

**CONFIRMATION HEARING ON THE NOMINATIONS  
OF LESLIE SOUTHWICK, TO BE CIRCUIT JUDGE  
FOR THE FIFTH CIRCUIT; JANET T. NEFF,  
TO BE DISTRICT JUDGE FOR THE WESTERN  
DISTRICT OF MICHIGAN; AND LIAM O'GRADY,  
TO BE DISTRICT JUDGE FOR THE EASTERN  
DISTRICT OF VIRGINIA**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON THE JUDICIARY**  
**UNITED STATES SENATE**  
ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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MAY 10, 2007

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made a mistake, a serious mistake. What does the agency need to do about it? The Employee Appeals Board made its decision, and we, at the appellate level, were applying our review standard to that.

If you're saying, in light of all of the criticism today do I wish I had written a separate opinion or whatever else, I just can't go back on the analysis that I did there. If I had the same case in front of me in the future, should I be fortunate enough to be a judge to have a case like that, I would certainly evaluate.

I mean, the important thing for all of us is constantly to be aware of how what we do as judges affects people. I have tried to do that, and every day is a learning experience, I hate to admit, of new things that I need to take into consideration.

So in the future, in a case like that I would certainly consider what has happened, if I'm in a position to make decisions in the future.

Senator KENNEDY. Well, I appreciate it. Lincoln, of course—"Ralph Waldo Emerson" said "consistency is the hobgoblin of little minds" as well, so we can go around. But the real issue on this thing is, that word, whether there's any way that anybody can understand it in any other kind of framework, that it was derogatory and always offensive.

Let me go to the issues on consumer and workers' rights, the protecting of workers that you had on—I think you're familiar with the *Canon MidSouth X-Ray Company*. You're familiar with that case. You had an individual who was—some of your decisions—just in looking through the workers' rights case, some of your decisions seem to bend over backward in favor of the larger corporation at the expense of individual Americans.

The dissent in the *Canon* case denied the claims of a darkroom technician who became ill, suffered severe seizures, headaches, nausea, being forced to handle toxic chemicals at work without proper safety precautions.

The employer had ordered her supervisor not to tell her that the darkrooms were dangerous, not to take any safety precautions. After many years, she finally found a doctor who diagnosed her illness as caused by toxic chemicals at her job.

Seven of your colleagues on the court ruled that she was entitled to a trial to hold the company accountable for the damage to her health, but you have denied the claim, arguing the statute of limitations had run out. She should have figured it out on her own, even before the doctor made the diagnosis that her illness was related to her work.

The majority opinion stated that she lacked any specialized training and was, just by all accounts, a darkroom technician who cannot reasonably be expected to diagnose a disease on which the scientific community has yet to reach an agreement. Why did you think it was reasonable to require her to figure out that her illness was work-related?

Judge SOUTHWICK. Senator, I don't think I was deciding that. It was my interpretation, from controlling case law and the general statute of limitations in Mississippi that we were applying, that that had already been decided.