

While there is no definitive list of the oldest newspapers in the United States that are still published under their original names, it is believed the Bedford Gazette is among the 30 oldest newspapers in the country. The motto of the paper: "Published continuously since 1805. One of America's oldest newspapers" stakes its historical claim. What began as a four page weekly containing mainly political reports and stories has grown to publish daily since 1950.

As with so much of my district, Bedford, Pennsylvania has had a front seat to American history. The Bedford Gazette was there as eyewitness, recording the first steps of a new nation, and there are documented reports of Gazette editors as players in that history. One editor wrote of playing billiards with John Brown when he stayed in Bedford (under an assumed name) on his way to Harper's Ferry, West Virginia, to carry out his infamous raid. Another Gazette editor announced to the country that Pennsylvanian James Buchanan would not seek re-election to the U.S. Presidency. The proximity of the famous Bedford Springs Hotel allowed the Gazette access to centuries of America's movers and shakers. Presidents James Polk, Zachary Taylor, William Henry Harrison, John Tyler, James Garfield, Dwight D. Eisenhower, and Ronald Reagan all spent time at the Hotel and the Gazette was there to record it.

The Frear family of Bedford has a long history with the Gazette. In 1935 Hugo Frear became editor of the paper, and when he volunteered for service in the U.S. Navy during World War II, his wife Virginia stepped in and ran the paper herself. His son Ned would become editor, serving for 30 years and eventually his grandson Chris would take the reins for another 10. All in all, three generations of the Frear family were owners, publishers, and editors for almost 60 years.

Mr. Speaker, I am proud to recognize the historical milestone of the Bedford Gazette, a newspaper found on all kitchen tables across the county, including my own. The Bedford Gazette is more than just a daily newspaper. It is an established tie connecting Bedford's rich history and promising future.

NADER STATEMENT ON ROBERTS NOMINATION

HON. JOHN CONYERS, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 15, 2005

Mr. CONYERS. Mr. Speaker, for decades Ralph Nader has forced Washington to confront crucial issues that otherwise might be swept under the rug. True to form, he now has called to our attention an important question regarding the candidacy of John Roberts to be Chief Justice of the United States. His statement to the Senate Judiciary Committee on that nomination raises issues in many areas important for all of us in Congress. Important areas of focus are access to the courts.

Mr. Nader's statement follows:

WASHINGTON, DC,
September 12, 2005.

Mr. Chairman and members of the Senate Judiciary Committee, thank you for the opportunity to submit testimony on the nomination of Judge John G. Roberts Jr. for the

position of Chief Justice of the Supreme Court of the United States. I ask that this statement be made part of the printed hearing record.

In 1994 I testified before the Senate Judiciary Committee on the nomination of Stephen G. Breyer by President Clinton to be an Associate Justice of the Supreme Court of the United States. In that testimony I called attention to the importance of balance in the way our laws handle the challenges of corporate power in America.

I said: "For our political economy, no issue is more consequential than the distribution and impact of corporate power. Historically, our country periodically has tried to redress the imbalance between organized economic power and people rights and remedies. From the agrarian populist revolt by the farmers in the late 19th and early 20th century, to the rise of the federal and state regulatory agencies, to the surging trade unionism, to the opening of the courts for broader non-property values to have their day, to the strengthening of civil rights and civil liberties, consumer, women's and environmental laws and institutions, corporate power was partially disciplined by the rule of law."

Today it is more important than ever for all Supreme Court Justices and, in particular, the Chief Justice of the Supreme Court to have the inclination and wisdom to realize that our democracy is being eroded by many kinds of widely reported systemic corporate excesses. Giant multinational corporations have no allegiance to any country or community, and the devastation and other injustices they visit upon communities throughout the United States and around the globe have outpaced the countervailing restraints that should be the hallmark of government by, for and of the people. Unfortunately, the structure and scope of these hearings are not likely to devote a sufficient priority to the corporate issues of our times.

In 1816 Thomas Jefferson wrote: "I hope we shall . . . crush in its birth the aristocracy of our moneyed corporations, which dare already to challenge our government to a trial of strength and bid defiance to the laws of our country." Imagine his reaction to the corporate abuses of Enron Corp., HealthSouth Corp., Tyco, WorldCom or Adelphia Communications Corp. to name only a few, along with the drug, tobacco, banking, insurance, chemical and other toxic industries. The corporate crime and greed of today tower over the abuses of the "moneyed corporations" of Jefferson's day. The economic power of giant corporations is augmented by a flood of Political Action Committee (PAC) money and other donations that shape the quality and quantity of debate in our country and consequently drive our society to imperatives that are increasingly more corporate than civic.

You will hear about Judge Roberts from several perspectives, but it is safe to assume that questions and testimony about Judge Roberts' views on corporate power and the rule of law will be inadequate given the broad and profound impact giant corporations have on our democracy. An important procedural and substantive corollary is the important role our civil justice system plays in expanding the frontiers of justice and in giving individuals the ability to hold "wrongdoers" accountable in a court of law. "If we are to keep our democracy, there must be one commandment: Thou shalt not ration justice," said the famous jurist, Learned Hand.

Unfortunately, powerholders, corporations and other institutions which are supposed to be held accountable by the civil justice system, are striving to weaken, limit and override the province of juries and judges. Some

companies, led by insurers, have used expensive and focused media to promote the view that civil juries are too costly and too unpredictable. This narrow and short-sighted perspective is contrary to the long-standing tenets of our democracy and in particular the Seventh Amendment to our Constitution.

The civil jury system of the United States embraces a fundamental precept of tested justice: ordinary citizens applying their minds and values can and do reach decisions on the facts in cases that often involve powerful wrongdoers. This form of direct citizen participation in the administration of justice was deemed indispensable by this nation's founders and was considered non-negotiable by the leaders of the American revolution against King George III. But the civil jury is more than a process toward bringing a grievance to resolution. The civil jury is a pillar of our democracy necessary for the protection of individuals against tyranny, repression and mayhem of many kinds and for the deterrence of such injustices in the future. Our civil jury institution is a voice for and by the citizenry in setting standards for a just society. Jury findings incorporated in appellate court decisions contribute to one of the few authoritative reservoirs of advancing standards of responsibility between the powerful and the powerless—whether between companies and consumers, workers, shareholders and community or between officialdom and taxpayers or citizens in general. Knowing the evolution of the common law and the civil jury provides compelling and ennobling evidence of this progression of justice. Chief Justice William Rehnquist wrote, "The founders of our Nation considered the right of trial by jury in civil cases an important bulwark against tyranny and corruption, a safeguard too precious to be left to the whim of the sovereign, or, it might be added, to that of the judiciary."

As the hearing unfolds, I suggest that the members of the Judiciary Committee devote some time to areas beyond those that are traditionally the focus of witnesses and questioning by Committee members and ask fundamental questions about the views of Judge Roberts, a former corporate lawyer at Hogan & Hartson, regarding corporate power and the civil justice system.

In the spirit of expanding the criteria by which the Committee and the public can measure Judge Robert's judicial and civic philosophy, I offer the following questions for you to pose to the nominee. Some of the questions are narrowly focused and some are broad-gauged. But, in their totality they constitute the broad kind of "litmus test" that should be applied in selecting and confirming all judges. In short, does the nominee, having met the threshold requirements of competency, believe that the rule of law should be used to broaden and deepen, procedurally and substantively, our democracy—even if it means the rights of the giant corporation or powerful interests must be circumscribed to protect the rights of the individual citizen and of our communities—rural or urban, large or small?

In pursuing its own line of questions, the Committee should not let its exploration of the nominee's views be artificially restricted. Judicial nominees have given two reasons for refusing to answer questions, but these reasons are contradictory. First, they say, if they publicly express their views, it will compromise them if the issue comes before the Court. Second, they say, judges do not decide legal issues in a vacuum: they only decide a concrete dispute in a specific adversarial context. Accordingly, some nominees claim it's silly or inappropriate, for example, to say whether they believe the Constitution protects the right to abortion, because Justices don't decide cases by asking

such abstract questions. They face a particular statute, challenged by a particular party directly affected in a particular way, and the resolution of that dispute will turn on all those particulars.

This second response has a degree of merit—and undercuts the first reason for refusing to answer most questions. Precisely because neither nominees nor the public can know in what context issues will reach the Court (if at all), it is not problematic for nominees to discuss their views. They should not say how they would decide an actual pending case, but, short of that, it is fine for them to discuss issues because that in no way commits them to taking sides in any actual dispute—such disputes are invariably context-specific. For example, a nominee may be asked about the doctrine that treats a corporation as a “person” entitled to various constitutional rights. His or her thoughts on this issue will not tell us what he or she will do if such an issue is raised in a case before the Court. The latter may depend on the nature of the corporation (non-profit? media? multi-national?), the nature of the claimed right, and much more.

Moreover, even if the nominee testifies that he or she disapproves the doctrine, as a Justice the nominee may hold that the question is settled law. Or if a nominee says that he or she agrees with the doctrine, a new circumstance—or a party making a new argument—may lead the nominee to hold otherwise. Nothing a nominee says guarantees that he or she will decide any case any particular way. Nothing that is said has to be fixed in stone. Judges do give opinionated public speeches, do they not?

It may be wondered whether, in light of the above, any purpose is served by asking the nominee his views. The answer is yes. It's no secret that nothing a nominee says binds the nominee once he or she receives an office with life tenure. Nominees can't and shouldn't be bound. But especially with a nominee who has a limited public record, the hearings provide some basis for gauging the nature and quality of his ideas, about his philosophy of due process for example. At any rate they have that potential—if Senators do their job and do not accept a nominee's self-serving refusal to answer questions.

At the outset, it would behoove the Committee to establish the parameters the nominee will use in fashioning responses to your questions by asking:

What criteria are you using to determine if you will directly answer or not answer questions posed to you by members of the Senate Judiciary Committee?

If the Court has recently ruled on a matter, will you provide the Committee with your views on the Court's ruling?

If a matter is long settled, will you provide the Committee with your views on the Court's ruling?

Once this baseline has been established, the following questions should shed light on nominee's approach to some major issues of our day.

1. Lloyd Cutler, speaking as a prominent corporate attorney, once said: “There is one point I want to make clear: we believe in the arguments that we make.” Do you believe the arguments you have made on behalf of your corporate clients?

2. Do you believe limits on television station ownership abridge the free speech rights of corporate broadcasters?

3. What is your view of the First Amendment rights of the listeners being paramount to those of the broadcasters as articulated by the Court in *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969)?

4. Do you see a problem when corporations are treated as equal participants, with every

right to use their First Amendment rights to dominate public policy debates such as those that occur in state and local referenda?

5. Do you believe the Court should uphold state and Congressional limits on corporate political expression in order to equalize contributions to public debates?

6. Do you believe that a strict reading of the Constitution provides for the treatment of corporations as “persons” under the law for purposes of equal protection, freedom of speech or due process of law? And, if so, what in the Constitution's text provides a basis for this belief?

7. Many observers complain that law firms representing large corporations routinely abuse the discovery process in order to delay and harass their opponents. Have you observed that phenomenon? If so, what should be done about it?

8. In 1986, in *Pacific Gas & Elec. Co. v. Public Util. Comm'n of Cal.*, 475 U.S. 1 (1986) the Supreme Court (5 to 3) struck down a state regulation as violating a utility company's “right of conscience” under the First Amendment. What makes the case particularly unsettling is its disconnectedness to opinions past and future. As Justice Rehnquist observed in his lengthy dissenting opinion in the case, “the two constitutional liberties most closely analogous to the right to refrain from speaking—the Fifth Amendment right to remain silent and the constitutional right of privacy—have been denied to corporations based on their corporate status.” Do you think it makes sense to attribute a right of conscience to a commercial corporation?

9. Would any trade agreement, such as GATT, NAFTA, or CAFTA ever require Senate ratification as a treaty?

10. Does the President have complete discretion to determine whether an international trade or other agreement must be submitted to the Senate for two-thirds treaty approval? If not, what are the criteria that determine when an international agreement must be submitted to the Senate for two-thirds treaty approval?

11. Are there limits on Congress' power to strip federal courts of jurisdiction over a particular issue? If so, what are such limits?

12. Do you believe victims of defective products that meet federal standards should be limited from recovering damages from the manufacturers of the defective products?

13. Do you believe Congress should federalize and pre-empt state products liability common law in any or all sectors?

14. Plaintiffs' trial lawyers have been blamed by their corporate critics for all sorts of problems with the economy and legal profession. Do you believe that those representing injured persons in product liability and medical malpractice cases are harming America?

15. So-called tort-reform is aimed at restricting the amount of non-economic damages, such as pain and suffering, a party can receive. Are you concerned that this interferes with the traditional role of juries and judges to find facts and mete out appropriate justice?

16. Do you believe the use of the government contractor defense should be limited in nonmilitary procurement? If so, how?

17. Some people say the Ninth Amendment can play no substantive role in protecting rights, that it's merely a statement of principle or reminder of limited government. Do you agree?

18. A number of legal scholars argue that the 11th Amendment has been interpreted by the Court to shield states from liability for wrongdoing in a way that blatantly contravenes the original intention of the Amendment. Are you familiar with that scholarship and do you find it persuasive?

19. In what circumstances, if any, is it appropriate for a contractual arbitration clause to contract away substantive contract law, tort, or statutory rights? For instance, can an arbitration clause require arbitration of a worker's Title VII rights and at the same time limit the worker's compensatory damages to \$200,000? Can that same clause require the loser to pay the winner's attorney's fees? Can that clause require that the parties to arbitration bear their own attorney's fees?

20. Describe the presumption against preemption of state law. Does it apply in some or all instances where federal law is said to preempt state law?

21. Is the presumption against preemption of state law (by federal law) similar to the plain statement rule that demands that Congress speak with unmistakable clarity if it wishes to override the states' sovereign immunity? If the presumption against preemption is not similar to the plain statement rule, explain how it is different?

22. How is the presumption against preemption applied in cases where federal regulatory law (regulating, for instance, drugs, boats, pesticides, motor vehicles, and the like) is said to preempt state tort law that provides monetary remedies to compensate for injuries caused by a product that the federal government regulates?

23. Do you believe Congress should preempt the state-law-based medical malpractice system?

24. What are your views on the “American rule” as opposed to the English rule under which the losing party in litigation generally pays the winner's costs, including attorney's fees?

25. What has been your reaction or views on Congressional funding levels for federally funded legal services programs over the last two decades? Should government be responsible for funding representation for poor people in civil litigation where important property or liberty interests are at stake? Or should that be mainly or entirely a private function?

26. Some scholars and judges believe that “Originalism” is the only principled method of constitutional interpretation. Do you agree?

27. Do you believe that a declaration of war by Congress is Constitutionally required for the United States to engage in war?

28. Does a Congressional delegation of the war-making discretion to the President in the form of a war resolution meet the test of of Article One, Section Eight of the Constitution?

29. What level of equal protection scrutiny was applied in *Bush v. Gore*, 531 U.S. 98 (2000)?

30. What is the precedential effect of *Bush v. Gore*? In other words, what kinds of equal protection claims does *Bush v. Gore* control or apply to? After *Bush v. Gore*, may a political entity (city, county, state) holding an election use more than one type of voting methodology (paper ballots, standard machines, punch cards, etc.) knowing that the error rates (whether through undercounts or otherwise) are different from one methodology to another?

31. Is there a need to amend our open government laws to make the President subject to them in whole or in part? Would such amendments be constitutional?

32. Do you believe arguments before the Supreme Court should be televised in the way C-SPAN televises Congressional deliberations?

33. In your view, is the Freedom of Information Act functioning properly at this time? If not, what are the major problems facing the Act?

34. In *Buckhannon Board & Care Home, Inc. v. West Virginia Dept. of Health and*

Human Resources, 532 U.S. 598 (2001) case, the Court rejected the argument that a party that has failed to secure a judgment on the merits or a court-ordered consent decree, but has nonetheless achieved the desired result because the lawsuit brought about a voluntary change (the catalyst theory) in the defendant's conduct is entitled to attorney's fees. Does the rejection of the catalyst theory of fee recovery in the Supreme Court's Buckhannon decision apply across-the-board to federal fee-shifting statutes? If not, to what kinds of fee-shifting statutes is it likely to apply and to what kinds is its application more doubtful?

35. Brian Wolfman, Director of the Public Citizen Litigation Group notes, "The Bush administration says that Buckhannon applies to [Freedom of Information Act] FOIA cases, even though Congress stated explicitly, when it enacted FOIA, that fees should be available when FOIA cases settle. The Bush Justice Department has consistently argued to expand Buckhannon to every pro-consumer and civil rights statute in every conceivable situation." What approach (or approaches) to statutory construction of Congressional enactment was evident in the Supreme Court's Buckhannon decision? How would you describe the reliance on (or lack of reliance on) legislative history in the majority's reasoning in that case? Do you believe the Bush Justice Department is applying the Buckhannon decision correctly?

36. From both a legal (constitutional) and practical perspective, what is your view of the trend in the federal judiciary toward releasing more of its opinions in "unpublished" form, i.e., where the relevant court accords no precedential effect to the decision for other cases?

37. Should federal judges attend seminars which are funded by private corporations (or by foundations that are funded by such corporations) that have matters of interest to the corporations before the courts?

38. Do you believe a government attorney, in a subordinate position, should be forced (under penalty of discharge) to work on a case or argue a position that he or she believes is illegal, unconstitutional or unethical? Or should government lawyers have a "right of conscience" like other professionals?

39. What kinds of participation in civic life may federal judges continue to be involved in once they assume their judicial positions?

40. How many hours or what percent of their work time do you think partners in major firms should devote to pro bono work each year?

41. How many hours on average did you bill per year as a partner and at what rates?

42. How many hours on average did you bill per year as an associate?

43. What was the nature of your pro bono work and approximately how much time per year did you devote to pro bono work?

44. Corporate attorneys and legal scholars have written books and articles decrying unethical or fraudulent billing practices in large corporate law firms. An article in the Summer 2001 Georgetown Journal of Legal Ethics titled Gunderson Effect and Billable Mania: Trends in Overbilling and the Effect of New Wages states that unethical billing practices are "a pervasive problem in law firms across the country"—do you agree?

45. Did you ever observe unethical billing practices when you were in private practice?

46. If so, what was the nature of and who were the protagonists of such practices?

I hope these questions, whether asked orally or submitted to the nominee in writing for response, spark a robust, constructive debate between the Committee members and the nominee. Such exchanges should provide the Senate and the larger public with insights

into how Judge John G. Roberts will, if confirmed as Chief Justice, perform his duties.

RECOGNIZING DR. ROBERT W. DARTER OF SAINT HELENA, CALIFORNIA

HON. MIKE THOMPSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 15, 2005

Mr. THOMPSON of California. Mr. Speaker, I rise today to recognize Dr. Robert Darter of Saint Helena, California for his 40 years of public service on the Saint Helena Library Board of Trustees, making him one of the longest serving members.

A native of Northern California, Dr. Darter earned his Bachelors of Science in Public Health from the University of California at Berkeley. He received both his M.S. in Microbiology and his M.D. from Northwestern University in Chicago.

Dr. Darter has become a household name in Saint Helena. A beloved and highly revered doctor throughout the community, Dr. Darter has helped care for and protects the health of his fellow Napa Valley citizens for nearly half a century.

Despite the uncompromising and exhausting demands of his profession, Dr. Darter has continued to devote his life to the betterment of our community. He has worked with numerous organizations including the Boy Scouts of America and Kiwanis Club of Saint Helena.

For the past 40 years Dr. Darter has played an integral role on the Saint Helena Public Library's Board of Trustees, the past 29 of which he has served as Chairman. With his leadership, dedication and forward thinking personality the Saint Helena Public Library has made considerable advances, including two building expansions, the first in 1979 and the second in 1999. He is currently working to designate neighboring land for future expansion campaigns, which will enable our library to continue enriching our community with the best possible resources.

I'm sure Dr. Darter's wife, Jan, and their five children Robert, Michael, James, John and Kimberley are all extremely proud of him.

Mr. Speaker, it is appropriate that we thank Dr. Robert Darter for his years of hard work and dedication to my hometown, Saint Helena. On behalf of my fellow colleagues I wish to extend my sincerest gratitude to Dr. Darter for all that he has done and continues to do for our community. Thank you, Dr. Darter.

HISPANIC HERITAGE MONTH

HON. CHRIS VAN HOLLEN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 15, 2005

Mr. VAN HOLLEN. Mr. Speaker, I rise in honor of Hispanic Heritage Month and pay tribute to the extraordinary contributions that Hispanics make to America year-round. This month-long celebration begins on September 15, the anniversary of the independence of 5 Latin American countries—Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua. This anniversary commemorates the day

these countries declared their independence from colonial rule, and continues to represent unity for all Latinos in the U.S. and in Latin America.

Throughout the month we celebrate the Hispanic community and pause to reflect on Hispanic values—faith, family, and patriotism. These values are American values. The Hispanic dream—the hope of a better future—is the American dream. There are more than 41 million Hispanic-Americans, and their hard work, deep faith and closely-knit families have made America a better and stronger country. As a Nation, we must advance initiatives that support empowerment and opportunity for all.

During this month, I am pleased to recognize the efforts of groups in Maryland's Eighth Congressional District that work to enrich the lives of Hispanic-Americans. An example of one such group is CASA de Maryland. The Ford Foundation and the National Council of La Raza, NCLR named CASA de Maryland "Affiliate of the Year" in recognition of its hard work and dedication to providing services that improve the lives of Latinos and others in Montgomery and Prince George's Counties.

As we honor the achievements of Hispanics, we know that celebrating the Hispanic community for one month a year is not enough. All Latinos deserve a real opportunity to achieve the American dream, whether they have been here for generations or have just arrived on our shores.

IN HONOR OF THE 3RD ANNUAL
HISPANIC HERITAGE DINNER
AND DANCE

HON. BRIAN HIGGINS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 15, 2005

Mr. HIGGINS. Mr. Speaker, on Saturday night, September 17, 2005, the 3rd Annual Hispanic Heritage Dinner and Dance will take place. I would like to congratulate the three organizations that worked hard to put this dinner together, Hispanics United of Buffalo, the Hispanic Women's League, and the Latino Business Owners Association (LBOA).

Hispanics United of Buffalo has worked hard in this community, providing assistance, while instilling pride, promoting rights, and allowing people to have a chance at a better life, by offering services unheard of being offered in the Hispanic community. Such services advocated by the agency include access to proper nutrition, adequate housing, affordable health care, meaningful employment, and equal educational opportunities. Since its inception, HUB has aided the Hispanic community by being a first step into a better, more prosperous community, not just for Hispanics nor simply for the West Side but for everyone in this city and for that I commend them.

The Hispanic Women's League, was formed in 1979 by a group of women to respond to issues affecting Hispanic women in Western New York. The primary commitment of the league has been to maintain a scholarship fund established to grant financial support to Hispanic/Latina women pursuing higher education. If it were not for the efforts of this organization, the next generation of leadership for the community would not be secure, by providing a chance at higher education to youth