity, and temperament how we've thought of just the whole group of qualities, [we have] categorized them under those three headings.

Certainly, [what makes a good judge] is a question we ask every single person who comes in as a candidate, you know, what they think. And I don't think I have ever disagreed with an answer or thought that somebody — something somebody had said sounded odd or off or something.

People assign different priorities to different specific qualities, skills under those three general topics — patience, huge work ethic, a willingness ... to be a person who does the work up front — and in my own experience and view, this all seems right.

You know, particularly for a trial judge, a good sense and kind of way with people, the parties, for the lawyers, for the jury, for the court personnel [are important]. I think ... that we like ... somebody who has true humility, not in the sense of somebody who's obsequious or self-denigrating, [or] self-deprecating in some way, but try to look out for arrogance or kind of impatience or sort of a sense of well, gee, "I know all about that," "I don't need to think about that," or, "I don't need to learn about that."

Obviously an important thing [is] just compassion, interest, understanding, that ... the case is for the people there, and, you know, it's their case, it's the most important case in the world, whether it's a tiny case or a huge case.

**CR:** Do you have one or two judges that you would say would be the ideal of what you think is a good judge?

**ACHESON:** Well, I'm reluctant to answer a question like that because we've sent, you know, 300-plus [nominees].

**CR:** I was thinking more of ones you've been in front of as opposed to ones you'd sent up.

**ACHESON:** Well, the person that I would say I think [was] just a spectacu-

lar judge is the judge for whom I clerked, who's unfortunately now deceased ... but Edward Gignoux, who was a United States District Court Judge in the District of Maine, appointed by President Eisenhower and, sadly, didn't take senior status until shortly, relatively shortly, before his death, but who was the district court in Maine for many years.

He was the chief judge, he was the only judge and was an extraordinary person. Just tremendous intellect and integrity and the sense of fairness and tremendous sort of patience and interest in all types of cases and situations, of all types of people, and a hard and relatively quick worker. I don't mean that he whipped things off in any light way, but he had an ability to move through matters to decision.

And that's another point that many people often talk about, and it's most interesting to hear people who have been judges talk about it, the ability to make a decision. You can have lots of people with lots of fine qualities, but people who are slow to reach decision or really can't [make a decision] on issues, and try and get — you know, even when it's clear the parties can't, and that's why they're in court — to go back at them to settle or resolve or compromise is not a good thing.

It's important to be able to make a decision, to recognize when parties or lawyers are not going to, and that it's your job to. Anyway, he was great at those sorts of things.

**CR:** In terms of the relationship between the Justice Department and the judiciary broadly speaking, I know that your office does all the sort of management for and response for meetings that the Attorney General would have with representatives of various judicial organizations, ... [including] the national Conference of Chief Justices. Could you talk a little bit about those interactions from the perspective of what they do for the Justice Department? The justices [who have participated in these sessions have] talked about how unusual they were historically and the regularity with which the Attorney General had these meetings. It seems to me the judges would be interested in the Justice Department perspective of the value of

maintaining a strong relationship in that way.

**ACHESON:** Well, as I think you know, the Attorney General started meeting with the executive committee of the federal judiciary. We were into that relationship, although it was fairly early on, it clearly became so useful to have a forum in which to talk informally about matters ... judges wanted to raise with the Department, whether they related to practice of United States attorneys in various ways or large policy questions about what position the Department was going to take on legislation pending in Congress, the Attorney General ... thought it would be extremely useful to set up the same kind of a series of regular meetings and hopefully develop a good set of relationships with the Conference of Chief Justices and the National Center for State Courts.

And so we did that and have with the CCJ two or three meetings a year. And ever since we set this up, the CCJ has, in addition to our regular Washington meetings, invited the Attorney General to come to their annual meeting and make a presentation, give a speech.

Once she did a listening session. Instead of going and giving a big speech on a topic, the main part of her time spent with them was actually to sit with the entire group of 50-plus chief justices of the states and some other jurisdictions, and talk about, in a very informal setting, a variety of issues that they were interested in, and that she was interested in, raise questions, and have basically a give and take.

It has turned out to be, and we expected this, but it has just been a tremendously valuable relationship from the perspective of the Department of Justice on many levels. One is certainly being able to sit down and work with the judges on so many of the issues that are not necessarily federal issues, or we might feel they should not become federal issues, but we are trying to give support and give suggestions to the state courts on — giving priority to certain issues, or hearing from them about what we can do to support them in certain issues.

I mean, some good examples of this are, for example, in the Violence Against

VACANCIES WITHOUT PRESIDENTIAL NOMINEES	
Courts of Appeals	5
District Courts	24
<b>Total</b>	<b>29</b>
Source: U.S. Senate Judiciary Committee, data as of October 21, 1998.	

Women Act, which is part of the Crime Act of 1994, there is basically a mandatory full faith and credit provision. Now, this is something that really doesn't involve federal government or the federal courts, but it is a piece of federal legislation that basically says full faith and credit shall be given to protective orders [and] related kinds of court orders that might fall within what's covered by this provision.

And yet the mechanisms for actually achieving the vision that that provision is trying to achieve; namely, that when a woman... has fled from Jurisdiction 1 to Jurisdiction 2 (or, indeed, it could be a man), but whose abuser or stalker or whomever follows her or him, can go into the courts of Jurisdiction No. 2 and easily, quickly, and efficiently have the court or have the police of Jurisdiction No. 2 understand that there is an outstanding order and take the appropriate action against an individual who may be violating the order.

And there are a number of ways in which we have worked with the CCJ on this, bringing to their attention this provision, talking to them about the ... scope of the problem of domestic violence or family violence or intimate violence, whatever you want to call it, on the one hand, and the ... obstinance and difficulty of the problems of full faith and credit from the perspective of victims, which we hear about daily — helping to identify best practices in this regard, helping to fund ... pilot programs the various states could try for putting protective orders on line or into their criminal history record databases; compacts between states whose law enforcement officials have actually experienced, across a state line, problems where people flee from X County, Ohio, into Y County, Kentucky, and back and forth.

There are places, borders like this

within the United States, where there are a lot of these kinds of issues, and local courts are essentially trying to do what they can to develop ways to resolve these problems and facilitate them.

So you have that kind of work with the Attorney General bringing these issues to CCJ, but basically saying — and the National Center for State Courts — we will do everything we can to help you and support you. And here are the kinds of things we have in mind, here are the things we want to do for you, tell us what you think works. Would it be useful to have a best practices conference? Would it be useful to have [a] state judges and tribal judges conference, where you have states with Indian country in them, and these kinds of issues going back and forth, funding programs, having all sorts of work going on in this regard?

Coming the other way, one of the things that has been very, very good in this relationship is [that] it's given state judges an avenue to bring to our attention deep concerns they have, sort of structural concerns indeed that they have about what seems to be, [from] their perspective, ... sort of an epidemic of federalizing matters. We've heard some of that in the context of violence against women, we've heard some of that in the context of the Administration's, initiatives on hate crimes in ... our proposals and our support of Senator Kennedy's bill to amend the current federal hate crimes statute, and they have a lot of concerns about that.

So there are a number of examples about areas that we can bring to each other's attention, and [that] we can do a lot of work in to often find common ground. It's just been very valuable.

**CR:** Are there other issues that you're working on that you think would be of special interest to judges, particularly state or municipal? In other words, are there other topics you would particularly like to be able to address to judges?

**ACHESON:** One of the things that right now we are working on in the Department, and we have been for about a year-plus, and it is an issue that the Attorney General has been raising regularly with state judges ... is the problem that [has] existed for some time — this is not anything new, but it doesn't seem to get any better — on the indigent defense front and the need that there clearly is to do what we can.

And this so often falls on state and county officials, including state and county judges as well as the people who fund the courts and fund these programs, to do what we can to see that some consistently good standard is maintained in representation for indigent persons. And that is simply not the experience in all too many jurisdictions around the country. And the Attorney General is very concerned about it.

We understand that this is significantly, but perhaps not exclusively, a resources problem. The Attorney General has talked to Congress about this issue, ... and she ... has expressed the Administration's concern and, indeed, opposition about a number of proposals that are in the Congress that, in fact, would have the opposite effect....

And yet particularly with respect to capital trials, but also across-the-board, we see some situations that, you know, one wonders what kind of representation somebody really is getting. Oftentimes, ... there are serious [stakes] ... — always, certainly, with respect to the individual involved, there are huge stakes.

Her view as a former prosecutor, and actually a current prosecutor, although obviously she's not sort of on the line day-to-day as she was in Miami, but ... I think she sees from the perspective of the prosecutor that this is a really serious and important issue really as a structural matter to a fair, reasonable investigation, prosecution and trial and justice process.

It's not a stand-alone issue that ...

people think is a good thing or a bad thing. It has to be seen as an element in ... a multifaceted process which we basically call our justice process. And it's not a good process, and most prosecutors would agree, if you have lots of resources for investigation and prosecution but a disproportionately lesser amount for a critical element of this process, which is defense.

**CR:** Is the Department likely to publish or issue some clear standards as to how much is enough with respect to defense of certain crimes?

**ACHESON:** I'm not sure that's the route to go, and I don't think we ... , as a Department, are going to directly publish something like that.

One of the things we are doing is that we have funded some pretty comprehensive research, because it hasn't been done ... at least since the early '80s, into what kinds of systems there are in the states and counties across the country, what kinds of resources are going into these systems, and really kind of try and [not only] collect all the data that there is, but actually develop some where it appears there's not current data on what is going on out there, and measure it in different kinds of ways.

And we've got a grant out, and we expect a full-blown report on that front in 1999. We already have a little bit of a snapshot document which we have just gotten fairly recently, actually, from this contractee, which gives us some sense of what the situation is.<sup>1</sup> But we've asked for a full-blown report.

And we, among many other things we are doing on this front, we are having in February a National Symposium on Indigent Defense, which we expect will be significantly informed by this research, but that is not just to focus on or look at the research, it is to try and tee up what other kinds of issues there are beyond resources and how defenders are responding, whether the defense function is organized on a state basis or a county basis.

#### Footnotes

1. The preliminary report is entitled, "Improving State and Local Criminal Justice Systems: A Report on How Public Defenders,

Prosecutors and Other Criminal Justice Practitioners Are Collaborating Across the Country."

People have developed ways to respond, to try and figure out where we are and what works, what kinds of contributions the department can make directly or indirectly to training, to some of the same access, if you will, and training about technological developments in areas that are critical to investigating and presenting compelling evidence, understanding what that evidence means, and developing scientific areas like DNA analysis and similar kinds of things.

So I think we are probably not going to be in the business of developing our own standards. I think what we would like to be in the business of, is to bring investigators, defenders, prosecutors, [and] judges, all of whom have experience and ideas about how to try and solve some of these problems, together to develop on a very practical basis for use by people in areas where they have severe resource problems, sort of ... what is the ... the consensus sense of best practices in different kinds of circumstances. That's certainly what our goals are here.

**CR:** Let me introduce one kind of final topic. You're the granddaughter of Dean Acheson, and accordingly you've come into contact with lots of people who could give you advice over the years. In an article you wrote, you said that Clark Clifford advised you while you were in law school to go into the public sector to pursue your career out of law school since there were better opportunities for women there in the early '70s. You didn't take that advice and instead went into the private sector. What would you say was the best career advice you've ever gotten?

**ACHESON:** I don't know. I don't know that I've gotten the best career advice that can be given. You know, I expect the best career advice that I've gotten, and this is not to say that Mr. Clifford's advice wasn't good, because I think it was very good. It was true, [though,] that I didn't take it for a number of reasons.

But probably the best advice that I got was my father's not only advice but sort of persistent advice in, I think, the beginning of my third year of law school

to try hard to get a clerkship. And he felt very strongly that it really almost didn't matter what court, state or federal, it didn't matter, unless one had a definite leaning toward trial work over other kinds of work, whether it was a trial court or an appellate court.

He had a very, very strong sense of the value of working very closely for a year with a judge who was just an amazingly good judge in all the ways that we've sort of talked about, somebody who was extraordinarily intelligent, experienced, compassionate, [a] person of great integrity.... I think he was focused certainly at least as much on the sense of somebody who'd had a long career, long and really outstanding career, in the law, [who] happened to be a judge at the moment, who could be a tremendous mentor in a lot of ways.

And that was certainly the best advice I got, and leading to one of the absolute best professional experiences that, you know, I ever had, and that was ... my year of clerking with Judge Gignoux.

**CR:** Thank you.

**VACANCIES IN EXISTENCE FOR 18 MONTHS OR LONGER  
(DESIGNATED "JUDICIAL EMERGENCIES" BY U.S. COURTS)**

JUDICIAL CIRCUIT	COURT	VACANCY CREATED BY	REASON	VACANCY DATE	DAYS PENDING
First	D.P.R.	Raymond L. Acosta	Senior status	6/1/1994	1643
Second	N.D.N.Y.	Con. G. Cholakis	Disabled	6/30/1996	883
Third	3rd Cir.	H. Lee Sarokin	Retired	7/31/1996	852
Third	E.D. Pa.	Edmund V. Ludwig	Senior status	5/20/1997	559
Third	E.D. Pa.	Thomas N. O'Neill, Jr.	Senior status	7/6/1996	877
Third	W.D. Pa.	Alan N. Bloch	Senior status	4/12/1997	597
Third	W.D. Pa.	Maurice B. Cohill, Jr.	Senior status	11/28/1994	1463
Fourth	4th Cir.	J. Dickson Phillips, Jr.	Senior status	7/31/1994	1583
Fourth	4th Cir.	New Position	—	12/1/1990	2921
Fifth	5th Cir.	William L. Garwood	Senior status	1/23/1997	676
Fifth	N.D. Tex.	Barefoot Sanders	Senior status	1/1/1996	1064
Sixth	6th Cir.	Damon Keith	Senior status	5/1/1995	1309
Seventh	N.D. Ill.	Brian Barnett Duff	Senior status	10/30/1996	761
Eighth	E.D. Mo.	George F. Gunn, Jr.	Senior status	12/1/1996	729
Ninth	9th Cir.	Robert R. Beezer	Senior status	7/31/1996	852
Ninth	9th Cir.	John T. Noonan	Senior status	1/1/1997	698
Ninth	9th Cir.	Cecil F. Poole	Senior status	1/15/1996	1050
Ninth	9th Cir.	Charles E. Wiggins	Senior status	12/31/1996	699
Tenth	D. Kan.	Sam A. Crow	Senior status	11/15/1996	745
Tenth	N.D. Okla.	Thomas R. Brett	Senior status	10/3/1996	788
Eleventh	S.D. Ala.	Alex T. Howard, Jr.	Senior status	10/21/1996	770
D.C.	D.C. Cir.	James L. Buckley	Senior status	8/31/1996	821
D.C.	D.D.C.	Stanley S. Harris	Senior status	2/1/1996	1033

Source: Administrative Office of the U.S. Courts; Data as of December 1, 1998.