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S. HRG. 103-1031, Pt. 3

# CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

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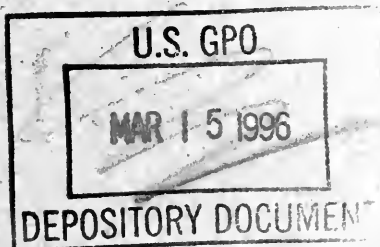
## HEARINGS BEFORE THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE ONE HUNDRED THIRD CONGRESS SECOND SESSION ON CONFIRMATIONS OF APPOINTEES TO THE FEDERAL JUDICIARY

MARCH 25; APRIL 21, 22, 29; MAY 12 AND 25, 1994

### Part 3

Serial No. J-103-28

Printed for the use of the Committee on the Judiciary



1042-A



# CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

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## HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON

CONFIRMATIONS OF APPOINTEES TO THE FEDERAL JUDICIARY

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MARCH 25; APRIL 21, 22, 29; MAY 12 AND 25, 1994

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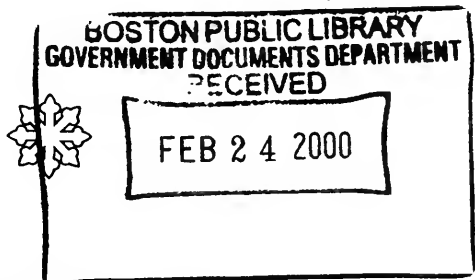
### Part 3

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Serial No. J-103-28

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Printed for the use of the Committee on the Judiciary



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1996

20-487

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For sale by the U.S. Government Printing Office  
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402

ISBN 0-16-052259-5

COMMITTEE ON THE JUDICIARY

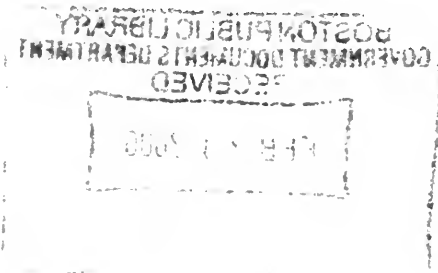
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**NOMINATIONS OF AUDREY COLLINS, TO BE  
U.S. DISTRICT JUDGE; FORTUNATO BENA-  
VIDES, TO BE U.S. CIRCUIT JUDGE; AND  
RUBEN CASTILLO, TO BE U.S. DISTRICT  
JUDGE**

---

**FRIDAY, MARCH 25, 1994**

U.S. SENATE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The committee met, pursuant to notice, at 10:44 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Carol Moseley-Braun presiding.

Also present: Senators Simon, Feinstein, and Specter.

**OPENING STATEMENT OF SENATOR MOSELEY-BRAUN**

Senator MOSELEY-BRAUN [presiding]. Ladies and gentlemen, I want to first thank you for coming this morning. The purpose of this hearing is the confirmation of Ms. Audrey Collins, Mr. Ruben Castillo, and Mr. Fortunato Benavides. So we have three judicial nominees to be heard this morning, and we will start first with Ms. Collins in light of the fact that Senator Feinstein has joined us.

Just by way of explanation for those of you who have not been through this process as friends or family of the nominees, the Constitution of the United States in article II, section 2, in describing Presidential power, says that the President of the United States has the authority to appoint judges. There are a number of other appointments that he is authorized obviously to make in this section, but then it says that he shall have the power, by and with the advice and consent of the Senate, to make treaties and appointments.

So we are here as representatives of the Senate in a hearing of the Senate Judiciary Committee to actually provide our advice and consent on the nominations as made. Most of the nominees have been through an already exhaustive process with the Department of Justice, with the administration, and sometimes back in their home States, but this is kind of the last leg and that is the good news for everyone.

After this hearing, should the committee vote to recommend the nominations, then there is a vote of the full Senate and, in all likelihood, I am trusting and hoping with all of you that there are no glitches between today and that final vote. But that is the section of the Constitution that gives us the authority and the power to do what we are doing today, and I am looking forward to chairing as

much of this hearing as possible. Senator Simon is actually the chair. He is right now on the Senate floor in the middle of an amendment debate.

So, with that, as is customary, we will hear first from the Senators who wish to introduce nominees to the committee. Before we do start, again, each nominee has completed a detailed questionnaire on his or her qualifications, experiences, finances, and philosophy. The portions of the questionnaires available to the public will be printed in the record of this hearing. We will also keep the record open for a limited time just in case members of the committee would like to submit written questions.

With that, I would like to call Ms. Audrey Collins and Senator Feinstein to introduce her to the committee.

The Senator from California.

### STATEMENT OF HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator FEINSTEIN. Thank you very much, Madam Chairman. I am very pleased to be here today and to introduce to you Audrey Collins. She is an extremely qualified Los Angeles district attorney whom I recommended for appointment to the District Court for the Central District of California.

Audrey Collins is 1 of only 3 assistant district attorneys in the Los Angeles department of 900 attorneys. That is the largest department in America and she holds the third highest position in that department.

Her academic credentials have prepared her well for a distinguished legal career. Having won and maintained a 4-year academic scholarship to Howard University, from which she graduated Phi Beta Kappa, Ms. Collins spent 7 years as a teacher in Washington, DC, Indiana, Colorado, and then moved to Los Angeles.

Deciding to pursue a career in law, she entered UCLA Law School in 1974. Upon graduating, she soon joined the Los Angeles County district attorney's office, where she has established a strong reputation among her colleagues and supervisors.

When I was interviewing candidates for the post, I called District Attorney Gil Garcetti to ask about Audrey's record in the department. He gave her an unqualified, enthusiastic endorsement, and said that the DA's loss would be the region's gain with Audrey serving on the bench.

For the purpose of this introduction, I would like to focus my remarks on her 16-year career in the DA's office, a career that has been marked by a string of promotions. From 1978 to 1987, the nominee was deputy DA. In this capacity, she served from 1980 to 1983 when she worked in the consumer and environmental protection division, where she appeared in civil court frequently.

From 1983 to 1985, she served as grand jury legal advisor, where she assisted the grand jurors in their role of civil oversight of the county government. During this time, the grand jury heard some of the most complex cases ever handled by the district attorney's office, the *Twilight Zone* case and the *McMartin Preschool Molestation* case.

For 9 years during her tenure as deputy DA, she appeared in criminal courts regularly. With the exception of her work in the

consumer and environmental protection division and as grand jury adviser, the nominee focused solely on criminal cases and her record is quite impressive.

She was sole counsel and successfully tried more than 200 cases to a verdict. These cases included misdemeanor jury trials, misdemeanor and felony juvenile adjudications, and felony adult court and jury trials. The nominee estimates that 90 percent of her cases were tried before a jury. This type of experience is invaluable as a judge carefully weighs the facts.

Among her many cases during this period, was, in 1986, *People v. Larry Charles McKiever*. This is where the defendant had fire jumped into a victim's car, forced her from the car, stole her wallet and drove away, leaving her behind. The defendant was arrested 2 days later while driving the victim's car and charged with kidnapping and robbery. He was found guilty on all charges and sentenced to State prison for life and a 5-year enhancement for prior conviction.

Senator MOSELEY-BRAUN. I am sorry, Senator. Not being from California, what is "fire jumped"?

Senator FEINSTEIN. I am sorry; fired and jumped; in other words, started and jumped.

Senator MOSELEY-BRAUN. I am sorry. I thought this was a term of art with which I was not familiar.

Senator FEINSTEIN. No, no, no.

In 1986, in *People v. Anthony Carl Rogers*, the defendant cornered the victim, demanded money, and struck her in the face twice when she was too slow in giving him the money. The jury found him guilty of robbery and he was sentenced to 5 years in State prison.

There are other cases, as well, and I won't go into them now. What I want to say that I think is very interesting about this nominee is when she was in school she originally believed she would work for defendants. She was an intern in the district attorney's office and, in this internship, encountered victims really for the first time and realized how many of them were people of color. So she came to identify with victims.

As part of that, I think in your questioning you will see she has got a rather interesting approach. In her civic life, she has gone out of her way to support victims and their rights, to work with them, to console them, to help them. As she just said to me when we were informally discussing her record, she said, you know, I have always viewed that my job as a prosecutor wasn't really just to get a conviction; it was to find out what actually happened and what the truth was and to be fair in that regard. I think that commends her well for the Federal bench.

Madam Chairman, I recommend to you with great support, interest, and eagerness the nomination of Audrey Collins.

Thank you.

Senator MOSELEY-BRAUN. Thank you very much, Senator Feinstein.

Ms. Collins, it is now your turn. If you would stand, please, to take the oath? Do you swear that the testimony that you give in this proceeding shall be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. COLLINS. I do.

Senator MOSELEY-BRAUN. Ms. Collins, if any members of your family are with us today, please feel free to introduce them at this point.

**TESTIMONY OF AUDREY COLLINS, LOS ANGELES, CA, TO BE  
U.S. DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA**

Ms. COLLINS. Thank you. I would like to introduce to the committee my husband, Tim Collins, who has been my supportive partner for over 26 years. I could not be here today without him. I would also like to introduce my son, Tim, Jr., who is now a second-year law student at Yale, and I am very proud of him. Unfortunately, my daughter, Rachel, could not be here because she just finished starring in the school play and that caused her to miss some school work and I just didn't feel that she could afford to miss any more, but we are also very proud of her.

Senator MOSELEY-BRAUN. Thank you. If you have an opening statement to make.

Ms. COLLINS. No, other than to thank Senator Feinstein for recommending my name to the President and to thank this committee for scheduling the hearing in such a prompt, expeditious way.

**QUESTIONING BY SENATOR MOSELEY-BRAUN**

Senator MOSELEY-BRAUN. Well, Ms. Collins, I have, on behalf of the committee, a few questions for you. There has been a great deal of attention paid to the Federal courts' increased caseloads and the resulting problem of docket backlog. This backlog, of course, has had an adverse effect on litigants before the court and, as Senator Feinstein pointed out in her eloquent statement regarding your concern for victims, has had an adverse effect on victims and people who are seeking justice.

So the question I have for you is, If confirmed, what steps will you take to ensure that your docket progresses at as quick a pace as is fair and reasonable?

Ms. COLLINS. Your question certainly points out an increasing problem nationwide, and I know, in the Central District of California. In my reading and preparation, I came across an interesting statistic. In 1988, 64 percent of the available trial time was used for civil trials, but in the first 9 months of 1993 that figure of 64 percent had dropped to only 42 percent of the available trial time was used for civil cases.

This is an extremely serious problem because it goes to the very heart of the system and possible denial of access of litigants to the central district. I hope that my experience, both as a prosecutor and as a manager in the DA's office, will be of assistance if I should be confirmed, because as a manager, of course, I have had experience managing diverse bureaus, all of which have competing and different demands and needs, and one of the things that I have learned to do is to prioritize and to set timetables and goals.

Specifically, I think it is important for a Federal district court judge—in addition to all of the other talents which she or he must possess, it is important for that person to be an active manager, and one of the things that I would do, and I have already begun



discussing this with Chief Judge Byrne, is to very early delve into the caseload which I would inherit, learn those cases and become actively involved in managing them.

This would include such things as setting firm dates for discovery, for pretrial settlement conferences and for trial dates, and, of course, they would have to be realistic depending on the complexity of the case, but to set firm dates and then stick to those. I would also, as everyone in the central district does now, have mandatory pre trial settlement conferences, and this is a policy in the central district.

In addition to the mandatory pretrial settlement conferences which are in court, I would hope to hold frequent telephonic conferences, and this is one of the new methods that is being employed in order to assist attorneys in focusing early on the issues that still divide them and focusing their attention on how they can narrow those issues. So I would also do that.

Another step that is being taken within the central district is for the district court judges to go to the chief judge, when necessary, and ask him to assign complex civil or criminal cases to visiting or senior judges. I would do that. In addition, I would hope to work very closely with the magistrates. I understand we have excellent magistrates in the central district. I have already met with some of them, and I would hope to work closely with them so that they could be of assistance especially with discovery and nondispositive motions in the complex cases.

Senator MOSELEY-BRAUN. If confirmed to the Federal bench, you will face a docket that includes a heavy criminal caseload, as well as constitutional, employment, and civil rights cases. Certainly, you have a great deal of experience in criminal matters, but what steps do you plan to take to familiarize yourself with those areas of the law in which you may have less experience?

Ms. COLLINS. First, I have been fortunate in that for about the past year as assistant district attorney one of my duties has been to be the top manager in our office in the area of personnel, and this includes such issues as working with the Americans With Disabilities Act and also working with employees who are being disciplined, or the recommendation is that they be disciplined, and I make the ultimate decision as to whether they will be disciplined. I also deal with all issues of harassment that come through the district attorney's office. So, fortunately, I have begun familiarizing myself already with the law relating to the Americans With Disabilities Act, harassment, and other employment issues.

Since being nominated, I have also begun studying the other areas which you mentioned, specifically civil rights law and constitutional law. I have also visited already with Chief Judge Byrne, who has been very helpful in discussing with me caseload and case procedures.

I have received materials from the Federal Judicial Center and I am reviewing those, including some videotapes, which are excellent, on topics such as jurisdiction and evidence. I have obtained the Federal Rules of Civil Procedure and Criminal Procedure and Evidence, and I am studying those. So I do believe with those steps, plus the excellent orientation I received yesterday from the administrative office and my plans to attend a week-long video pro-

gram presented by the Federal Judicial Center, I will be in good shape to be up to speed if I should be fortunate enough to be confirmed.

Senator MOSELEY-BRAUN. What would you do if faced with a ninth circuit precedent that controlled a matter before you but with which you personally disagreed?

Ms. COLLINS. Senator, I have a full understanding that, if confirmed, it would be my obligation to follow precedent, whether that be a U.S. Supreme Court or a ninth circuit case, and I would have absolutely no difficulty in following the doctrine of stare decisis and following precedent, no matter what my personal opinion might be.

Senator MOSELEY-BRAUN. Since graduating from law school, you have worked at the Los Angeles district attorney's office first as a litigator and then as an administrator. You have also been involved in a number of professional organizations and have a record of doing pro bono assistance in the community at large. In what way do you feel these experiences have prepared you to serve as a Federal district court judge?

Ms. COLLINS. That is an interesting question because I feel I have learned different things and I have gained different skills from each of those experiences and opportunities, although there is some overlap. As a prosecutor—and all of my litigation is in the area of prosecution—as a prosecutor, of course, first of all, I have learned criminal law, criminal procedure, and evidence, and as I have begun my study of Federal criminal law and evidence, I am happy to be reminded how similar the Federal and the California statutes are. So, that certainly has been a good preparation for me, should I be confirmed.

I have also learned, of course, how the system works, and although there are some differences between the State and the Federal system, I think that much of this will be transferrable. I have learned how to try a case and I think, if confirmed, it is very helpful as you see a case unfolding before you for you to see if there are any problems ahead that you might recognize and be able to help the attorneys to solve.

More importantly—and I think I have an idea, as I said, of how the system works—over 90 percent of the cases, criminal or civil, never go to trial. They are settled, and it is important to understand that actually that is a fairly cooperative process between the prosecution and the defense, and the judge sometimes is involved—sometimes in the State system is involved, sometimes is not. But it is important to have an understanding of how all the elements of the criminal justice system have to work together to make the system work, and I will bring that experience to bear if I am fortunate enough to be confirmed.

One very important thing that I bring is something that the Senator mentioned in her remarks, and that is a sensitivity to all of the parties in the system. I think I was certainly well aware from law school of the rights of the defendant and of how respectful the system is of those, but it wasn't until I joined the district attorney's office as a summer law clerk that I became sensitized to then needs of the victims. I have worked with that throughout my career, first in the courtroom in making sure the courtroom was a comfortable, accessible place for victims, who were often elderly, often people of

color and who really appreciated and enjoyed working with someone who was sensitive and accommodating to their needs.

As an administrator, I have continued this work because I have been the administrator in charge of the victims and witnesses assistance program which serves that same purpose by making victims feel comfortable, by providing financial assistance to victims who have been injured, and there is nothing, I think, more important that I have done in my career than to be sensitive to, and accommodating to, and helping the victims of crime.

But probably the most important thing that I have learned and that I would bring to the Federal bench, if confirmed, is something else that the Senator mentioned, and it is my knowledge that the most important thing a prosecutor does is not to obtain convictions. It is to look for truth and to do justice. Much of the time, after examining a case, I felt that I did justice by seeking a conviction, but there were certainly times when I thought that the only way to do justice was to dismiss all or part of the case, and that core value, that core thing that I do as a prosecutor to seek justice is, I think, the same core value that a Federal district court judge has. I, as a district court judge, would be there to do justice. So those are the things that I would take from my career as a prosecutor or litigator.

On the administrative side—I mean, there, I think, is an administrator in any position. It is a big-picture type of job, and there I got an idea not just what happens in one courtroom or even in one courthouse, but what is going on in the entire district attorney's office, what is going on in the entire criminal justice system, and even to some extent, as I have struggled with budget, what is going on in all of Los Angeles County.

I have had to learn to prioritize, to have timetables for all of the bureaus that I work with, to work with personnel, to work with needs for space, to work with budget, especially in Los Angeles County where we simply don't have enough budget dollars to go around, and I have had to work with the board of supervisors to try to, as an advocate, seek sufficient funding for the district attorney's office.

I think, again, all of these management skills would be transferrable to the Federal bench not only in managing the docket problems that we talked about, but hopefully, if I were there for a while and got my feet wet, maybe even helping the court overall and contributing with such issues as budget and space that go on.

The third area which you talked about, which is my work with pro bono or professional organizations—that has been so important to me, whether it is going out to a law school and speaking to the black law students group, whether it is working with the black police officers association, meeting with gang members in South Central, which I have been doing recently, or whether it is speaking to California women lawyers on gender bias or my work with the Committee of Bar Examiners, as well as the other bar that I have done, because I feel I have gotten so much out of that. I have felt that I have contributed to the community, I have contributed to the bar, and not only have I contributed, but I have gotten something out of that, too, and that is balance, and also collegiality.

I think, if confirmed and I become a Federal court judge, it is still important to have balance. It is important to give something back to the community and to the bench and bar, and the collegiality aspect is extremely important, too, because the bench can be very isolating, I believe, based on everything I have heard. And it is important to get out there and meet people that you wouldn't necessarily have met otherwise, and through my work with bar associations I have met people well outside not only the district attorney's office, but outside criminal justice. I have met civil lawyers through the Committee of Bar Examiners. I have even met wonderful public members who aren't lawyers, but people who are giving up their own time from their busy careers—and some of them are college professors, retired military officers, and here they are contributing to the legal profession. What a wonderful example they have set, and meeting these people has been enriching, too, and continuing this type of experience, I think, would help to make me a more balanced and keep me a balanced individual.

Senator MOSELEY-BRAUN. We have been joined by Senator Specter. I have concluded my questions.

Senator Simon, have you any questions?

Senator SIMON. I do not. I apologize for getting here late. I want to thank my colleague for starting the hearing here. I had an amendment on the floor, which I am pleased was accepted on the floor, so I had to get here late. I apologize to the nominee. I don't have any questions at this point.

Ms. COLLINS. Thank you. I am just pleased, and congratulations on your success on the floor.

Senator SIMON. Thank you.

Senator MOSELEY-BRAUN. Senator Specter.

#### QUESTIONING BY SENATOR SPECTER

Senator SPECTER. Why do you want to be a Federal judge?

Ms. COLLINS. Being a Federal judge, I believe, would offer me the best opportunity I can think of to serve the residents of the central district, which is a seven-county district, very diverse, and I have been in public service ever since I became a lawyer, starting with legal services, which I worked for for several months, and then coming to the district attorney's office for the past 16 years. I feel that I have made real contributions there, but that going to the Federal district court, if confirmed, would allow me to contribute even more to the residents who live in this entire area.

It is an opportunity for service that I think will hopefully allow me to continue to open up and bring more access to the courts, which is something that I was discussing earlier in the sense of victims' rights, making the courts more open and accessible to victims. And I think that one of my strengths is that I am good with people, I am a people person, and that as a Federal district court judge I can assist with making the courts more accessible, and I think that will also help in resolving the docket problems.

As I said, I think that I will be a good manager and that I will be able to easily assume the problems inherent in a crowded docket and be able to assist with that as the courts are faced with criminal and civil issues that are really central to our Nation's future.

Senator SPECTER. I note that you were born in Chester, PA.

Ms. COLLINS. Yes, I was, and then I lived in Yeadon for many, many years.

Senator SPECTER. When did you leave Pennsylvania?

Ms. COLLINS. When I went to college, that is really when I left, although, of course, I continued to go home for holidays and vacations, and then when I got married right after graduating from college, I did not go back to live in Pennsylvania anymore. But, you know, I still miss Pennsylvania, Senator, and the seasons. I truly do. I love California, but the sameness of the terrain and the seasons often make me miss Pennsylvania, although I gather from my mother, who still lives in Lansdowne, that this was a real tough winter.

Senator SPECTER. It was. You have served for a long time as a deputy district attorney in Los Angeles. What sort of work did you do there?

Ms. COLLINS. I was privileged to have a great variety of assignments. Due to the size of—

Senator SPECTER. Did you try cases?

Ms. COLLINS. Oh, yes.

Senator SPECTER. Murder cases?

Ms. COLLINS. Yes. I also was privileged to be in our one civil division, which was consumer and environment.

Senator SPECTER. Do you think it is realistic to have mandatory life sentences, three strikes and you are out?

Ms. COLLINS. Well, the legislature has now, as you know, of course, passed that. It is still also on the ballot in November. We will see—when you say realistic, I don't know if you are thinking of the cost aspect of building new prisons.

Senator SPECTER. What I am thinking about is whether we will, in fact, get life sentences. My own view, after having experience as a district attorney, is that justice needs to be individualized and that whatever you say by way of mandating judges or the system, the system and judges find a way not to follow the mandate if they feel it is unfair.

What I have been advocating since I was elected in 1980 is to try to get realistic rehabilitation for juveniles, first offenders and second offenders—literacy training and job training—so that they have a chance. I think that if they fail after a conviction and come back a second time and have rehabilitation opportunities and fail and come back on a third offense for violent crime, at that juncture it is realistic to get a judge to impose a life sentence. But absent that, I think three strikes and you are out is hollow rhetoric, and we can mandate all we like, but it will not happen.

I would be interested in your experience, since I note you were in the district attorney's office for some 16 years. You outrank me by a couple of years. What do you think?

Ms. COLLINS. I guess it is really too soon to say. I can tell you that originally our district attorney, Gil Garcetti, favored a three-strikes bill that was somewhat more narrowly drawn than the version that ultimately passed. But now that that is the law, the version that passed, of course, the district attorney's office is committed to and, in fact, will vigorously enforce it. I think, only having been in law for a couple of weeks, it is too soon to say.

The bill itself, as I understand it—and I have only looked at it slightly— really removes most of the discretion that judges would otherwise have. Even the second strike is double the normal term, and the third strike, which need not be for a serious or violent felony, then does mandate, as you have stated, life without possibility of parole.

The district attorney's office, of course, too, is mandated to, and will, not only file, but file prior felony convictions as required. So I would anticipate, and I know that there will be legal challenges to this. It is my understanding that the defense bar is already planning to, if they have not already, file such challenges. So I suppose it is—

Senator SPECTER. They will probably come right into Federal court, your Federal court.

Ms. COLLINS. It is even conceivable that that could be before me, yes, if I am confirmed.

Senator SPECTER. Thank you very much. Thank you, Mr. Chairman, or Madam Chairman, whoever is the chairman.

Senator MOSELEY-BRAUN. Well, almost the chairman, just for a few more seconds.

Thank you very much. Again, this is the last leg of a long process for you and we are all delighted to see such a stellar nominee coming out of California, but then we would expect nothing less of Senator Feinstein. Thank you very much, Ms. Collins.

Ms. COLLINS. Thank you, and it has been a pleasure every step along the way, and certainly including today. It is an honor. Thank you very much.

Senator MOSELEY-BRAUN. Thank you.

We will now call Ruben Castillo.

Senator SIMON. Well, before we call Mr. Castillo, since Senator Hutchison and Congressman Jack Brooks are here, why don't we let them introduce their candidate, and then we will call on Mr. Castillo.

Senator MOSELEY-BRAUN. Since seniority still has a role to play in this legislative body, Senator Simon is the senior Member from Illinois and the senior member on this committee, so I am going to pass the gavel on to him.

#### OPENING STATEMENT OF SENATOR SIMON

Senator SIMON [presiding]. Well, I thank you very much.

We welcome the nominee from the State of Texas, and I don't know if either of you has a preference—

Mr. BROOKS. I think we ought to let the distinguished junior Senator from Texas, the lovely lady from La Margue in my district, though she be a Republican, introduce first.

Senator SIMON. Senator Hutchison, be careful when Jack Brooks praises you. I have learned that over the years. [Laughter.]

Mr. BROOKS. Now, Paul, don't give her all that. Just let her go on and talk, will you?

Senator SIMON. All right. We are pleased to have you here for any statement you may make.

**STATEMENT OF HON. KAY BAILEY HUTCHISON, A U.S.  
SENATOR FROM THE STATE OF TEXAS**

Senator HUTCHISON. Thank you, Mr. Chairman. I will say that I appreciate the deference of the dean of the Texas delegation in Congress. I thought that Ms. Moseley-Braun made a very good point about seniority, and we are very proud to have Jack Brooks as the dean. He has represented the district I grew up in for all of my life, so we have known each other for a long time.

It is my pleasure to be here to introduce you to Pete Benavides. I have known Pete for a long time. He is the law partner now of a very good friend of mine, who is also one of the members of my judicial advisory committee, Morris Atlas. I was very surprised that Mr. Benavides decided to go back into the judiciary. He has a long record of distinguished service as a judge in Hidalgo County, as a State district judge there, and also served on the State Court of Appeals and the Texas Court of Criminal Appeals.

So he has been in public service all his life and just went into private practice, and I asked him why he decided to take the oath of poverty once again and go back into the judiciary, but I am very pleased that he did because I think he will serve well on the fifth circuit and I am very proud to be here to support him.

Senator SIMON. Thank you very much.

It is a pleasure to welcome Jack Brooks, who is a genuine public servant and, in addition, an enjoyable guy to be with and work with. I served with him 10 years in the House. When you refer to him as the dean of your delegation, I remember Wright Patman. Things have changed now that you are the dean over there.

Senator HUTCHISON. Does that make you feel old, Mr. Chairman?

Senator SIMON. Dean, we welcome you.

**STATEMENT OF HON. JACK BROOKS, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF TEXAS**

Representative BROOKS. Thank you very much, Senator. I am delighted to be here to introduce Fortunato "Pete" Benavides, a nominee for the U.S. Court of Appeals for the Fifth Circuit, to my long-time colleagues in the Senate.

Judge Benavides has had a notable career in the Texas judicial system, during which he authored more than 500 judicial opinions in both criminal and civil cases. He has been praised by both the prosecutors and the defense attorneys for his work, and he is known for his compassion and fair-mindedness.

He was born and educated in Texas. Judge Benavides is dedicated to serving the community outside the courtroom as well. This commitment is highlighted by his establishment, when he was a county judge, of a center for troubled teenagers. In other words, he was an early believer in alternative correction, particularly for young offenders.

I believe that Judge Benavides is well prepared for a position on the U.S. Court of Appeals and will do an excellent job on the fifth circuit in New Orleans. His experience will serve this country well. I would recommend him to you.

Senator SIMON. We thank you. We have a statement also that we will enter in the record from Congressman de la Garza regarding you, Judge.

[The prepared statement of Mr. de la Garza follows:]

PREPARED STATEMENT OF E (KIKI) DE LA GARZA, A REPRESENTATIVE IN CONGRESS  
FROM THE STATE OF TEXAS

Mr. Chairman, it is very unfortunate that I cannot be present today to introduce the Honorable Fortunato "Pete" Benavides who has been nominated by the President for the position of Circuit Judge for the 5th Circuit in Texas. The reason for my absence is the death of a close and longtime friend which has necessitated my returning to Texas. Were it not for that I would be with you this morning.

Judge Benavides is someone I have known for many, many years. I think very highly of him and hold him in the highest regard. I am also fully acquainted with his work. He has had a very distinguished career. Not only is he thoroughly qualified but he has an extraordinary knowledge which makes him an ideal candidate for this position.

There are many accolades I could bestow on Judge Benavides but I think his record speaks for itself. To that I can only add he is truly exceptional. I am proud to know him and to call him my friend.

Thank you.

Senator SIMON. Judge, we will call on Mr. Castillo and then we will ask you back—you are not going to get off that easily here, Judge.

Judge BENAVIDES. I understand.

Senator SIMON. But do you have members of your family you would like to introduce here, or friends?

Judge BENAVIDES. My family wasn't able to come up here. I do have a cousin that is a doctor at George Washington University that drove across town, Minerva Gorena, my first cousin, originally from Edinburg, TX.

Senator SIMON. We welcome you here.

Senator SPECTER. Chairman Brooks, I said to Senator Simon, will Chairman Brooks stand for questions? We don't often see you at a witness table over here.

Mr. BROOKS. With a clear conscience, it is no problem.

Senator SPECTER. I am sorry. I didn't hear you.

Mr. BROOKS. I say if you have a clear conscience, it is no worry, no problem.

Senator SPECTER. Well, I presume you mean your conscience, not mine. [Laughter.]

It is a pleasure to see you here, and I will not try any questions for fear of the response.

It is nice to see you, Senator Hutchison.

Mr. BROOKS. Give your wife our best.

Senator SPECTER. Thank you.

Senator SIMON. We thank you both. Judge, we will excuse you temporarily.

Judge BENAVIDES. Before they leave, I would like to thank the Senator and the Congressman for being here and introducing me.

Senator SIMON. You are under good auspices.

Mr. Castillo, if you can go up there, we are going to hear from my colleague, Senator Carol Moseley-Braun here first.

STATEMENT OF HON. CAROL MOSELEY-BRAUN, A U.S.  
SENATOR FROM THE STATE OF ILLINOIS

Senator MOSELEY-BRAUN. Thank you very much, Mr. Chairman. I am proud to be here today to introduce Mr. Ruben Castillo, the nominee for U.S. district court judge for the Northern District of Illinois. I am even prouder to be able to say that I was able to play



a part in selecting this outstanding nominee, and for that I am eternally grateful to you, Senator Simon. We have, as you know, a judicial merit selection commission back in Illinois that you established, and you were gracious enough to allow me to play a co-equal part in that process and I am mindful of it and grateful to you for that.

When Mr. Castillo is confirmed by the U.S. Senate, and I am certain that he will be, he will become the first Latino Federal judge in the State of Illinois. The son of immigrant parents—his father, Ruben, Sr., emigrated from Mexico; his mother, Carmen, from Puerto Rico—Ruben Castillo embodies the American dream. He is the first member of his family to finish college, and it was his parents who encouraged him to pursue higher education and instilled in him a love of learning that led him to Loyola University in Chicago.

It was then that he had his first experience with the law, working nights as a clerk in Cook County Circuit Court to put himself through school. After graduation from Loyola, Mr. Castillo went on to Northwestern University School of Law, one of the finest law schools in the country. I must say there are people on the south side of Chicago at the University of Chicago who argue that a little bit, but nonetheless Northwestern is certainly one of the finest law schools in the country. We are blessed to have a multitude of riches in that regard in Chicago.

Ruben Castillo started his career in the law with the firm of Jenner & Block which, as you know, is one of the largest, most prestigious firms in Chicago, and in the country indeed, leaving after 5 years there to become assistant U.S. attorney, prosecuting criminal cases. His involvement, in fact, one case, prosecuting a drug kingpin, resulted in a contract being placed on his life and he and his family were forced to receive 24-hour police protection for a time. Happily, that threat was resolved with no physical harm to him or to his family.

Mr. Castillo left the U.S. attorney's office in 1988 to serve as director and regional counsel for the Mexican American Legal Defense and Education Fund, known as MALDEF. Under his leadership, MALDEF filed and won a suit challenging the congressional districts drawn up after the 1990 census. That lawsuit was successful and it resulted in the first majority Hispanic district to be created in Illinois, and that, of course, led to the election of Luis Guttierrez, the State's first Latino Congressman. Mr. Castillo headed MALDEF until 1991, when he left to become the first Latino partner at the prestigious Chicago law firm of Kirkland & Ellis.

I don't want to take up too much of the committee's time in this regard, but before I conclude I would like to mention just a few of the charitable activities that Mr. Castillo has devoted himself to over the years. He is a member of the advisory boards of the Children and Family Justice Center of Northwestern University, the Chicago Legal Clinic, and Business and Professional People for the Public Interest. He was appointed by Mayor Daly to serve on a blue ribbon panel to recommend revisions to Chicago's minority and female set-aside programs, and he is a member of the Northern District Court's Civil Justice Reform Act Advisory Group. He has been awarded the Chicago Bar Association's Maurice Weigle

Award for outstanding service to the legal profession, the Attorney of the Year Award from MALDEF, and the Community Service Award by the Latin American Police Association.

Of course, Mr. Chairman, our merit selection committee highly recommended him. His respect for the law and commitment to public service and integrity are noteworthy and were the basis for their recommendation to us. I am delighted to introduce him to the committee and to make this nomination.

I believe, as you are well aware, Mr. Chairman, that Ruben Castillo is an outstanding attorney, one who brings to the bench a rich history of involvement in the field of public interest law, and I am proud to introduce him to the committee today and hope that the Senate will act quickly on his nomination so that he may be confirmed.

Thank you.

Senator SIMON. Thank you, Senator Moseley-Braun. Let me just add, in the process we had 138 lawyers who applied for the 3 vacancies. The commission recommended 10 out of 138. You are talking about some quality people there. Senator Moseley-Braun and I interviewed all 10 and made the 3 recommendations.

Not only did you make a good impression on us personally in our interview, but in informal conversations I had with people, and I am sure Senator Moseley-Braun had the same experience, people spoke very highly of you and I was pleased to join my colleague in sending the recommendation to the Justice Department and the White House.

I think you have members of your family here with you. Would you like to introduce them, Mr. Castillo, and any other friends that you may have here?

Mr. CASTILLO. Yes, I would. Thank you, Senator. First, I would like to introduce my wife and life partner, Sylvia Mojica-Castillo; my daughter, Francisca Castillo; my son, Roberto Castillo; my father, Ruben Castillo; my mother, Carmen Castillo; my mother-in-law, Ramona Mojica; my father-in-law, Felix Mojica; my sister-in-law, Ester Rodriguez. And I have two good friends, Martin Castro, who is president of the Mexican American Lawyers Association, and a former trial partner and colleague of mine from the Justice Department, Mary Harkenreiter.

Thank you.

Senator SIMON. Well, we are very happy to have all of them here, and I might add that one of your guests is a brother of a staff member of mine, which you probably are aware of.

I do have a serious question for those two young people. Are you skipping school today? [Laughter.]

Mr. CASTILLO. They refuse to answer that question on the advice of their counsel. [Laughter.]

Senator SIMON. All right. Well, we thank you.

If I could ask both Judge Benavides and Mr. Castillo, if you could stand and raise your right hands? Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Judge BENAVIDES. I do.

Mr. CASTILLO. I do.

Senator SIMON. Under our usual procedure, we would take Judge Benavides first, but are you leaving now?

Senator MOSELEY-BRAUN. Thank you, Mr. Chairman. I have to leave, and in light of the fact that we have already asked the questions that would be put to Mr. Castillo, I unfortunately will not be able to put questions to Mr. Benavides. But at the same time, we have a very busy Senate schedule and I have to get back.

Senator SIMON. All right.

Senator MOSELEY-BRAUN. But I know it is being left in great hands.

Senator SIMON. In that event, I will follow precedent, and the nominee for the higher court gets precedence over the district judge, I have to tell you.

Mr. CASTILLO. I completely understand, Senator.

Senator SIMON. You will get used to that. [Laughter.]

Judge, we are very pleased to have you here as a nominee. I have looked through your background. I note that, among other things, you belong to a group in Corpus Christi called the Mustangs. Tell me about the Mustangs. I assume this is not an organization that discriminates or would in any way disqualify you from serving on the court of appeals.

#### **TESTIMONY OF FORTUNATO BENAVIDES, AUSTIN, TX, TO BE U.S. CIRCUIT JUDGE FOR THE FIFTH CIRCUIT**

Judge BENAVIDES. No. I think there are some that might come from the name Mustangs, and I can assure you that you needn't worry about that. Actually, the Mustangs of Corpus Christi, to which I formerly belonged, is a very loose service association. I did not apply for that position, but you just get asked to join a club or an association of people that get together, donate food, cook food and serve food for non-profit educational or charitable organizations. It owns no facilities, no clubs, no swimming pools, no restaurants or dining halls or anything of that nature.

#### **QUESTIONING BY SENATOR SIMON**

Senator SIMON. All right. My staff has just handed me a note that we are going to have a rollcall vote in about 15 minutes, so I am going to be very brief. That may be a break for both you and Mr. Castillo here.

Let me ask the question that Senator Specter asked the previous nominee. Why do you want to become a Federal judge?

Judge BENAVIDES. That is a very good question, Senator. I have had the good fortune and the honor to have served on various courts in the State of Texas—county court, district court, court of appeals, and then on the State's highest court, the court of last resort in criminal matters. I enjoyed the work. I feel competent in doing that work, and it also provides an avenue for a deep sense of feeling or commitment that I have toward serving my people, my community and my country, and it provides just a fantastic avenue by which I can fulfill that drive or desire, whatever one might call that.

Senator SIMON. I just received a letter from a Federal judge in the Central District in Illinois, Judge Harold Baker, who said that he was going to request to go on senior status, and he says that as I look for his successor I ought to be looking for someone who,

among other things, is sensitive to those less fortunate. I couldn't agree more. That is one of the things that is important.

Obviously, the law has to be applied regardless, but that sensitivity does make a difference in the kind of judge you are, whether it is on the court of appeals or a district judge. What in your background suggests that you have that sensitivity?

Judge BENAVIDES. Well, we can start probably with my father, who was born in Mexico and came to this country to work and fought in World War II and was wounded. It makes it very difficult to forget your roots when you are still so close to the ground. I have worked with juveniles, devoted much of my time to working with children. I have had support in my campaigns from ethnic organizations, from women's organizations.

I am from south Texas, Senator Simon, the deep part of south Texas, and it is a very political area. It is over 80 percent Hispanic and politics plays a great part in daily lives. People read the papers and know who their politicians are and know what the issues are, and there is always—you grow up with the idea of don't forget who you are, and I don't think that I have forgotten who I am. I don't think that I can ever forget who I am or where I come from and the roots that I have.

Senator SIMON. Senator Specter?

#### QUESTIONING BY SENATOR SPECTER

Senator SPECTER. You had been a State court judge?

Judge BENAVIDES. Yes, Senator.

Senator SPECTER. And why did you leave that position?

Judge BENAVIDES. Well, if you are talking about the last State court position, I did not make that decision, Senator. The people of the State of Texas made that decision when I was on the court of criminal appeals and I lost a statewide race.

Senator SPECTER. That probably speaks to your credit. [Laughter.]

Senator Simon I don't think has lost as many elections as I have, so he really wouldn't understand it as well as I do.

Senator SIMON: Well, I have experienced that, too.

Senator SPECTER. That sounds like a solo loss, the way he said it.

I do not know the details of your judicial service. How long were you on the State bench?

Judge BENAVIDES. Senator, I was—a little over 15 years. I served at every level. I was a county court at law judge, which is a trial court judge for misdemeanors.

Senator SPECTER. From 1981 to 1984?

Judge BENAVIDES. Right. Then I was a district court judge, which is the highest trial court bench, civil and criminal, and then I was on the court of appeals in Corpus Christi, which was a direct appellate court for civil and criminal cases, for approximately 6½ years, and then the court of criminal appeals for almost 2 years, which was a—

Senator SPECTER. Is that the one that you stood for election and lost?

Judge BENAVIDES. Yes. That is a court of last resort in criminal cases.

Senator SPECTER. Well, I have seen your electoral process in Texas and I have wondered about it. The Pennsylvania Supreme Court has been a source of national and international wonderment as to what goes on in our court. I hope some day we can take State court judges out of elective politics.

The fifth circuit certainly is a prestigious and very, very important court. With a very limited number of grants of cert, the courts of appeals have realistically become the court of last resort on matters of enormous importance.

I received a letter from a high school classmate of mine, an attorney in Kansas, Gene Balloun, which I would like to make part of the record, Mr. Chairman.

Senator SIMON. It will be entered in the record.

[The letter referred to follows:]

LAW OFFICES,  
SHOOK, HARDY & BACON P.C.,  
Overland Park, KS, March 1, 1994.

Hon. ARLEN SPECTER,  
U.S. Senate,  
Washington, DC.

DEAR ARLEN: The Senate Judiciary Committee will soon be considering the nomination of F.P. (Pete) Benavides for appointment as a judge of the Court of Appeals for the Fifth Circuit. I would like to give my wholehearted endorsement to Judge Benavides, and urge you to support his appointment.

I did not know Judge Benavides until this past year. However, we have both been representing defendants in some extremely complicated litigation in Texas. As a result of these encounters, I have had an opportunity to observe his litigation skills, demeanor and judgment.

In my opinion, Judge Benavides will make an outstanding appellate judge. He is well qualified by virtue of his extensive judicial experience. More importantly, he has the character and temperament to make an outstanding judicial officer.

Judge Benavides did not ask me to write this letter. I called him and offered to do so, since I have been so impressed with his abilities.

Many thanks for your consideration.

Sincerely,

J. EUGENE BALLOUN.

Senator SPECTER. Gene has worked with you on a case where you were working on the same case representing defendants. He described it as complex litigation, and Gene Balloun is an outstanding man. He and I went to Russell High School together and I was salutatorian. Do you know what that is?

Judge BENAVIDES. I understand you made some pretty good grades, Senator.

Senator SPECTER. Well, salutatorian is second, and I only mention it because Balloun was valedictorian, which is first. So my last question for you is what kind of a lawyer is Gene Balloun? [Laughter.]

You don't have to answer that.

Judge BENAVIDES. He is an excellent lawyer.

Senator SPECTER. Thank you very much. Thank you, Mr. Chairman.

Senator SIMON. Your appearance here evoked the information we did not have until this point—that Arlen Specter was salutatorian of his high school class. [Laughter.]

Senator SPECTER. I don't ordinarily like to admit that, but to finish second to Balloun is not too bad.

Judge BENAVIDES. I will tell him that you said that. We are still involved in that litigation, by the way.

Senator SIMON. We wish you the very best, judge. Thank you very much.

Judge BENAVIDES. Thank you.

Senator SIMON. Mr. Castillo? First, I want to mention, Mr. Castillo, the American Bar Association's Standing Committee on the Federal Judiciary unanimously gave you a "well qualified" recommendation, which is—and I don't mean this disrespectfully to any other nominees—but it is exceptional for us to receive that, and that is to your credit.

Let me ask the question that Senator Specter asked. Why do you want to become a Federal judge?

**TESTIMONY OF RUBEN CASTILLO, CHICAGO, IL, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS**

Mr. CASTILLO. Well, Senator, in my career I have had the privilege of serving various clients from all walks of life, from some of the corporate 100 organizations to individuals who had literally no assets, and I have always enjoyed the role of being the advocate for those clients, but I really came to a conclusion that I would like to have only one client from now on, and that client being justice, per se, and that is why I want to be a Federal district court judge.

I believe that given the variety of litigation assignments and experiences that I have had that that is the best place for me to serve the country at this point, and I really enjoyed public service from my 4 years as an assistant U.S. attorney in Chicago.

**QUESTIONING BY SENATOR SIMON**

Senator SIMON. You served on a group called the Civil Justice Reform Act Advisory Group.

Mr. CASTILLO. That is correct, sir.

Senator SIMON. I just read the Wall Street Journal reported on a case. I know nothing other than the Wall Street Journal article about this case and I don't mean to comment on the case other than just to ask a question about what they say. There was a woman named Irene Geschke who filed a civil lawsuit in the Federal court in the Northern District in Illinois in 1979. That case has been continued now for 15 years. Nine scheduled trial dates have come and gone; 530 motions, hearings, memorandums, and orders have occurred.

Do we face a special problem in the Northern District of Illinois? What can we do, and what more specifically can you do as a district judge to see that justice is served? For justice to be served also means it sometimes has to be expedited; you can't have cases going on for 15 years.

Mr. CASTILLO. I agree. I am not familiar with that particular case, but from my work with the Civil Justice Reform Act Committee in the northern district, we found overall that the court was functioning pretty well. However, the court has a huge docket, as you well know. There are over 400 cases per every judge in the Northern District of Illinois.

What can we do? Our group basically concluded that we need our judges to become managers of cases, that they have to have effec-

tive docket control systems so that a case as you describe—that type of situation becomes an anomaly and just doesn't recur. Judges need to know the status of all of their cases and need to set orders that expedite discovery and lead to a quick resolution of the case, and identify a case as a potential trial or as a case that might be resolved somewhat short of a trial.

So what we basically concluded, without getting into all the specifics of our recommendations, is we want our trial judges to be active managers and to get involved in litigation early on; call the parties in and find out exactly why it was that a complaint was filed in Federal district court, determine whether or not there is adequate jurisdiction, and determine where the case is going. Is this a case that can be resolved short of trial, or if there is going to be a trial, let us talk about realistic dates to get to that point.

Senator SIMON. Do you think you are a good manager?

Mr. CASTILLO. I think I am, based on my experiences at MALDEF and my experiences right now in my firm. I have to manage a number of cases, a number of people. I like to be very hands-on, and I think those attributes will serve me well if I am confirmed by the Senate.

Senator SIMON. If your son or daughter were to ask you what makes a good judge, how would you respond?

Mr. CASTILLO. Well, I would start out with the word "patience," first, and, second, hard work. And, third, courtesy and civility to litigants, I think, is especially important. I think every judge should treat the litigants in their courtroom and the attorneys the way that he or she would want to be treated if they were appearing before that judge. I think it is very important that when a litigant leaves a judge's courtroom, whether or not they win or lose that case, they feel that they received a fair shake on that day.

Senator SIMON. Senator Specter?

Senator SPECTER. Picking up for just a moment on your comment about courtesy, when Senator Thurmond is not able to attend a nominations hearing, I often ask nominees a question that he asked in one of the first hearings I attended back in 1982. There were two Pennsylvanians up for U.S. district court and Senator Thurmond said, do you promise to be courteous, in his Southern accent.

I thought to myself, what a meaningless question that is. What is anybody going to say if you ask them, do you promise to be courteous? Both nominees said yes, and then Senator Thurmond said, because the more power a person has, the more courteous that person should be.

I will expect the record to reflect the effort at Senator Thurmond's dialect. [Laughter.]

I have come to regard that as the wisest thing I have heard in 14 years that I have been here, not that there is much competition around here for the wisest comment that I have heard. We were in session yesterday until 3:30 a.m. and last night until 10. We might not qualify for a position on any bench anywhere.

But Senator Thurmond's comment was very, very profound, and I believe that judges, especially judges with life tenure, tend to forget that very fast. There is a leveling influence if you have to run for election, and I am not suggesting that we change the Constitu-

tion to have Federal judges run every 6 years and have Senators sit for life, but this issue of courtesy is really important, really important.

I am unhappy with some of the stories I have heard about some of the people whom Senator Heinz and I recommended. People will be watching you and the word will get around, so that being courteous is a very, very, very high calling. Understanding the Securities Act and the antitrust implications and the rule against perpetuities and the difference between a shifting use and a springing use are hard to do, but being courteous is something that you can do, but it takes a lot of concentration.

Mr. CASTILLO. I completely agree, Senator. I think my mother, who is here, has taught me the fundamental rule of treating everyone like you would want yourself to be treated. I think she would be the first one to remind me if she saw something going on that didn't stick to that rule.

Senator SPECTER. OK, but she won't be with you all the time. [Laughter.]

Mr. CASTILLO. No, but she is in spirit.

Senator SPECTER. You are lucky to have her.

Thank you, Mr. Chairman. Thank you. Good luck.

Mr. CASTILLO. Thank you, Senator.

Senator SIMON. We thank you.

Our hearing stands adjourned.

[Whereupon, at 11:47 a.m., the committee was adjourned.]

[Submissions for the record follow:]



## SUBMISSIONS FOR THE RECORD

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

## QUESTIONNAIRE FOR JUDICIAL NOMINEES

## I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).

Audrey B. Collins  
Maiden name Audrey Anne Brodie

2. Address: List current place of residence and office address.

Current residence:  
Beverly Hills, CA

Work address:  
Office of the Los Angeles County District Attorney  
18-201 Criminal Courts Building  
210 West Temple Street  
Los Angeles, CA 90012

3. Date and place of birth.

June 12, 1945  
Chester, PA.

4. Marital Status. List spouse's occupation, employer's name and business address.

Married to Timothy R. Collins since June 30, 1967.

Spouse's occupation: Dentist  
Spouse's Present Employer and business address: (8/1990 - present)  
Los Angeles County Department of Health Services  
Dr. Ruth Temple Health Center  
3834 South Western Avenue  
Los Angeles, CA 90062

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Howard University, Washington, D.C.  
9/63-6/67  
B.A. in Political Science (1967)

American University, Washington, D.C.  
9/67-1/69  
M.A. in Government and Public Administration (1969)

U.C.L.A. Law School, Los Angeles, CA  
9/74-6/77  
Juris Doctor (1977)

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Summer Clerk, Agency for International Development, Washington, D.C. 7/67-8/67;  
Teacher, Dunbar High School, Washington, D.C. School System, 1/69-6/69;  
Substitute teacher, Vigo County, Indiana School System, 9/69-6/70;  
Assistant Director, Manual High School-University of Northern Colorado Model Cities Project, Denver, Colorado, 9/70-9/71;  
Substitute teacher at John Adams Junior High School, Los Angeles Unified School District, 5/72-6/72;  
Director, Norman Topping Student Aid Fund, University of Southern California, 9/72-8/74;  
Assistant Attorney, Legal Aid Foundation of Los Angeles, 10/77-1/78;  
Deputy District Attorney (Now Assistant District Attorney), Los Angeles County District Attorney's Office, 1/78-present.

As part of my current position as Assistant District Attorney, I have responsibilities for the Bureau of Crime Prevention and Youth Services. In this connection, I am an officer with the following non-profit foundations organized recently to seek possible private funding for our community outreach efforts:

Advisor, Special Assistance to Victims in Emergency (SAVE), a non-profit foundation of the Los Angeles County District Attorney's Office, 1992-93.

Secretary, Los Angeles County District Attorney's Foundation (non-profit), 1993.

President, Los Angeles County District Attorney's Crime Prevention Foundation (non-profit), 1993.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Honors:

Langston Bar Association Lawyer of the Year, 1988  
 Honoree, Howard University Alumni Club of Southern California, 1989  
 Woman of the Year, Howard University, 1967  
 Who's Who in American Colleges & Universities, 1967

Academic Distinctions:

Order of the Coif, 1977  
 Phi Beta Kappa, 1967  
 Dean's List, Howard University (1963-67)  
 Dean's List, American University (1968-1/69)  
 Four-year Academic Scholarship, Howard University, 1963-67

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Current Bar Associations & Professional Societies:

State Bar Committee of Bar Examiners since June, 1991;  
 Chair, Sub-Committee on Moral Character, 1992-93; Co-Chair,  
 Sub-Committee on Moral Character, 1993-94

Black Women Lawyers of Los Angeles County

Trustee, Langston Bar Association of Los Angeles

National Bar Association

California Women Lawyers

Women Lawyers of Los Angeles

Los Angeles County Bar Association

Los Angeles County Bar Judiciary Committee, 1985-present

California District Attorneys' Association

The following are significant past chairmanships and memberships on Bar committees, professional societies or commissions:

Deputy General Counsel, Office of the Special Advisor to the Los Angeles Police Department Board of Commissioners, (Webster-Williams Commission), appointed to investigate the L.A.P.D. response to the April, 1992 civil disorders in Los Angeles, 1992

Los Angeles County Bar Board of Trustees, 1989-91

Member, Los Angeles County Bar Judicial Appointments Committee, 1988-91

Member, Los Angeles County Bar Litigation Section, Inn of Court, 1990-91

Chair, Executive Committee, State Bar Criminal Law Section, 1987-88; Advisor to the Executive Committee, 1988-90

Member, Executive Committee, Los Angeles County Bar Association Delegation to the State Bar Annual Meeting, 1986-89

Chair, Los Angeles County Bar Criminal Justice Section, 1986-87

President, Association of Los Angeles County Deputy District Attorneys, 1984

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

I believe the following organizations to which I belong lobby before the California State Legislature: State Bar of California (mandatory bar association); Los Angeles County Bar Association; California District Attorneys Association; California Women Lawyers; Women Lawyers of Los Angeles; National Bar Association; Parent-Teacher Association. To the best of my knowledge, I do not

belong to any other organizations, with the exception of the additional Bar associations listed in the response to #9.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

California Bar, 12/1977  
United States District Court, Central District of California, 4/20/1982

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

I am enclosing three articles which I wrote in 1987, 1988, and 1990, respectively, for newsletters published by the State Bar of California. Two were written in 1987 and 1988 for Criminal Law News in my capacity as Chair of the State Bar Criminal Law Section. The third article appeared in the August, 1990 issue of The Minority Lawyer, published by the State Bar's Ethnic Minority Relations Committee.

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent. My most recent physical examination was on August 6, 1993.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all

appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Not applicable.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

I am a member of the California State Bar Committee of Bar Examiners, a position to which I was appointed by the State Bar Board of Governors.

In 1992, I was also appointed as a Deputy General Counsel to the Office of the Special Advisor to the Los Angeles Police Department (LAPD) Board of Commissioners (Webster-Williams Commission), appointed to ascertain the nature of the Los Angeles Police Department's response to the April, 1992 civil unrest in Los Angeles. The Commission interviewed over 400 people, conducted a telephone survey, and held meetings to assist in its determination of the effectiveness of the LAPD's level of preparation. I was one of four Deputy Counsel supervising an attorney team of lawyers whose responsibility was to conduct interviews of LAPD personnel. In addition to describing and assessing the LAPD's response to the civil unrest, the Commission made recommendations designed to assist both the LAPD and the entire City of Los Angeles in efforts to improve emergency preparedness. In brief, the Commission recommended that the LAPD strengthen its emphasis upon basic patrol duties, that the LAPD and Los Angeles City as a whole pay increased attention to emergency response planning and training, and that the emergency operations center and communications systems for the LAPD and the City of Los Angeles be modernized.

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. Whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk:

No clerkship.

2. Whether you practiced alone, and if so, the addresses and dates:

No solo practice.

3. The dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each:

- 1) Legal Aid Foundation of Los Angeles (LAFLA)  
9/77-12/77  
Administrative address:  
1550 West Eighth Street  
Los Angeles, CA 90017  
Assistant Attorney (Agency's title for a law school graduate who has not been sworn in as an attorney)
- 2) Los Angeles County District Attorney's Office  
1/78 to present  
210 West Temple Street, Los Angeles, CA 90012  
1/78-6/87: Deputy District Attorney  
6/87-10/88: Head Deputy, Torrance Branch Office  
10/88-12/92: Assistant Director, Bureaus of Central Operations and Special Operations  
12/92-present: Assistant District Attorney, one of three highest ranking administrators in an office of approximately 900 deputy district attorneys.

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

I practiced criminal law as a deputy district attorney in court until June, 1987. I served in preliminary hearing, misdemeanor and juvenile prosecution units. I also negotiated cases in the Consumer and Environment Protection Division from July, 1980 until April, 1983. I was the Grand Jury Legal Advisor for two years from April, 1983 to June, 1985. My next assignment was as a

calendar deputy in the Central Operations Division from July, 1985 to June, 1987.

From June, 1987 until October, 1988, I was the Head Deputy of the Torrance Branch office of the District Attorney's Office. I was an Assistant Director with oversight of criminal law divisions from October, 1988 until December 7, 1992. As a Head Deputy I approved charging decisions and dispositions in major cases in the Torrance Branch of the District Attorney's office. As an Assistant Director, I participated in broader policy-making issues, although I still made decisions as to the filing, scope of, and disposition of, major cases in the criminal bureau.

Since December 7, 1992, I have been the third highest administrator and the highest ranking woman of color in the Los Angeles County District Attorney's office, which is the largest local prosecutorial office in the nation with approximately 900 attorneys. Although the District Attorney's office is predominantly a criminal law office, I am currently supervising child support policies and procedures in the Bureau of Family Support. I also oversee the Bureau of Management and Budget and the Bureau of Crime Prevention and Youth Services.

In addition, I have responsibility for all Employee Relations decisions within the department. This includes oversight of disciplinary matters and departmental implementation of the Americans with Disabilities Act. I conduct Skelly hearings (Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194) in disciplinary matters involving deputy district attorneys, and make litigation decisions on matters before the Los Angeles County Civil Service Commission.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Since being sworn in as an attorney in December, 1977, I have represented one client--the People of the State of California. As described above, I have specialized in criminal law. Of particular interest were my assignments to the Consumer and Environment Protection Division, and as Legal Advisor to the Los Angeles County Grand Jury. I



have been in increasingly responsible management positions since June, 1987, and am now one of two Assistant District Attorneys.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

As stated above in 17.b.1., I appeared in criminal courts on a regular basis from January, 1978 until June, 1987 (when I became the Head Deputy of the Torrance Branch) with the exception of the following periods:

7/80-4/83: Assignment to Consumer and Environment Protection Division. (I appeared in civil court infrequently, and then often before a Commissioner who accepted stipulated judgments.)

4/83-6/85: Advisor to the Los Angeles County Grand Jury.

2. What percentage of these appearances was in:  
 (a) federal courts;  
 (b) state courts of record;  
 (c) other courts.

My appearances were in state courts of record 100% of the time.

3. What percentage of your litigation was:  
 (a) civil  
 (b) criminal

My litigation was 100% civil from July, 1980 through April, 1983, consisting of lawsuits brought under California Business and Professions Code Sections 17200 (unfair business practices) and 17500 (false advertising).

From January, 1978 through June, 1980 and from April, 1983 through June, 1987, my litigation was 100% criminal.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I estimate that I tried approximately 200 criminal cases to verdict, including misdemeanor jury trials, misdemeanor and felony juvenile adjudications (all of which are Superior Court non-jury trials), and felony adult court and jury trials. I was sole counsel in all criminal cases.

5. What percentage of these trials was:  
 (a) jury  
 (b) non-jury.

Of my Superior Court adult trials, I estimate that 90% were jury and 10% non-jury trials. All juvenile court adjudications (estimating five per week for nine months) were non-jury Superior Court matters. To the best of my knowledge, my misdemeanor trials were jury trials.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:  
 (a) the date of representation;  
 (b) the name of the court and the name of the judge or judges before whom the case was litigated; and  
 (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

As a criminal trial lawyer, I gained invaluable experience by litigating and resolving the variety of cases that are part of the daily case load in the downtown criminal courts. Although these were not high-publicity cases, I consider my experience as a calendar deputy and regular trial deputy to be among my most valuable assignments.

In each of the eight criminal lawsuits listed below, I was the trial attorney for the Los Angeles County District Attorney's Office, representing the People of the State of California. I was co-counsel in the civil lawsuits listed as cases 9 and 10. All cases were litigated in the Los Angeles County Superior Court.

1. People v. Michael Iveys  
 Case Number: A772038  
 Charge: P.C. 211 (Robbery)  
 Judge: The Honorable Philip F. Jones (retired)

Defense Attorney: John Martinez, Office of the Public  
Defender, Rio Hondo Office, 11234  
East Valley Blvd., El Monte, CA  
91731; (818) 575-4174

Date of Verdict: January 24, 1986

Facts of case: The victim was walking in an alley behind a downtown hotel when he was approached and beaten by three individuals, one of whom was the defendant. The defendant took the victim's wallet. Two witnesses from the hotel came to the aid of the victim and held the defendant for police. The other two assailants escaped.

The jury convicted the defendant of robbery. He was sentenced to three years in State Prison.

2. People v. Cecil Turner

Case Number: A772155

Charge: 3 counts P.C. 245(a)

(Assault by means of force likely to produce great bodily injury and with a weapon.)

Judge: The Honorable Charles Older (retired)

Defense Attorney: James Goldstein

6454 Van Nuys Blvd., Van Nuys, CA 91401;

(818) 785-5553

Date of Verdict: February 12, 1986

Facts of case: The defendant was charged with three counts of assault with a deadly weapon against the three victims, who were brothers. The three brothers, young men in their 20's, testified that the defendant pulled two knives on one brother, and that all three brothers eventually disarmed the defendant. One brother was cut on his hand. However, the defendant himself sustained fairly serious injuries, including torn tendons on one arm. The victims never admitted that they had inflicted these wounds on the defendant, despite the presence of medical records.

The jury found the defendant not guilty.

3. People v. Cornelius Fredericks Banks

Case Number: A769521

Charge: P.C. 245(a)

(Assault by means of force likely to produce great bodily injury and with a deadly weapon.) An enhancement of great bodily injury was also charged.

Judge: The Honorable Robert Altman

Defense Attorney: Albert E. Hopkins

1324 Wierfield Dr., Pasadena, CA 91105; (818)  
931-1567

Date of Verdict: April 23, 1986

Facts of Case: In July, 1985, the victim was walking with a girlfriend when the defendant, her estranged boyfriend, approached her and allegedly slashed her face with a knife. The victim's credibility was successfully attacked on several major issues during the trial. The jury returned a not guilty verdict.

4. People v. Larry Charles McKiever

Case Number: A781270

Charge: P.C. 290(b), 211; V.C. 10851  
(Kidnapping for robbery, robbery, taking an  
automobile without the owner's consent.)

Judge: The Honorable Paul Boland

Defense Attorney: George S. Clark  
880 West 1st Street, Los Angeles, CA 90012;  
(213) 617-8128

Date of Verdict: August 1, 1986

Facts of case: The defendant, along with another suspect, jumped into the car driven by the 40-year-old female victim. They forced her to drive from downtown Los Angeles to South Central Los Angeles, where they forced her from her car, took her wallet and her car, and left her. The defendant was arrested driving the victim's car two days later.

The jury found the defendant guilty of all charges. He was sentenced to State Prison for life and to a five year enhancement for a prior conviction.

5. People v. Anthony Carl Rogers

Case Number: A782730

Charge: P.C. 211 (Robbery)  
Enhancement charging use of a knife was also  
filed.

Judge: The Honorable Miriam Vogel

Defense Attorney: Edward M. Mizrahi  
Mizrahi & Geffen, 9930 La Cienega Blvd.,  
#519, Inglewood, CA 90301; (310) 216-0660

Date of Verdict: August 18, 1986

Facts of Case: The defendant, acting with a juvenile co-suspect, cornered the victim, a mother out with her baby and her young daughter. The defendant allegedly brandished a knife and demanded money. He struck the victim twice in the face when she was too slow in giving him money.

The jury found the defendant guilty of robbery. It did not return the enhancement. The defendant was sentenced to five years in State Prison.

6. People v. Jeffrey Forest Hughes

Case Number: A779204

Charge: P.C. 187 (Murder)

It was also alleged that the defendant personally used a firearm.

Judge: Commissioner Ronald Hauptman

Defense Attorney: Albert DeBlanc

DeBlanc & Alexander, 5750 Wilshire Blvd.,

#555, Los Angeles, CA 90036; (213) 965-0949

Date of Verdict: January 29, 1987

Facts of case: At 2:00 a.m. one morning, the victim and his friend drove in the friend's car to an area where they had heard they could purchase cocaine. A group of several people, including the defendant, flagged them down. After some preliminary discussions over the price of the cocaine, the defendant fired several shots into the car at the victim, who was in the passenger seat, and his friend. The victim was shot five times. Although his friend drove straight to a hospital, the victim died from multiple gunshot wounds. The People presented eyewitness testimony which placed the defendant at the scene with a weapon.

The jury returned a verdict of second degree murder. The defendant was sentenced to State Prison for 15 years to life plus 2 years for the enhancement alleging use of a gun.

7. People v. Horace Butler

Case Number: A781930

Charge: 1 - 3 counts H.S. 11352 (Sale of cocaine)  
2 - H.S. 11379.6 (a) (Manufacture of a  
controlled substance other than P.C.P.)

Judge: The Honorable Robert Roberson

Defense Attorney: Herbert Barish

1007 So. Central, #208, Glendale, CA 91204;  
(818) 242-7400

Date of Verdict: March 17, 1987

Facts of case: The defendant was charged with three counts of sale of cocaine to an undercover officer in 1986. The undercover officer also watched the defendant process a piece of rock cocaine. The jury found the defendant guilty on all four counts. He was sentenced to four years in State Prison, which was suspended, and to probation and county jail.

8. People v. July T. Dy  
 Case Number: A 781903  
 Charge: 1 count P.C. 487.1 (Grand theft of personal property.  
 9 counts I.C. 556(a)(4) (Preparing fraudulent insurance claims)  
 Judge: The Honorable Charles Older (retired)  
 Defense Attorney: Donald R. Schindler  
 Combell, Ack & Driscoll, P.O. Box 1065,  
 Placerville, CA 95667; (916) 622-2992  
 Date of Verdict: April 8, 1987

Facts of case: This was a fairly complicated insurance fraud case. The total loss suffered by the insurance company was approximately \$26,000.00. The defendant, a medical doctor and surgeon, applied for a disability insurance policy in 1976 in Indiana. He then moved to California, where he had both a private practice and, eventually, full-time employment with the Los Angeles County Department of Health Services. In 1984, the defendant became infected with hepatitis and was in fact for a time unable to do surgery because of the danger of contaminating patients. Subsequently, the defendant contacted his insurance company. The insurance company knew the defendant had a private practice. However, he never disclosed to the insurance company that he was an employee of the Los Angeles County Department of Health Services.

The defendant submitted monthly claims for full disability and collected monthly payments without revealing that he was working as a full-time employee of the Department of Health Services.

The jury convicted the defendant of all ten counts. He was sentenced to three years probation and payment of full restitution plus applicable fines and assessments.

9. People of the State of California vs. Southern California Edison  
 Case Number: C372982  
 Charge: Civil prosecution for violation of Business and Professions Code Section 17200.  
 Judge Approving Stipulated Judgment: Judge Pro Tempore Clinton Rodda  
 Co-Counsel: Deputy District Attorney, now Head Deputy, John F. Lynch, Santa Monica Branch Office, 1725 Main St., Santa Monica, CA 90401, (310) 458-5341.  
 Defense Attorney: Mark E. Mikulka  
 So. Calif. Edison Co., 2244 Walnut Grove Avenue, Rosemead, CA 91770;

(818) 302-3272

Date of Stipulated Judgment: June 30, 1981

Facts of case: This was a non-litigated but significant civil case which resulted in a Stipulated Final Judgment. As a civil litigator in the Consumer and Environment Protection Division, I was one of two attorneys assigned to a 1981 civil prosecution against Southern California Edison (SCE), which provides electricity for Southern California.

SCE used transformers which contained polychlorinated biphenyl ("PCB"), a substance regulated as a hazardous waste under Health and Safety Code Sections 21500 et seq. The PCBs were contained primarily in transformers, which occasionally ruptured or leaked, resulting in accidental spills of PCB. SCE failed to clean up the spills in accordance with the Health and Safety Code sections governing the handling and disposal of hazardous waste. In addition, SCE transported the material from the spills to hazardous waste facilities; however, SCE did not register as a hauler of hazardous waste as required by the Health and Safety Code Section. The District Attorney's office alleged that both SCE's failure to effectively clean the PCB spills and its failure to register as a hazardous waste hauler constituted unlawful business practices in violation of Business and Professions Code Section 17200.

Several months of negotiations with SCE culminated in the June 30, 1981 filing of a Complaint and Stipulated Final Judgment which contained the largest civil judgment and costs (\$85,400) negotiated to that date by the Consumer and Environment Division. The Attorney General joined in the Judgment, but all case negotiations were handled by DDA Lynch and me. The Final Judgment also contained an injunction which required Southern California Edison to notify the State Department of Health Services by the end of the first business day following the spill, to notify customers near the spill within twenty-four hours after the spill, and to clean up every spill site in accordance with all federal standards and further orders from the State Department of Health Services.

10. People of the State of California vs. Giorgio, Inc.  
 Case Number: L.A. Superior Court C412556  
 Charge: Civil prosecution for violation of Business & Professions Code Section 17200.  
 Judge Approving Stipulated Judgment: Judge Pro Tempore Bertrand D. Mouron

Co-Counsel: DDA (now Head Deputy) John F. Lynch,  
1725 Main Street, Santa Monica, CA  
90401; (310) 458-5341.

Defense Counsel: David Birnbaum (then with Gibson,  
Dunn & Crutcher); University of CA,  
Berkeley, Office of General  
Counsel, 291 Boalt Hall, Berkeley,  
CA 94720-2499; (510) 987-9725

Date of Stipulated Judgment: May 28, 1982

Facts of case: Following service of simultaneous search warrants at several Beverly Hills shops, DDA John Lynch and I alleged unfair business practices under Business & Professions Code Section 17200 against several Beverly Hills retail stores which sold pocketbooks, belts, and other items made from endangered species in violation of California Penal Code Section 653(o). Negotiations resulted in the filing of Stipulated Final Judgments as to all the retailers. One such judgment was reached with Giorgio, Incorporated, which paid \$7,000 in civil penalties and costs and was subject to an injunction requiring compliance with Penal Code Section 653(o).

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question. Please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

The most significant legal activities which I have pursued include my criminal trial work, my civil litigation in consumer and environment protection, my assignment as the Legal Advisor to the Grand Jury, and the legal activities in which I have been involved since becoming Assistant Director and now Assistant District Attorney.

As a civil litigator in the Consumer and Environment Protection Division, I gained valuable civil pre-trial litigation and negotiating experience with cases in the consumer and environmental protection area. One of the consumer protection cases I handled was People v. La Victoria Foods, Inc., Los Angeles Superior Court C355633. This was a negotiated Final Judgment including \$40,000 in civil penalties and costs against La Victoria Foods, a local manufacturer of salsas and sauces, for unfair business practices under Business and Professions Code Section 17200. The violations arose from unsanitary conditions at La



Victoria's food processing plant in violation of the Health and Safety Code.

During my term as Grand Jury Legal Advisor, the Grand Jury heard some of the most complex cases ever handled by the Los Angeles County District Attorney's Office, including the Twilight Zone case and the McMartin Pre-school molestation case. I also had the opportunity to assist the grand jurors in their role of civil oversight of County government.

As an administrator, I have been involved in a number of significant legal activities. While serving as a Head Deputy and Assistant Director in three criminal bureaus, I had the opportunity to make filing decisions and case disposition decisions on the most significant cases within those bureaus.

As Assistant District Attorney since December, 1992, I have recently been involved in assisting with budget negotiations during what is arguably the most challenging fiscal year in Los Angeles County's history. Although this is not a legal activity, I have gained invaluable administrative experience as well as an understanding of the budgeting process in a county government larger than most states. Similarly, I supervise the Bureau of Family Support, with its separate staff of attorneys and support staff, and its separate budget and complex relationships with the federal and state government.

Perhaps of most recent importance was my service as a Deputy General Counsel on the Webster-Williams Commission appointed to investigate the Los Angeles Police Department (LAPD) response to the April, 1992 civil disorders. Our Commission worked during the entire summer of 1992 to review the LAPD's reaction to the civil unrest. I was one of four Deputy Counsel in charge of an attorney team which interviewed over 200 LAPD officers, ranging from patrol officers to the then Deputy Chief for the Commission.

In addition to describing and assessing the LAPD's response to the civil unrest, the Commission made recommendations designed to assist both the LAPD and the entire City of Los Angeles in efforts to improve emergency preparedness. In brief, the Commission recommended that the LAPD strengthen its emphasis upon basic patrol duties, that the LAPD and Los Angeles City as a whole pay increased attention to emergency response planning and training, and that the emergency operations center and communications systems for the LAPD and the City of Los Angeles be modernized.

I am a member of the State Bar Committee of Bar Examiners, and have been the Chair of the Subcommittee on Moral

Character for the past year. Our Subcommittee conducts voluntary interviews of applicants whose backgrounds have raised issues which must be resolved before their admission to the Bar. This work has proved to be of significant value to the State Bar and has been personally rewarding for me.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

When I reach retirement age, I will receive retirement income from the Los Angeles County Employees Retirement Association (LACERA) and the County of Los Angeles Savings Plan (assuming that I remain in those plans). Alternatively, I may "roll-over" my retirement funds into an Individual Retirement Account (IRA) within 180 days of terminating my employment with the County. I will also continue to receive interest income, dividends, and capital gain distributions as indicated on my Form AO-10.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I would immediately disclose to all litigants the potentially conflicting ownership of stocks, bonds, or mutual funds, as well as my prior employment with Los Angeles County and membership in the Los Angeles County Employees Retirement Association (LACERA) and the County of Los Angeles Savings Plan (assuming that I remain in those plans). I would indicate whether I considered the particular holding to constitute a conflict of interest, and would remove myself from any involvement with the case if I concluded that either an actual conflict or the appearance of a conflict of interest existed.

I do not anticipate any other sources of potential conflict. I will, of course, follow all canons of the Code of Judicial Conduct in reference to any potential conflict of interest.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

Please see Form A0-10 for sources and amounts of all income called for in this question.

5. Please complete the attached financial net worth statement in detail (add schedules as called for).

Please see attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No.

AO-10  
Rev. 1/93

# FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics  
Reform Act of 1989, Pub. L. No.  
101-194, November 30, 1989  
(5 U.S.C.A. App. 6, §§101-112)

|  |   |                                      |
|--|---|--------------------------------------|
| 1. Person Reporting (Last name, first, middle initial)<br><br>Collins, Audrey B.   | 2. Court or Organization<br><br>United States District Court,<br>Central District of California   | 3. Date of Report<br><br>1/29/94     |
| 4. Title (Article III Judges indicate active or senior status; Magistrate Judges indicate full- or part-time)<br><br>Nominee, district court   | 5. Report Type (check appropriate type)<br><input checked="" type="checkbox"/> Nominating, Date <u>1/27/94</u><br><input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final | 6. Reporting Period<br><br>1/93-1/94 |
| 7. Chambers or Office Address<br><br>L.A. County District Attorney's Office<br>18-201 Criminal Courts Building<br>210 West Temple Street<br>Los Angeles, CA. 90012   | 8. On the basis of the information contained in this Report, it is, in my opinion, in compliance with applicable laws and regulations _____<br><br>Reviewing Officer Signature _____                              |                                      |
| <b>IMPORTANT NOTES:</b> <i>The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on last page.</i> |   |                                      |

## I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

POSITION

NAME OF ORGANIZATION/ENTITY

NONE (No reportable positions)

Assistant District Attorney \_\_\_\_\_ Los Angeles County District Attorney

President \_\_\_\_\_ L.A. County District Attorney's Crime Prevention Foundation (non-profit), 1993-94

Secretary \_\_\_\_\_ L.A. County District Attorney's Foundation (non-profit), 1993-94

## II. AGREEMENTS. (Reporting individual only; see p. 8-9 of Instructions.) (continued at VIII.)

DATE

PARTIES AND TERMS

NONE (No reportable agreements)

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

DATE  
(Honoraria only)

SOURCE AND TYPE

GROSS INCOME  
(yours, not spouse's)

NONE (No reportable non-investment income)

|   |   |                    |
|---|---|--------------------|
| 1 | (1992) L.A. County District Attorney's Office (self)    | \$ 108,812         |
| 2 | (1993) L.A. County District Attorney's Office (self)    | \$ 114,492         |
| 3 | (1994) L.A. County District Attorney's Office (self)    | \$ 9,400 (approx.) |
| 4 | (1992-94) L.A. County Dept. of Health Services (spouse) | \$ _____           |
| 5 | (1993) Oxy U.S.A. - Oil royalty (community property)    | \$ 258             |

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Date of Report

Collins, Audrey B.

1/29/1994

**IV. REIMBURSEMENTS and GIFTS – transportation, lodging, food, entertainment.**  
 (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

SOURCEDESCRIPTION

NONE (No such reportable reimbursements or gifts)

|   |        |  |
|---|--------|--|
| 1 | Exempt |  |
| 2 |        |  |
| 3 |        |  |
| 4 |        |  |
| 5 |        |  |
| 6 |        |  |
| 7 |        |  |
| 8 |        |  |

**V. OTHER GIFTS.** (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp.15-16 of Instructions.)

SOURCEDESCRIPTIONVALUE

NONE (No such reportable gifts)

|   |        |  |    |
|---|--------|--|----|
| 1 | Exempt |  | \$ |
| 2 |        |  | \$ |
| 3 |        |  | \$ |
| 4 |        |  | \$ |

**VI. LIABILITIES.** (Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp.16-18 of Instructions.)

CREDITORDESCRIPTIONVALUE CODE\*

NONE (No reportable liabilities)

|   |  |   |
|---|--|---|
| 1 | Connecticut Higher Education Supplemental Loan Co-borrower on student loan for | K |
| 2 | 26-year old son at Yale Law School   |   |
| 3 |  |   |
| 4 |  |   |
| 5 |  |   |
| 6 |  |   |
| 7 |  |   |

\* VALUE CODES: J = \$15,000 or less    K = \$15,001 to \$50,000    L = \$50,001 to \$100,000    M = \$100,001 to \$250,000  
 N = \$250,001 to \$500,000    O = \$500,001 to \$1,000,000    P = More than \$1,000,000

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Date of Report

Collins, Audrey B.

1/29/1994

## VII. INVESTMENTS AND TRUSTS - income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

| A.<br>Description of Assets<br>(Including trust assets)<br><br>Indicate, where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.<br><br>Place "(X)" after each asset exempt from prior disclosure.  | B.<br>Income during reporting period |                          | C.<br>Gross Value at end of reporting period |                          | D.<br>Transactions during reporting period |                     |                       |                      |   |
|--|--------------------------------------|--------------------------|--|--------------------------|--|---------------------|-----------------------|----------------------|---|
|  | (1)                                  | (2)                      | (1)  | (2)                      | If not exempt from disclosure              |                     |                       |                      |   |
|  | Act. Code:1 (A-B)                    | Type (S, J, DC, or Int.) | Value: (J-P)                                 | Value Method: Code (Q-V) | (1) Type (S, J, DC, or Int.)               | (2) Date: Month/Day | (3) Value: Code (J-P) | (4) Date: Code (A-B) | (5) Identity of Buyer/Seller (if private transaction) |
| <input type="checkbox"/> NONE (No reportable income, assets, or transactions)  |                                      |                          |  |                          | EXEMPT                                     |                     |                       | EXEMPT               |   |
| 1 Residence, Los Angeles, Ca. (J) C Rent K/M R/V*  |                                      |                          |  |                          |  |                     |                       |                      |   |
| 2 Acct. #134-990196-3,134-100506-1 Home Savings of America (J) A Interest J T  |                                      |                          |  |                          |  |                     |                       |                      |   |
| 3 Acct. #72-32889-1 Broadway Federal Savings & Loan (J) A Interest J T   |                                      |                          |  |                          |  |                     |                       |                      |   |
| 4 Acct. #2439-0870 Charles Schwab Brokerage Acct (J) A Div. K T  |                                      |                          |  |                          |  |                     |                       |                      |   |
| 5 Acct. #596-012019-407 A.C. Edwards & Sons Brokerage Acct (J) A Div. K T  |                                      |                          |  |                          |  |                     |                       |                      |   |
| 6 Dodge & Cox Balanced Fund (J) A Div. J T   |                                      |                          |  |                          |  |                     |                       |                      |   |
| 7 T. Rowe Price New Asia Fund (J) A Div. - T   |                                      |                          |  |                          |  |                     |                       |                      |   |
| 8 Janus Venture Fund, Inc. (J) A Div. - T  |                                      |                          |  |                          |  |                     |                       |                      |   |
| 9 Sudder Short Term Bond Fund (J) A Div. - T   |                                      |                          |  |                          |  |                     |                       |                      |   |
| 10 Benham GMA Income Fund (J) B Div. K T   |                                      |                          |  |                          |  |                     |                       |                      |   |
| 11 Acct. #2433-9971 IRB-Charles Schwab (self) A Int. K T   |                                      |                          |  |                          |  |                     |                       |                      |   |
| 12 Acct. #2439-8862 IRB-Charles Schwab (spouse) A Int. K T   |                                      |                          |  |                          |  |                     |                       |                      |   |
| 13   |                                      |                          |  |                          |  |                     |                       |                      |   |
| 14   |                                      |                          |  |                          |  |                     |                       |                      |   |
| 15   |                                      |                          |  |                          |  |                     |                       |                      |   |
| 16   |                                      |                          |  |                          |  |                     |                       |                      |   |
| 17   |                                      |                          |  |                          |  |                     |                       |                      |   |
| 18   |                                      |                          |  |                          |  |                     |                       |                      |   |
| 19   |                                      |                          |  |                          |  |                     |                       |                      |   |
| 20   |                                      |                          |  |                          |  |                     |                       |                      |   |
| 1 Income/Gain Codes: A=\$1,000 or less B=\$1,001 to \$2,500 C=\$2,501 to 5,000 D=\$5,001 to \$15,000<br>(E= \$15,001 to \$50,000 F=\$50,001 to \$100,000 G=\$100,001 to \$1,000,000 H=more than \$1,000,000)<br>2 Value Codes: J=\$15,000 or less K=\$15,001 to \$50,000 L=\$50,001 to \$100,000 M=\$100,001 to \$250,000<br>(N=\$250,001 to \$500,000 O=\$500,001 to \$1,000,000 P=more than \$1,000,000)<br>3 Value Method Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market<br>(U=Book Value V=Estimated) |                                      |                          |  |                          |  |                     |                       |                      |   |

## FINANCIAL DISCLOSURE REPORT (cont'd)

| Name of Person Reporting | Date of Report |
|--------------------------|----------------|
| Collins, Audrey B.       | 1/29/1994      |

## VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

## I. Positions(continued)

Advisor, Special Assistance to Victims in Emergency (SAVE) (non-profit foundation of L.A. County District Attorney's Office, 1992-93)

Trustee, Langston Bar Association of Los Angeles, 1993

## VII(continued)

#1, Residence, Los Angeles, Ca.

This residence was purchased in 1971 for \$29,000(cost.) However, that does not reflect its true value today.

I believe the current market value to be approximately \$200,000-\$220,000. (Note: The assessed value of the

home is lower than market value because California's Proposition 13 has frozen the assessed value of homes

owned since the 1970's.)

## IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature

Audrey B. Collins

Date January 29, 1994

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, § 104, AND 18 U.S.C. § 1001.)

## FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Judicial Ethics Committee  
Administrative Office of the  
United States Courts  
Washington, DC 20544



## FINANCIAL STATEMENT

## NET WORTH

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Provide a complete, current financial net worth statement which itemizes in detail all assets (including accounts, real estate, securities, trusts, investments, and other financial holdings), all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

| ASSETS                             |           | LIABILITIES                               |        |
|------------------------------------|-----------|---|--------|
| Cash on hand and in banks          | \$20,601  | Notes payable to banks-secured            | 0      |
| U.S. Govt. securities-add schedule | 0         | Notes payable to banks-unsecured          | 0      |
| Listed securities-add schedule     | \$80,534  | Notes payable to relatives                | 0      |
| Unlisted securities-add schedule   | 0         |   |        |
| Accounts and Notes receivable      | 0         | Notes payable to others                   | 0      |
| Due from relatives and friends     |           |   |        |
| Due from others                    |           |   |        |
| Doubtful                           |           |   |        |
| Real estate owned-add schedule     | \$655,000 | Accounts and bills due                    | 0      |
| Real estate mortgages receivable   | 0         | Unpaid income tax                         | 0      |
| Autos and other personal property  | \$131,000 | Other unpaid tax and interest             | 0      |
| Cash value-life insurance          | 0         | Real estate mortgage payable-add schedule | 11,802 |
| Other assets-itemized on schedule  | \$53,510  | Other mortgages and other liens payable   | 0      |

|                     |   |
|---------------------|---|
| Other debts-itemize | 0 |
|---------------------|---|

|              |           |                                 |           |
|--------------|-----------|---------------------------------|-----------|
| Total assets | \$940,645 | Total liabilities               | \$11,802  |
|              |           | Net worth                       | \$928,843 |
|              |           | Total liabilities and net worth | \$940,645 |

## CONTINGENT LIABILITIES

|                                   |          |
|-----------------------------------|----------|
| As endorser, comaker or guarantor | \$18,230 |
| On leases or contracts            | 0        |
| Legal Claims                      | 0        |
| Provision for federal income tax  | 0        |
| Other special debt                | 0        |

## GENERAL INFORMATION

|  |    |
|--|----|
| Are any assets pledged?<br>(Add schedule)        | No |
| Are you defendant in any suits or legal actions? | No |
| Have you ever taken bankruptcy?                  | No |

-----

## FINANCIAL STATEMENT

## NET WORTH

## SCHEDULE

| LISTED SECURITIES                                 | CASH/MARKET VALUE |
|---|-------------------|
| -----   |                   |
| 1. Charles Schwab                                 |                   |
| Roche Holding A.G.                                | \$ 8,160          |
| Schwab Money Market Fund                          | 10,343            |
| 2. A.G. Edwards                                   |                   |
| Centennial Government Trust                       | \$16,351          |
| 3. Charles Schwab IRA-Audrey B. Collins           |                   |
| Cable & Wireless Spon ADRF                        | 4,800             |
| Hong Kong Tele, Ltd.                              | 6,225             |
| Merck & Co., Inc.                                 | 3,438             |
| NovaCare  | 3,050             |
| Vestar  | 1,250             |
| Schwab Money Market Fund                          | 4,065             |
| 4. Charles Schwab IRA-Timothy R. Collins (spouse) |                   |
| Cable & Wireless Spon ADRF                        | 4,800             |
| Hong Kong Tele, Ltd.                              | 6,225             |
| Merck & Co., Inc.                                 | 3,438             |
| NovaCare  | 3,050             |
| Vestar  | 1,250             |
| Schwab Money Market Fund                          | 4,089             |
| TOTAL   | \$80,534          |
|   |                   |
| REAL ESTATE OWNED                                 |                   |
| 1. Residence                                      |                   |
| Current Market Value (approximate)                | \$455,000         |
| 2. Residential Property                           |                   |
| Los Angeles, CA                                   |                   |
| Current Market Value (approximate)                | \$200,000         |
| TOTAL   | \$655,000         |

## OTHER ASSETS

## Mutual Funds:

|                                  |          |
|----------------------------------|----------|
| Dodge & Cox Balanced Fund.....   | \$4,138  |
| Monetta Fund, Inc.....           | \$278    |
| T. Rowe Price New Asia Fund..... | \$4,821  |
| Lindner Fund, Inc.....           | \$376    |
| Janus Venture Fund, Inc.....     | \$3,373  |
| Wasatch Growth Fund.....         | \$663    |
| Scudder Short Term Bond Fund..   | \$7,000  |
| Benham GNMA Income Fund.....     | \$32,861 |

TOTAL \$53,510

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Because of the limitations placed upon Los Angeles County attorneys by the County Charter, I have not participated in pro bono activities. Los Angeles County Charter Section 55 states: "The District Attorney, Public Defender, County Counsel and their deputies shall not engage in any private law practice, and they shall devote all their time and attention during business hours to the duties of their respective offices."

In 1989 I represented the District Attorney's Office on Safe Harbors, a project sponsored by the South Central Organizing Committee (SCOC), United Neighborhoods Organization (UNO), and East Valley Organization (EVO) to promote the safety of our residents, especially children, in streets and parks. We sought, but did not receive, federal funding in 1989.

I am the only woman and the only prosecutor joining the Los Angeles Black Peace Officers Association (BPOA) in meeting with African-American gang members in South Central Los Angeles. The original purpose of the meetings was to promote communication and understanding between law enforcement and members of gangs in South Central Los Angeles. A new objective is to find meaningful employment for interested former gang members. These meetings are not held during office hours.

In other community-related activities, I spoke at the Drive-By Agony March sponsored by the mother of two murdered sons on April 24, 1993, at the Criminal Courts Building, and at the Interfaith Coalition to Heal L.A. meeting on March 25, 1993 at Holman Methodist Church.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates--through either formal membership requirements or the practical implementation of

membership policies? If so, list, with dates of membership. What have you done to try to change these policies?

I have not belonged to any such organization, to the best of my knowledge. However, from 1965-67 I was active in my college sorority, Alpha Kappa Alpha. Its membership consisted of only women. I do not know whether its By-laws then, or now, restricted membership to women. I have not been a financial member since 1967.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

To the best of my knowledge, there is not an independent selection commission in my jurisdiction to recommend candidates for nomination to the federal courts. However, I was interviewed by Senator Dianne Feinstein's Judicial Advisory Committee for the Central District of California. I also requested that Women Lawyers of Los Angeles evaluate me through their judicial recommendation process. The organization evaluated me as "Exceptionally Well Qualified."

Senator Feinstein's Judicial Advisory Committee for the Central District of California interviewed me in April, 1993. I was subsequently interviewed by Senator Feinstein in her San Francisco office. Senator Feinstein's State Director, Kam Kuwata, was also present during the interview.

I have subsequently had telephone conversations with officials from the Department of Justice, and have met with representatives from the Federal Bureau of Investigation and the American Bar Association.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Criticism of "judicial activism" within the Federal judiciary has been the subject of increasing controversy in recent years. Although some of this criticism may be well-founded, based upon decisions which appear to impose far-reaching orders, much of this criticism may also be based upon disagreements with either individual rulings or the legislative decision to increase the court's jurisdiction in the area of Constitutional civil rights.

Because of the authority and discretion vested in the federal district courts, it is especially critical that a district court judge recognize the appropriate Constitutional limitations upon the courts and follow existing law as applied to the facts before the court. If it appears to the public that federal jurists rule upon their personal and political views rather than the rule of law, public confidence in the judiciary as an independent branch of the federal government will be diminished. In becoming a federal district court judge, I would consider it my duty to put aside any personal biases and beliefs and apply the relevant law to the facts before the court.

An awareness of and willingness to follow the concepts discussed below, which all relate to the limited jurisdiction of the federal court, should curtail any legitimate criticism of the courts based upon "judicial activism." With the courts confronted with an increasing case load, including an expanding percentage of criminal cases which must be tried within statutory time limits, the federal courts must be mindful of the need for caution in issuing rulings which would require ongoing monitoring or review of other governmental institutions.

If confirmed as a federal district court judge, I would be mindful of the jurisdictional limitations inherent in the federal court system and would adhere to the following jurisdictional precepts and limitations to avoid criticism of the court:

Federal courts are courts of limited jurisdiction under Article III, Section 2 of the Constitution. They can adjudicate only those cases which the Constitution and Congress authorize them to adjudicate. The Constitution also limits the federal judicial power to designated "cases" and "controversies." This helps to assure that the courts do not intrude into areas committed to the other branches of government. The doctrine of standing, which examines whether the plaintiff has a redressable injury subject to the court's jurisdiction, is an essential element of the case-or-controversy requirement of Article III.

Lower courts are bound by the principal of stare decisis, which is defined as meaning "to abide by, or adhere to, decided cases." Black's Law Dictionary 1406 (6th ed. 1990). It may be understood as the obligation to follow judicial precedents to allow continuity and reliability in the law. It is obviously the role of district courts to abide by the rulings of appellate courts under this doctrine.

In summary, I have no agenda, and no preconception as to how I would rule upon any factual scenario or legal issue other than to apply the law as it stands to the facts at hand. As a federal district court judge, I would seek to be fair, to provide access to the judicial system, and to do justice under the Constitution and laws of the United States.



**QUESTIONNAIRE FOR JUDICIAL NOMINATION  
UNITED STATES SENATE COMMITTEE ON THE JUDICIARY**

**I. BIOGRAPHICAL INFORMATION (PUBLIC)**

1. Full name (include any former names used.)  
Fortunato Pedro Benavides (also referred to as Pete Benavides)
  
2. Address: List current place of residence and office address(es).  
  
OFFICE: 818 Pecan  
McAllen, Texas 78501  
  
HOME: 4246 Westlake Drive  
Austin, Texas 78746
  
3. Date and place of birth.  
February 3, 1947; Mission, Texas
  
4. Marital Status (including maiden name of wife, or husband's name): List spouse's occupation, employer's name and business address(es).  
  
Augusta Camille (Zapffe) Benavides; nurse; Seton Home Care; 4200 North Lamar, Austin, Texas 78756
  
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.
  - a. University of Houston (1965-1968), Houston, Texas; Received a Bachelor of Business Administration Degree (BBA) - 1968

- b. Bates College of Law at the University of Houston (1968-1972), University of Houston Law Center, Houston, Texas; Received Doctor of Jurisprudence (JD) - 1972
6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.
- a. 1972-1974: Associate, Rankin, Kern & Martinez (now Mullins and Rankin, Inc.); McAllen, Texas
  - b. 1974: Partner, Cisneros, Beery & Benavides; McAllen, Texas
  - c. 1975: Partner, Cisneros, Brown & Benavides; McAllen, Texas
  - d. 1976: Partner, Cisneros & Benavides; McAllen, Texas
  - e. 1977: Sole Proprietor, Fortunato P. Benavides, Attorney at Law; McAllen, Texas
  - f. 1977-1979: Judge, Hidalgo County Court-at-Law #2; Edinburg, Texas
  - g. 1980: Proprietor, Fortunato P. Benavides, Attorney at Law; McAllen, Texas
  - h. 1981-1984: Judge, 92nd District Court of Hidalgo County, Texas; Edinburg, Texas
  - i. 1984-1991: Justice, 13th Court of Appeals; Corpus Christi, Texas
  - j. 1991-1992: Judge, Texas Court of Criminal Appeals; Austin, Texas
  - k. 1993: Visiting Judge to courts in Texas; by assignment of Thomas R. Phillips, Chief Justice of the Supreme Court of Texas
  - l. November 1993-Present: Partner, Atlas & Hall, L.L.P.; McAllen, Texas

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.
- No
8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.
- a. Appointed to the Texas Juvenile Probation Commission in 1983; Austin, Texas; Resolution and plaque for service to the youth of Texas and to the Commission, received 1990
  - b. Plaque in honor of contributions to the Hispanic Women of Texas, presented by the Hispanic Women's Network of Texas, Corpus Christi, Texas
  - c. Certificate of Appreciation from St. Edward's University, Austin, Texas; for contributions in migrant education
  - d. The American Bar Association at its 1992 annual convention recognized me and awarded to me a certificate as an outstanding minority jurist.
9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.
- a. Member: State Bar of Texas, Austin, Texas; Member of District 12b Grievance Committee; 1977-1982
  - b. Member: Hidalgo County Bar Association, Edinburg, Texas; Director 1978, 1979, 1980; President 1980-1981 term
  - c. Member: San Patricio County Bar Association, Sinton, Texas
  - d. Member: Travis County Bar Association, Austin, Texas; Member 1991-1993

- e. Former Member: Corpus Christi Bar Association, Corpus Christi, Texas
  - f. Member: American Bar Association
  - g. Member: Hispanic National Bar Association, Melville, New York
10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Organizations to which I belong active in lobbying are the American Bar Association and the Hispanic National Bar Association. Other organizations to which I have belonged are as follows:

- a. Texas Center for the Judiciary, Inc. (non-profit organization providing continuing education and training for the Texas Judiciary), Austin, Texas; Member, Board of Directors 1990-1992
  - b. St. Michael's Episcopal Church, Austin, Texas; 1992 to present
  - c. St. Andrew's Episcopal Church, Corpus Christi, Texas; 1985-1991
  - d. St. Matthew's Episcopal Church, Edinburg, Texas; 1981-1985; Vestry Member 1984
  - e. Hidalgo County Easter Seals Society for Adult and Crippled Children, McAllen, Texas; Board of Directors 1980-1984
  - f. Mustangs of Corpus Christi, Corpus Christi, Texas; a community service organization; Member 1990-1991; Honorary member 1992
  - g. Mexican American Democrats of Texas, 1990-1992
11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.
- a. All Courts of the State of Texas: Admitted April 20, 1972; good

standing

b. United States Court of Appeals for the Fifth Circuit: Admitted March 27, 1975. On October 1, 1981, the Circuit was split. The new Fifth Circuit required reapplication. However, since I was a Texas District Court Judge at the time and the laws of Texas would not allow me to appear or plead in court while a judge, I did not reapply.

c. United States District Court for the Southern District of Texas: Admitted January 12, 1973. In 1985 the judges of the Southern District determined that admission or licenses should not be renewed and required reapplication. Because I was a justice on the Texas Court of Appeals and could not under Texas law plead or appear in court, I did not renew my admission or license in the District Court. I did not resume the practice of law until October 1993, and I was readmitted to practice on November 1, 1993.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

a. "*Recent Significant Decisions of the Texas Court of Criminal Appeals (1990-1991 Term)*;" published in workbook form for the Texas District and County Attorney's Association 1991 Annual Criminal Law Update, September 25-27, 1991, Galveston, Texas. The paper was updated, delivered and published in materials for the Texas Criminal Defense Lawyers Association, Practice Skills Course, January 16-17, 1992, El Paso, Texas. Additionally, it was part of the course materials published for the Hispanic National Bar Association 1991 meeting, San Antonio, Texas.

b. "*Confessions*;" published by the State Bar of Texas in material for the 17th Annual Advanced Criminal Law Course, August 5-9, 1991, Austin, Texas. Scott Young was the co-author. The paper was an update of the materials prepared by Michael McCormick, Presiding Judge of the Texas Court of Criminal Appeals, and Carroll Wilborn, Jr., Judge of the 344th Judicial District Court. Mr Young was responsible for nearly all of the work on the updated paper; I provided editing, suggested additional topics and cases, and orally presented the paper.

c. *"Texas Appellate Procedure--Briefs and Arguments on Appeal."* The paper outlined the appellate procedure rules in Texas with respect to briefs and arguments in civil and criminal cases. The article was prepared and reproduced for the Abilene Bar Association meeting of January 3, 1992. It was not published.

d. *"A Countdown of Cases."* A paper on the ten most significant criminal cases decided by the Texas Court of Criminal Appeals in 1991. The paper was delivered at the Texas Criminal Defense Lawyers Association's Practice Skills Course in Corpus Christi, Texas, and is a part of the Skills Course materials.

13. Health: What is the present state of your health? List the date of your last physical examination.

Good; September 20, 1993

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

a. Judge, Hidalgo County Court at Law #2, Edinburg, Texas; August 1977-December 1979; appointed 1977 by Hidalgo County Commissioners Court; elected to full term November 1978. Jurisdiction over probate matters, civil case over lesser amounts, eminent domain proceedings, proceedings under mental health code and jailable misdemeanors.

b. Judge, 92nd Judicial District Court of Hidalgo County, Texas; January 1981-1984; elected in 1980 for 4-year term. Jurisdiction over felony trials, official misconduct cases, civil cases involving greatest amounts in controversy and suits involving title to realty as well as mandamus and prohibition.

c. Justice, Thirteenth Court of Appeals; November 1984-April 1991; appointed by Governor Mark White in 1984; elected in 1986 for unexpired term and in 1988 for full term. The court has jurisdiction over appeals from trial courts of record as well as mandamus and prohibition matters.

d. Judge, Texas Court of Criminal Appeals; April 1991-January 1993; appointed by Governor Ann W. Richards in 1991. It is the court of last

resort in criminal matters. It exercises discretionary authority over decisions of the courts of appeal. It also has jurisdiction over post-conviction writs of habeas corpus and prohibition and mandamus action.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.
- (1)
    - a. *Nancy Johnson v. Del Mar Distributing Co., Inc.*; 776 SW 2d 768 (Tex App--Corpus Christi, 1989)
    - b. *State National Bank v. Academia, Inc., et al*; 802 SW 2d 282 (Tex App--Corpus Christi, 1990)
    - c. *Benjamin Trapnell v. Honorable Jack E. Hunter*; 758 SW 2d 426 (Tex App--Corpus Christi, 1990)
    - d. *Thomas v. State of Texas*; 821 SW 2d 616 (Tex Crim App, 1991)
    - e. *Linscomb v. State of Texas*; 829 SW 2d 164 (Tex Crim App, 1992)
    - f. *Garcia v. State of Texas*; 829 SW 2d 796 (Tex Crim App, 1992)
    - g. *National Union Fire Insurance v. Valero Energy Corp.*; 777 SW 2d 501 (Tex App--Corpus Christi, 1989)
    - h. *Estate of Herman Scott v. Victoria County*; 778 SW 2d 585 (Tex App--Corpus Christi, 1989)
    - i. *McNamara v. Freedom Newspapers, Inc.*; 802 SW 2d 901 (Tex App--Corpus Christi, 1991)
    - j. *Physicians and Surgeons General v. George Koblizek et ux*; 752 SW 2d 657 (Tex App--Corpus Christi, 1988)
  - (2)
    - a. *Scurlock Oil Co. v. Smithwick*; 724 SW 2d 1 (Tex, 1986)  
The case involved a wrongful death action in which there were multiple defendants. During the trial a settlement agreement from another case

involving the same defendants was improperly introduced in evidence. Writing for the 13th Court of Appeals, I had held that the complaint on appeal had been waived when the complaining party had used the agreement for its own purposes. Additionally, I held that even if the complaint was not waived, the error was not reversible error. Accordingly, the final judgment in favor of the plaintiff was affirmed. The Supreme Court of Texas reversed the Court of Appeals holding that the complaint had not been waived and that the prejudicial effect of the improperly admitted evidence required a reversal of the case, and remanded for a new trial.

b. *Southern Pacific Transportation Co. v. Luna*; 724 SW 2d 383 (Tex, 1987)

The action was for damages sustained at a railroad crossing collision. At trial, the plaintiffs obtained a judgment in their favor based upon a jury verdict. On appeal, I found that the jury finding that the failure of the company to issue special restrictions was a proximate cause of the collision fatality conflicted with the jury finding that the speed the train was travelling at the time of the accident was not negligent. Accordingly, the Court of Appeals reversed the trial court judgment. The Supreme Court of Texas reversed the Court of Appeals because it found that the two jury findings could reasonably be construed in such a manner as to be reconciled in favor of the judgment rendered on the jury verdict.

c. *Leeco Gas & Oil Co. v. Smithwick*; 736 SW 2d 629 (Tex, 1987)

The case involved the condemnation by a government unit of a possibility of reverter and the damages recoverable by the owner of the reversionary interest. The trial court allowed the condemnation and awarded nominal damages. On appeal to the 13th Court of Appeals, and writing for the Court, I upheld the condemnation against an attack that the government unit was estopped to condemn a reversionary interest retained when the government unit acquired the land by gift from its grantor (the condemnee in the condemnation action). Additionally, I ruled that under Texas law, the condemnee was entitled to receive only nominal damages for the taking of his reversionary interest. The Supreme Court of Texas agreed that the government unit was not estopped to condemn the reversionary interest; however, the Supreme Court announced a new rule in Texas cases by which compensation for condemnation of a reversionary interest is to be computed when the government entity is a grantee in a gift deed. Accordingly, the case was reversed and remanded to the trial court for a determination of the compensation to be paid under the new rule.

d. *Estate of Hanau v. Hanau*; 730 SW 2d 666 (Tex, 1987)

The case involved the characterization and distribution of property under a will. The trial court held that properties acquired by the deceased and his



spouse while domiciled in a common law state (Illinois) was community property. Writing for the 13th Court of Appeals, I reversed the trial court by holding that the property retained the character it had at the time of its acquisition and was not community property. I rejected the contention that the probate code or the new rule announced in *Cameron v. Cameron* allowed the trial court to reclassify the character of the property. Additionally, I found that certain securities were not sufficiently segregated and traced to separate property so as to rebut the presumption of being community property. The Supreme Court of Texas affirmed my judgment as to the general characterization of the property. However, the judgment was reversed in part because the Supreme Court found the evidence was sufficient to destroy the statutory presumption that the securities were community property.

e. *Dukes v. Migura*; 770 SW 2d 568 (Tex, 1989)

The case involves a suit to recover a debt and to foreclose a lien. The plaintiff, Delphine Migura, in a prior suit had sought a divorce claiming that she had a common law marriage with Mr. Migura. During the pendency of that previous suit, Joy Dukes was ceremoniously married to Mr. Migura. Mr. Migura died shortly thereafter. After the death, Delphine Migura amended her petition to a claim against the executrix of Mr. Migura's estate, claiming a reimbursement from the community estate based upon her common law marriage claim. The executrix and Delphine Migura agreed to a judgment that declared the existence of the common law marriage; divided the community property between Delphine and the estate, and established a lien of \$25,000 to satisfy Delphine's claim of reimbursement against real property Mr. Migura had devised to Joy Dukes. Joy Dukes was not a party to this previous proceeding. Delphine then brought this action for the \$25,000 debt and foreclosure of lien on the real property devised to Joy. The trial court granted Delphine judgment for foreclosure of the debt and foreclosure of the lien. Writing for the 13th Court of Appeals, I reversed the trial court, holding that since Joy was not a part of the action that created a lien on her property, the agreed judgment sought to be enforced was void as to Joy Dukes. The Supreme Court reversed the judgment of the Court of Appeals, holding that an action to enforce a lien does not involve title to realty and Joy Dukes was not a necessary party to the prior suit. The judgment of the trial court was reinstated.

f. *State v. Moreno*; 807 SW 2d 327 (Tex Crim App, 1991)

The case involves the question whether the State of Texas had the statutory right to appeal a trial court's order dismissing an information. The trial court had sustained a motion to quash that complained of the specificity of the information but had refused to sign an order specifically dismissing the case. Writing for the 13th Court of Appeals, I affirmed the trial court, based

on the applicable statutory provision and previous Texas case law on that issue. The Texas Court of Criminal Appeals reversed based on the construction of a similar federal rule and determined that the quashing of the indictment effectively terminated the prosecution; and accordingly determined that the State had the right to appeal the granting of a motion to quash.

g. *Rodriguez v. State*; 804 SW 2d 516 (Tex Crim App, 1991)

This case involves the question of whether it is the State or an accused who has the burden to show diligence in prosecuting a motion to revoke probation. The motion to revoke was filed and the arrest warrant was issued before the expiration of the defendant's probationary period. However, the arrest warrant was executed and the hearing on the state's motion was heard after the probationary period had expired. I affirmed the trial court, holding that the timely filing of the motion and issuance of the warrant gave the trial court jurisdiction over the proceeding and it was incumbent upon the defendant to develop and carry the burden on the issue of the State's failure to use due diligence. The Texas Court of Criminal Appeals reversed, holding that once the issue of due diligence was raised, the State had the burden of proof on the issue and having failed to meet its burden, the trial court was without jurisdiction to revoke the defendant's probation.

h. *Williams v. State*; 851 SW 2d 282 (Tex Crim App, 1983)

This case involves the question of which party has the burden to produce evidence and the burden of persuasion on the exception to the punishment provided for the offense of aggravated kidnapping (V.T.C.A. Penal Code, section 20.046). The defendant was convicted of aggravated kidnapping and aggravated sexual assault and assessed a life sentence for each offense. Writing for the 13th Court of Appeals, I affirmed the trial court judgment and sentence for aggravated sexual assault and reversed the aggravated kidnapping conviction, finding egregious error in the trial court's improperly instructing the jury with respect to the provisions of section 20.046. In a case of first impression, the Court of Appeals' opinion placed the burden of production and persuasion on the State. The Court of Criminal Appeals agreed that the instruction given the jury was in error but did not believe the error to be egregious. Egregious error is necessary in Texas to reverse a conviction in a criminal case where the error is in the charging instrument and no objection is made in the trial court. The Court of Criminal Appeals also determined that the burden of production was on the accused, not the State, but it did agree that the burden of persuasion was on the State. Finding no egregious error, the opinion of the Court of Appeals was reversed as to the aggravated kidnapping case and affirmed as to the aggravated sexual assault case.

(3) See list of citations attached for opinions touching federal or state constitutional issues.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

a. 1983-1989, Commissioner, Texas Juvenile Probation Commission; appointment by Governor Mark White

b. I was unsuccessful in seeking election for a full term to the Texas Court of Criminal Appeals in the general election held November of 1992.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

I did not serve as a clerk to a judge.

2. whether you practiced alone and, if so, the addresses and dates;

(a) 1977: Sole Practice of Law; 1011 Pecan Street, McAllen, Texas 78501

(b) 1980: Sole Practice of Law and of Counsel to Yzaguirre, Chapa & Trevino; 821 Nolana, McAllen, Texas 78504

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

(a) 1972-1974: Associate, Rankin, Kern & Martinez (now Mullins & Rankin, Inc.); 804 Pecan Street, McAllen, Texas 78501

(b) 1974: Partner, Cisneros, Beery & Benavides; W. Erie Street,

McAllen, Texas 78501

(c) 1975: Partner, Cisneros, Brown & Benavides; 1011 Pecan Street, McAllen, Texas 78501

(d) 1976: Partner, Cisneros & Benavides; 1011 Pecan Street, McAllen, Texas 78501

(e) 1977-1979: Judge, Hidalgo County Court at Law #2; Hidalgo County Courthouse, Edinburg, Texas 78539

(f) 1981-1984: Judge, 92nd District Court of Hidalgo County, Texas; Hidalgo County Courthouse, Edinburg, Texas 78539

(g) 1983-1989: Commissioner, Texas Juvenile Probation Commission; 2015 South IH 35, Austin, Texas 78741

(h) 1984-April 1991: Justice, Thirteenth Court of Appeals; Tenth Floor, Nueces County Courthouse, Corpus Christi, Texas 78401

(i) May 1991-December 1992: Judge, Texas Court of Criminal Appeals; Supreme Court Building, Austin, Texas 78711

(j) 1993: Visiting Judge, by appointment of Thomas R. Phillips, Chief Justice of the Supreme Court of Texas

(k) November 1993-present: Partner, Atlas & Hall, L.L.P.; 818 Pecan, PO Box 3725, McAllen, Texas 78502-3725

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

During the first two years of practice, approximately 80% of my work was devoted to civil litigation. Approximately 10% of my work was devoted to criminal matters in the State and federal courts, and the remaining 10% was devoted to work for the city of McAllen, city of Mission, and to serving as general counsel for the Pharr, San Juan, Alamo Independent School District. Beginning in the summer of 1974, and until 1977 and in the year 1980, the percentage of criminal work in the State and federal courts increased to approximately 45% of my caseload. During this time, approximately 45% of my work included civil law and civil litigation and 10% was devoted to representing the Pharr, San Juan, Alamo Independent School District and serving as trial counsel for the Hidalgo County

Child Welfare Agency (now the Department of Human Resources, Child Protection Services, Hidalgo County Unit).

2. Describe your typical former clients and mention the areas, if any, in which you have specialized.

Because my practice was varied and in both the civil and criminal law areas, I do not have a truly typical client. I participated in land disputes, family law matters, tort defense, tort prosecution, election contests, contract disputes, probate disputes, school law matters, etc... Many of my clients were also charged with crimes, a number of whom were indigent. During the first two years of practice my clients were more likely to be a middle- to upper-income businessman, professional person, or corporate client whose case had been assigned to me by one of the senior partners at Rankin, Kern & Martinez. After leaving that law firm, my clients more likely were lower- to middle-income with family law or contractual law problems. I represented the Pharr, San Juan, Alamo Independent School District as general and trial counsel almost continuously throughout my period in private practice.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Frequently

2. What percentage of these appearances was in:

|     |                        |                  |     |
|-----|------------------------|------------------|-----|
| (a) | federal courts         | 1972-1974:       | 3%  |
|     |                        | 1974-1977, 1980: | 30% |
| (b) | state courts of record | 1972-1974:       | 93% |
|     |                        | 1974-1977, 1980: | 70% |
| (c) | other courts           | 1972-1974:       | 4%  |
|     |                        | 1974-1977, 1980: | 0%  |

3. What percentage of your litigation was:

|     |          |                  |     |
|-----|----------|------------------|-----|
| (a) | Civil    | 1972-1974:       | 85% |
|     |          | 1974-1977, 1980: | 50% |
| (b) | Criminal | 1972-1974:       | 15% |
|     |          | 1974-1977, 1980: | 50% |

4. State the number of cases in courts of record you tried to verdict or

judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

|                   |    |
|-------------------|----|
| Sole Counsel      | 28 |
| Chief Counsel     | 4  |
| Associate Counsel | 30 |

5. What percentage of these trials was:

|              |     |
|--------------|-----|
| (a) jury     | 34% |
| (b) non-jury | 66% |

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- the date of representation;
- the name of the court and the name of the judge or judges before whom the case was litigated; and
- the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *USA v. Ramiro Gonzalez*, 559 F 2d 1271 (5th Cir, 1977). In 1976, I assisted my law partner, Joe A. Cisneros, at trial. I appealed the conviction and secured reversal in 1977. The case was tried to a jury before Judge Owen D. Cox, Jr. (deceased) and, on appeal, was heard before Judges Thornberry, Ainsworth, and Roney.

The accused was charged with conspiracy with intent to distribute marijuana. The prosecution's case depended on the testimony of an alleged co-conspirator who refused to testify at trial. His grand jury testimony was used at trial to secure a conviction at trial. I undertook the appeal and wrote the appellate brief. On appeal, I was able to show that the statements of the co-conspirator were not against his interest, nor did they have an equivalent guarantee of trustworthiness. The testimony did not qualify as an exception to the hearsay rule.

Co-counsel at trial: Joe A. Cisneros, 3827 North 10th Street, McAllen, Texas; (512) 282-1883

Opposing counsel at trial: George A. Kelt, Assistant US Attorney, Suite 900, 440 Louisiana Street Houston, Texas 77002; (713) 238-9519

Opposing counsel on appeal: Mary L. Sinderson, former Assistant US Attorney, Houston, Texas

2. *State v. Jesus Cruz*, #C-611 in the 139th District Court of Hidalgo County, Texas. The judge was Fidencio M. Guerra, Jr. and the trial was January 10-14, 1977.

I represented, as sole counsel, the accused who was charged with aggravated assault on a peace officer. The accused turned down an offer to plead to a misdemeanor assault charge, insisting that he had acted in self-defense. My investigation revealed that the alleged victim, a peace officer, had sexual relations with a girl who was with the accused at the time of the alleged offense. The accused had been an MP in Vietnam and the alleged victim had to be hospitalized from a blow delivered by the accused. The jury believed the accused. I understand that one of the police officers was reprimanded and/or excused as a result of the matters revealed at trial. Opposing counsel: Joe A. Conners, Assistant District Attorney (now in private practice, 804 Pecan Street, McAllen, TX 78502 [512-687-8217])

3. *State v. Elias Juarez*, #B-765 in the 93rd District Court of Hidalgo County, Texas. Tried in 1977, the trial judge was Magus F. Smith, Jr. (deceased).

In the aftermath of a well-publicized murder trial in Hidalgo County, Texas, the accused was charged with tampering with a witness. Mr. Juarez, a former investigator with the Hidalgo County Sheriff's Office, had been hired as an investigator by an attorney for the accused murderer. I understand that Mr. Juarez was so adept at his work that he was able to locate and interview a number of witnesses even before the local police authorities. Although the State was successful in the murder prosecution (I was not an attorney in the murder case), it nonetheless sought and obtained an indictment against Mr. Juarez for jury tampering. I was sole counsel for Mr. Juarez and tried the case before a jury, which acquitted my client.

Opposing counsel: Fidencio M. Guerra, Jr., now Judge of the 370th District Court, Hidalgo County Courthouse, 100 North Closner, Edinburg, Texas 78539; (210) 318-2280

4. *García v. Pharr, San Juan, Alamo Independent School District* (PSJA), Case No. 11073, 139th District Court, Hidalgo County, Texas. Tried and disposed of on motion January 10, 1974. The trial judge was Merlin Johnson. The case is reported at 512 SW 2d 636.

I was sole counsel for PSJA. Mr. Garcia filed suit alleging violation of his civil rights when he was discharged as a teacher for running for office in violation of school policy. After discovery, I secured a judgment dismissing the case on the basis, among others, that he could not bring suit because he had not exhausted his administrative remedies. The case was appealed

and the judgment was affirmed.

Opposing counsel: Filemon B. Vela, now US District Judge, Federal Courthouse, 500 East 10th Street, Brownsville, Texas 78520; (210) 548-2500

5. *Sanchez v. Brandt*, No. D-473, 206th District Court of Hidalgo County, Texas. Tried in the spring of 1977, judgment was signed July 1, 1977. The judge was Joe B. Evins, Hidalgo County Courthouse, Edinburg, Texas.

I was sole counsel for Brandt, who had sold rural property by contract of sale to Sanchez. Mr. Sanchez lived in Illinois and had another residence in Mission, Texas. Brandt sought to declare forfeiture and Sanchez claimed a violation of a Texas statute dealing with notice of default and forfeiture on property on which the vendee resides. The jury found for Mr. Sanchez. The trial court nevertheless granted a judgment non obstante veredicto on the basis that the statute did not apply to unimproved rural property on which the vendee did not actually live or occupy. Unfortunately for Mr. Brandt, the case was reversed on appeal, and the appeal is reported at 567 SW 2d 254.

Opposing counsel: George Powell, 5921 North 23rd, McAllen, Texas 78501; (210) 686-2413

6. *Estate of Zamora v. Rodriguez*, 517 SW 2d 838 (Tex App--Corpus Christi, 1975). The judge was Walter Kelly, Hidalgo County Court at Law. I was sole counsel for Mrs. Rodriguez, who was the subject of eviction proceedings brought by the Zamora Estate. I undertook the case after the justice court had ordered her eviction. I filed an appeal, which was dismissed as untimely by the County Court at Law judge. I undertook a pro-bono appeal and the Court of Appeals reversed the County Court at Law and reinstated the forcible detainer action in the County Court.

Opposing counsel: Ralph Vidaurri, P.O. Box 787, 1221 South 14th, Edinburg, Texas 78540; (512) 383-2467

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

While a District Judge in Hidalgo County, I took on responsibility for establishing a residential facility for juvenile offenders. I was able to acquire commitments from the commissioners' court for a facility, funding from the State of Texas, and the county for equipment, improvement of facilities and



the operation of the facility. In addition, I had to secure permission from the City of Weslaco. The Ramiro Guerra Youth Center is still operating with room for 52 male juveniles. In addition, I am assured that efforts are being taken by the local authorities now in charge to expand the facility to house young female offenders.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

None, except for retirement benefits due me from the Texas Employees Retirement System. The amounts due are dependent on whether I draw benefits upon realizing the age of 55 or 60 years. Because I served continuously for over 12 years, I should receive 50% of the amount then paid to a judge on the Texas Court of Criminal Appeals if I retire at age 55, and 60% of such amount if I retire at age 60 (the annual pay of a judge on the Texas Court of Criminal Appeals is presently in the neighborhood of \$90,300.00). Additionally, I own a 1/3rd undivided interest in 10 acres of land in Hidalgo County with two individuals. I expect that, upon the sale of the land, I will recover 1/3rd of the proceeds.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts of interest during your initial service in the position to which you have been nominated.

Lawyers of cases on appeal should disclose names of all lawyers and parties with an interest in a case so that a justice can determine whether he has a financial interest in the case, or a family or financial

interest with a party. In addition, the issues in the case should be examined to determine whether the resolution of the issues will likely affect the financial interest of the justice. If an examination reveals a conflict or appearance of impropriety, I would voluntarily recuse myself. In addition, I would adhere to the Canons of the Code of Conduct for Judges and abide by the directives and advisory opinions of the Committee on the Codes of Conduct. I am aware of no areas of litigation that would be likely to present themselves which would create a conflict of interest by my initial service.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

#### 1993 SOURCES OF PERSONAL INCOME

|                               |           |  |
|-------------------------------|-----------|--|
| State of Texas                |           |  |
| a. Court of Criminal Appeals  | 8,282.38  | Salary   |
| b. Services as Visiting Judge | 41,881.45 | Salary and per diem                              |
| Nueces County, Texas          | 613.27    | Supplemental pay and expenses for Visiting Judge |
| El Paso County, Texas         | 1,998.59  | Same as above                                    |
| Bexar County, Texas           | 1,079.58  | Same as above                                    |
| Bee County, Texas             | 823.44    | Same as above                                    |
| San Patricio County, Texas    | 887.72    | Same as above                                    |
| Brooks County, Texas          | 665.28    | Same as above                                    |
| Atlas & Hall, McAllen, Texas  | 36,833.00 | Salary   |
| Texas Commerce Bank, Austin   | 682.93    | Interest   |

#### 1994 SOURCES OF PERSONAL INCOME

|                              |           |        |
|------------------------------|-----------|--------|
| Atlas & Hall, McAllen, Texas | 28,666.64 | Salary |
|------------------------------|-----------|--------|

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

Attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have not, except for my own campaigns as a candidate for office as follows:

a. 1978: I ran unopposed for Judge of the Hidalgo County Court at Law No. 2.

b. 1980: I ran and secured the Democratic party nomination for Judge of the 92nd District Court of Hidalgo County, Texas against two opponents. I ran unopposed in the 1980 general election.

c. 1988: I ran unopposed for a full term as a justice on the 13th Court of Appeals of Texas.

d. 1992: I ran for a full term on the Texas Court of Criminal Appeals. I was unopposed in the Democratic party primary, but I was defeated at the November general election.

### III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

a. I appealed a case pro-bono (*Estate of Zamora v. Rodriguez*, 517 SW 2d 838 (Tex App, 13th District 74) for a woman who was being removed from her residence. The time spent on this appeal was three days.

b. I served as a director of the Easter Seals Society for adults and crippled children in McAllen, Texas. I attended monthly meetings and helped advise the organization its policies and practices. I spent four years with this organization.

c. I appeared in civil cases while as lawyer on numerous occasions pro-bono and accepted State court appointments to represent indigents accused of crimes.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates - - through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?

I am not presently a member of any such organization. At the University of Houston from 1965 to 1968, I was a member of a college-sanctioned national social fraternity: Phi Sigma Kappa. Only males were allowed membership and I have not made any effort to change the policies. Additionally, in 1990 I was invited and joined a voluntary service organization in Corpus Christi, Texas, known as the Mustangs of Corpus Christi. Although I am not familiar with its rules or by-laws, there were no female members. The sole activity of the organization was to donate food, cook the barbecue, and serve the food and barbecue at fund-raising dinners held on behalf of charitable, civic, and educational groups or organizations. It did not solicit money or sell tickets, but simply donated, cooked, and served. I made no effort to change the policy if indeed one exists. I left the organization in 1991 when I moved to Austin and I was listed as an honorary member in 1992.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

I am not aware of the existence of a selection committee in Texas for nomination to the U.S. Court of Appeals for the Fifth Circuit. Around mid-August of 1993, I received an inquiry from a friend as to whether I would be interested in a position on the Fifth Circuit. On Thursday, September 9,

1993, I received a call from the White House Counsel's office. I was advised that the President was considering my appointment to the Fifth Circuit and that certain forms would be sent to me. In November of 1993, I was interviewed by Ron Klain, an Assistant Counsel to the President, and also by Bernard Nussbaum, the White House Counsel, and other members of the President's staff. I have submitted information to and have been interviewed by the Federal Bureau of Investigation and the American Bar Association. I have also submitted information to the U.S. Department of Justice.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue or question? If so, please explain fully.

No

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. a tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. a tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. a tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. a tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. a tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

It is the function of the courts to resolve disputes arising between parties to litigation. Certainly a problem must exist in order for there to be a dispute. However, the courts should be careful to resolve issues according to law and with an understanding of the respective role of the executive and legislative branches. Courts should be aware of the differences between their own desire and beliefs and those required by the laws of the legislature and the Constitution. If not, the courts jeopardize representative government. The cornerstone of our way of life is democracy, not judicial oligarchy.

The judiciary should resolve the issues and controversy between the parties to litigation (and not others not a part of the proceedings). However, because precedent is (and should be) an important and well-established component of our law, it follows that rulings will tend to extend to and effect others not a part of the case. The reliance on precedent provides a stability and predictability necessary to the civil, criminal, contract, and commercial law. People need to know what the rules are and expect others to follow them. Courts must insist on maintaining the integrity of their orders by being able to enforce their decisions, but should exercise care that an individual is not denied his day in court.

When the government or society has a broad, affirmative duty imposed by the Constitution or by lawful legislative statutes, the judge must declare that duty when called upon in a proper case. The imposition of such duties when they arise should come from the law. A court is cowardly if it does not enforce the law. A court usurps its role in our constitutional democracy when it imposes any duty, broad or narrow, not required by law or necessary to carry out the law.

I believe traditional rules for ripeness and standing are necessary to insure that the proper parties with an existing dispute come before the court and so that the courts may avoid injecting themselves into our system as the arbiters of emerging policy. Courts are not well suited to be administrators. The judicial and executive branches should, for the most part, be afforded an opportunity to correct problems. Only when an individual or institution is recalcitrant or unwilling to perform its legal duties, should the court as a last resort, and then only for the shortest period to insure lawful compliance, undertake the administration of an institution. Even then, such should not be a general administration, but only measures necessary to effectively protect the rights established by the Constitution and by Congress.

## ATTACHMENT RELATED TO PART I, INQUIRY 15(3)

Texas Cases, 691-854 S.W.2d

Documents

Results only

Query: ju(benavides) &amp; constitution!

| CITATION       | COURT/YEAR                   | TITLE                         |
|----------------|------------------------------|-------------------------------|
| 853 S.W.2d 527 | (Tex.Cr.App. 1992)           | Johnson v. State              |
| 848 S.W.2d 126 | (Tex.Cr.App. 1992)           | Nelson v. State               |
| 843 S.W.2d 586 | (Tex.Cr.App. 1992)           | Chavez v. State               |
| 834 S.W.2d 357 | (Tex.Cr.App. 1992)           | Arcila v. State               |
| 831 S.W.2d 331 | (Tex.Cr.App. 1992)           | Draughon v. State             |
| 829 S.W.2d 164 | (Tex.Cr.App. 1992)           | Linscomb v. State             |
| 829 S.W.2d 191 | (Tex.Cr.App. 1992)           | Fuller v. State               |
| 829 S.W.2d 796 | (Tex.Cr.App. 1992)           | Garcia v. State               |
| 828 S.W.2d 1   | (Tex.Cr.App. 1992)           | Phynes v. State               |
| 823 S.W.2d 284 | (Tex.Cr.App. 1991)           | Ex parte Bower                |
| 823 S.W.2d 660 | (Tex.Cr.App. 1992)           | Greenwood v. State            |
| 821 S.W.2d 616 | (Tex.Cr.App. 1991)           | Thomas v. State               |
| 819 S.W.2d 806 | (Tex.Cr.App. 1991)           | Hernandez v. State            |
| 817 S.W.2d 64  | (Tex.Cr.App. 1991)           | State v. Engelking            |
| 817 S.W.2d 77  | (Tex.Cr.App. 1991)           | Ex parte McGee                |
| 815 S.W.2d 560 | (Tex.Cr.App. 1991)           | Lewis v. State                |
| 815 S.W.2d 656 | (Tex.Cr.App. 1991)           | Ellason v. State              |
| 807 S.W.2d 8   | (Tex.App.-Corpus Christi ... | Castillo v. State             |
| 807 S.W.2d 878 | (Tex.App.-Corpus Christi ... | Burns v. State                |
| 806 S.W.2d 900 | (Tex.App.-Corpus Christi ... | Estate of Hanau, In re        |
| 803 S.W.2d 808 | (Tex.App.-Corpus Christi ... | Olson v. Central Power and... |
| 802 S.W.2d 386 | (Tex.App.-Corpus Christi ... | Poindexter v. State           |
| 802 S.W.2d 901 | (Tex.App.-Corpus Christi ... | McNamara v. Freedom Newspa... |
| 801 S.W.2d 12  | (Tex.App.-Corpus Christi ... | Ex parte Haskin               |
| 800 S.W.2d 320 | (Tex.App.-Corpus Christi ... | State By and Through Matto... |
| 797 S.W.2d 243 | (Tex.App.-Corpus Christi ... | Smith v. State                |
| 797 S.W.2d 272 | (Tex.App.-Corpus Christi ... | Lopez v. State                |
| 791 S.W.2d 226 | (Tex.App.-Corpus Christi ... | Villegas v. State             |
| 789 S.W.2d 688 | (Tex.App.-Corpus Christi ... | Wisnabarger v. Gonzales Wa... |
| 785 S.W.2d 426 | (Tex.App.-Corpus Christi ... | Trapnell v. Hunter            |
| 780 S.W.2d 497 | (Tex.App.-Corpus Christi ... | Martin v. State               |
| 779 S.W.2d 83  | (Tex.App.-Corpus Christi ... | City of Robstown v. Barrera   |
| 779 S.W.2d 884 | (Tex.App.-Corpus Christi ... | Rodriguez v. State            |
| 778 S.W.2d 585 | (Tex.App.-Corpus Christi ... | Estate of Scott v. Victori... |
| 774 S.W.2d 771 | (Tex.App.-Corpus Christi ... | Hargrove v. State             |
| 772 S.W.2d 271 | (Tex.App.-Corpus Christi ... | State v. Benavides            |
| 771 S.W.2d 573 | (Tex.App.-Corpus Christi ... | Fishman v. State              |
| 769 S.W.2d 661 | (Tex.App.-Corpus Christi ... | State v. Moreno               |
| 768 S.W.2d 755 | (Tex.App.-Corpus Christi ... | Southwestern Bell Telephon... |
| 767 S.W.2d 197 | (Tex.App.-Corpus Christi ... | King v. Bauer                 |
| 764 S.W.2d 846 | (Tex.App.-Corpus Christi ... | Burns v. State                |
| 764 S.W.2d 903 | (Tex.App.-Corpus Christi ... | Gunther v. State              |
| 763 S.W.2d 38  | (Tex.App.-Corpus Christi ... | State v. Brady                |
| 761 S.W.2d 549 | (Tex.App.-Corpus Christi ... | McKinney v. State             |
| 760 S.W.2d 681 | (Tex.App.-Corpus Christi ... | Guerra v. State               |
| 760 S.W.2d 778 | (Tex.App.-Corpus Christi ... | Hosey v. State                |
| 752 S.W.2d 734 | (Tex.App.-Corpus Christi ... | Reyes v. State                |
| 750 S.W.2d 906 | (Tex.App.-Corpus Christi ... | Garcia Rodriguez v. State     |
| 738 S.W.2d 378 | (Tex.App.-Corpus Christi ... | Roe v. State                  |
| 736 S.W.2d 134 | (Tex.App.-Corpus Christi ... | Town of South Padre Island... |

Texas Cases, 691-854 S.W.2d

Documents

Results only

Query: ju(benavides) &amp; constitution!

| CITATION       | COURT/YEAR                   | TITLE                         |
|----------------|------------------------------|-------------------------------|
| 716 S.W.2d 578 | (Tex.App.-Corpus Christi ... | Corpus Christi Taxpayer's ... |
| 716 S.W.2d 615 | (Tex.App.-Corpus Christi ... | Leeco Gas & Oil Co. v. Nue... |
| 707 S.W.2d 171 | (Tex.App. 13 Dist. 1986)     | Esterline v. State            |
| 706 S.W.2d 717 | (Tex.App. 13 Dist. 1986)     | Chase v. State                |
| 704 S.W.2d 397 | (Tex.App. 13 Dist. 1985)     | Chaires v. State              |
| 703 S.W.2d 708 | (Tex.App. 13 Dist. 1985)     | Wyatt v. General Motors Corp. |
| 698 S.W.2d 435 | (Tex.App. 13 Dist. 1985)     | Vista Chevrolet, Inc. v. B... |
| 697 S.W.2d 702 | (Tex.App. 13 Dist. 1985)     | Dill v. State                 |
| 697 S.W.2d 753 | (Tex.App. 13 Dist. 1985)     | A. Wolfson's Sons, Inc. v.... |
| 697 S.W.2d 774 | (Tex.App. 13 Dist. 1985)     | Satterwhite v. State          |
| 693 S.W.2d 528 | (Tex.App. 13 Dist. 1985)     | Botello v. State              |

Texas Cases, 481-690 S.W.2d

Documents

Results only

Query: ju(benavides) &amp; constitution!

| CITATION       | COURT/YEAR               | TITLE           |
|----------------|--------------------------|-----------------|
| 688 S.W.2d 631 | (Tex.App. 13 Dist. 1985) | Sinast v. State |
| 687 S.W.2d 114 | (Tex.App. 13 Dist. 1985) | Jones v. State  |



ATTACHMENT RELATED TO PART II, INQUIRY 5**FINANCIAL STATEMENT****NET WORTH**

Fortunato P. Benavides (includes spouse and dependent children)  
463-84-2221

ASSETS

|   |                    |
|---|--------------------|
| Cash on hand and in banks                       | \$ 66,911.66       |
| US Government securities--add schedule          | 0.00               |
| Listed securities--add schedule                 | 0.00               |
| Unlisted securities--add schedule               |                    |
| Accounts and notes receivable:                  | 0.00               |
| Due from relatives and friends                  |                    |
| Due from others                                 |                    |
| Doubtful  |                    |
| Real estate owned--add schedule--see Schedule A | 322,701.08         |
| Real estate mortgages receivable                | 0.00               |
| Autos and other personal property               | 54,000.00          |
| Cash value--life insurance                      | 15,107.00          |
| Other assets--itemize:                          |                    |
| Spouse beneficiary of trusts; trustee is        |                    |
| First Union National Bank of Florida*           | 1,840,121.82       |
| Horses  | <u>11,000.00</u>   |
| <br>Total Assets                                | <br>\$2,309,841.56 |

CONTINGENT LIABILITIES

|                                   |           |
|-----------------------------------|-----------|
| As endorser, comaker or guarantor | 0.00      |
| On leases or contracts            | 773.00    |
| Legal Claims                      | 0.00      |
| Provision for Federal Income Tax  | 12,300.00 |
| Other special debt                | 0.00      |

LIABILITIES

|                                   |      |
|-----------------------------------|------|
| Notes payable to banks--secured   | 0.00 |
| Notes payable to banks--unsecured | 0.00 |
| Notes payable to relatives        | 0.00 |

|   |                |
|---|----------------|
| Notes payable to others                                     | 0.00           |
| Accounts and bills due                                      | 6,690.08       |
| Unpaid income tax   | 0.00           |
| Other unpaid tax and interest                               | 0.00           |
| Real estate mortgages payable--add schedule--see Schedule C | 177,710.97     |
| Chattel mortgages and other liens payable                   | 6,600.00       |
| Other debts--itemize:                                       | 0.00           |
| <br>  |                |
| Total liabilities   | \$ 204,074.05  |
| Net Worth   | \$2,105,767.51 |
| Total Liabilities and net worth                             | \$2,309,841.56 |

**GENERAL INFORMATION**

|  |    |
|--|----|
| Are any assets pledged? (Add schedule.)          | No |
| Are you defendant in any suits or legal actions? | No |
| Have you ever taken bankruptcy?                  | No |

\* Value of five separate trusts based on market value of each trust x (times) spouse's percentage of net income interest in each trust; value of separate annuity trust based on present value of monthly annuity during spouse's lifetime.

**SCHEDULE A**

Real Estate Interests owned by self, spouse, and immediate members of family:

|    |  |                     |
|----|--|---------------------|
| 1. | 1/7 owner interest in 0.62 acres, Hidalgo, TX  | \$ 571.08           |
| 2. | 1/3 owner interest in 2 lots and improvement,<br>Crow Wing County, MN                        | 30,000.00           |
| 3. | .000831 royalty interest in land in Hidalgo County, TX                                       | 50.00               |
| 4. | 0091 non-part/royalty interest on 50 acres<br>in Starr County, TX                            | 80.00               |
| 5. | 1/3 owner 10 rural acres in Hidalgo County, TX,<br>John Sharp Subdivision                    | 33,000.00           |
| 6. | 1/8 owner interest of portion of Section 34,<br>Township 135, Range 29, Crow Wing County, MN | 10,000.00           |
| 7. | owner, homestead, lot and house, Austin, TX  | <u>249,000.00</u>   |
|    | <b>Total Real Estate</b>   | <b>\$322,701.08</b> |

**SCHEDULE B**

Specific identification of liabilities in excess of \$1,000:

|    |  |                     |
|----|--|---------------------|
| 1. | Real estate mortgage with Banc One Mortgage  | \$177,710.97        |
| 2. | Chattel mortgage: Valley Financial Service<br>of Phoenix, AZ, security is spouse's truck | 6,600.00            |
| 3. | MasterCard (2 accounts)  | <u>3,150.00</u>     |
|    | <b>Total Liabilities</b>   | <b>\$187,460.97</b> |

**SCHEDULE C**

One real estate mortgage secured by home in Austin, Texas

|                         |   |
|-------------------------|---|
| <b>Payee:</b>           | <b>Banc One Mortgage</b>                            |
| <b>Date of Note:</b>    | <b>November 1991</b>                                |
| <b>Original Amount:</b> | <b>\$180,000.00</b>                                 |
| <b>Term:</b>            | <b>30 years</b>                                     |
| <b>Payments:</b>        | <b>Monthly principal and interest of \$1,422.03</b> |
| <b>Balance:</b>         | <b>\$177,710.97</b>                                 |

**RUBEN CASTILLO  
CANDIDATE FOR THE  
NORTHERN DISTRICT  
OF ILLINOIS**

**UNITED STATES SENATE**

**QUESTIONNAIRE FOR JUDICIAL NOMINEES**

**I. BIOGRAPHICAL INFORMATION (PUBLIC)**

1. Full name (include any former names used.)

**ANSWER:** Ruben Castillo

2. Address: List current place of residence and office address(es).

**ANSWER:** Kirkland & Ellis  
200 East Randolph Drive  
Suite 5900  
Chicago, Illinois 60601

Home Address:  
6015 North Kilpatrick Avenue  
Chicago, Illinois 60646

3. Date and place of birth.

**ANSWER:** August 12, 1954 -- Chicago, Illinois

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

**ANSWER:** Married to Sylvia Mojica Castillo on August 12, 1978. She is employed as a social worker/therapist by Tom Leo and Associates, 1530 West Wellington, Chicago, Illinois 60657.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

**ANSWER:** Loyola University, Chicago, Illinois -- 1972 to 1976 -- B.A. Political Science (6/76)  
  
Northwestern University School of Law, Chicago, Illinois -- 1976 to June, 1979 J.D. (6/79)

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or

other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

- ANSWER:** 1974-1979 -- Deputy Clerk, Circuit Court of Cook County, assigned to Night Arraignment Court
- 1979-1984 -- Associate Attorney, Jenner & Block
- 1984-1988 -- Assistant United States Attorney, Northern District of Illinois
- 1988-1991 -- Regional Counsel, Mexican American Legal Defense and Educational Fund ("MALDEF")
- 1991- to present -- Partner, Kirkland & Ellis
- 1988 to present -- Adjunct Professor of Trial Advocacy, Northwestern University School of Law

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

**ANSWER:** None.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

**ANSWER:** Recipient of Meritorious Service Award by the Illinois State Bar Association for pro bono work on behalf of indigent criminal defendants, June, 1983; Recipient of FBI Commendations for outstanding work as a Federal Prosecutor (March and November, 1986); Recipient of Award from the United States Customs Service for aggressive and diligent prosecution of a currency and heroin smuggling operation (1987); Recipient of Certificate of Appreciation from Drug Enforcement Administration for outstanding

contributions in the field of drug law enforcement (1988); Recipient of United States Secret Service Certificate of Appreciation for superior contributions to service's law enforcement responsibilities (1988); Recipient of the Maurice Weigle Award awarded by the Chicago Bar Foundation in recognition of outstanding service to the Legal Profession and Organized Bar during 1989; Selected one of ten outstanding young citizens by Chicago Jaycee Organization, 1989; Selected in 1990 for "40 Under 40" Honor by Crain's Chicago Business Magazine; Selected Attorney of the Year in 1990 by Mexican American Lawyers Association; Awarded Community Service Award by Latin American Police Association, 1989; Recipient of Distinguished Alumni Citation from Loyola University in October, 1992; Public Service Award by Federal Bar Association, October, 1993.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

**ANSWER:** Vice President, Chicago Council of Lawyers, 1991-1993

Member of Board of Governors, Chicago Council of Lawyers, 1988-1991

Member, Latin American Bar Association, 1980 to present

Member, American Bar Association, 1979 to present

Board Member, Chicago Bar Foundation, 1991 to present

Member, Civil Justice Reform Act Advisory Group of the United States District Court for the Northern District of Illinois (1991 to 1993)

Member of Advisory Board of Children and Family Justice Center Northwestern University Legal Clinic (1992 to the present)

Appointed by the Illinois Supreme Court to the Special Commission on Administration of Justice (Member of the Judicial Selection Task Force) (1991 to 1993).

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

**ANSWER:** Former member of Board of Directors of the Business and Professional People for the Public Interest (BPI); Former Board Member, Chicago Legal Clinic; Current Board Member, Alumni Association of Northwestern University School of Law; Appointed in 1990 to the Visiting Committee of Northwestern University School of Law.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

**ANSWER:** Illinois Supreme Court -- 1979

United States District Court, Northern District of Illinois -- 1979

United States Court of Appeals for the Seventh Circuit -- 1984

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.



**ANSWER:** Note, "Fifth Amendment - Confession and the Right to Counsel," 68 Journal of Criminal Law and Criminology 517 (1977) Comment, "The Use of Civil Liability To Aid Crime Victims," 70 Journal of Criminal Law and Criminology 57 (1979). Copies of these articles are attached at Tab 1.

13. **Health:** What is the present state of your health? List the date of your last physical examination.

**ANSWER:** Good. September 20, 1993

14. **Judicial Office:** State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

**ANSWER:** Appointed as Court Special Master in Northern District of Illinois, 1990 to 1991, and as Court Monitor, 1992 to 1993 by United States District Court Judge James B. Zagel (Northern District of Illinois) in Burgos, et al. v. Ryder, et al., No. 75 C 3974. My work involved monitoring and reporting on the ongoing efforts of the Illinois Department of Children and Family Services to comply with a 1977 court decree which requires the department to provide bilingual child welfare services to clients whose primary language is Spanish.

15. **Citations:** If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

**ANSWER:** I have not written any judicial opinions.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

**ANSWER:** Appointed by Mayor Daley in May of 1989 to serve on a three member blue ribbon panel which recommended revisions to the City's Minority and Female Purchasing Set-Aside Program.

Appointed by Mayor Daley in April of 1992 to serve on a nine member City of Chicago Gaming Commission which reviewed the desirability and feasibility of developing a single-site casino, hotel, and family entertainment complex in or near Downtown Chicago. (Chair of the Legal/Regulatory Committee).

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:
- (1) whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;
  - (2) whether you practiced alone, and if so, the addresses and dates;
  - (3) the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;
- b. (1) What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?
- (2) Describe your typical former clients, and mention the areas, if any, in which you have specialized.

- c. (1) Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.
- (2) What percentage of these appearances was in:
- (a) federal courts;
  - (b) state courts of record;
  - (c) other courts.
- (3) What percentage of your litigation was:
- (a) civil;
  - (b) criminal.
- (4) State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.
- (5) What percentage of these trials was:
- (a) jury;
  - (b) non-jury.

**ANSWER:**

I did not serve as a traditional federal law clerk. In order to finance my college and law school education I served as a state clerk to a Cook County local arraignment court which held sessions at night.

From June, 1979 to April, 1984, I worked as an associate attorney with the law firm of Jenner & Block located at One IBM Plaza in Chicago, Illinois 60611. During this time period my legal practice consisted primarily of general civil and criminal litigation. My typical clients included both individuals and corporations. I also participated in various civil rights and criminal law litigation matters on a pro bono basis. During my litigation practice at Jenner I split my appearances evenly between federal and state court, and spent 80% of my time on civil litigation and the remaining 20% on criminal litigation.

In April of 1984 I accepted an appointment as an Assistant United States Attorney in the Northern District of Illinois. I worked at the United States Attorney's Office located at 219 South Dearborn Street, Suite 1200, Chicago, Illinois 60602. From April of 1984 through April of 1988 my practice consisted exclusively of the investigation, preparation and trial of federal criminal prosecutions. My only client during this time period was the United States. During this time period I served as lead prosecutor in over twenty-five trials, which included more than twenty jury trials.

In April of 1988 I became the Director and Regional Counsel of the Chicago Office of the Mexican American Legal Defense and Educational Fund ("MALDEF"), which was located at 542 South Dearborn Street, Suite 750, Chicago, Illinois 60605. From April of 1988 to April of 1991 I supervised and participated in various federal class action litigation on behalf of Hispanic clients. During this time period I solely practiced civil litigation and primarily handled employment discrimination, voting rights, education and immigration cases. Ninety percent of my court appearances were in federal court.

In May of 1991 I became a partner at my present law firm of Kirkland & Ellis in Chicago. I presently work at Kirkland's office at 200 East Randolph Drive, Chicago, Illinois 60601. My practice consists of both civil (40%) and criminal defense litigation (60%). My typical clients are large Chicago based corporations. I have also continued to represent individual clients on both a pro bono and paid basis. Ninety percent of my court appearances are in federal court.

I have tried over thirty cases to verdict or judgment as both chief and sole counsel. Ninety percent of these cases were jury trial cases.

I have never practiced alone during my legal career.

18. **Litigation:** Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
- a. the date of representation;
  - b. the name of the court and the name of the judge or judges before whom the case was litigated; and
  - c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

ANSWER: 1. Shy, et al. v. Navistar, Case No. C-3-92-333 (Judge Rice, W.D. Ohio, 1992). This ERISA class action case involved numerous novel litigation issues as well as complicated tax and federal securities issues, and proceeded on a parallel basis in two separate federal districts. I was one of the main attorneys for Navistar throughout this litigation. My primary co-counsel were Emily Nicklin and Michael Kerr, Kirkland & Ellis, 200 East Randolph Drive, Chicago, Illinois (312) 861-2000. My opponents were represented by Daniel Sherrick, Associate General Counsel International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, 8000 East Jefferson, Detroit, Michigan 48214, Tel. No. (313) 926-5216, and Julia Penny Clark, Bredhoff & Kaiser, 1000 Connecticut Ave., N.W., Suite 1300, Washington, D.C. 20036, Tel. No. (202) 833-9340. This case was settled in 1993 and the class settlement was approved by Judge Rice in July of 1993.

2. Hastert v. Board of Elections, 777 F. Supp. 634 (Judges Conlon, Norgle and Kanne, N.D. Ill. 1991). This Illinois congressional redistricting case led to the creation of Chicago's first Hispanic congressional district. I was the senior litigation attorney for Hispanic interests in this case. My co-counsel on this case were Arturo Jauregui, Mexican American Legal Defense and Educational Fund, 542 South Dearborn Street, Chicago, Illinois 60605 (312) 427-9363, and Judson H. Miner, Davis, Miner, Barnhill, 14 West Erie Street, Chicago, Illinois 60610, Tel. No. (312) 751-1170. The Republican interests in this case were represented by Ty Fahner of Mayer, Brown & Platt, 190 South La Salle Street, Chicago, Illinois 60603, Tel. No. (312) 782-0600, and the Democratic interests were represented by William J. Harte, 111 West Washington Street, Suite 1100, Chicago, Illinois 60602, Tel. No. (312) 726-5015
3. Ortiz v. Fairman, et al., 88-7509 (N.D. Ill. Judge Duff). I was appointed as lead trial counsel to represent a prisoner in a complex prisoner rights case. This trial ended in one of the largest individual jury awards to plaintiff -- \$758,000. On December 29, 1993 Judge Duff granted the defendants' motion for a new trial. Thereafter, the case was tentatively settled pursuant to a confidential settlement agreement. The defendants were represented by Assistant Attorney General Roger P. Flahaven, 100 West Randolph Street, 13th Floor, Chicago, Illinois 60601, Tel. No. (312) 814-3650 and Assistant Attorney General Patricia A. Marshall, 100 West Randolph Street, 13th Floor, Chicago, Illinois 60601, Tel. No. (312) 814-5195.
4. Hernandez v. Woodward, 714 F. Supp. 1963 (Judge Duff, N.D. Ill. 1989). This federal voting rights class action successfully challenged restrictive deputy voter registrar practices which

adversely affected the voter registration of Hispanic voters. I served as chief counsel for plaintiffs in this case which was successfully settled after the entry of an agreed temporary restraining order. My co-counsel on this case was Arturo Jauregui, Mexican American Legal Defense and Educational Fund, 542 South Dearborn Street, Chicago, Illinois 60605 (312) 427-9363. The defendants were represented by Stuart D. Gordon, 30 North La Salle Street, Suite 2040, Chicago, Illinois 60602, Tel. Nos. (309) 759-0800; (312) 541-0707.

5. Ridge v. Verity, et al., 715 F. Supp. 1308 (Judge Standish, W.D. Pa.). I argued on behalf of Hispanic interests in this complex multi-party action which challenged the inclusion of undocumented persons in the 1990 census. The parties are listed in the published opinion. (See Attachment 2) The defendants were represented by Sandra M. Schraibman, Thomas Peebles and Susan Korytkowski, Attorneys, U.S. Department of Justice, Civil Division, Room 3744, 10th & Pennsylvania Avenue, Washington, D.C. 20530, Tel. No. (202) 514-2000.
6. U.S. v. Bentley, Degan, Josten & Yung, No. 85 CR 267. After this month long jury trial before Judge Plunkett (N.D. Ill.) convictions were returned against all defendants in this commodities case, including the first successful prosecutions of lower level salesmen. I served as one of the chief prosecutors in this case. My co-counsel on this case was former federal prosecutor James R. Ferguson who is presently with the law firm of Sonnenschein, Nath & Rosenthal, 800 Sears Tower, Chicago, Illinois 60606 (312) 876-3188. I received a commendation from the FBI for my work on this case. The defendants were represented by David P. Schippers, Schippers & Gilbert, 79 West Monroe Street, Suite 400, Chicago, Illinois

60603, Tel. No. (312) 263-1200 and Martin S. Agran, Agran & Agran Ltd., 105 West Madison Street, Suite 700, Chicago, Illinois 60602, Tel. No. (312) 236-2434.

7. United States v. Centracchio & Salemi, Nos. 84 CR 2678, 84 CR 2773 (N.D. Ill.). This was a three week bank fraud prosecution involving the Broadway National Bank which I successfully tried along with now Judge Suzanne Conlon (Northern District of Illinois, Tel. No. (312) 435-5595). This jury trial was tried before Judge Shadur. The defendants were represented by Frank Oliver, current address and telephone number is unknown, and Gerald M. Werksman, 343 South Dearborn Street, Suite 1510, Chicago, Illinois 60604, Tel. No. (312) 372-5196.
8. United States v. Cosentino & Patterson, 86 CR 359 (N.D. Ill., Judge Marvin Aspen). This was an insurance fraud trial in which I served as one of the lead prosecutors. My co-counsel was former Assistant United States Attorney Dan DuPree who is presently employed as an attorney at the Brunswick Corporation, One North Field Court, Lake Forest, Illinois 60045-4811, Tel. No. (708) 735-4700. The appeal is reported at 869 F.2d 301 (7th Cir. 1989). I received a commendation from the FBI for my work on this case. The defendants were represented by Jerome Rotenberg, Rosenfeld, Rotenberg, Hafron & Shapiro, Chicago, Illinois, Tel. No. (312) 372-6058.
9. United States v. Dr. Bernard Lerner, 87 CR 268 (N.D. Ill., Judge Marvin Aspen). This was a two week jury trial in which I served as one of the lead prosecutors which successfully prosecuted the fraudulent prescription activities by a doctor who was on the staff of Northwestern Memorial Hospital. My co-counsel was Phillip A. Turner, a former federal prosecutor, who is



currently a partner at Turner, Latz & Olmstead, 200 West Madison Street, Suite 440, Chicago, Illinois 60606, Tel. No. (312) 899-0900. The defendant was represented by Julius Lucius Echeles, 300 North State Street, Suite 4428, Chicago, Illinois 60610, Tel. No. (312) 782-0711.

10. United States v. Ocampo, et al., No. 88 CR 319 (N.D. Ill., Judge Harry Leinenweber). This was a one week narcotics jury trial which I successfully tried by myself in 1988. The defendants were represented by Dennis Cooley, 155 North Michigan Avenue, Suite 716, Chicago, Illinois 60601, Tel. No. (312) 565-1966, and Stuart V. Goldberg, 180 North La Salle Street, Suite 1925, Chicago, Illinois 60601, Tel. No. (312) 327-9400.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

**ANSWER:** Throughout my career I have devoted myself to improving my skills as a trial attorney. I have taught Trial Practice at Northwestern University School of Law as an adjunct professor for the last five years (1989-1994) and I have also served as an instructor at the National Institute of Trial Advocacy ("NITA") during the same time period.

During the last two years I have devoted considerable time and effort to improving the local court systems by serving as the Vice President of the Chicago Council of Lawyers and by my service on the Civil Justice Reform Act Advisory Group for the Northern District of Illinois, the Illinois Supreme Court's Special Commission on Administration of Justice, and the Advisory Board of the

Children and Family Justice Center of the Northwestern University Legal Clinic. I have also attempted to maintain an active community involvement throughout my career as indicated by my service on several boards of legal services organizations as well as my service on several civic commissions.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

**ANSWER:** None.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

**ANSWER:** I plan to strictly follow the Code of Conduct for United States Judges. The only potential conflicts of interests that I can perceive are related to personal friendships rather than financial arrangements. I will automatically excuse myself from hearing any matters in which the parties are represented by my personal friends. In addition, because of my close prior association with MALDEF I do not believe it would be appropriate for me to preside over any litigation filed by MALDEF in the Northern District of Illinois.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

**ANSWER:** With the permission of the Chief Judge of the Northern District of Illinois and in compliance with the Code of Conduct for United States Judges, I plan to continue my service as an Adjunct Professor of Trial Advocacy at Northwestern University School of Law. My compensation agreement with Northwestern is \$2,000 per year as indicated in the attached Financial Disclosure Report, (Tab 3).

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

**ANSWER:** See attached Financial Disclosure Report, (Tab 3).

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

**ANSWER:** See Attached Schedule, (Tab 4).

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

**ANSWER:** I have not played an active role in any political campaign. I have served on Political Lawyers Committees for U.S. Senator Carol Mosley-Braun; State Senator Jesus Garcia and State Senator Miguel del Valle.

### III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities,

listing specific instances and the amount of time devoted to each.

**ANSWER:** Throughout my legal career I have worked on significant pro bono litigation and worked on various efforts at improving the legal system for the disadvantaged. At Jenner & Block I worked on several federal civil rights cases as well as a pro bono murder case. At Kirkland & Ellis I worked on a prisoner rights trial and a congressional redistricting trial on a pro bono basis.

During my tenure at the Mexican American Legal Defense and Educational Fund and throughout my service on various boards and commissions, such as the Chicago Legal Clinic and the Chicago Bar Foundation, I have sought to ensure that the legal system became more accessible to the disadvantaged.

I estimate that I have spent well in excess of 300 hours per year on pro bono matters.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

**ANSWER:** I am not and have never been a member of any organization of this type.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

**ANSWER:** Beginning March of 1993 I submitted a formal application with a 26 member Merit Selection

Commission which was named by Senators Simon and Carol Mosley Braun. The application form was similar to this form. Thereafter, I was one of forty-six candidates (out of 130 applicants) that was formally interviewed by the full Commission. In July of 1993 my name was among the names of ten finalists that were submitted to the Senators by the Commission. After all ten finalists were interviewed by the Senators I was informed that the Senators had recommended my nomination, along with two other names, for the three vacancies which currently exist in the Northern District of Illinois. Thereafter, I was subjected to further evaluations by the local bar associations in Chicago. I was found qualified to serve as a federal judge by the Chicago Council of Lawyers and the Chicago Bar Association. I was found highly qualified by the Illinois State Bar Association. During the last five months I have been the subject of further evaluations by the Department of Justice, the Federal Bureau of Investigation and the American Bar Association. I was formally interviewed on one occasion during each of these investigations. After the completion of these three investigations I was formally nominated by the President for consideration by the Senate.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

**ANSWER:** No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of

government. Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

**ANSWER:** Our country was designed to have a three branch form of government. The role of the judiciary should be to apply (not create) the law to the facts presented by a specific case or controversy. It is a fundamental mistake for the judiciary to attempt to promulgate new laws or duties because such activities would usurp the role of the legislative branch of government. By the same token, most legal oversight responsibilities are properly the role of the executive branch of government and should not be the responsibility of the judiciary. The jurisdictional requirements are vital and important to the proper functioning of the federal judiciary and help to ensure that the proper cases and controversies are decided by the judicial branch of government.

## FINANCIAL DISCLOSURE REPORT

AO-10  
Rev. 1/83

|  |  |                                      |
|--|--|--------------------------------------|
| 1. Person Reporting (Last name, first, middle initial.)<br>Castillo, Ruben   | 2. Court or Organization<br>United States District Court<br>Northern District of Illinois  | 3. Date of Report<br>2/1/94          |
| 4. Title (Article III judges indicate active or senior status; Magistrate judges indicate full- or part-time)<br><br>Active Status | 5. Report Type (check appropriate type)<br><input checked="" type="checkbox"/> Nomination, Date 1/27/94<br><input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final | 6. Reporting Period<br>1/1/93-2/1/94 |
| 7. Chambers or Office Address<br>200 East Randolph Drive<br>Suite 5900<br>Chicago, Illinois 60601                                  | 8. On the basis of the information contained in this Report, it is, in my opinion, in compliance with applicable laws and regulations _____<br>Reviewing Officer Signature _____                           |                                      |

**IMPORTANT NOTES:** *The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on last page.*

## I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

POSITION

NAME OF ORGANIZATION/ENTITY

|                          |  |
|--------------------------|--|
| <input type="checkbox"/> | NONE (No reportable positions)                                   |
| Partner                  | Kirkland & Ellis (5/91 to Present)                               |
| Board Member             | Business and Professional People for Public Interest (1991-7/93) |
| Board Member             | Chicago Legal Clinic (1991-7/93)                                 |

## II. AGREEMENTS. (Reporting individual only; see p. 8-9 of Instructions.)

DATE

PARTIES AND TERMS

|                                     |                                 |
|-------------------------------------|---------------------------------|
| <input checked="" type="checkbox"/> | NONE (No reportable agreements) |
|-------------------------------------|---------------------------------|

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

DATE  
(Honorary only)

SOURCE AND TYPE

GROSS INCOME  
(yours, not spouse's)

|                          |  |   |            |
|--------------------------|--|---|------------|
| <input type="checkbox"/> | NONE (No reportable non-investment income) |   |            |
| 1                        | R. Castillo                                | Kirkland & Ellis (1992) - Law Firm Partner                        | \$ 190,000 |
| 2                        | R. Castillo                                | Kirkland & Ellis (1993) - Law Firm Partner                        | \$ 215,000 |
| 3                        | R. Castillo                                | Northwestern University School of Law (1994)<br>Adjunct Professor | \$ 2,000   |
| 4                        | (S)  | Tom Leo & Associates (1992) Social Therapist                      | \$         |
| 5                        | (S)  | Tom Leo & Associates (1993) Social Therapist                      | \$         |

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting  
Ruben CastilloDate of Report  
2/1/94

**IV. REIMBURSEMENTS and GIFTS – transportation, lodging, food, entertainment.**  
(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

SOURCEDESCRIPTION

| <input checked="" type="checkbox"/> | NONE (No such reportable reimbursements or gifts) |  |  |
|-------------------------------------|---|--|--|
| 1                                   |   |  |  |
| 2                                   |   |  |  |
| 3                                   |   |  |  |
| 4                                   |   |  |  |
| 5                                   |   |  |  |
| 6                                   |   |  |  |
| 7                                   |   |  |  |
| 8                                   |   |  |  |

**V. OTHER GIFTS.** (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp.15-16 of Instructions.)

SOURCEDESCRIPTIONVALUE

| <input checked="" type="checkbox"/> | NONE (No such reportable gifts) |  |          |
|-------------------------------------|---------------------------------|--|----------|
| 1                                   |                                 |  | \$ _____ |
| 2                                   |                                 |  | \$ _____ |
| 3                                   |                                 |  | \$ _____ |
| 4                                   |                                 |  | \$ _____ |

**VI. LIABILITIES.** (Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp.16-18 of Instructions.)

CREDITORDESCRIPTIONVALUE CODE\*

| <input checked="" type="checkbox"/> | NONE (No reportable liabilities) |  |  |
|-------------------------------------|----------------------------------|--|--|
| 1                                   |                                  |  |  |
| 2                                   |                                  |  |  |
| 3                                   |                                  |  |  |
| 4                                   |                                  |  |  |
| 5                                   |                                  |  |  |
| 6                                   |                                  |  |  |
| 7                                   |                                  |  |  |

\* VALUE CODES: J = \$15,000 or less    K = \$15,001 to \$50,000    L = \$51,001 to \$100,000    M = \$100,001 to \$250,000  
N = \$250,001 to \$500,000    O = \$500,001 to \$1,000,000    P = More than \$1,000,000



FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting  
Ruben Castillo

Date of Report  
2/1/94

VII. INVESTMENTS and TRUSTS - income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

| A.<br>Description of Assets<br>(including trust assets)<br><br>Indicate, where applicable, owner of the asset by using the parenthetical (1) for joint ownership of reporting individual and spouse, (S) for separate ownership by spouse, (DC) for ownership by dependent child.<br><br>Place "(E)" after each asset exempt from prior disclosure. | B.<br>Income during reporting period |   | C.<br>Gross value at end of reporting period |                                   | D.<br>Transactions during reporting period         |                       |                            |                           |  |  |
|---|--------------------------------------|---|--|-----------------------------------|--|-----------------------|----------------------------|---------------------------|--|--|
|   | (1)<br>Amt. Code<br>(B-8)            | (2)<br>Type<br>(e.g., div., rent or int.) | (1)<br>Value Code<br>(C-7)                   | (2)<br>Value Method Code<br>(C-8) | If not exempt from disclosure                      |                       |                            |                           |  |  |
|   |                                      |   |  |                                   | (1)<br>Type<br>(e.g., Buy, Sell, Swap, Redemption) | (2)<br>Date Month Day | (3)<br>Value Code<br>(D-7) | (4)<br>Gain Code<br>(A-8) | (5)<br>Identity of Buyer/Seller (if private transaction) |  |
| <input type="checkbox"/> NONE (No reportable income, assets, or transactions)   |                                      |   |  |                                   |  |                       |                            |                           |  |  |
| 1   |                                      |   |  |                                   |  |                       |                            |                           |  |  |
| 1st Nationwide Bank - IRA   | A                                    | Int.                                      | J  | T                                 | None   |                       |                            |                           |  |  |
| 2   |                                      |   |  |                                   |  |                       |                            |                           |  |  |
| Illinois College Bonds  | A                                    | Int.                                      | J  | T                                 | None   |                       |                            |                           |  |  |
| 3   |                                      |   |  |                                   |  |                       |                            |                           |  |  |
| 1st Nationwide Bank - IRA(s)  | A                                    | Int.                                      | J  | T                                 | None   |                       |                            |                           |  |  |
| 4 Putnam U.S. Govt. Income IRA Rollover Plan(s)   | A                                    | Int.                                      | J  | T                                 | Buy  | 2/1/93                | J                          | A                         | Putnam Investments                                       |  |
| 5   |                                      |   |  |                                   |  |                       |                            |                           |  |  |
| 6   |                                      |   |  |                                   |  |                       |                            |                           |  |  |
| 7   |                                      |   |  |                                   |  |                       |                            |                           |  |  |
| 8   |                                      |   |  |                                   |  |                       |                            |                           |  |  |
| 9   |                                      |   |  |                                   |  |                       |                            |                           |  |  |
| 10  |                                      |   |  |                                   |  |                       |                            |                           |  |  |
| 11  |                                      |   |  |                                   |  |                       |                            |                           |  |  |
| 12  |                                      |   |  |                                   |  |                       |                            |                           |  |  |
| 13  |                                      |   |  |                                   |  |                       |                            |                           |  |  |
| 14  |                                      |   |  |                                   |  |                       |                            |                           |  |  |
| 15  |                                      |   |  |                                   |  |                       |                            |                           |  |  |
| 16  |                                      |   |  |                                   |  |                       |                            |                           |  |  |
| 17  |                                      |   |  |                                   |  |                       |                            |                           |  |  |
| 18  |                                      |   |  |                                   |  |                       |                            |                           |  |  |
| 19  |                                      |   |  |                                   |  |                       |                            |                           |  |  |
| 20  |                                      |   |  |                                   |  |                       |                            |                           |  |  |
| <b>1 Income/Gain Codes:</b><br>(See Col. B1 & P4)<br>A=\$1,000 or less<br>B=\$1,001 to \$2,500<br>C=\$2,501 to 5,000<br>D=\$5,001 to \$15,000<br>E=\$15,001 to \$50,000<br>F=\$50,001 to \$100,000<br>G=\$100,001 to \$1,000,000<br>H=More than \$1,000,000   |                                      |   |  |                                   |  |                       |                            |                           |  |  |
| <b>2 Value Codes:</b><br>(See Col. C1 & D3)<br>J=\$15,000 or less<br>K=\$15,001 to \$50,000<br>L=\$50,001 to \$100,000<br>M=\$100,001 to \$500,000<br>N=\$500,001 to \$1,000,000<br>O=More than \$1,000,000   |                                      |   |  |                                   |  |                       |                            |                           |  |  |
| <b>3 Value Method Codes:</b><br>(See Col. C2)<br>A=Appraisal<br>B=Cost (real estate only)<br>C=Book Value<br>D=Cost (real estate only)<br>E=Assessment<br>F=Other<br>G=Assessment<br>H=Cost/Market<br>I=Estimated   |                                      |   |  |                                   |  |                       |                            |                           |  |  |

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting  
Ruben CastilloDate of Report  
2/1/94

## VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

1. With respect to Part I, I have served since 1991 as a Board of Director of the Chicago Bar Foundation, a charitable arm of our local Bar Association.

2. With respect to item 5 in Part III, I began teaching a trial practice course at Northwestern University School of Law in January of 1994 as an Adjunct Professor. My teaching responsibilities will be completed in June of 1994.

## IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature

*Ruben Castillo*

Date

2-1-94

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, § 104, AND 18 U.S.C. § 1001.)

## FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Judicial Ethics Committee  
Administrative Office of the  
United States Courts  
Washington, DC 20544

ATTACHMENT FOUR  
FINANCIAL STATEMENT

NET WORTH -- RUBEN CASTILLO

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

| ASSETS   |                | LIABILITIES   |                |
|--|----------------|---|----------------|
| Cash on hand and in banks                                | 4,000          | Notes payable to banks - secured                                  |                |
| U.S. Government securities - add schedule                |                | Notes payable to banks - unsecured                                |                |
| Listed securities - add schedule                         |                | Notes payable to relatives  |                |
| Unlisted securities - add schedule                       |                | Notes payable to others   |                |
| Accounts and notes receivable:                           |                | Accounts and bills due  | 10,000         |
| Due from relatives and friends                           |                | Unpaid income tax   |                |
| Due from others  |                | Other unpaid tax and interest                                     |                |
| Doubtful   |                | Real estate mortgages payable - add schedule - Personal Residence | 160,000        |
| Real estate owned - add schedule<br>- Personal Residence | 260,000        | Chattel mortgages and other liens payable                         |                |
| Real estate mortgages receivable                         |                | Other debts - itemize:  |                |
| Autos and other personal property                        | 15,000         |   |                |
| Cash value - Life insurance                              | 4,000          |   |                |
| Other assets - itemize:                                  |                |   |                |
| State College Bonds                                      | 20,000         |   |                |
| IRA Accounts   | 20,000         |   |                |
|  |                | Total liabilities   | 170,000        |
|  |                | Net Worth   | 153,000        |
| <b>Total Assets</b>                                      | <b>323,000</b> | <b>Total liabilities and net worth</b>                            | <b>323,000</b> |
| <b>CONTINGENT LIABILITIES</b>                            | None           | <b>GENERAL INFORMATION</b>  |                |
| As endorser, comaker or guarantor                        |                | Are any assets pledged? (Add schedule.)                           | NO             |
| On leases or contracts                                   |                | Are you defendant in any suits or legal actions?                  | NO             |
| Legal Claims   |                | Have you ever taken bankruptcy?                                   | NO             |
| Provision for Federal Income Tax                         |                |   |                |
| Other special debt                                       |                |   |                |

*Ruben Castillo* 9-22-93

Personal residence mortgage is held by Oak Trust Savings Bank (Chicago, Illinois)



**NOMINATIONS OF CARL E. STEWART, TO BE  
U.S. CIRCUIT JUDGE; JAMES CARR, CLAR-  
ENCE COOPER, FRANK M. HULL, MARY M.  
LISI, AND W. LOUIS SANDS, TO BE U.S. DIS-  
TRICT JUDGES**

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**THURSDAY, APRIL 21, 1994**

U.S. SENATE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The committee met, pursuant to notice, at 2:38 p.m., in room SD-106, Dirksen Senate Office Building, Hon. Herbert Kohl presiding.

Also present: Senators Metzenbaum and Thurmond.

**OPENING STATEMENT OF SENATOR KOHL**

Senator KOHL. This hearing will come to order. This afternoon, the Judiciary Committee will conduct a hearing on the following judicial nominees: Judge Carl Stewart to be Circuit Court Judge for the Fifth Circuit Court of Appeals; Judge James Carr to be District Court Judge for the Northern District of Ohio; Judge Clarence Cooper to be District Court Judge for the Northern District of Georgia; Judge Frank Hull to be District Court Judge for the Northern District of Georgia; Mary Lisi to be District Court Judge for the District of Rhode Island; and Judge Louis Sands to be District Court Judge for the Middle District of Georgia.

As is customary, we will hear first from Senators and Representatives who wish to introduce nominees to the committee, but before we turn to them let me state for the record that each nominee has completed a detailed questionnaire on his or her qualifications, experience, finances and philosophy. The portions of the questionnaire available to the public will be printed in the record of this hearing.

I understand that we have received a letter concerning the nomination of Mary Lisi from Stephen Fortunato, so we will make that part of the record.

[The letter referred to follows:]

THE LAW FIRM OF  
FORTUNATO & TARRO,  
Warwick, RI, March 15, 1994.

Hon. JOSEPH BIDEN,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR BIDEN: On March 14, 1994, I received a call from Cathy Poston, Esq., Chief Nominations Counsel, who indicated that I should direct a letter to you in light of your policy of generally not having live testimony on nominations to the Federal Bench.

I am opposed to the nomination of Mary Lisi to the United States District Court for the District of Rhode Island because she has absolutely no experience as a trial lawyer. Based upon my own frequent practice in the United States District Court over the past twenty-three (23) years, as well as discussions about the matter with professional colleagues, I believe I can safely state that Mary Lisi has not handled any matters in the United States District Court. It also appears that she has never been involved as counsel in a jury trial—or in any significant non-jury matters in any court for that matter.

I believe she has had some experience as a court-appointed advocate for children in Family Court matters, but this role bespeaks more of social work rather than a trial attorneys position. As you are aware, proceedings involving juveniles are in no way as formal and rigorous as matters that come before a federal trial court.

At the present time, Ms. Lisi is Chief Counsel for the Supreme Court, handling disciplinary matters involving complaints against attorneys. Again, the forum is in no way a formal one regarding procedures and matters of evidence.

In short, Mary Lisi has no meaningful trial experience whatsoever, and she has not gained experience elsewhere to equip her for the federal trial court. Frankly, other than trial experience, I do not see how anyone can become qualified to sit as a United States District Court judge. This, in my opinion, is somewhat different from a nominee for an appellate position, where a distinguished career of teaching and scholarship could qualify one for the United States Court of Appeals or even the Supreme Court of the United States.

I understand from Ms. Poston that this letter will be circulated to other members of the Committee, and for this I am grateful.

It is my hope that members of the Committee will raise this question directly in its inquiry of Ms. Lisi and in its deliberations. The people of Rhode Island who seek relief in the Federal Courts—or who must defend themselves against claims in that forum—deserve to have their matters adjudicated by someone who has significant experience with the Federal Rules of Evidence and Procedure as well as at least some of the important and complex statutes that are regularly disputed in the Federal Courts.

I thank you for your attention to this.

Very truly yours,

STEPHEN J. FORTUNATO, Jr.

P.S. I should add that when this position became available, it was the consensus of the legal community and the public at large that it would be fitting for a woman to be appointed because no woman has previously served on this Court in Rhode Island. I can assure you that in Rhode Island there are a number of qualified women, many of whom have distinguished records as federal litigators and some of whom are presently sitting members of the Rhode Island judiciary.

Senator KOHL. We will keep the record open for a limited time for any other submissions to the committee and in case members of the committee would like to submit written questions. Of course, we will place in the record the full introductory statements of home State Senators.

We have a number of very distinguished Senators with us today, and so we are going to begin with them. Before we do, though, let me make one point. We have six nominees, but not too much time this afternoon, and so we need to complete the hearing today in order to go to markup next week. Therefore, to the extent that introductions can be somewhat abbreviated, it would be appreciated by everybody.

First, on behalf of Ms. Lisi, we have Senator Chafee and Senator Claiborne Pell here today, and we will have that introduction first. Senator Pell.

**STATEMENT OF HON. CLAIBORNE PELL, A U.S. SENATOR  
FROM THE STATE OF RHODE ISLAND**

Senator PELL. Thank you very much, indeed, Senator Kohl. Members of the committee, it is with very real pleasure that I am here to introduce to you Mary Lisi of my State of Rhode Island for the position of district court judge.

I am very pleased by this nomination and proud to be part of it. I am confident that following your review of her qualifications, you will agree that President Clinton made a wise, appropriate choice for the vacancy on the Federal bench in my State.

I recommended Mary Lisi to President Clinton because I considered her a person of exemplary talent, sterling character, and very real compassion, whose legal career has been distinguished by high professional competence and by her most judicial temperament and demeanor.

Mary Lisi is a native Rhode Islander. She received her undergraduate degree from the University of Rhode Island, her law degree from Temple. In her legal career, she has served in private practice, as a public defender, and as a court-appointed special advocate for children and juveniles in our State's juvenile system.

In recommending Mary Lisi to President Clinton, I realized that her distinguished, accomplished legal career was quite different in character from those of many other nominees, but I believe strongly that her experiences, though different from the traditional, were equally as important and would bring to the bench a diversity of background. In short, I believe strongly that Mary Lisi has the necessary skills, knowledge, and temperament.

I would also note that this is an historic day for the Federal judiciary in my State. If confirmed, Mary Lisi will become the first woman to become a Federal judge in Rhode Island. It is hard to believe it has taken over 200 years for us to come to this point, but I am glad we finally have.

As we achieve greater diversity in the makeup in our Federal judiciary, it is imperative that we not sacrifice the integrity and quality of our court system, and that is why I am so proud of this nomination, which will add a great deal to the Federal bench.

I thank you for this opportunity, Senator Kohl.

Senator KOHL. Thank you, Senator Pell.

Senator Chafee.

**STATEMENT OF HON. JOHN CHAFEE, A U.S. SENATOR FROM  
THE STATE OF RHODE ISLAND**

Senator CHAFEE. Thank you very much, Mr. Chairman. First, I am delighted to join with Senator Pell in welcoming Ms. Lisi to the Hill and introducing her to this committee.

In our State, Mr. Chairman, we take great pride in the Rhode Island members of the Federal judiciary. At the district court level, we have Judges Laqueux and Torres and retired Judges Pettine and Boyle. Judge Selya serves with distinction on the first circuit,

and each of these judges are truly outstanding individuals and have served our Nation extremely well.

I am confident that Mary Lisi will bring added luster to this notable group, and I am very pleased to recommend her to you for the position of U.S. district judge for Rhode Island. She has got an impressive résumé that details a career devoted to public service. She spent the greater part of the 1980's working in the courts to protect the rights and well-being of abused or neglected children in our State.

Since 1988, she has worked to ensure the integrity of our court system by serving on the Supreme Court Disciplinary Board. I also would note that in the last 2 years, Mary Lisi gave of her time by serving on a very important commission we had to investigate the failure of some of our credit unions, and this was an extremely difficult job that took untold number of hours and she carried herself off with great distinction.

So, in sum, Mr. Chairman, the committee has before it this nominee whose professional life has truly been dedicated to serving our community and the interests of justice and fairness. So it is with enthusiasm that I recommend her to you, Mr. Chairman.

Senator KOHL. Thank you very much, Senator Chafee and Senator Pell.

Ms. Lisi, we will come back to you in a few minutes.

We have three nominees from the State of Georgia. They are represented here today by Senator Nunn and Senator Coverdell, and I don't know if Congressman Lewis here. We will take those nominees, Senator Nunn, as you wish for their introductions. We have three nominees. How would you like to introduce them today?

#### **STATEMENT OF HON. SAM NUNN, A U.S. SENATOR FROM THE STATE OF GEORGIA**

Senator NUNN. Thank you very much, Mr. Chairman. On behalf of Senator Coverdell and myself—and he will add whatever remarks he would like to make, but I believe I am speaking on behalf of both of us because we have discussed this—it is my honor and pleasure to introduce to the committee today three of President Clinton's nominees to the Federal district court seats in the State of Georgia.

All of them are judges, outstanding judges: Judge Clarence Cooper, Judge Frank Hull, and Judge Louis Sands. They already have made an outstanding record on the bench and, of course, we are very proud of the diversity they represent, but I can assure the members of this committee that they were selected because they are outstanding individuals, and I believe will make outstanding Federal judges. I am just going to say a few words about each of them.

Judge Cooper currently serves on the Georgia Court of Appeals. He was appointed by Gov. Joe Frank Harris to that position in 1990. He was returned by the voters of Georgia to that position in 1992. Prior to joining the court of appeals, Judge Cooper was on the Fulton County Superior Court and on the Atlanta Municipal Court, so he has had very significant judicial experience. He also served as assistant district attorney in Atlanta.



Judge Cooper has distinguished himself in his military service and his education. From 1968 to 1970, Judge Cooper served in the U.S. Army and received a Bronze Star for his tour of duty in Vietnam. He is a graduate of Clark College, the John F. Kennedy School of Government, and the Massachusetts Institute of Technology Community Fellows Program. After beginning his legal education at Howard University School of Law in 1964, Judge Cooper transferred to Emory University in Atlanta, and as an Emory graduate myself, I am very proud to say, that he graduated from Emory with a juris doctor degree in 1967.

Judge Frank Hull was appointed to the Atlanta Judicial Circuit in 1990. Judge Hull was returned by the voters in 1992. Before joining the superior court, Judge Hull served 6 years on the Fulton County State Court. She has had an outstanding record in both of those positions.

Judge Hull is a graduate of Randolph-Macon Women's College and a cum laude graduate of Emory University Law School. In 1973, Judge Hull served a clerkship with Judge Elbert Tuttle, then judge of the fifth circuit court of appeals. From 1974 to 1984, she worked for the firm of Powell, Goldstein, Frazer & Murphy as a trial attorney handling a broad range of cases in the Federal and State courts.

Judge Hull is a longtime participant in a large number of legal and civic concerns. She has been very active in the Atlanta project, an effort by former President Carter to address in a comprehensive manner the problems of crime, health, and education that are found in the Atlanta area, and indeed in most of the cities of our country. She has done a tremendous amount of work in counseling, job placement, drug and alcohol rehabilitation, and other endeavors so important in the whole judicial system.

Judge Louis Sands currently sits on the superior court of the Macon judicial circuit, a position to which he was appointed by Gov. Zell Miller in 1991. Between 1975 and 1987, Judge Sands was an assistant district attorney for the Macon circuit and an assistant U.S. attorney for the Middle District of Georgia. He was the senior assistant U.S. attorney in the middle district for 8 years.

During his tenure in the U.S. attorney's office and the district attorney's office, Judge Sands developed a strong record in handling complex criminal and civil cases. He has a background in child support enforcement and has served on several State task forces dealing with family violence, gender equality, and substance abuse. Judge Sands spends much of his spare time working with our young people in Georgia. In fact, Mr. Chairman, these are all people of different backgrounds, but they have a common denominator, and that is their dedication to the young people and to the family and their concern about family breakup in our State and in our Nation.

Judge Sands is a graduate of Mercer University and the Mercer University Walter F. George School of Law. He is an active member of the Macon community, helping to lead the Adopt-a-Role Model Program that matches local professionals with high-school-age children in mentoring relationships. He is also very active in the Stewart Chapel African Methodist Episcopal Church. When Judge Sands is approved by this committee and the Senate, I be-

lieve he will be an asset to the Federal bench, just as he has been at the State level.

All of these are outstanding individuals, Mr. Chairman and Senator Thurmond. I interviewed these people extensively and the others who were contenders for these jobs. We had an unusual number of well qualified applicants. These people were outstanding, and I think they will do an excellent job for our State and Nation. I commend them to you, Senator Thurmond, the committee, and to the Senate.

Senator KOHL. We thank you, Senator Nunn.  
Senator Coverdell.

#### STATEMENT OF HON. PAUL COVERDELL, A U.S. SENATOR FROM THE STATE OF GEORGIA

Senator COVERDELL. Mr. Chairman, I want to echo the remarks given by Senator Nunn, and also publicly thank him for the cooperation extended to our office in the process by which he measured the applicants for these high posts.

All of these individuals are distinguished citizens of our State. They have demonstrated academic proficiencies. They have demonstrated a community spirit so necessary in the work for which they will soon be challenged. They have professionally impeccable records. The President has selected, along with Senator Nunn and his office, three very distinguished Georgians very suitable to serve their Nation and this President.

Senator KOHL. Thank you very much.

Senator NUNN. Mr. Chairman, I see that Congressman John Lewis is here. I am very proud that he could join us today. I know he knows these individuals very well.

Senator KOHL. Very good. Thank you, Senator Nunn and Senator Coverdell.

Representative Lewis.

#### STATEMENT OF HON. JOHN LEWIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Representative LEWIS. Thank you very much, Mr. Chairman, Senator Thurmond. I am very pleased to be here to join with Senator Nunn and Senator Coverdell in introducing Judges Hull, Cooper, and Sands to you.

This is indeed a very special occasion for the people in the State of Georgia and for our Nation. The nomination of these three judges to the Federal bench tends to demonstrate the distance we have come as a nation and as a people. It reflects this administration's and your commitment to diversity on the Federal bench. It also reflects this administration's and your commitment to the highest quality Federal judiciary.

Judge Hull, Judge Cooper, and Judge Sands are all held in extreme high regard for their excellent judicial temperament, fairness, and hard work. All three are highly respected by their peers in the State of Georgia.

There is a lot I could say about Judge Frank Mays Hull, about how she graduated cum laude from Emory University Law School and about how she was one of the first women appointed to the

Fulton County State Court, twice reelected to the court, and then elevated to the Fulton County Superior Court in 1990.

But as Senator Nunn stated so well, what I most want to say is that Judge Frank Hull was Elbert Tuttle's law clerk. Judge Tuttle is 97 years old now. He served 38 years on the U.S. Court of Appeals for the Fifth and Eleventh Circuits. We all know Judge Tuttle. Judge Tuttle's fairness and firmness and his fair and firm leadership as chief judge of the Federal appeals court of the South helped to change the face of the South. Judge Frank Hull learned from Judge Tuttle. She was part of his team.

Judge Clarence Cooper is currently a member of the Georgia Court of Appeals. He was appointed to that position in 1990 and just a few months later won a statewide election to that position. Judge Cooper's career in the law has been long and impressive. Upon graduation from Clark College, Judge Cooper entered Howard University School of Law. After 1 year, he came home to Atlanta to study at Emory University Law School. He graduated from the Emory University School of Law in 1967.

In 1967, after serving as Fulton County's first black assistant district attorney, Clarence Cooper was appointed to the Atlanta Municipal Court. He took a leave from the court in 1976 to pursue his master's in public administration at Harvard University. In 1980, Judge Cooper was elected to the Fulton County Superior Court. While there, he presided over the very high-profile missing and murdered children case. On a personal note, let me say that I know Judge Clarence Cooper, and I know him very well. We are fortunate to have someone of his caliber with his commitment and dedication to public service.

Now, let us look at Judge W. Louis Sands. He is from what we call middle Georgia—I guess Senator Nunn's home area, Macon, GA. I don't know him as well as I do the others, but I know his reputation and his excellent reputation for hard work and a very high standard of ethics.

Judge Sands went to Mercer University and the Walter F. George School of Law. While in law school, he worked as chief legal assistant to the district attorney, and while in law school Louis Sands served in the Army Reserve. He resigned from the reserves in 1978 at the rank of captain.

Following graduation from law school, Louis Sands spent 3 years as assistant district attorney. In 1978, he was appointed assistant U.S. attorney for the Middle District of Georgia. In 1987, he formed his own firm, Mathis, Sands, Jordan & Adams, operating two offices, one in Millersville and the other one in Macon.

Judge Sands brings to the Federal bench the very valuable perspective of a person that has spent long hours on the other side of the bench, both as a Federal and State prosecutor and as a private lawyer with a very diverse litigation practice. Mr. Chairman and Senator Thurmond, I am pleased and proud to see him before you today for your confirmation of his nomination to the Federal district court.

I cannot emphasize how lucky and how blessed we are to have these three outstanding Georgians. Their elevation to the Federal court is good news for Georgia and it is good news for America.

Thank you, Mr. Chairman. Thank you, Senator Thurmond.

Senator KOHL. We thank you, Representative Lewis, and Senator Nunn, Senator Coverdell. We will get back to your nominees in due time. Thank you very much.

We have now James Carr from Ohio, to be introduced by the Senators from Ohio, Senator Glenn and Senator Metzenbaum. Senator Glenn.

**STATEMENT OF HON. JOHN GLENN, A U.S. SENATOR FROM  
THE STATE OF OHIO**

Senator GLENN. Thank you Mr. Chairman and Senator Thurmond. Mr. Chairman and members of the committee, it is truly a privilege to be here today to introduce to you Magistrate James Carr. I want to welcome Magistrate Carr's family—his wife, Eileen; his daughters, Maureen, Megan, Darrah, and Caitlin; as well as his brother Tom. And his father, Edmund, flew in from Michigan to be here today.

This is a day we have been looking forward to for a very long time, but I think there is only one person who has been looking forward to this day more than Jim, and that is Judge Potter back in Toledo, who took senior status in August 1992, but has been faithfully coming in every day with a full caseload waiting for a new judge to be appointed. Finally, that day has come and I can't think of a more qualified person than Magistrate Carr to take the job.

Jim Carr has literally been in direct training to be a Federal judge since 1979 when he was named a Federal magistrate in Toledo. Prior to that time, Jim enjoyed a distinguished and diverse legal career in private practice, as a prosecutor, as a legal aid lawyer, and as a professor of law. He has published extensively, and not only in English. In fact, Magistrate Carr has published more German law review articles than most German lawyers could ever hope to publish. I think this provides sufficient evidence that he is a real student of the law on a wide, wide scale.

I could go on and on, but I am not the one you want to hear from today. Just let me add that Magistrate Carr is exactly the kind of individual we need on the Federal bench. I believe he has the perfect blend of skills and experience to take on what is truly an awesome responsibility.

So I respectfully urge the committee to favorably review his nomination. I am glad to give Magistrate Carr my highest recommendation; I know he will do a great job.

Thank you, Mr. Chairman.

Senator KOHL. We thank you, Senator Glenn.  
Senator Metzenbaum.

**STATEMENT OF HON. HOWARD M. METZENBAUM, A U.S.  
SENATOR FROM THE STATE OF OHIO**

Senator METZENBAUM. Mr. Chairman, in a certain way this is an unusual nomination for me, and I think maybe for John Glenn as well. I never met Magistrate Carr before the question of an opening came up. I never heard of him. I never knew of him politically, I never knew him socially, but suddenly there converged upon us Senators an overwhelming outpouring of support for this man who had been a magistrate for 15 years and many people said was

doing all the work that a judge should and could be doing, and with no exception.

His reputation is impeccable. The lawyers of the community and the people of the community all say that Magistrate Carr is truly the person for the position, and I am just very proud to be sitting here with Senator Glenn and urging his confirmation. I have no doubt in my mind that he will make an excellent jurist.

John has already told you of some of his background, some of his writings, some of the work that he has done in the past. I can only say to you that this is a man whom I am sure will make a superb jurist and I am very pleased to be here recommending him to you.

Senator KOHL. Well, we thank you very much, Senator Metzbaum and Senator Glenn, and we will get back to you, Magistrate Carr.

We have now with us the two Senators from Louisiana, Senator Johnston and Senator Breaux. We appreciate your patience in introducing Carl Stewart.

#### **STATEMENT OF HON. J. BENNETT JOHNSTON, A U.S. SENATOR FROM THE STATE OF LOUISIANA**

Senator JOHNSTON. Mr. Chairman and Senator Thurmond, it is a great personal pleasure for me to introduce to the committee Judge Carl Stewart, who is the President's nominee to be judge for the U.S. Fifth Circuit Court of Appeals.

It is a pleasure, first, because Carl Stewart is an old friend, along with his family. By the way, I would like to introduce his family. His wife and his son are here, if you would stand up. His brother is here, and he also has a lot of friends who are with him for this historic occasion.

Second, it is a great pleasure because he is highly qualified. Third, it is a great pleasure because he is the first African-American ever to be nominated to the U.S. Fifth Circuit Court of Appeals as it is presently structured.

Mr. Chairman, there is a great deal that I could say, and I have a statement which I would like to put in the record which details his many, many qualifications. I would only like to make one point, and that is that he has been an elected district judge and court of appeals judge in a predominately white city; he has been elected.

The Shreveport Journal, one of our newspapers there, did a survey of judges not too long ago. Let me tell you that the Shreveport Journal stated that Judge Stewart "nearly swept the ratings. He was a splendid judge, excellent in every respect, has been praised for his judicial economy and fine judicial manner." I think that article in the Shreveport Journal says it all.

It is with a great deal of pride that I recommend to you Judge Carl Stewart.

[The prepared statement of Senator Johnston follows:]

#### **PREPARED STATEMENT OF SENATOR J. BENNETT JOHNSTON**

Mr. Chairman and members of the committee. I am very pleased to appear before the committee today for the purpose of introducing to you Carl Edmond Stewart of Shreveport, Louisiana, nominee to the United States Court of Appeals for the Fifth Circuit.

It is most fitting that an individual of Mr. Stewart's high standards and eminent qualifications be nominated for this very important position.

As a teenager in the 1960s, Carl Stewart witnessed the civil rights struggle of the era and saw how the legal system could be used to bring about positive social change. He was inspired by what he saw and decided to dedicate his life to helping people through the legal system.

Carl Stewart comes to the committee with impressive credentials, having served since 1991 on the Second Circuit Court of Appeals in the State of Louisiana. Mr. Stewart is a 1974 graduate of the Loyola University School of Law in New Orleans.

Mr. Stewart has a distinguished career in law and public service. He has served as a district judge in the First Judicial District Court, Division D, for the State of Louisiana, in addition to working as an assistant United States Attorney for the Western District of Louisiana and a special assistant to the District Attorney in Shreveport, Louisiana.

Among the professional organizations to which Mr. Stewart holds membership are the American Bar Association and Judicial Administration Division; the National Bar Association and Judicial Council; the Louisiana State Bar Association, where he is a member of the bench bar liaison committee; the Harry V. Booth Chapter of the American Inns of Court in Shreveport, where he is a charter member; the Black Lawyers Association of Shreveport-Bossier; and the Louisiana Conference of Court of Appeals Judges.

Mr. Stewart has been widely praised for his judicial performance. In a survey of judges, the Shreveport Journal declared that he "nearly swe[pt] the ratings." Mr. Stewart has been described as "a splendid judge, excellent in every respect" and has been praised for his "judicial economy" and "fine judicial manner," being "careful to treat all parties with the same attitude and concern."

It is important to note that Judge Stewart has also served with distinction in a wide variety of responsible positions outside the legal profession. He has been very active in his community as a member of the board of directors for the Caddo-Bossier Community Council, the Boys Club of Shreveport-Bossier, the Hap House Multidisability Work Center, Goodwill Industries of Northwest Louisiana, the Salvation Army Advisory Board, the Northwest Louisiana Sickle Cell Anemia Foundation, the Northwest Louisiana Family Crisis Center, the Shreveport Opera, the Shreveport-Bossier Metropolitan YMCA, the American Red Cross, the Northwest Louisiana Biomedical Research Foundation, and the Shreveport Chamber of Commerce.

Judge Stewart has been honored with awards from the Boys Scouts of America and the Carver Branch YMCA. The Louisiana Chapter of the Jaycees named him the Louisiana outstanding black man of the year and he received the black man of the year award from Southern University's Shreveport-Bossier Afro-American Society.

Judge Stewart frequently addresses student and professional groups, emphasizing the importance of educational achievement and community service and the need for African-American role models in business and public service. He is also a lay leader of the Louisiana United Methodist Conference.

I have known Carl Stewart for several years and have found him to be professional and competent as a lawyer and community leader. Moreover, I am confident he possesses the necessary judicial temperament to serve on the United States Court of Appeals for the Fifth Circuit.

In sum, I believe that Mr. Stewart possesses the integrity, appropriate demeanor and aptitude for legal scholarship that will enable him to serve well and with distinction if he is confirmed.

Mr. Chairman, Carl Edmond Stewart is imminently qualified to serve as a judge to the United States Fifth Circuit Court of Appeals and I strongly urge the committee act favorably on his nomination.

Senator KOHL. Thank you, Senator Johnston.  
Senator Breaux.

#### **STATEMENT OF HON. JOHN B. BREAU, A U.S. SENATOR FROM THE STATE OF LOUISIANA**

Senator BREAU. Thank you very much, Mr. Chairman and Senator Thurmond. Thank you for letting our delegation appear to recommend Judge Carl Stewart.

I think our colleague, Bennett Johnston, was right on target. This is a very historic day. I mean, Judge Stewart will be the first African-American to be appointed to the fifth circuit court of appeals, as it is presently constituted, and you all know what an his-

toric circuit that has been in the area of human rights and civil rights for all Americans. So it really is with a great deal of pride that we are able to present Judge Stewart.

He really comes as a person who is not here just because of his race. He is here because of the great background as a professional jurist that he brings to this court. He has a degree in psychology, which I think is always very helpful in these areas, and very important. This man has served as a captain in the U.S. Army in the Judge Advocate General's Corps, so he brings a degree of experience about the Military Code of Justice which I think is also very helpful.

In addition, as our colleague, Bennett Johnston, said, I really think that to get to the circuit court, experience in the lower courts is very important. I think it is very difficult just to pick up someone who is a practicing attorney and make them a circuit court judge because they haven't had that experience of sitting in a courtroom in a day-to-day environment and hearing people who are real people with real problems come before them.

Judge Carl Stewart has done that. As I said, he has been an elected district court judge in Louisiana, an elected court of appeals judge in Louisiana. He has been an assistant U.S. attorney. This man has, by experience, by training, by background and education, the credentials to make the type of judge that this Congress will be very impressed with and all of America can be very proud of. I recommend him to you.

Senator KOHL. We thank you, Senator Breaux.

We also have two Members of the House of Representatives here with us, Representative William Jefferson and Representative Cleo Fields.

Representative Jefferson.

#### **STATEMENT OF HON. WILLIAM J. JEFFERSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA**

Representative JEFFERSON. Thank you, Mr. Chairman and members of the committee. I am honored and pleased to be here today with Senators Johnston and Breaux, and with my House colleague, Congressman Fields, in presenting Judge Carl Stewart to this committee.

I believe that Judge Stewart will be an excellent addition to the New Orleans Fifth Circuit Court of Appeals, located in the area that I represent, and I applaud our Senators and President Clinton for his nomination.

As the Senators have said, this is truly a historic day for this committee, for the people of Louisiana, and indeed for our country. As has been said, when confirmed, Judge Stewart will be the first African-American to ever sit on the fifth circuit court of appeals. The fifth circuit has been in the forefront of many areas of law, from admiralty law to contracts law to constitutional law to employment law and natural resource law, but its most prominent decisions have been in the area of civil rights law advances because, unfortunately, the Southern States over which the fifth circuit has had jurisdiction, have been all too fertile a ground for the fostering of civil rights claims.

Judge Stewart's nomination completes the circle of opportunity for African-Americans, from being shut out of the system as litigants to having rights established through court decisions and statutes to bring their claims and now to have Judge Stewart to give this area of the law, and others, meaning borne out of peculiar experience.

The fifth circuit court of appeals has always had a long list of outstanding jurists to serve on it. Judge Robert Ainsworth; Judge Elbert Tuttle; Judge Robert Brown; Judge Alvin Rubin, for whom I was privileged to clerk; and Judge Minor Wisdom, who continues to serve as a senior judge, are among just a few of the outstanding jurists who have served on this court. Judge Stewart will serve, I believe, in this grand tradition.

Mr. Chairman, Judge Stewart is from a unique family, as Senator Johnston has said. He and his wife are the proud parents of three children, and he has two brothers who are also judges—Judge James Stewart of the Shreveport, LA, First Judicial District Court and Capt. Richard Stewart, Jr., a military judge with the U.S. Naval Pacific Fleet in San Diego, CA.

From the beginning, Judge Stewart's public judicial life has been marked for success. He has been singled out by his colleagues as an outstanding district court judge, and on the court of appeals he has always been spoken of only in the highest terms as hard-working, knowledgeable, decisive, competent, efficient, and fair. Yes, Judge Stewart will bring diversity to the court of appeals, but he will also bring a wealth of legal experience to the fifth circuit.

For these reasons, I strongly urge this committee to recommend Judge Carl Stewart to the full Senate for confirmation to the U.S. Court of Appeals for the Fifth Circuit. Mr. Chairman, I appreciate the opportunity to appear before you this afternoon and I thank the committee for its time.

Senator KOHL. We thank you, Congressman Jefferson.  
Congressman Fields.

#### **STATEMENT OF HON. CLEO FIELDS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA**

Representative FIELDS. Thank you, Mr. Chairman, Senator Thurmond, and my colleagues from Louisiana. It is a pleasure to be here to speak on behalf of Judge Stewart who lives in my district and for whom I have a great deal of respect. But one of the disadvantages I have, Mr. Chairman, is whenever you come last, most of the things that you wanted to say have already been said. Let me just say that if Judge Stewart was before the court today, he would simply say, after these three statements, "Your Honors, I rest my case."

Judge Stewart graduated from Booker T. Washington High School with honors and from Dillard University in Louisiana magna cum laude in 1971, Mr. Chairman. He graduated from Loyola Law School in 1974. He practiced military law, served as assistant attorney general, then served as an assistant attorney with the district attorney's office in Louisiana. He practiced extensively in private practice as well, so he brings a vast amount of experience to the bench. He was elected and reelected as district court judge and then was elected to Louisiana's Second Court of Appeals.



He is a member of many organizations, not only in the State of Louisiana, but throughout this entire Nation. He was a past board member of the Shreveport Chamber of Commerce, and also a board member of the American Red Cross. He has served on many community organization boards. I think the most unique part of his credentials is his hard work to help young people within the Shreveport community.

Mr. Chairman and Mr. Thurmond, Shreveport is a community where a lot of our young people turn to drugs and alcohol. Judge Stewart is out there every Saturday working with young people to keep them from turning to drugs and alcohol. He has a program within the Shreveport community that I am very proud of, and I don't think you could find a better person to confirm for the court. So, finally, I can sum it up by saying: This man is fair, but he is also firm.

Senator KOHL. Well, we thank you very much, Mr. Fields, Senators, and Congressman.

We are going to begin with Judge Stewart. Judge Stewart, you have been nominated to be circuit court judge for the Fifth Circuit Court of Appeals. Would you please raise your right hand?

Do you swear that the testimony you shall give in this proceeding shall be the truth, the whole truth and nothing but the truth, so help you God?

Judge STEWART. I do.

Senator KOHL. Judge Stewart, if you have any members of your family—and I know you have them with you—we would be happy to have you introduce them to us at this time.

#### TESTIMONY OF CARL E. STEWART, SHREVEPORT, LA, TO BE U.S. CIRCUIT JUDGE FOR THE FIFTH CIRCUIT

Judge STEWART. Thank you, Senator. I will be brief. As mentioned, I am very proud to have my family with me—my father, Richard G. Stewart, Sr., if my dad would stand; he is a retired letter carrier. My mother is deceased. My father is here; my older brother, Richard G. Stewart, Jr., who is a captain in the U.S. Navy. My wife, Jo Ann, is present here. One of my children, our baby child, Kyle, is present. Our older two children are in school and could not be here with us.

My nephew, James T. White, is present, also, and I have a host of friends and supporters and staff that are here that I am extremely proud to have come and support me, and briefly if they will just stand?

[The persons stood.]

Senator KOHL. All right, that is great. We welcome you all here today.

Judge STEWART. Thank you.

#### QUESTIONING BY SENATOR KOHL

Senator KOHL. I have just a couple of questions and then I will turn it over to Senator Thurmond.

Judge Stewart, if you are confirmed as an appellate judge, at some point you may be faced with applying a Supreme Court precedent with which you do not personally agree. Would you consider yourself to be bound by such precedent?

Judge STEWART. Yes, sir; absolutely, Senator.

Senator KOHL. You will also be faced with cases involving issues on which the Supreme Court has not ruled. In many of those cases, however, you will have decisions from the fifth circuit on which to rely. Under what circumstances, if any, do you believe an appellate judge should overturn precedent within his or her own circuit?

Judge STEWART. Senator, in the circumstance where the Supreme Court has not ruled, I would be bound by the law of the circuit, in this case the fifth circuit, to follow that law as binding precedent on me as one of three in a panel. If there was reason to believe that precedent should be overturned, that would only occur in a situation where the en banc court decided to reverse the law in that circuit. Otherwise, I would be bound to follow the law of the circuit.

Senator KOHL. Judge Stewart, rule 11 of the Federal Rules of Civil Procedure allows judges to impose sanctions against lawyers or parties who file frivolous lawsuits. Recently, there has been much debate over the courts' increased willingness to punish litigants under rule 11. Some lawyers argue that the rule, as applied, sometimes chills creative arguments in developing areas of the law, such as civil rights. As the chief judge of the New York Court of Appeals has put it: "Today's frivolity may be tomorrow's precedent."

What do you think of these concerns, and how might you respond to them on the court of appeals?

Judge STEWART. Senator, I am aware of the discussion and debate over the imposition of rule 11 sanctions. Like many rules, it requires a balancing test, that which certainly is measured by the need to control litigation and ensure that only those cases which are justiciable should be within our courts. The Federal courts are courts of limited jurisdiction and limited time, and those cases should be handled.

On the other hand, in a burgeoning era of litigation, there are a lot of different lawsuits that are brought and I think that rule 11 should be applied reasonably and only in those circumstances where it absolutely is required to be imposed.

Senator KOHL. Finally, an issue currently before the pro bono legal community is whether work for the disadvantaged should be a mandatory or voluntary requirement for lawyers. We see that because of your judicial role, you have provided nonlegal pro bono services in the past, including your time with the Boy Scouts and your positions on the boards of youth service organizations.

In your view, do you think pro bono work should be a mandatory or a voluntary requirement for lawyers?

Judge STEWART. Senator, mandatory pro bono would probably produce more lawyers doing pro bono work. However, a compelling argument can be made that by providing incentives for lawyers to do it voluntarily will also bring about more lawyers, but they will gain greater satisfaction from doing it because they want to do it. Lawyers tend to not want to be mandated to do things, and so a great argument can be made that mandatory pro bono should be a case of last resort.

Senator KOHL. I thank you.

Senator Thurmond.

## QUESTIONING BY SENATOR THURMOND

Senator THURMOND. Thank you, Mr. Chairman. Judge, we are glad to have you with us.

Judge STEWART. Thank you, sir.

Senator THURMOND. Thomas Jefferson remarked shortly after the ratification of the Constitution these words, "Our nation's particular security is the possession of a written Constitution. Let us not make it a blank paper by construction." What do you think he meant by that warning, "Let us not make it a blank paper by construction?"

Judge STEWART. I am not absolutely sure, Senator, what he meant, other than to mean that judges in applying the Constitution should look to its words and look to apply it in situations narrowly where a constitutional issue is raised and not merely in situations where there may be some other statutory basis or some other Federal common law upon which to decide a controversy.

Senator THURMOND. The way some judges have construed the Constitution appears unreasonable, and I do think we have got to be careful how we construe the Constitution. All we have got to do—it is written very plainly—is follow the Constitution.

Now, I think judicial temperament is a very important quality of a judge. I have seen some Federal judges yell at lawyers, jurors, witnesses, and that is inexcusable. The more power you have, the more humble a person ought to be. A judge has all the power, even over life and death, and therefore I think he ought to be very humble. How do you feel about that?

Judge STEWART. I would agree with you, Senator. I have always believed that a judge, whether elected or appointed, is a public servant and that he or she should accord himself to lawyers and litigants with that in mind and should exercise only the amount of power necessary in order to allow litigants to resolve their differences in the courtroom.

I have been very proud of an ability to hopefully have people leave my courtrooms feeling that they got a fair shake even if they disagreed with the outcome, but to feel that the atmosphere of the courtroom was a fair one.

Senator THURMOND. You have a fine record and I wish you well on the bench.

Judge STEWART. Thank you, sir.

Senator THURMOND. Thank you, Mr. Chairman.

Senator KOHL. We thank you very much, and you are excused.

Judge STEWART. Thank you, Mr. Chairman.

Senator KOHL. Our next nominee is Judge James Carr, who has been nominated to be district judge for the Northern District of Ohio.

Judge Carr, would you raise your right hand? Do you swear that the testimony you shall give in this proceeding shall be the truth, the whole truth and nothing but the truth, so help you God?

Judge CARR. I do.

Senator KOHL. Thank you, sir. You may sit down, and we would be happy to be introduced to members of your family if they are here with you.

**TESTIMONY OF JAMES CARR, TOLEDO, OH, TO BE U.S.  
DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OHIO**

Judge CARR. With me today, and it is a great honor for me and it is a thrill for me for them to share in this honor, are, first, my father, Edmund Carr, who is in his 82d year. At age 65, after retiring from a successful career, he went to law school and he is still an active and productive member of our family and society.

After him, I would like to introduce my wife, who is a part of everything I have ever done and ever been, and she, of course, is the mother of our four daughters, Maureen, Megan, Darrah, and Caitlin. I am happy, as well, to have my brother, and my brother-in-law and my sister-in-law and their children, and several other people.

Senator KOHL. Well, we are happy to have you all with us here. Judge CARR. Thank you.

Senator KOHL. Before I ask you a question, I would like to mention to you and people here today that Judge Carr comes highly recommended by my very good friend, for whom I have the highest regard, E. Michael McCann, the Milwaukee County district attorney. I have a wonderful letter in your behalf from District Attorney McCann and I will put it in the record at this point.

Judge CARR. Thank you.

[The letter referred to follows:]

OFFICE OF DISTRICT ATTORNEY,  
MILWAUKEE COUNTY,  
Milwaukee, WI, April 18, 1994.

Senator HERB KOHL,  
Hart Senate Office Building,  
Washington, DC.

DEAR SENATOR KOHL: I understand that the appointment of James G. Carr to the Federal District Court for the Northern District of Ohio will be before the Senate Judiciary Committee on Thursday, April 21, 1994. Mr. Carr would be a truly excellent judge and I urge the committee to confirm his appointment.

Mr. Carr and I have served together for several years on the Board of Directors of the National Pretrial Services Resource Center, a not-for-profit corporation which addresses the array of problems in the pretrial portion of the criminal justice system. From my personal observations, I know Mr. Carr is a man possessing sound judgement and a strong work ethic.

First as a law teacher and then as a federal magistrate, James Carr has consistently demonstrated superior legal scholarship. His opinion as a magistrate in *United States v. Steven Wayne Yee*, case No. 3:89 CR 0720, Northern District of Ohio, Western Division, is the finest legal evaluation of DNA, in my estimate, that has been written.

I have taken the liberty of attaching a copy of Magistrate Carr's résumé. His experience and publications further highlight his outstanding qualifications for the federal judiciary.

James G. Carr is a man concerned with justice. He is felicitously graced with patience, common sense, unimpeachable integrity and a very fine mind.

I keenly recommend his confirmation and would be delighted if you see fit to include this letter in the hearing materials.

Sincerely yours,

E. MICHAEL MCCANN,  
District Attorney.

**QUESTIONING BY SENATOR KOHL**

Senator KOHL. Judge Carr, you have served as a Federal magistrate for 15 years. In many respects, you have performed duties similar to those of a Federal district court judge. If you are con-

firmed, how do you foresee your responsibilities changing on a day-to-day basis from those exercised now as a U.S. magistrate?

Judge CARR. The principal change will be that I will be responsible for the trial and also taking guilty pleas in felony cases and, of course, sentencing in felony cases. Other than that, in terms of my daily routine, I foresee practically nothing changing, except the workload getting even bigger.

Senator KOHL. From your broad experience as a magistrate, can you offer any suggestions to us on how to improve magistrates' current role in the judicial system?

Judge CARR. I think quite candidly, Senator, that if all judges, all district judges, could treat and assign the responsibilities to the magistrates in the way that I have been treated for almost 15 years by the judges in our court, that would probably be a substantial enhancement of the role that magistrates play. I have been extremely fortunate to work closely and well and be treated as a peer by outstanding district judges.

Senator KOHL. I understand, Judge, that early in your legal career you were a staff attorney with the Cook County Legal Assistance Foundation. As part of your daily caseload, you represented almost exclusively poor and disadvantaged clients. What role, if any, and how, do you think a judge has in ensuring that the poor and disadvantaged have access to the legal system?

Judge CARR. Well, of course, I think that there should be no impediment to anyone coming into court. I routinely sign petitions to proceed pro se and in forma pauperis. I perhaps should mention that, at my suggestion, the Toledo Bar Association about 2 years ago proposed to the district court of our district a procedure for developing a fund so that attorneys who take on pro bono cases for indigent civil plaintiffs and civil defendants would be able to be reimbursed or have a modest amount of money paid to them to compensate them for direct out-of-pocket costs. We had no such fund of that sort in our court.

I will only say that, if confirmed, I hope to recall that proposal to the attention of my colleagues and to take speedy action on it. I think that perhaps one of the great instances of unfairness in our system is the inability of civil plaintiffs and defendants to obtain counsel who will represent them faithfully and competently.

Senator KOHL. A last question before I turn it over to Senator Thurmond. Mandatory minimum sentences have been the subject of much debate. In fact, yesterday at a hearing that I chaired, two Federal circuit court judges criticized mandatory minimums, and one of my colleagues called them a "rule of thumb rather than a rule of reason."

As a Federal judge, what would you do if faced with a situation where you were called upon to impose a sentence that you felt was too harsh either because of a mandatory minimum or because it was called for by the sentencing guidelines? What would you do in that case?

Judge CARR. I would be required to impose the sentence that was required by law.

Senator KOHL. How do you feel about mandatory minimums?

Judge CARR. I think that they are troublesome in a couple of respects. One is that they can have a tendency to undercut the effect

of the sentencing guidelines and the Sentencing Commission. Second, they make it extremely difficult, if not impossible, to treat separate cases and individuals separately when those persons are convicted of the same statutory offense.

Senator KOHL. All right, thank you.

Senator Thurmond.

#### QUESTIONING BY SENATOR THURMOND

Senator THURMOND. Thank you, Mr. Chairman. We frequently hear the argument that courts act in response to various social problems because the legislature has failed to act on its own. How would you respond to this defense of an activist judiciary?

Judge CARR. I don't think it is much of a defense at all. I don't think it is a position that can be asserted at all. I think that the court—the last thing any court should be doing is acting either in response to its perception of some social problem or its personal view or outlook as to how things ought to be. We are constrained by the law, beginning with the Constitution, the statutes and the precedent and the rules that have been adopted to guide us in our procedure, and that is the only place we can look in performing our duties.

Senator THURMOND. Judge, someone called my attention to a speech you made in 1990 to the New Probation and Pre-Trial Chiefs Conference. It is alleged that you stated, "The past couple of years have encompassed the most thoroughgoing change in penological philosophy in our country's history—a shift from rehabilitation to prolonged and thoroughgoing incapacitation." This article says you claimed that in making this shift, Congress has manifested an approach that probably can best be described as gulag syndrome.

Would you tell us what you meant by that?

Judge CARR. What I meant by that, Senator, was that as a result of sentencing reform, principally mandatory minimum sentences, we have many people, often quite young, people in their early 20's, charged with very serious offenses, but, as a result of the Federal sentencing structure, find themselves confronted with very long terms of incarceration, including life imprisonment.

And what I meant by that was that we have substituted what historically had been an intent or a desire to undertake to rehabilitate people, particularly younger persons charged with serious offenses and convicted of very serious offenses, and instead have adopted an approach that in many respects sends them away, incapacitates them and obviously protects society in that regard, while at the other hand turning our back to a fair extent on the rehabilitative efforts.

Senator THURMOND. Do you continue to believe that Congress' approach to sentencing can best be described as the gulag syndrome?

Judge CARR. I think that when one adopts particularly mandatory minimum sentences that mandate in all instances extremely long or very long periods of incarceration, up to and including life terms when you start multiplying sentences—I think that that, although a very strong statement, is one observation. Let me make clear, however, as I said to Senator Kohl—and this is obviously

something anyone in this position, anybody contemplating the honor of being confirmed by the Senate, considers, and I have absolutely no doubt whatsoever that when called upon to do so, I will apply the sentencing guidelines and the mandatory minimums faithfully and in full accordance with the law and as required by Congress.

Senator THURMOND. Was your purpose in making this statement to criticize the Congress, or what was your purpose?

Judge CARR. My purpose may have been to criticize the Congress. I think it was more to express concern about the displacement of rehabilitation as a paramount penological goal.

Senator THURMOND. At the time you made this statement, you were a Federal magistrate?

Judge CARR. Yes, sir.

Senator THURMOND. Do you believe that persons are being held in U.S. prisons solely because of their political views?

Judge CARR. No, sir, absolutely not, under no circumstance, and if that is an interpretation of that phrase or statement, that is obviously incorrect in terms of my expression.

Senator THURMOND. That is all, Mr. Chairman.

Senator KOHL. We thank you, Senator Thurmond, and we excuse you, Judge Carr.

Judge CARR. Thank you, Senator Kohl.

Senator KOHL. We now have Judge Clarence Cooper. Judge Cooper has been nominated to be district court judge for the Northern District of Georgia.

Judge Cooper, would you please raise your right hand? Do you swear that the testimony you shall give in this proceeding shall be the truth, the whole truth and nothing but the truth, so help you God?

Judge COOPER. I do.

Senator KOHL. We thank you, sir. Be seated. If you have any members of your family with you, we would be delighted in getting to know them.

#### **TESTIMONY OF CLARENCE COOPER, ATLANTA, GA, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF GEORGIA**

Judge COOPER. Thank you. Mr. Chairman, Senator Thurmond, I would like to introduce members of my family at this time, and I do want them to stand since they are seated in the rear of this audience.

My wife, Shirley, will you please stand? My mother, Hazel Cooper; my mother-in-law, Ms. Lillie Mae Elder; my daughter, Jennae Cooper; and my son, Corey Clarence Cooper. I have two family members seated up front, to my left. Emmanuel and Pamela Payton, will you both stand?

[The persons stood.]

Senator KOHL. Well, we are delighted to have you all here with us today.

Judge Cooper, in 1981 and 1982, you presided over the highly publicized trial of Wayne Williams, the man who was found guilty of murdering 2 of the 28 young blacks who were killed in Atlanta. Citing potential harm to the city's children, you at that time refused to allow television cameras in the courtroom during that

trial. Having cameras in the courtroom sometimes requires a balance between the value of a free press and the interest in having justice rendered fairly and without distortion.

Do you, sir, believe that TV cameras should ever be permitted in Federal courtrooms?

Judge COOPER. I am a proponent of cameras in the courtroom, and despite the ruling that I entered in that case, I personally felt that maybe the case should have been televised, but I received so many letters from psychiatrists, mental health experts, and child psychologists who suggested that probably the case shouldn't be aired simply because so many children had experienced traumatic psychological and emotional problems.

And I don't know whether or not you are aware of it, Senator, but I did hold a hearing on that issue as to whether or not it should be televised. During that evidentiary hearing, I heard from mental health experts, psychologists, psychiatrists, social workers, and other people from other disciplines, and all of them, except one person, felt that the case should not be aired because of the trauma that these kids experienced, and they felt that if it were televised, then these traumas would recur. So I acted on what was in the record, and the decision was one with which both parties agreed.

#### QUESTIONING BY SENATOR KOHL

Senator KOHL. So I would take it, as a Federal judge, if it were permissible, you would allow cameras in your courtroom?

Judge COOPER. I think it brings about a greater understanding on the part of the public as to what we do, particularly when it comes to the civil process because it is so complicated and cumbersome, and I think many people find that more of a mystery than they do the criminal process. So I think it would be something that the public could benefit from, were they able to see a civil trial in Federal court from time to time.

Senator KOHL. In the past few years, there has been a growth in the use of secrecy orders in product liability, malpractice, and environmental cases. Critics of this trend claim that those orders prevent the public from learning about very serious threats to public health and safety.

During your years in private practice, I know you had broad experience in civil litigation. Judge Cooper, how should a judge who hears a request to make documents in such cases confidential balance the public's right to know against a litigant's right to privacy?

Judge COOPER. Senator, that is a very difficult task to undertake, as you know. It requires much of a judge and, of course, I did handle several cases involving that issue. The judge has to do a balancing act; he has to weigh the interests of both sides, the public's right to know as opposed to the litigant's right to keep certain matters confidential and private.

Some of these matters are very sensitive matters and some may involve people not directly or indirectly a part of the lawsuit, but may affect them adversely. Also, a judge should be guided by some of the parameters he may consider and how the law has been evolving in this area in terms of his ultimate decision. But I think his decision should be a reasoned one and it should be based on



not only what is in the best interests of the public, but also the rights of the litigants.

Just remember, these are private litigants who themselves sometimes agree that maybe certain matters should be kept secret not only to protect themselves, but to protect other people.

Senator KOHL. Well, let me ask you this. I have introduced legislation that would prohibit judges from allowing confidentiality orders when the information sought to be made secret relates to public health and safety. It would prohibit confidentiality orders when we are talking about public health and safety.

Yesterday, we held a hearing on this measure, but opponents of the bill made the following argument, and I think you mentioned it just a minute ago, that the civil justice system is about settling private disputes between parties and not necessarily protecting the public interest. How do you—

Judge COOPER. Don't misunderstand me. That is one of the considerations one must make in balancing the various interests.

Senator KOHL. Well, how do you feel about a law that would say when public health and safety is involved, a judge cannot allow a secrecy order?

Judge COOPER. Senator, I don't want to prejudge what might be before me as a Federal district court judge, and that very issue might arise and I don't want to commit myself at this time. I can only say that I would balance the competing interests and make a decision that I think would be fair to the parties involved, but I don't want to commit myself to a position at this time.

Senator KOHL. All right, very good. You should be running for office. [Laughter.]

Senator Thurmond.

#### QUESTIONING BY SENATOR THURMOND

Senator THURMOND. Thank you, Mr. Chairman. I believe you were in the Army 2 years in the Judge Advocate General's Corps?

Judge COOPER. Yes, I was.

Senator THURMOND. I guess you found that an interesting experience.

Judge COOPER. Quite interesting.

Senator THURMOND. What was your rank there?

Judge COOPER. I was an E-6, a specialist E-6, when I came out of service after my 2-year stint—E-6.

Senator THURMOND. You served as a Fulton Superior Court judge and on the Georgia Court of Appeals, also—10 years on the Fulton court, and you are still on the court of appeals, is that right?

Judge COOPER. Yes. I presently serve on the Georgia Court of Appeals, where I have been for the last 4 years. Prior to that, I was on the Fulton Superior Court bench 9 years.

Senator THURMOND. Which type work do you like the best?

Judge COOPER. Well, I am willing to return to the trenches. I think I found that much more exciting than the work that I do as an appellate court judge, although I really enjoy my appellate court work, but I do miss tremendously being a part of that whole process that we call the jury trial system. So I would love to return to that.

Senator THURMOND. Do you see any difficulty in transferring from that type of work—

Judge COOPER. Having been on the bench for 18 years—I am sorry, Senator; go ahead.

Senator THURMOND. You didn't let me get through.

Judge COOPER. OK, that is right. I am sorry.

Senator THURMOND. Do you see any difference in the work you did then and the work you will do now as a judge of the Northern District of Georgia?

Judge COOPER. The only difference would be the kinds of cases that I would be exposed and handling, were I confirmed and became a Federal district court judge, but I think the skills are basically the same. I have been at judging for now 18 years, having served as a city judge, a county judge, and now on the State appellate court. So I have been able to acquire certain skills over the years that should aid me in this transition.

But there are areas of the Federal law that I have never been exposed to—title VII cases, antitrust cases, tax cases, patent rights cases, and other cases of this nature, and those are cases that I am looking forward to if confirmed by the Senate.

Senator THURMOND. How would you handle an instance in which counsel for one of the parties in your court was obviously not a skilled litigator and not prepared to adequately represent the interests of his or her client?

Judge COOPER. That is a very difficult question. I have been confronted with that on several occasions, and I understand that, you know, as a judge I must respect the wishes of one of the parties as to whom he or she wants as his or her attorney. That issue is even more pronounced in criminal matters than civil matters, but I respect the issues of the parties as to whom they want to designate as their lawyers and I try not to interfere, although from time to time a judge may do some things to help the case along. But that is something that a judge is very uncomfortable with when there is a mismatch in court. One of the parties to the litigation has an incompetent lawyer and the other side has a very competent lawyer, and so you have to live with those results, regrettably.

Senator THURMOND. Under the Constitution, we have three branches of government. The legislative branch, the Congress, makes the law. The executive branch, headed by the President, administers the law. The judicial branch, headed by the Supreme Court, interprets the law.

Now, we have found that in some cases some of the judges, if they didn't like the law, felt they had a right to modify it and use their own opinions. How do you feel about that?

Judge COOPER. Well, I think it would be wrong for a judge to ignore precedent, stare decisis, to usurp the power of the legislative branch of government. Judges are not there to make law. We are there to interpret and apply law.

Senator THURMOND. Some call it judicial activism, taking to their power something they don't have. Your job as a judge is to interpret the law and not make the law.

Judge COOPER. I understand that.

Senator THURMOND. Do you agree with that?

Judge COOPER. Wholeheartedly.

Senator THURMOND. That is all. Thank you.

Judge COOPER. Thank you.

Senator KOHL. We thank you, Judge Cooper, and you are excused.

Judge COOPER. Thank you.

Senator KOHL. Our next nominee is Judge Frank M. Hull. She has been nominated to be district court judge for the Northern District of Georgia.

Judge Hull, will you raise your right hand? Do you swear that the testimony you shall give in this proceeding shall be the truth, the whole truth and nothing but the truth, so help you God?

Judge HULL. I do.

Senator KOHL. Thank you, Judge Hull. If you would like to introduce any members of your family, we would be delighted to meet them.

**TESTIMONY OF FRANK M. HULL, ATLANTA, GA, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF GEORGIA**

Judge HULL. Thank you. First, Senator Kohl, I would like to thank you for chairing the hearing on this busy afternoon for you, and I would like to thank Senator Thurmond for your presence on this busy afternoon for you.

At this time, joining me are my family members from Georgia: my husband, Tony Aeck; my two children, Richard Hull Aeck, and our daughter, Molly Hull Aeck; my mother, another Frank—she is Frank Mays Pride; my uncle, Inman Mays; my sister, Carol Hull Palmer; my brother, James Meriwether Hull; a close family friend, Ms. Wilma Hudson; a cousin, Katherine, Mays; another close family friend, Terry Adamson, from Washington, DC, who was my law school classmate 20 years ago; two other close family friends, Mark Eaton and Brooksie Koopman; my cousin, Richard Sullivan.

I have my secretary of 12 years, Darlene Buchanan, who is here. I have my current law clerk, Diana Willis, and I am proud to have two former law clerks, Theresa Gilstrap and Renata Turner, here with me today.

Senator KOHL. Well, we are delighted to have such a considerable entourage. [Laughter.]

Judge HULL. And I appreciate your allowing me to introduce all of them.

**QUESTIONING BY SENATOR KOHL**

Senator KOHL. Well, we thank you. This hearing was originally scheduled for a smaller room, and I went to that room before and it was empty and they told me to come down here to this larger room. Now, I know why.

Judge Hull, much of your experience has been in State court. If confirmed, you will face a docket that includes a heavier caseload of constitutional, employment, and civil rights cases. What steps do you plan to take to familiarize yourself with those areas of the law with which you may lack experience at the present time?

Judge HULL. There would be a number of steps I would follow. First, on the district court, if I am confirmed, that I would be joining, several of the judges have an in-house training program for

the other judges. Our chief judge has already informed Judge Cooper and me, if we were confirmed, that would be occurring over the next 4 months.

I would also take advantage of the materials that have already been sent to all of us from the Federal Judicial Center, as well as the various orientation programs that you have the opportunity to attend as a Federal judge, if confirmed.

Senator KOHL. Very good. Judge Hull, I understand that Atlanta has something called the Atlanta Project, which is designed to attack poverty at its roots by dividing Atlanta and surrounding counties into cluster communities and employing coordinators to guide local residents in seeking ways to enhance their quality of life.

In October 1993, you piloted an effort in the Washington Cluster in which residents became voluntary probation officers and counselors for first-time nonviolent offenders. Could you tell us how successful that program was and did it, in fact, spread to other parts of the city, as was originally hoped?

Judge HULL. The Atlanta Project wants to undertake any new program as a pilot for at least 2 years, so it has not spread yet because they want to work out all of the problems in the program, so it has not spread and, frankly, it is too early to tell. However, we have a neighboring jurisdiction that has used such a program, Cobb County, and it has been extremely successful there.

Senator KOHL. Judge Hull, Congress is contemplating legislation aimed at reducing overcrowding in Federal courts by allowing Federal judges to assign some of their smaller cases to court-appointed arbitrators. Now, many judges and lawyers have expressed concerns about this approach. They say that it infringes upon the rights of citizens to a jury trial. What do you think about this? Do you have any thoughts to offer us?

Judge HULL. In Fulton County, we have had an arbitration program for 10 years that I have used very frequently as a trial judge, and this has been our experience. The arbitration program has three court-appointed arbitrators from lawyers and other citizens who volunteer to serve or who are paid if they do not volunteer.

We assign a case to arbitration at a very early phase in the case. It is nonbinding arbitration; that is, the decision is nonbinding, but it is binding that you must attend the arbitration. Lawyers are given 1 to 2 hours to present their side. The arbitrators make a decision, and then if someone is dissatisfied, they have 30 days in which to simply write a letter, no cost, and say I want my jury trial. That program has been extremely successful.

In Atlanta, we are assigned 1,800 new cases. In fact, my Federal court caseload will be less considerably in terms of number of cases than my current State caseload. We have found arbitration—50 percent of the cases settle before they even go to the arbitration because they were going to settle anyway. Another 25 percent settle within 3 months after the arbitration. I favor it in a nonbinding arbitration matter.

Senator KOHL. I thank you. That is a very good answer.  
Senator Thurmond.

#### QUESTIONING BY SENATOR THURMOND

Senator THURMOND. Thank you, Mr. Chairman.

I notice you were born in Augusta, GA.

Judge HULL. Yes, and I have—all my relatives here are mostly born in Augusta, too, Senator.

Senator THURMOND. I live at Aiken, just 17 miles from Augusta. I had two brothers that were obstetricians at Augusta, Dr. William Thurmond and Dr. George Thurmond.

Judge HULL. And I know of them, sir, and you may have known of my grandfather, Jim Hull, from Augusta, many years ago.

Senator THURMOND. You don't anticipate any difficulty in changing to a new type job as a Federal judge from what you are doing now, do you?

Judge HULL. No, sir, I do not.

Senator THURMOND. Do you believe that a judge should assume direct control over complex issues and cases in order to avoid delays in effective management of such cases?

Judge HULL. Yes, sir, I do. In fact, 100 years ago you could just hear the case and decide it. Today, you have an equally important role to be a hands-on case manager because of the explosion in litigation. Particularly with my State court caseload, I have done that through a number of techniques, which I would be glad to expound upon if you would like, already for the last 10 years as a trial judge, sir.

Senator THURMOND. What do you believe will be the most rewarding aspect of serving as a Federal judge?

Judge HULL. The same rewarding aspect I have had for 10 years as a trial judge, attempting to help litigants resolve disputes in a peaceful, orderly fashion earlier than later.

Senator THURMOND. I don't think I have any further questions. I wish you well on the bench.

Judge HULL. Thank you, Senator.

Senator KOHL. We thank you, Judge Hull.

Judge HULL. Thank you, Senator Kohl.

Senator KOHL. Our next nominee is Mary Lisi, who has been nominated to be district court judge for the District of Rhode Island.

Ms. Lisi, if you would raise your right hand, do you swear that the testimony you shall give in this proceeding shall be the truth, the whole truth and nothing but the truth, so help you God?

Ms. LISI. I do.

Senator KOHL. We thank you. You may be seated, and if you have any members of your family here, we would love to meet them.

#### **TESTIMONY OF MARY M. LISI, PROVIDENCE, RI, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF RHODE ISLAND**

Ms. LISI. I do. I am very happy to say that my husband, Stephen Reid, is here with our two children, Jonathan, who is 13, and Jeffrey, who celebrated his 10th birthday 2 days ago, along with my mother-in-law, Eleanor Reid. I have some friends here, also, from the State of Rhode Island—Jason Zaborsky, who is a student at American University, and also Beth Bailey and her husband, Bob Bailey.

## QUESTIONING BY SENATOR KOHL

Senator KOHL. Well, we are delighted to have you all here today.

Ms. Lisi, your questionnaire indicates that you have served as an assistant public defender, as a child advocate, and most recently as chief disciplinary counsel. If confirmed, how do you plan to make the transition from advocate to impartial arbiter?

Ms. LISI. I have already begun to think along those lines, Senator Kohl, in terms of the kinds of studying that I will need to do to bring myself up to speed, and also to start thinking of myself less as a proponent of a particular position, but rather as an arbiter of disputes.

Senator KOHL. All right. Why do you want this job?

Ms. LISI. Senator, my entire professional career has been dedicated to public service. It is something that I enjoy. It is something that I have given a great deal of my personal energies to because I receive so much back in the way of satisfaction. I can think of no higher honor and no higher aspiration for a practicing attorney than to serve as a Federal court judge.

Senator KOHL. Recently, there has been a growing concern about violent juvenile crime at both the State and Federal levels, as you know. In part, as a response, we have begun to see a trend to open more juvenile records, as adult records already are. As a one-time public defender, what do you think about this trend?

Ms. LISI. I can only tell you my own experiences in the juvenile area, which are now somewhat aged because I have been out of that system for several years. I can tell you that when I started as a public defender in 1977 in the juvenile division, we were dealing with children who were committing the kinds of offenses that one would almost expect to see in the juvenile courts. But by the time I ended my tenure with the public defender's office, we were seeing children coming in at much younger ages committing much more serious offenses.

I think that what you are suggesting as far as looking at those records is very important in order for us to understand how we can work with those individuals who have committed crimes as adults and what kinds of services or incarceration may be necessary in order to protect the public from them.

Senator KOHL. You pointed to the fact, and I alluded to it also, that we have an increasingly serious problem with juvenile crime in our society. What has happened in our society? What has developed over the last decade or two so that we confront this today as we do?

Ms. LISI. Senator Kohl, one of the things I did as a public defender in representing those indigent offenders was to go back and find out who they were, and I was astounded when I read their case files which, in our family court, included not only the offenses for which they were before the court, but also the cases of abuse which had been brought before the court when they were much, much younger.

That is when I changed and began to work as an advocate on behalf of abused and neglected children because I firmly believe that the only way, or perhaps the most successful way that we can work with juvenile offenders is to reach them when they are much

younger and to reach that family unit before it becomes so dysfunctional that any amount of services will not have success.

Senator KOHL. Are you saying that perhaps, in your opinion, the major cause of some of these problems in our society is dysfunctional family units, as opposed and contrasted with a generation or two ago?

Ms. LISI. I believe so, sir, yes.

Senator KOHL. All right. Ms. Lisi, what would you do when faced with a first circuit precedent that controlled a matter before you but with which you personally disagreed?

Ms. LISI. I think I am bound to set aside any personal feelings I have about that precedent and I am bound to apply it.

Senator KOHL. I thank you.

Senator Thurmond.

#### QUESTIONING BY SENATOR THURMOND

Senator THURMOND. Thank you, Mr. Chairman.

I notice from your résumé you are with the Rhode Island Supreme Court. Now, as I understand it, you are not on the court, but you are counsel to the court, is that correct?

Ms. LISI. I am the chief disciplinary counsel for the supreme court.

Senator THURMOND. You have not been a judge?

Ms. LISI. No, sir.

Senator THURMOND. You don't anticipate any trouble in the transition to being a judge, do you?

Ms. LISI. No, sir, I do not.

Senator THURMOND. The phrase "judicial activism" is often used to describe the tendency of judges to make decisions on issues that are not properly within the scope of their authority. What does the phrase "judicial activism" mean to you?

Ms. LISI. I think, Senator Thurmond, that the description that was provided to us in the questionnaire probably most aptly describes what judicial activism is, and if you have my questionnaire in front of you, you know that my feeling is that a Federal court judge is bound by the parameters of article III and the acts of this Congress.

Senator THURMOND. Sometimes, judges don't agree with the law in some respects, and you can understand that, and they attempt to assert their own opinions. How do you feel about that? Congress is the one that has to change the law and not the judges. Are you in accord with that?

Ms. LISI. I am, sir.

Senator THURMOND. Thank you. I wish you well on the bench.

Ms. LISI. Thank you very much.

Senator KOHL. Thank you, Senator Thurmond. Thank you very much, Ms. Lisi.

Our final nominee today is Judge Louis Sands. He has been nominated to be district court judge for the Middle District of Georgia.

Judge Sands, if you would raise your right hand, do you swear that the testimony you shall give in this proceeding shall be the truth, the whole truth and nothing but the truth, so help you God?

Judge SANDS. I do.

Senator KOHL. Thank you, sir. We would be delighted to meet members of your family if they are with you.

**TESTIMONY OF W. LOUIS SANDS, MACON, GA, TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF GEORGIA**

Judge SANDS. Thank you very much, Senator. First of all, I have with me my wife, Carla Heath Sands, and she is holding our youngest, Billye Louise Sands, who, for the benefit of the decorum of this body, it is probably best that she is asleep now. I also have my daughter, Angela Sands, who will be a student at Georgetown University Law School later this year, and my son, Walker Louis Sands; my mother-in-law, Ms. Martha Johnson; my law clerk, Victoria Spear; and also a family friend, Tina Valdecanas.

Thank you very much, Senator.

**QUESTIONING BY SENATOR KOHL**

Senator KOHL. Well, we thank you all for coming here today. It is a pleasure to have you.

Judge Sands, in recent years much has been said about Federal courts' increasing caseloads and the resulting problem of docket backlog. This backlog has had an adverse effect on the litigants before the court, who have been forced to suffer at least some, if not significant delay in the resolution of their claims.

If confirmed, what steps would you take to ensure that your docket progresses as quickly as possible?

Judge SANDS. Well, Senator, that, of course, has been a very great difficulty not only for the Federal courts, but it has been a challenge for the State courts, such as the one that I serve on, and it is a problem we constantly look at. I would expect to do the same on the Federal bench, if confirmed, as I have tried to do as a State court judge; that is, to look first to any means that may have already been set up or may have been suggested by others, but I believe, for the Federal courts, one has to make good use of the magistrates. In the circuit where I live, we happen to have some very able magistrates.

Also, there is some discussion about other means, such as arbitration or matters through which litigants can be referred. But I believe it is a matter that has to be constantly reviewed, any of those types of suggestions. One of the first things that I would do, of course, would be to consult with the persons already on our local bench, but I would be open to any suggestions and again would use those type of reviews and new techniques that we would come up with, as we have done on the State bench.

Senator KOHL. All right. I would like to ask you a question I asked one of the previous nominees, and that is about court secrecy orders. As you know, there is a growing tendency to allow court secrecy orders to stand. I have a bill which would make a judge, by requirement, not allow any court secrecy agreement that endangers public health and safety. In other words, if there is a defective automobile, of which there may be 5 or 10,000 defective automobiles, and one person has an accident and comes to court and is prepared to accept a settlement, provided it is kept secret, that person would not be allowed to do it. The judge would have to rule that there is a public health and safety issue. There may be 10,000,



or 20,000, or 30,000 people who need to know about this defective automobile, so we cannot allow this judgment to be made secret. How do you feel about that?

Judge SANDS. Well, Senator, I am not specifically familiar with what you are referring to, the bill that you are referring to, but I think I understand to what you refer by your description.

Senator KOHL. I tried to explain it, yes.

Judge SANDS. Yes; by your description, I do understand.

Senator KOHL. Right.

Judge SANDS. First of all, I understand that there is a very difficult balancing to take place by what you suggest. I believe, of course, that the courts are public. They are provided for us to have litigation there so that anyone who wishes to observe may do so. But I am also aware, on the other hand, that there are certain matters that are so strictly private, some things as we have had in the past in criminal cases that are maybe an endangerment. So I believe, on the other hand, or the other side, there are matters that might need to be considered closed, possibly.

Senator KOHL. Well, now, there is the opportunity today for a judge—no requirement, but the opportunity today for a judge to set aside any secret arrangement if, in his judgment or her judgment, it violates public health and safety. What would you do in the case of a defective automobile that had caused a death and the plaintiff was offered a considerable settlement, provided that he was willing to keep it secret, and he was willing to do it and the defendant wanted to do it, and you had, as you would have, the opportunity, but not the requirement, to set that secrecy order aside in the interests of the larger public health and safety of our country? What would you do?

Judge SANDS. Senator, first of all, of course, I would not like to right here prejudge how I would do it in that particular case, but I certainly would listen to all of the facts, take into consideration all of the circumstances on both sides of the case, as I have tried to do in all cases in the past, and make a decision which I believed was fair and consistent with the public interest, as well as to abide fully with whatever law did apply.

Senator KOHL. Finally, do you believe that pro bono work is a good thing in our society, a necessary thing in our society? Do you think we ought to make it, second, obligatory on the part of lawyers, particularly young lawyers as they are coming up in their communities?

Judge SANDS. I think it is very important to our society that lawyers provide service pro bono. I had the honor and privilege of being the president of our local bar, and at various times in our court to this day as new lawyers come aboard, we have a short ceremony where they come before the bench and I have tried to emphasize on each of those occasions to the new lawyers how important it is not only to exercise the privilege of earning a living by practicing law, but also to return something to the community, to give something back. So I have tried to do it in that manner.

I believe somehow, if we were to make it absolutely mandatory, though, I think it would take away the very voluntary nature of it. I believe it would be something that should definitely be encouraged, but I doubt that we would get the full benefit of it if we made

it strictly mandatory, but definitely something we should encourage fully.

Senator KOHL. I thank you very much.

Senator Thurmond.

#### QUESTIONING BY SENATOR THURMOND

Senator THURMOND. Thank you.

I notice you graduated from the Walter George School of Law in Macon, GA.

Judge SANDS. I did, sir.

Senator THURMOND. I spoke there several years ago. I don't guess you were a student at that time, were you?

Judge SANDS. I was a student there, Senator, from 1971 to 1974.

Senator THURMOND. I have forgotten now what year I spoke there, but I—

Judge SANDS. I would have seen you, Senator. I don't believe I was there at that time because certainly I would have attended.

Senator THURMOND. I was very much impressed with that school, though. I think it is a good school.

Judge SANDS. Thank you very much.

Senator THURMOND. The American Bar Association in considering judges for the Supreme Court especially consider, first, integrity. Have you ever been arrested for any crime?

Judge SANDS. No, I have not, Senator, fortunately.

Senator THURMOND. They consider judicial temperament. You heard me talk a few moments ago about temperament of a judge, that he ought to always be courteous and be calm and control himself. Do you agree with that?

Judge SANDS. Yes, I do, Senator. It is very important. I believe, as you stated, the greater the power a person has, the more humbleness they should show.

Senator THURMOND. That is right. The other thing was professionalism. I think you have the professionalism here. Having graduated from the Walter F. George School of Law, your education qualifies you there. You have had considerable experience in various ways. I notice you were with the Army Reserve in the Signal Corps.

Judge SANDS. Yes, I was.

Senator THURMOND. What was your rank then?

Judge SANDS. I was commissioned when I graduated from college as a second lieutenant and I later attained the rank of first lieutenant when I went into active duty, and at the time I resigned my commission I was at the rank of captain.

Senator THURMOND. Do you still hold that rank?

Judge SANDS. No; I resigned the commission several years ago, Senator—

Senator THURMOND. I see.

Judge SANDS [continuing]. After completing my required service time.

Senator THURMOND. I notice you are a superior court judge in Georgia.

Judge SANDS. That is correct, sir.

Senator THURMOND. I was a circuit court judge in South Carolina. I believe that is the same kind of judge, the highest trial court in the State.

Judge SANDS. It is, yes, sir.

Senator THURMOND. We call them circuit courts and you call them superior courts, I believe. In New York, they call them superior courts, too.

Now, this will be a trial court you are going on here, the district court, so it will be similar type work. It will just be in the Federal court rather than the State court.

Judge SANDS. Yes, sir.

Senator THURMOND. So you don't anticipate any trouble there in making that transition, do you?

Judge SANDS. I do not, Senator.

Senator THURMOND. I think you have got a good record. I wish you well on the bench.

Judge SANDS. Thank you very much.

Senator THURMOND. I wanted to mention one more thing to you. I want to note for the record that you are a member of a club, the Homosophian Civic Club of Macon.

Judge SANDS. Yes, I am, sir.

Senator THURMOND. At least as of 2 months ago, it had never had a female member in its history, had it?

Judge SANDS. That is correct, I believe, Senator.

Senator THURMOND. I just wanted to add that you are hardly unique in this respect. Many of the Clinton judicial nominees have had similar club issues, but I must observe that in the days when the Republicans controlled the Senate and were making nominations, there would have been an objection to them because they belonged to a club that didn't have minorities or didn't have women. But you are not responsible for that, are you?

Judge SANDS. I am not. In fact, Senator, there is a woman member of the club and I believe I was one of the persons who encouraged that membership.

Senator THURMOND. I think some of the Democrats went too far in raising a point about these memberships in clubs, so long as they are fair and just. Anyway, I just wanted to make the point there that I hope there won't be a double standard when Republicans get back in control and it will be the same standard as the Democrats use.

Judge SANDS. Yes, sir.

Senator THURMOND. Thank you very much.

Senator KOHL. All right. Well, that is not going to be very soon. [Laughter.]

But I wanted to say this, and I was going to say this before you made your remarks. I am really honored to be sitting on the same panel with you, and I think everybody here today feels very special about having you in our presence.

Senator THURMOND. Thank you. Well, I want to commend you for presiding over these hearings. You do it quickly, you do it efficiently, and we save a lot of time. Some of these presiding officers take too long. You do a good job. [Laughter.]

Senator KOHL. Judge Sands?

Judge SANDS. Senator, not to extend these hearings, but I would be remiss if I failed to mention a law professor. When Senator Thurmond mentioned Mercer's Walter F. George School of Law—I have the great fortune of having a professor here who was formerly of that school, Ms. Leah F. Chanin, who is also present, and I would like for her to stand.

[Ms. Chanin stood.]

Senator KOHL. Thank you very much.

We thank you all for being here today.

Senator THURMOND. I would like to shake hands with you nominees, if you will come around here in just a minute as I come down there before we leave.

Senator KOHL. All right. These hearings are closed.

[Whereupon, at 4:03 p.m., the committee was adjourned.]

[Submissions for the record follow:]

## SUBMISSIONS FOR THE RECORD

## I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Carl Edmond Stewart

2. Address: List current place of residence and office address(es).

Home: 6805 Snowmass Street  
Shreveport, Louisiana 71119

Office: 430 Fannin Street  
Shreveport, Louisiana 71101

3. Date and place of birth.

January 2, 1950  
Shreveport, Louisiana

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Spouse: Jo Ann Southall Stewart  
Drug Intervention Coordinator  
Caddo Parish School Board  
1961 Midway Street  
Shreveport, Louisiana 71130-2000

5. Education: List each college and law school you have attended, including dates of attendance, degrees received and dates degrees were granted.

Loyola University School of Law, New Orleans, Louisiana  
September 1971 - May 1974  
Juris Doctor of Law Degree, 1974

Dillard University, New Orleans, Louisiana  
September 1967 - May 1971  
Bachelor of Arts Degree in Psychology  
Magna Cum Laude, 1971

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Part-time Initial Action Unit, Nighttime Claims Handler,  
Allstate Insurance Company, Metairie, Louisiana,  
1972-1974

Trial Defense Counsel and Legal Assistance Attorney,  
Office of the Staff Judge Advocate, United States  
Army, Fort Sam Houston, Texas, 1974-1977

Associate Attorney, Piper & Brown Law Firm, Shreveport,  
Louisiana, October 1977-January 1978

Staff Attorney, Louisiana Attorney General's Office,  
Shreveport, Louisiana, January 1978-April 1979

Assistant United States Attorney, Western District of  
Louisiana, Shreveport, Louisiana, April 1979-  
November 1983

Partner, Stewart & Dixon, A Professional Law Corporation,  
November 1983-April 1985

Special Assistant District Attorney and Assistant  
Shreveport City Prosecutor, 1983-1985

Adjunct Instructor, Louisiana State University-Shreveport,  
College of Business, Department of Management and  
Marketing, Spring 1982-Spring 1985

District Judge, First Judicial District Court, Division D,  
State of Louisiana, April 1985-February 1991

Judge, Second Circuit Court of Appeal, State of Louisiana,  
February 1991-Present

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

Yes.

October 1974 - October 1977  
Captain, U.S. Army Judge Advocate General's Corps  
Fort Sam Houston, Texas  
437-86-7477  
Honorable Discharge

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Charter Member and Team Leader, Harry V. Booth Chapter,  
American Inns of Court, Shreveport, Louisiana

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups. The following memberships are current:

The American Bar Association and Judicial Administration Division

The National Bar Association and Judicial Council

The Louisiana State Bar Association

The Harry V. Booth Chapter, American Inns of Court,  
Shreveport, Louisiana (Charter Member)

The Black Lawyers Association of Shreveport-Bossier

The Louisiana Conference of Court of Appeal Judges

The Louisiana State Bar Association Bench/Bar Liaison Committee

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies.

None.

Please list all other organizations to which you belong.

FORMER BOARD OF DIRECTOR MEMBERSHIPS

Caddo-Bossier Community Council, 1981-1985

Carver Branch YMCA, 1981-1987

HAP House Multi-Disability Work Center, 1981-1987

Boys Club of Shreveport-Bossier, 1982-1985

Goodwill Industries of Northwest Louisiana, 1983-1987  
 Salvation Army Advisory Board, 1983-1986  
 Northwest Louisiana Sickle Cell Anemia Foundation, 1985-1987  
 Northwest Louisiana Family Crisis Center, 1986-1987  
 KDAQ Public Radio Station Community Advisory Board, 1986-1987  
 Shreveport Opera, 1986-1988  
 Shreveport-Bossier Metropolitan YMCA, 1985-1989  
 American Red Cross, 1987-1989  
 Northwest Louisiana Biomedical Research Foundation  
 (Charter Officer), 1985-1988  
 Shreveport Chamber of Commerce, 1985-1988

MEMBERSHIPS IN CIVIC AND COMMUNITY ORGANIZATIONS

Shreveport Chamber of Commerce-Leadership Council, (Chairman,  
 1985-1986)  
 National Association for the Advancement of Colored People,  
 1988-Present  
 Louisiana State University-Shreveport Chancellor's Advisory  
 Board, 1983-1989, (Chairman, 1988-1989)  
 Ark-La-Tex Ambassadors Club, 1990-Present  
 Shreveport Chamber of Commerce, Military Affairs Council,  
 1992-Present  
 Omega Psi Phi Fraternity, Inc., Rho Omega Chapter, (Basileus,  
 1983-1985)  
 Omega Psi Phi Fraternity, Inc., Rho Omega Chapter, Achievement  
 Week Committee (Chairman, 1992-1994)  
 Dillard University, Friends of Louisiana Association of  
 Independent Colleges and Universities, New Orleans,  
 Louisiana, (Representative, 1988-1989)  
 Dillard University Alumni Association, New Orleans, Louisiana  
 (Parliamentarian, 1992)  
 Loyola University School of Law Visiting Committee,  
 New Orleans, Louisiana, 1988-1989  
 YMCA Black Achievers Program Steering Committee, 1990



BOARD MEMBERSHIPS

National Member at Large, Boy Scouts of America, National Council, 1986-Present

Norwela Council Boy Scouts of America, (Treasurer, 1987-1988, Vice President for Membership 1990-1993, Council President 1993-Present)

National Member, Urban Field Services Committee, Boy Scouts of America, Dallas, Texas, 1992-Present

Lighthouse Educational Enrichment Program, 1987-Present

Advisory Board, Links Inc., Project LEAD High Expectations, 1992-Present

Volunteers of America of Northwest Louisiana, 1991-Present

Downtown Shreveport Development Corporation, 1990-Present

Grambling State University, Dr. Martin Luther King, Jr. Criminal Justice Center, Grambling, Louisiana, 1992-Present

Trustee, Centenary College of Louisiana, Shreveport, Louisiana, 1992-Present

11. Court Admission. List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administration bodies which require special admission to practice.

The Supreme Court of the State of Louisiana  
October 2, 1974

The United States Court of Military Appeals  
December 13, 1974

The United States District Court for the Western District of Louisiana  
January 3, 1978

The United States Fifth Circuit Court of Appeals  
February 2, 1979

The United States Supreme Court  
June 30, 1980

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

None.

13. Health: What is the present state of your health? List the date of your last physical examination.

Good. September 30, 1993.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Elected District Judge, First Judicial District Court, Division D, State of Louisiana, April 22, 1985-February 15, 1991. The district court encompasses Caddo Parish (county) and is a general jurisdiction court for all civil and criminal cases except municipal traffic offenses and juvenile cases.

Elected Judge, Second Circuit Court of Appeal, State of Louisiana, February 15, 1991-Present. The Second Circuit is one of five intermediate appellate courts in Louisiana and consists of nine judges. Pursuant to the Louisiana Constitution, a court of appeal has appellate jurisdiction of (1) all civil matters, including direct review of administrative agency determinations of workers' compensation matters, (2) all matters appealed from family and juvenile courts, and (3) all criminal cases triable by a jury except in capital cases where a penalty of death has actually been imposed. It has supervisory jurisdiction over cases which arise within its circuit.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

(1) citations for the ten most significant opinions you have written:

Ten Most Significant Opinions

1. McCrary v. Park South Properties, Inc., trial court opinion attached; affirmed on appeal, 560 So.2d 38 (La. App. 2d Cir. 1990), writ denied, 563 So.2d 1156 (La. 1990).
2. State v. Lobato, 588 So.2d 1378 (La. App. 2d Cir. 1991), affirmed, 603 So.2d 739 (La. 1992).
3. Aldredge v. Whitney, 591 So.2d 1201 (La. App. 2d Cir. 1991).
4. Howard v. Howard, 580 So.2d 696 (La. App. 2d Cir. 1991).
5. Coffin v. The Board of Supervisors of Louisiana State University Agricultural & Mechanical College, 620 So.2d 1354 (La. App. 2d Cir. 1993).
6. State v. Gay, 616 So.2d 1290 (La. App. 2d Cir. 1993).
7. Atkins v. Atkins, 623 So.2d 239 (La. App. 2d Cir. 1993).
8. In Re: JWR & RKR, 607 So.2d 634 (La. App. 2d Cir. 1992), writ denied, 607 So.2d 571 (La. 1992).
9. First Downtown Development Corp. v. Cimoehowski, 613 So.2d 671 (La. App. 2d Cir. 1993), writ denied, 615 So.2d 340 (La. 1993).
10. Soderquist v. Kramer, 595 So.2d 825 (La. App. 2d Cir. 1992).

(2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings:

1.

Massey v. G.B. Cooley Hospital For Retarded Citizens, 593 So.2d 460 (La. App. 2d Cir. 1992), set aside/remanded 616 So.2d 1242 (La. 1993). Plaintiff petitioned for damages against his employer alleging that he was wrongfully terminated and that the employer made defamatory statements about him during the grievance procedure after termination. Defendants filed an exception of no cause of action. The trial court maintained the exception as to allegations of wrongful termination of employment and

intentional infliction of emotional distress, but overruled the exception and found a cause of action for defamation. The court of appeal affirmed. The Louisiana Supreme Court set aside the judgments of the lower courts and remanded the case to the trial court to reconsider the exception in light of its recent detailed analysis of whether a court may render a judgment which partially maintains an exception of no cause of action when the judgment adjudicates less than all of the claims asserted against the excepting party.

## 2.

White v. West Carroll Hospital, 598 So.2d 1134, (La. App. 2d Cir. 1992), vacated 613 So.2d 150 (La. 1992). Presented with whether the court of appeal may consider a prior suit which was not introduced into evidence at a prescription hearing, the appellate court found that the prior suit was not part of the appellate record and refused to supplement the record on appeal or to grant plaintiffs' request to remand the case to the trial court to supplement the record. The Louisiana Supreme Court found that the court of appeal was correct in refusing to supplement the record on appeal, but found it appropriate to remand the case to the trial court to include evidence of the prior suit and to reexamine the issue of prescription in light of the prior suit. Accordingly, the Louisiana Supreme Court vacated and set aside the judgment of the court of appeal which affirmed the trial court's grant of the exception of prescription, and remanded the case to the trial court for further proceedings.

## 3.

Taylor v. Giddens, 607 So.2d 878 (La. App. 2d Cir. 1992), affirmed in part, reversed in part, and remanded, 618 So.2d 834 (La. 1993). The court of appeal determined that the language of LSA-R.S. 9:5628, Louisiana's medical malpractice prescription statute, is unambiguous and provides no exception for wrongful death and/or survival actions which arise from medical malpractice. The Louisiana Supreme Court determined that a wrongful death action is separate and distinct from a malpractice action and, thus, is not governed by LSA-R.S. 9:5628. However, the survival action is controlled by the prescriptive periods set forth in LSA-R.S. 9:5628. Therefore, the judgment which sustained the peremptory exceptions of prescription was affirmed as to the survival action and reversed as to the wrongful death action, and the case was remanded for further proceedings.

4.

State v. Atkins, 607 So.2d 875 (La. App. 2d Cir. 1992), remanded, 613 So.2d 164 (La. 1993), on remand 621 So.2d 656 (La. App. 2d Cir. 1993). The district attorney obtained bond forfeiture judgments against a bondsman and seized funds from the bondsman's savings account. The bondsman petitioned to nullify the bond forfeiture judgments, asserting that the state failed to give him proper notices of appearance dates and of the forfeiture judgments. The trial court found that all notices were properly sent, and the court of appeal affirmed. The Louisiana Supreme Court criticized the court of appeal's reference in dicta to a statute which became effective after the bond forfeitures occurred, and remanded the case to the appellate court for reconsideration. On remand, the court of appeal again affirmed the trial court judgment.

5.

State v. Otis, 586 So.2d 595, (La. App. 2d Cir. 1991), writ granted in part and remanded, 589 So.2d 487 (La. 1991), on remand, 592 So.2d 1 (La. App. 2d Cir. 1991). Defendant appealed his convictions for one count of manslaughter and two counts of attempted manslaughter. He also appealed his sentences, as an habitual offender, to 25 years hard labor on the manslaughter conviction and 12 1/2 years hard labor on each of the attempted manslaughter convictions, all of which were to run concurrently. The court of appeal affirmed defendant's convictions and sentences. The Louisiana Supreme Court granted writs, in part, and remanded the case for the appellate court to reconsider defendant's claim of excessiveness of sentence because defendant was sentenced as a multiple offender on all three counts, despite the fact that his convictions were entered on the same day and involved offenses committed in a single criminal act or episode. On remand, the court of appeal determined that the three convictions must be considered as one conviction, for the purposes of enhancement under the habitual offender bill, because they arose from a single criminal episode. Accordingly, the sentences were vacated and the case remanded to the trial court for resentencing on all three convictions, with adjudication and sentencing as a habitual offender on only one of the convictions.

(3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions.

Not applicable.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None.

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:
1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;  
No.
  2. whether you practiced alone, and if so, the addresses and dates;  
No.
  3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

October 1974-October 1977

I served as a Captain in the U.S. Army Judge Advocate General's Corps immediately after my admission to the Louisiana Bar. My duty assignment was as a Trial Defense Attorney and Legal Assistance Officer, Office of the Staff Judge Advocate, Headquarters, Fort Sam Houston, Texas.

October 1977-January 1978

Upon discharge from the U.S. Army, I returned home to Shreveport, Louisiana where I worked as an associate attorney in the two-person law firm of Piper and Brown, Attorneys at Law.

January 1978-April 1979

I served as a staff attorney in the Shreveport, Louisiana office of Louisiana Attorney General William J. Guste, Jr.

## April 1979–November 1983

U.S. Attorney J. Ransdell Keene hired me as an Assistant U.S. Attorney for the Western District of Louisiana initially to work in the civil section. I remained an Assistant United States Attorney when Joseph S. Cage, Jr. succeeded Mr. Keene as United States Attorney for the Western District of Louisiana.

## November 1983–April 1985

Upon leaving the U.S. Attorney's Office, I went into private practice in a two-person law firm named Stewart and Dixon, A Professional Law Corporation located in Shreveport, Louisiana. I simultaneously held a part-time position as an Assistant City Attorney for the City of Shreveport and a Special Assistant District Attorney.

- d. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

## October 1974–October 1977

I was part of a nine-person military law office. As Trial Defense Attorney, I achieved success on behalf of my soldier clients in several courts-martial proceedings. In numerous other cases, quick and thorough pretrial preparation enabled me to secure nonjudicial punishments for my clients in lieu of court-martial. In my capacity as a Legal Assistance Officer, I organized and administered the Hospital Legal Assistance Program at Brooke Army Medical Center, Fort Sam Houston. As a result of my work as a judge advocate, I received the Department of the Army, Army Commendation Medal on October 11, 1977.

## October 1977–January 1978

I assisted both Piper and Brown in the preparation of general civil litigation files. I left the firm along with several support staff during the law firm's reduction of overhead costs.

## January 1978–April 1979

The Attorney General's Office is located in Shreveport, Louisiana and was staffed by one Assistant Attorney General, A. Mills McCawley, a secretary, and myself. My general duties were to draft Attorney General opinions, do legal research, and assist Mr. McCawley in the preparation and trial of cases within the Shreveport area. I left the Louisiana Attorney General's Office to accept a higher paying position.

April 1979–November 1983

I handled cases under the Federal Tort Claims Act, as well as other federal statutes and under the Code of Federal Regulations. In 1980, I moved to the criminal section and prosecuted cases ranging from the Migratory Bird Treaty Act to administrative agency cases for food stamp violations, social security benefits violations, etc. Cases I handled from grand jury indictments to jury trial encompassed vote buying in federal elections, fraudulent flood claims against the Federal Emergency Management Agency, embezzlements, bank robberies, loan sharking, and tax fraud and criminal civil rights violations. I also participated in voting rights and school desegregation cases brought by the Justice Department.

November 1983–April 1985

My law partner was Edward Dixon. We employed one secretary and one receptionist. As a small firm, we handled primarily general civil matters with little litigation. Both designations enabled me to prosecute Driving While Intoxicated cases for the city under state law. Additionally, I prosecuted misdemeanors and miscellaneous traffic offenses.

Our law firm dissolved and my part-time prosecution work ended upon my election as a judge on March 30, 1985. I took my oath of office on April 22, 1985.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

See answers to 17b(1) above.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Except during my private practice years, I appeared in state and federal courts on a regular basis.

(See answers to 17b(1) above).

2. What percentage of these appearances was in:

a. federal courts; 1974–1977; 1979–1983 (100%)



- b. state courts of record; 1978; 1984-1985 (99%)  
 c. other courts.

3. What percentage of your litigation was:

a. civil;

1974-1977 (0%); 1978-1983 (10%); 1984-1985 (1%)

b. criminal.

1974-1977 (100%); 1979-1983 (90%); 1984-1985 (99%)

4. State the number of cases in courts of record you tried to verdict or judgment: (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

|                             |       |   |
|-----------------------------|-------|---|
| Military practice           | - 25  | - sole counsel                                  |
| Private practice            | - 3   | - sole counsel                                  |
| City and State government   | - 120 | - sole counsel                                  |
| Federal government practice | - 100 | - (85%) sole counsel<br>(15%) associate counsel |

5. What percentage of these trials was:

(a) jury; 15%

(b) non-jury. 85%

3. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;  
 (b) the name of the court and the name of the judge or judges before whom the case was litigated; and  
 (c) The individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

The ten most significant cases I personally litigated all occurred during my tenure as an Assistant United States Attorney for the Western District of Louisiana.

## 1.

United States v. Robert Dwight Nance, No. 83-50024-08, Western District of Louisiana. Jury trial was held in November 1983 before the Honorable Tom Stagg. Counsel for the Defendant: Mr. Neil Martin Trichel, 610 Marshall Street, Suite 630, Shreveport, Louisiana 71101, (318) 424-1441

Summary: Filing of fraudulent tax return.

Representing the United States, I handled Mr. Nance's jury trial as the last of ten cases in which inmates at Wade Correctional Center located in Homer, Louisiana, had filed fraudulent federal income tax returns. The inmates filed returns claiming they had earned wages during the preceding year and were entitled to receive refunds from the United States government. Refunds were, in fact, received by the inmates via the fraudulent use of social security numbers and addresses. Nine of the ten defendants pled guilty prior to trial, but Mr. Nance, the purported ringleader, was tried and convicted by a jury on the indictment charging him with filing a fraudulent tax return.

My role included the following: Coordinating the field investigation with the FBI; preparing and examining witnesses for the grand jury; preparing the grand jury indictment and presenting it to the grand jury; responding to pre-trial motions; handling pre-trial proceedings and hearings; preparing lay and expert witnesses for trial; conducting the trial from opening argument, through the return of the jury verdict, to sentencing.

Significance:

The case was significant because it represented the curtailment of a substantial scheme of defrauding money from the government, not only by persons who had not earned any income but by inmates who were incarcerated on other charges. These fraudulent returns and the prosecution impacted greatly on the finances of the United States. Mr. Nance was convicted and sentenced to a period of hard labor to run consecutively with the time he was serving in the state penitentiary.

## 2.

United States v. Waymon Fortenberry, No. 82-30017, Western District of Louisiana, Monroe Division. Jury trial was held during 1982-1983 before the Honorable Nauman S. Scott, then Chief Judge of the Western District of Louisiana. Counsel for the Defendant: Mr. Robert McLeod, 1900 North 18th Street, Suite 610, Monroe, Louisiana 71207, (318) 325-7000. Co-Counsel for the United States, Department of Justice Attorneys Ross Connealy and Criselda Ortiz.

Summary: Criminal Civil Rights Violation.

I represented the United States as co-counsel in this case against Mr. Fortenberry, who was Warden of the East Carroll Parish Prison. The factual basis for the criminal civil rights violation was that two young black men, inmates at the prison, were left in a metal box over an extended period of time and, due to extreme heat and dehydration, died in the metal box. Both the victims in the case were under 20 years of age. After a multi-day trial, the jury acquitted the defendant.

As co-counsel, I served as local contact for the Washington, D.C. Justice Department lead counsel. I examined the grand jury witnesses and assisted in preparing the grand jury indictment. During the trial, I prepared and examined Dr. George W. McCormick, III, a forensic pathologist, who testified as an expert witness.

Significance:

The case is significant because of the extreme neglect which led to deaths of two young men while in the custody of a state official. The impact of the trial on the community, as well as the deterrent effect on others responsible for the care of prisoners, was significant. For my participation in this trial, I received a letter of commendation from the United States Department of Justice.

## 3.

United States v. Melvin Banks a/k/a Nighthtrain, No. 82-50031-01, Western District of Louisiana, Shreveport Division. Jury trial was held during 1982-1983 before the Honorable Henry A. Politz, now Chief Judge of the Fifth Circuit, United States Court of Appeals, who was then sitting as a District Court Judge. Counsel for Defendant: Mr. Richard Schmidt, appointed counsel, then of the law firm, Lunn, Irion, Smitherman, et al. Attorney Schmidt is now a United States Bankruptcy Judge, 501 Government Plaza Building, 400 Mann Street, Corpus Cristi, Texas 78401, (501) 888-3482.

Summary: Federal Loan Sharking.

I represented the United States in its prosecution of Mr. Banks under a federal loan sharking statute for his heinous and prolonged activities of exacting exorbitant interest rates under the threat and perpetration of violence upon persons who had borrowed small amounts of money. The victims were all members of Ledbetter Heights, a low income neighborhood in the City of Shreveport. The trial of Mr. Banks occurred after taking a number of guilty pleas of several persons involved in the same and similar conduct and, after extensive FBI surveillance and investigation. The jury convicted Mr. Banks and he was sentenced to a jail term.

My role included the following: Coordinating surveillance operations with the FBI; preparing and examining witnesses for the grand jury; preparing the grand jury indictment and presenting it to the grand jury; responding to pre-trial motions; handling pre-trial proceedings and hearings; preparing lay and expert witnesses for trial; conducting the trial from opening argument, through the return of the jury verdict, to sentencing.

Significance:

The incarceration of Mr. Banks removed a substantial threat to the community, particularly in the lives of the elderly and poor people who he intimidated.

4.

United States v. E.B. Malmay, No. 80-50031, Western District of Louisiana, United States v. Malmay, (on appeal) 671 F.2d 869 (5th Cir. 1982).

and

5.

United States v. Alfice Brumley, No. 80-50029, Western District of Louisiana. Litigated during 1980-1981 before the Honorable Tom Stagg. Counsel for both Defendants: Mr. John R. Martzell, 338 Lafayette Street, New Orleans, Louisiana 70130, (504) 581-9065. Co-Counsel for the United States: Mr. A. M. Stroud, then First Assistant United States Attorney, who is now with the law firm Blanchard, Walker, O'Quin & Roberts, Post Office Drawer 1126, Shreveport, Louisiana 71163, (318) 221-6858.

Summary: Payment of voters in an election.

Mr. Malmay was an elected school board member, and Mr. Brumley was an incumbent sheriff, in Sabine Parish of Louisiana. Each was indicted for paying voters in an election in which federal candidates were on the ballot. In connection with the public integrity section of the Justice Department, I participated as co-counsel in the prosecutions of Mr. Malmay and Mr. Brumley. Mr. Brumley plead guilty to a misdemeanor and is still the sheriff for Sabine Parish. Due to pretrial publicity in the Sabine Parish area, Mr. Malmay's trial was held in Shreveport. Mr. Malmay was convicted by a jury but, due to his age and station in the community, he was not given a jail term.

My participation as co-counsel included extensive coordination of pre-indictment investigation with the FBI and review of FBI 302 reports. I accompanied FBI agents during witness interrogation. I examined grand jury witnesses and assisted lead counsel, Mr. Stroud, in all other pre-trial proceedings. I examined witnesses and did the closing argument during the trial of Mr. Malmay.

Significance:

These convictions were the culmination of an extensive investigation by the FBI which had resulted in a number of guilty pleas of lower level haulers and payers. The conviction of Mr. Malmy served as a great deterrent to vote buying and other voter irregularities in the Sabine Parish area and other parts of the state. The conviction of a higher-up official served to bestow a confidence in the electoral system in the area impacted.

## 6.

United States v. Charles Bentley, Nos. 83-30008 and 85-50040, Western District of Louisiana, Alexandria Division. Litigated before the Honorable Nauman S. Scott, then Chief Judge of the Western District of Louisiana. Counsel for the Defendant: Mr. Ralph Capitelli, 600 Julia Street, New Orleans, Louisiana 70130, (504) 582-2425.

Summary: Embezzlement.

Representing the United States, I handled Mr. Bentley's prosecution and guilty plea after an extensive grand jury investigation which showed that he had embezzled more than \$6 million from the Bastrop Federal Savings and Loan Association where he was an officer and employee. Mr. Bentley had an excessive gambling habit which was the cause of his extensive thefts from the Savings and Loan Association. Because he was a relative of one of the senior employees, he was able to conceal this embezzlement for an extended period of time. Mr. Bentley pled guilty.

My role included coordinating the field investigation with the FBI and examining numerous financial records and gambling paraphernalia. I presented evidence to the grand jury which culminated in Mr. Bentley's indictment. I represented the government in plea negotiations which resulted in Mr. Bentley's guilty plea to five counts of embezzlement, each count in the amount of approximately \$1 million.

Significance:

One of the larger embezzlement cases prosecuted in Louisiana at that time, this \$6 million embezzlement served to cause the ultimate demise of the Bastrop Federal Savings and Loan Association.

## 7.

United States v. Hugh Lemoine, No. 81-50011, Western District of Louisiana, Shreveport Division. Jury trial was held during 1981-1982 before the Honorable Tom Stagg. Counsel for Defendant: Mr. H. F. Sockrider, Jr., 327 Crockett Street, Shreveport, Louisiana 71101, (318) 221-5503.

Summary: Receipt and sale of stolen merchandise.

Mr. Lemoine was a Shreveport policeman who was charged by indictment with knowingly receiving and reselling major appliances which he knew, or should have known, had been highjacked from an eighteen-wheeler truck during the interstate transport of the merchandise. After multiple days of trial, the jury acquitted Mr. Lemoine.

My role included the following: Coordinating the field investigation with the FBI; preparing and examining witnesses for the grand jury; preparing the grand jury indictment and presenting it to the grand jury; responding to pre-trial motions; handling pre-trial proceedings and hearings; preparing lay and expert witnesses for trial; conducting the trial from opening argument, through the return of the jury verdict.

Significance:

Notwithstanding the acquittal, the case culminated an extensive investigation involving receipt and sale of stolen merchandise that had been located in interstate commerce. The guilty pleas which preceded the Lemoine trial, as well as the trial itself, served to deter other highjacking and receipt and purchase of stolen items from Shreveport area truck stops and other locations.

8.

United States v. Warren J. Lacombe, No. 83-10011-01, Western District of Louisiana. Jury trial was held during 1983-1984 before the Honorable Nauman S. Scott. Counsel for the Defendant: Mr. Michael Johnson, now a judge on the 12th Judicial District Court, Avoyelles Parish Courthouse, Marksville, Louisiana 71351, (318) 253-9418

and

9.

United States v. Mitchell Laprairie, No. 82-10024-01, Western District of Louisiana. Counsel for Defendant: J. Michael Small, One Center Court, Suite 201, Alexandria, Louisiana 71309, (318) 487-8963.

Summary: Fraudulent flood claims.

Lacombe and Laprairie were companion cases to Verna Disselle, No. 83-10012-01, Louis Foster, No. 84-10016-01, and Thomas Simpson. I represented the United States in these cases in which, after an extensive grand jury investigation, each defendant was indicted for filing fraudulent flood claims with the Federal Emergency Management Agency. A scheme was protracted with Thomas Simpson, the agent for General

Adjustment Bureau which handled flood claims as a lower level adjuster for FEMA. Lacombe was the owner of several properties regarding which he submitted claims. Lacombe also consorted with other defendants to file claims on his behalf in an effort to recover money from the United States Government on properties which either (1) were not owned by him, or (2) were owned by him but which had not been affected by any flood.

In developing and prosecuting these cases, I accompanied the lead FBI investigator to view the situs of many of the fraudulent claims. I presented to the grand jury the evidence which had been developed by the FBI, prepared indictments, and negotiated plea agreements. I coordinated with the FBI a method by which guilty pleas were obtained from lower-level participants in exchange for information and testimony about higher-level participants. The procedure used extended the investigation but resulted in the indictment of Lacombe, who had submitted a large number of fraudulent claims.

Significance:

The impact of these cases is that, cumulatively, they involved a loss to the United States Government of over \$169,000.

10.

Beryl N. Jones v. Caddo Parish School Board, Civil No. 11055-S. Western District of Louisiana. Litigated in 1981 before United States District Judge Tom Stagg in the Shreveport Division. Counsel for Caddo Parish School Board: Mr. Fred Sutherland, 400 Travis Street, 1103 Beck Building, Shreveport, Louisiana 71101, (318) 226-9001. Co-Counsel for Jones: then United States Attorney J. Ransdell Keene, whose current address is Post Office Box 3097 1040 Kings Highway, Shreveport, Louisiana 71133-3097 (318) 221-5770; then First Assistant United States Attorney Frances O. Allen, who now resides at 754 Dudley Drive, Shreveport, Louisiana 71104, (318) 868-9953; and Justice Department Attorneys Nathaniel Douglas and Brian Hefernan.

Summary: Desegregation.

Jones is the primary school desegregation case in Caddo Parish. When first filed in the 1960's, it challenged the separate but unequal school system in the parish. Vestiges of the case remained in 1981 when the Caddo Parish School System sought unitary status. As an Assistant United States Attorney, I worked with the above referenced co-counsel in fashioning a Consent Decree.

My participation in this case included numerous discussions with government expert witnesses, school board members, and others, as well as negotiations with counsel for the school board. I collaborated with co-counsel and opposing counsel to assess the impact, upon various segments of the community, of both the proposed and final language of the Consent Decree.

The negotiations are described as follows in Jones v. Caddo Parish School Board, 735 F.2d 923, 931 (5th Cir. 1984):

[T]he United States and the Board entered into widely publicized settlement negotiations lasting nearly a year, which led up to the execution of the Consent Decree in May 1981. Numerous public meetings (twenty-eight are listed in the papers filed by the Board below) were held throughout the community, principally in February, March and April 1981, to inform the citizens about various desegregation approaches and to obtain community input. Representatives of the Justice Department met with black civic leaders, and also received input from black citizen and parent groups.

**Significance:**

The Consent Decree is signed by me as one of the attorneys and still governs the Caddo Parish School system today.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

In addition to the cases previously described in Number 18 above in which I was involved in the litigation, cases which I presided over as a trial judge stand out in my career. The range of judicial decisions I have made include issues of child custody, paternity, probate and successions, trusts, personal injury, worker's compensation, personal and commercial property interests, business organization disputes, misdemeanors to murders, rapes, robberies, and drug offense. The close contact I have had with litigants, lawyers, jurors and fellow judges has made my respect for the value of the rule of law greater than ever. Having served as a trial judge, I feel well equipped to handle appellate review on a high volume basis.



## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I am unaware of any conflicts of interest that might occur based on any past or present financial arrangements I have. I also do not know of any types of litigation which might cause me to have a conflict of interest. Nonetheless, I have read the Code of Conduct for United States Judges and fully intend to follow it whenever I should encounter a potential or actual conflict of interest. I would recuse myself from considering any case in which a conflict of interest exists.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See Attached Form A0-10 Financial Disclosure Report.

AG-10  
Rev. 1/93

## FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics  
Reform Act of 1989, Pub. L. No.  
101-194, November 30, 1989  
(5 U.S.C.A. App. 6, §§101-112)

|   |  |  |
|---|--|--|
| 1. Person Reporting (Last name, first, middle initial)<br><br>Stewart, Carl E.  | 2. Court or Organization<br>U.S. Court of Appeals<br>Fifth Circuit   | 3. Date of Report<br><br>January 20, 1993                      |
| 4. Title (Article III judges indicate active or senior status; Magistrate judges indicate full- or part-time)<br>Circuit Judge (full-time)  | 5. Report Type (check appropriate type)<br>___ Nomination, Date _____<br><input checked="" type="checkbox"/> Initial ___ Annual ___ Final  | 6. Reporting Period<br>January 1, 1993 to<br>December 31, 1993 |
| 7. Chambers or Office Address<br>U.S. Courthouse<br>600 Camp Street<br>New Orleans, Louisiana 70130   | 8. On the basis of the information contained in this Report, it is, in my opinion, in compliance with applicable laws and regulations _____<br>Reviewing Officer Signature _____ |  |
| IMPORTANT NOTES: <i>The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on last page.</i> |  |  |

## I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

POSITIONNAME OF ORGANIZATION/ENTITY

|   |  |
|---|--|
| <input type="checkbox"/> NONE (No reportable positions) | Volunteers of America of Northwest Louisiana |
| Director  | Norwela Council, Boy Scouts of America       |
| Trustee   | Centenary College, Shreveport, Louisiana     |

## II. AGREEMENTS. (Reporting individual only; see p. 8-9 of Instructions.)

DATEPARTIES AND TERMS

|   |
|---|
| <input checked="" type="checkbox"/> NONE (No reportable agreements) |
|---|

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

DATESOURCE AND TYPEGROSS INCOME  
(yours, not spouse's)

(Honoraria only)

|   |   |           |
|---|---|-----------|
| <input type="checkbox"/> NONE (No reportable non-investment income) |   |           |
| 1   | Louisiana State Judiciary (Judicial Salary) | \$ 89,000 |
| 2   | (S)Caddo Parish School Board (Salary)       | \$        |
| 3   | (S)Schumpert Medical Center (Salary)        | \$        |
| 4   |   | \$        |
| 5   |   | \$        |

FINANCIAL DISCLOSURE REPORT (cont'd)

|                          |                |
|--------------------------|----------------|
| Name of Person Reporting | Date of Report |
| Carl E. Stewart          | January 20, 19 |

IV. REIMBURSEMENTS and GIFTS – transportation, lodging, food, entertainment.  
 (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

| SOURCE   | DESCRIPTION |
|--|-------------|
| <input type="checkbox"/> NONE (No such reportable reimbursements or gifts) |             |
| 1  |             |
| 2 EXEMPT   | EXEMPT      |
| 3  |             |
| 4  |             |
| 5  |             |
| 6  |             |
| 7  |             |
| 8  |             |

V. OTHER GIFTS. (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp.15-16 of Instructions.)

| SOURCE   | DESCRIPTION | VALUE    |
|--|-------------|----------|
| <input type="checkbox"/> NONE (No such reportable gifts) |             |          |
| 1  |             |          |
| 2 EXEMPT   | EXEMPT      | \$ _____ |
| 3  |             | \$ _____ |
| 4  |             | \$ _____ |
|  |             | \$ _____ |

VI. LIABILITIES. (Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp.16-18 of Instructions.)

| CREDITOR   | DESCRIPTION | VALUE CODE* |
|--|-------------|-------------|
| <input checked="" type="checkbox"/> NONE (No reportable liabilities) |             |             |
| 1  |             |             |
| 2  |             |             |
| 3  |             |             |
| 4  |             |             |
| 5  |             |             |
| 6  |             |             |
| 7  |             |             |

\* VALUE CODES: J = \$15,000 or less    K = \$15,001 to \$50,000    L = \$50,001 to \$100,000    M = \$100,001 to \$250,000  
 N = \$250,001 to \$500,000    D = \$500,001 to \$1,000,000    P = More than \$1,000,000

FINANCIAL DISCLOSURE REPORT (cont'd)

|   |                                    |
|---|------------------------------------|
| Name of Person Reporting<br>Carl E. Stewart | Date of Report<br>January 20, 1994 |
|---|------------------------------------|

VII. INVESTMENTS and TRUSTS – income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

| A.<br>Description of Assets<br>(Including trust assets)<br><br>Indicate, where applicable, owner of the asset by using the parenthetical (J) for joint ownership of reporting individual and spouse, (S) for separate ownership by spouse, (D) for ownership by dependent child.<br><br>Place "X" after each asset exempt from prior disclosure. | B.<br>Income during reporting period           |  | C.<br>Gross Value at end of reporting period       |  | D.<br>Transactions during reporting period   |                      |                      |                     |   |
|--|--|--|--|--|--|----------------------|----------------------|---------------------|---|
|  | (1)  | (2)  | (1)  | (2)  | If not exempt from disclosure                |                      |                      |                     |   |
|  | Int. Code (A-d)                                | Type (Div., rent or int.)                            | Value Code (J-P)                                   | Value Method Code (Q-W)                          | (1) Type (A-S, buy, sell, merge, redemption) | (2) Date: Month, Day | (3) Value Code (T-P) | (4) Gain Code (A-M) | (5) Identity of buyer/seller (if private transaction) |
| <input checked="" type="checkbox"/> NONE (No reportable income, assets, or transactions)   |  |  |  |  |  |                      |                      |                     |   |
| 1  |  |  |  |  |  |                      |                      |                     |   |
| 2  |  |  |  |  |  |                      |                      |                     |   |
| 3  |  |  |  |  |  |                      |                      |                     |   |
| 4  |  |  |  |  |  |                      |                      |                     |   |
| 5  |  |  |  |  |  |                      |                      |                     |   |
| 6  |  |  |  |  |  |                      |                      |                     |   |
| 7  |  |  |  |  |  |                      |                      |                     |   |
| 8  |  |  |  |  |  |                      |                      |                     |   |
| 9  |  |  |  |  |  |                      |                      |                     |   |
| 10   |  |  |  |  |  |                      |                      |                     |   |
| 11   |  |  |  |  |  |                      |                      |                     |   |
| 12   |  |  |  |  |  |                      |                      |                     |   |
| 13   |  |  |  |  |  |                      |                      |                     |   |
| 14   |  |  |  |  |  |                      |                      |                     |   |
| 15   |  |  |  |  |  |                      |                      |                     |   |
| 16   |  |  |  |  |  |                      |                      |                     |   |
| 17   |  |  |  |  |  |                      |                      |                     |   |
| 18   |  |  |  |  |  |                      |                      |                     |   |
| 19   |  |  |  |  |  |                      |                      |                     |   |
| 20   |  |  |  |  |  |                      |                      |                     |   |
| 1 Income/Gain Codes:<br>(See Col. B1 & B4)   | A=\$1,000 or less<br>E=\$15,001 to \$50,000    | B=\$1,001 to \$2,500<br>F=\$30,001 to \$100,000      | C=\$2,501 to 5,000<br>G=\$100,001 to \$1,000,000   | D=\$5,001 to \$15,000<br>H=more than \$1,000,000 |  |                      |                      |                     |   |
| 2 Value Codes:<br>(See Col. C1 & C3)   | J=\$15,000 or less<br>K=\$150,001 to \$500,000 | L=\$15,001 to \$50,000<br>O=\$100,001 to \$1,000,000 | M=\$50,001 to \$100,000<br>P=more than \$1,000,000 |  |  |                      |                      |                     |   |
| 3 Value Method Codes:<br>(See Col. C2)   | Q=Appraisal<br>U=Book Value                    | R=Cost (real estate only)<br>V=Other                 | S=Assessment<br>W=Estimated                        |  |  |                      |                      |                     |   |

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Carl E. Stewart

Date of Report

January 20, 1994

## VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

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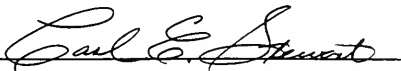
## IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature



Date January 20, 1994

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, § 104, AND 18 U.S.C. § 1001.)

## FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Judicial Ethics Committee  
 Administrative Office of the  
 United States Courts  
 Washington, DC 20544

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See Attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

None other than my own election campaign for Louisiana State District Judge on March 30, 1985 in Shreveport, Louisiana.

## FINANCIAL STATEMENT

## NET WORTH

February 23, 1994

Judge Carl E. Stewart  
437-86-7477

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

| ASSETS                                  |                     | LIABILITIES                                      |                   |
|---|---------------------|--|-------------------|
| Cash on hand and in banks               | 5,200.00            | Notes payable to banks—secured                   |                   |
| U.S. Government securities—add schedule |                     | Notes payable to banks—unsecured                 |                   |
| Listed securities—add schedule          |                     | Notes payable to relatives                       |                   |
| Unlisted securities—add schedule        |                     | Notes payable to others                          |                   |
| Accounts and notes receivable:          |                     | Accounts and bills due                           |                   |
| Due from relatives and friends          |                     | Unpaid income tax                                |                   |
| Due from others                         |                     | Other unpaid tax and interest                    |                   |
| Doubtful                                |                     | Real estate mortgages payable—add schedule       | 145,000.00        |
| Real estate owned—add schedule          | 165,000.00          | Chattel mortgages and other liens payable        | 2,766.00          |
| Real estate mortgages receivable        |                     | Other debts—itemize:                             |                   |
| Automobile and other personal property  | 55,000.00           | installment accounts/                            | 32,000.00         |
| Cash value—life insurance               | 6,081.00            | credit cards                                     |                   |
| Other assets—itemize:                   |                     |  |                   |
| Toro Hills time share                   | 7,500.00            |  |                   |
| JoAnn Stewart - IRA                     | 10,000.00           |  |                   |
| Certificate of Deposit                  | 5,000.00            | Total liabilities                                | 179,766.00        |
| La. State Emp'ee Retirement.            | 71,497.00           | Net Worth  | 145,512.00        |
| <b>Total Assets</b>                     | <b>\$325,278.00</b> | <b>Total liabilities and net worth</b>           | <b>325,278.00</b> |
| CONTINGENT LIABILITIES                  |                     | GENERAL INFORMATION                              |                   |
| As endorser, comaker or guarantor       |                     | Are any assets pledged? (Add schedule.)          | NO                |
| On leases or contracts                  |                     | Are you defendant in any suits or legal actions? | NO                |
| Legal Claims                            |                     | Have you ever taken bankruptcy?                  | NO                |
| Provision for Federal Income Tax        |                     |  |                   |
| Other special debt                      |                     |  |                   |

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantage." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Since 1985, I have served on panels for the Hugh O'Brien Youth Leadership Program, Mock Trial judge, People's Law School participant, and Shreveport Bar Association Pro Bono Project speaker. As a trial judge, I regularly invited school kids to visit my courtroom in order to give them a real impression of the impact of the law in our society. During breaks, I have introduced court staff to kids and answered questions for them. As an appellate judge, I have hosted at risk black kids from an after school program to my chambers and the courtroom. In addition to my youth services oriented board memberships, I make 10-15 school appearances per year for speeches, panels, etc. I devote an average of two hours per work day to youth and disadvantaged youth programs and activities.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates--through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

None.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? NO. If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

I was recommended for nomination to the federal court by Louisiana's two U.S. Senators J. Bennett Johnston and John Breaux. Thereafter, I was called by White House Counsel Bernard Nussbaum about their recommendation and I affirmatively acknowledged my



desire to serve on the federal bench. I submitted answers to a set of questionnaires provided by the White House Counsel's Office and was later interviewed in Shreveport by the FBI and a representative of the American Bar Association Standing Committee on the Federal Judiciary. I was interviewed in Washington, D.C. by the White House Counsel and members of his staff. On January 27, 1994, the White House Counsel notified me by telephone that President Clinton had nominated me to serve as a judge on the U.S. Fifth Circuit Court of Appeals.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include"

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

I believe in and respect the equality of the three branches of government created by the U.S. Constitution. As a separate branch of government, the federal judiciary's powers should be exercised sparingly and in a manner which resolves the litigation along the narrowest basis possible. Where issues before a court can more appropriately be resolved pursuant to the powers of the legislative or executive branches, the court should defer to the other branches.

I believe that the doctrine of judicial precedent plays a valuable role in maintaining stability in the law. I am familiar with the use of judicial precedent as part of the judicial decision making process. I have found it to play an important part in helping a court render sound legal rulings on the issues presented by the litigants.

## I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)  
James Gray Carr
2. Address: List current place of residence and office address(es).  
Residence: 4525 Wedgewood Court  
Toledo, Ohio 43615  
Office: 318 United States Courthouse  
1716 Spielbusch Avenue  
Toledo, Ohio 43624
3. a. Date and place of birth  
November 14, 1940 Boston, Massachusetts
4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).  
Eileen M. Carr (Glynn)  
Associate Professor  
College of Education  
University of Toledo  
2801 West Bancroft Street  
Toledo, Ohio 43606
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.  
Kenyon College 1958-62 A.B. 1962  
Univ. of Freiburg 1962-63 no degree  
Harvard Law School 1963-66 LL.B. 1966
6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit and otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

|   |  |
|---|--|
| Gardner, Carton, Douglas,<br>Chilgren & Waud<br>[now: Gardner, Carton & Douglas]<br>321 N. Clark St.<br>Chicago, Illinois 60610 | Summer, 1965<br>Summer Associate         |
| Gardner, Carton, Douglas,<br>Chilgren & Waud<br>[Gardner, Carton & Douglas]<br>321 N. Clark St.<br>Chicago, Illinois 60610      | 1966-68<br>Associate                     |
| Cook County Legal Assistance Fndtn<br>1146 Westgate St.<br>Oak Park, Illinois 60301   | 1968-70<br>Staff Attorney                |
| Chicago-Kent IIT College of Law<br>3300 South Federal St.<br>Chicago, Illinois 60609  | Fall, 1969<br>Adjunct Professor          |
| Loyola University College of Law<br>820 North Michigan Ave.<br>Chicago, Illinois 60611  | Spring, 1970<br>Adjunct Professor        |
| College of Law<br>University of Toledo<br>2801 W. Bancroft St.<br>Toledo, Ohio 43606  | 1970-79<br>Professor                     |
| Lucas County Prosecutor<br>Lucas County Courthouse<br>Toledo, Ohio 43624  | 1972-73<br>Part-time Asst. Prosecutor    |
| Child Abuse Prevention Center<br>[now: Family & Child Abuse<br>Prevention Center]<br>One Stranahan Square<br>Toledo, Ohio 43606 | 1974-79<br>Board Member                  |
| United States Courts<br>318 U.S. Courthouse<br>1716 Spielbusch Ave.<br>Toledo, Ohio 43624                                       | 1979 to date<br>United States Magistrate |
| Pretrial Services Resource Center<br>1325 G Street, N.W.<br>Washington D.C. 20005   | 1991 to date<br>Board Member             |

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

None

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

|  |   |
|--|---|
| Baker Scholarship  | Kenyon College  |
| Phi Beta Kappa   | Kenyon College  |
| German Academic Exchange Fellowship and Fulbright Travel Grant | Univ. of Freiburg<br>Freiburg, Germany<br>1962-63             |
| Fulbright Research Fellowship                                  | Law Faculty<br>University of Bonn<br>Bonn, Germany<br>1977-78 |

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

a. Bar Associations

|                            |                         |
|----------------------------|-------------------------|
| Chicago Bar Association    | 1966-70                 |
| Chicago Council of Lawyers | 1967-70                 |
| Ohio State Bar Association | mid 1970s               |
| American Bar Association   | mid 1970s, 1993 to date |
| Federal Bar Association    | mid 1970s               |
| Toledo Bar Association     | 1971 to date            |

b. Judicial-Related Committees

|   |         |
|---|---------|
| Committee on Rules of Criminal Procedure and Evidence<br>American Bar Association | 1994    |
| Committee on Criminal Law<br>Judicial Conference of the United States             | 1986-92 |

U.S. District Court, N.D. Ohio  
Differentiated Case Management Oversight Comm. 1991 to date

Administrative Office of the United States Courts  
Probation and Pretrial Services Case Management and  
Statistics Umbrella Group 1993

Ohio Supreme Court, Civil Rules Subcommittee  
on Juvenile Rules (Co-reporter) 1971-72

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

a. Lobbying Organizations: none.

b. Other organizations:

Pretrial Services Resource Center 1991 to date  
Board Member

Toledo, Lake Erie & Western Railway 1993 to date  
& Museum

Maritime Heritage Society 1988 to date

Great Lakes Historical Society 1979 to date

Maumee Valley Historical Society 1983 to date

Toledo Museum of Art 1978 to date

WGTE-TV/FM 1979 to date

History Group 1986 to date

Notre Dame Academy Booster Club 1993 to date

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Illinois Supreme Court November 29, 1966

U.S. District Court  
Northern District of Illinois December 16, 1966

|  |               |
|--|---------------|
| U.S. District Court<br>Northern District of Ohio | July 13, 1970 |
| Ohio Supreme Court                               | March 6, 1972 |
| United States Supreme Court                      | June 23, 1980 |

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

a. Books

|   |   |
|---|---|
| Criminal Procedure Handbook<br>(Annual book-length survey of<br>all reported federal criminal<br>cases) | Clark Boardman Callahan<br>1984 - 1993  |
| The Law of Electronic Surveillance<br>(treatise)  | Clark Boardman Callahan<br>1976 (1st ed.)<br>1985 (2d ed., supplemented<br>semi-annually) |
| 2 Anderson's Ohio Family Law: Juvenile<br>Law & Procedure<br>(treatise; co-author)                      | Anderson Pub. Co.<br>1975 (1st ed.)<br>1989 (2d ed., supplemented<br>annually)            |
| Juvenile Law and Its Processes<br>(casebook; co-author)   | Michie Bobbs Merrill<br>1980 (1st ed.)<br>1989 (2d ed.)                                   |
| Criminal Law Review<br>(annual anthology of law<br>review articles; editor)                             | Clark Boardman Callahan<br>1979 - 1993  |

b. Reports

|   |                               |
|---|-------------------------------|
| Report of the National Commission<br>for the Review of Federal and<br>State Laws Relating to Wiretapping<br>and Electronic Surveillance | Gov't Printing Office<br>1976 |
|---|-------------------------------|

American Bar Association Standards Little Brown  
for Criminal Justice, Standards 1980  
Relating to Electronic Surveillance

c. Articles

1. Law Reviews

Book Review, Cases and Materials on Law and Poverty  
84 Harv. L. Rev. 262 (1970)

Juries for Juveniles: Solving the Dilemma  
2 Loyola L. Rev. 1 (1971)

Grading Clinic Students  
26 J. Leg. Ed. 223 (1974)

The Impact of the Double Jeopardy Clause on Juvenile  
Court Proceedings  
6 U. Tol. L. Rev. 1 (1976)

Wiretapping in West Germany  
29 Am. J. Comp. Law 607 (1981)

Polizeiliches Abhoren in den Vereinigten Staaten  
und in der Bundesrepublik Deutschland: Rechtslage  
und Praxis [original and translated versions submitted]  
1979 Montasschrift fur Kriminologie 65

Das Abhoren von Rechtsanwälten in der USA [original and  
translated versions submitted]  
1979 Zeitschrift fur Rechtspolitik 244

Die Kontrolle der Nachrichtendienste in den USA [original and  
translated versions submitted]  
1979 Zeitschrift fur Rechtspolitik 20

2. Other Law-Related Journals

A Habeas Corpus Primer for State Court  
Defense Attorneys  
3 Criminal Law Journal of Ohio 189 (1991)

Sentencing Reform and Pretrial Release  
5 Federal Sentencing Reporter 220 (1993)

Bailbondsmen and the Federal Courts  
57 Federal Probation 9 (1993)



3. Newsletters

The following articles appeared in the Search and Seizure Law Report, published by Clark Boardman:

- Use of Oral Testimony to Supplement an Incomplete Affidavit (April, 1974)
- Electronic Beepers (April, 1977)
- Suppression of Electronic Surveillance Evidence (Dec., 1977)
- Interspousal Wiretapping (Nov., 1978)
- Dalia v. U.S. and Smith v. Maryland: Surveillance Outside Scope of Title III (Aug., 1979)
- Payton v. New York: Arrest Warrant Required for Arrest in Suspect's Home (June, 1980)
- Searches for Business Records, Books and Similar Documents (Feb., 1981)
- Michigan v. Summers: Detentions Permitted While Search Warrant is Executed (Aug., 1981)
- An Overview of Recent Developments in Fourth Amendment Law (March, 1982)
- Nighttime Searches (Dec., 1982)
- Overview of Recent Developments in Fourth Amendment Law (March-April, 1984)
- Electronic Surveillance by Consent Under State Law (Nov., 1984)
- Overview of Recent Developments in Fourth Amendment Law (March, 1985)
- Overview of Recent Supreme Court Decisions on the Fourth Amendment (Sept., 1986)
- Privacy of Electronic Communications Under Title III (March-April, 1987)
- The Supreme Court's 1987-88 Fourth, Fifth, and Sixth Amendment Cases (July, 1988)
- Warrantless Searches of Inbound Mail From Foreign Countries (March-April, 1989)

An Overview of the Supreme Court's Fourth and Fifth  
Amendment Decisions in the 1988-89 Term (Nov., 1989)

d. Speeches

During the past twenty years, I have given numerous speeches, most of which have been presented to lawyers or judges. Most of these speeches, talks, or seminars have involved either civil practice and procedure, criminal law, or criminal procedure, and many have discussed constitutional or legal policy issues.

It is usually not my practice to write out my speeches; I talk, rather, from notes and other materials which I normally discard afterwards. Thus, except for the first two items, I do not have copies of any speeches to submit. A brief summary of the topic and content of the other speeches of which I still have some record is, however, submitted.

Criminal Defense Attorneys of Michigan: "Unconventional Search Warrants and Orders," Nov. 6, 1993

Federal Judicial Ctr., Training Seminar for Probation and Pretrial Services Officers, "Remarks to New Probation and Pretrial Chiefs Conference," May 4, 1990

Toledo Women's Bar Ass'n, "Amendments to the Federal Rules and Local Practice," Jan. 19, 1994

This was talk about recent amendments to the Rules of Civil Procedure and a description of our District's Differentiated Case Management Program.

Columbus Bar Ass'n, "Ethical Issues for Litigators," Dec. 16, 1993

I was a member of a continuing legal education (CLE) panel, along with an Ohio Supreme Court Justice and two practicing attorneys. A series of scenarios presenting ethical issues in civil cases was discussed informally.

Toledo Bar Ass'n, "District Court Local Rules," Dec. 14, 1993

This was an overview for a CLE program of our Local Civil Rules and their implementation.

Toledo Bar Ass'n, "What Every State Court Attorney Must Know About Federal Habeas Corpus," Oct. 8, 1993

I summarized the general content of my materials, "A Habeas Corpus Primer for State Court Defense Attorneys" [copy submitted under §12.c.2] for a CLE program.

Ohio State Bar Ass'n, "Trial Practice From the Bench," Oct. 6, 1993

I was a CLE panelist along with two or three state court judges; we informally discussed practices and procedures in our courts.

Toledo Bar Ass'n, Alternative Dispute Resolution, Sept. 22, 1993

This was a CLE discussion, along with some role playing by me and two attorneys and a commentator, of various types of alternative dispute resolution techniques.

Toledo Bar Ass'n, "What Every State Court Attorney Must Know About Federal Habeas Corpus," Feb. 26, 1993

I summarized the general content of my materials, "A Habeas Corpus Primer for State Court Defense Attorneys" [copy submitted under §12.c.2] for a CLE program.

Columbus Bar Ass'n, "Handling the SOB Litigator," Dec. 17, 1992

I was a panelist for a CLE program along with a state court trial judge and two practicing attorneys; we responded to scenarios raising issues re. handling conflicts among counsel.

Ohio Ass'n of Criminal Defense Attorneys: "Protecting the Right to Federal Review While You are Still in State Court," Feb. 28, 1992

I summarized the general content of my materials, "A Habeas Corpus Primer for State Court Defense Attorneys" [copy submitted under §12.c.2] for a CLE program.

Toledo Bar Ass'n, "What Every State Court Attorney Must Know About Federal Habeas Corpus," Oct. 4, 1991

I summarized the general content of my materials, "A Habeas Corpus Primer for State Court Defense Attorneys" [copy submitted under §12.c.2] for a CLE program.

Toledo Bar Ass'n, "Rule 11 Review," March 5, 1991

I discussed Rule 11 of the Federal Rules of Civil Procedure and its application locally for a CLE program.

Toledo, Bar Ass'n, "Federal Sentencing," Nov. 26, 1990

This was a CLE program, which I moderated, discussing practices under the Federal Sentencing Guidelines.

Ohio Auto Theft Investigators' Ass'n, "Principles of Search and Seizure," Sept. 13, 1990

This was a speech for insurance company employees and law enforcement officers about basic Fourth Amendment doctrines.

American CLE Seminars, "Search and Seizure," May 22, 1990

This was an overview of recent developments in the law of search and seizure for a CLE seminar.

Ohio Judicial College, "Ohio's Electronic Surveillance Law," May 21, 1987

This was a description of Ohio's newly enacted electronic surveillance statute and its federal counterpart for an Ohio appellate judge's seminar.

Ohio Academy of Trial Lawyers, "Federal Habeas Corpus Relief," Feb. 13, 1987

I discussed general principles of federal habeas corpus for a criminal defense attorneys' CLE program.

13. Health: What is the present state of your health? List the date of your last physical examination.

a. Health: excellent

b. Date of Last Physical Examination: February 11, 1993

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

United States Magistrate  
Northern District of Ohio

1979 to date

Appointed by the District Judges

Federal Court with general trial jurisdiction

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where

your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for your significant opinions on federal and state constitutional issues, together with the citation of appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

a. Ten Most Significant Decisions

Central Residents Council, Inc. v. Lucas Metropolitan Housing Authority, No. C85-7610 (Dec. 14, 1989).

In this opinion, I concluded that the plaintiffs were prevailing parties and that they were entitled to attorneys' fees. The important aspect of this decision was my discussion of standards for review of petitions for attorneys' fees filed by prevailing counsel in civil rights cases, and, as well, evaluation of the role of the court in such circumstances. My approach was adopted by Judge Potter.

Cheetwood v. Roberts, No. 3:90CV7432 (Jan. 15, 1993)

This is a Securities and RICO case in which I concluded that the plaintiffs had failed to file their complaint within the period of limitations. The case, which has settled, raised interesting allegations of fraud and other wrongdoing involving the sale of shares in real estate developments.

In re Grand Jury Investigation Art Materials Industry, No. Misc. 81-61 (Nov. 16, 1981).

I rejected claims by state attorneys general that they were entitled to access to federal anti-trust grand jury materials. An appeal was dismissed voluntarily. At the time that this opinion was written, there was considerable interest, particularly on the part of counsel for public institutions that desired to pursue anti-trust civil claims after investigation by a federal grand jury, in the issues that it discusses. The position that I took was later adopted in another case by the Supreme Court.

Kreimes v. Dep't of the Treasury, No. C 79-264 (Nov. 9, 1983).

This was a suit by taxpayers to recover taxes that had been paid following disallowance of a catastrophic loss deduction. After return of a verdict in favor of the plaintiffs, they sought an award of fees under the Equal Access to Justice Act. I granted their request. My

decision was affirmed by the Sixth Circuit. This was one of the first decisions construing and applying the Equal Access to Justice Act.

Seilon v. Lamb, No C83-314 (July 27, 1983).

This was a securities case in which I concluded after lengthy proceedings that a violation of applicable securities laws had occurred and recommended appropriate relief. The case involved complex securities law issues. Judge Potter affirmed my decision. An appeal was dismissed voluntarily.

Sharp v. Owens Corning Fiberglas, No. 80-450 (Oct. 20, 1983, Aug. 2, 1984).

This was a class action employment discrimination case. These decisions involve unusual issues that arose after the defendants had filed a motion to remove the class representatives. The motion to remove class representatives was filed after the lawyer for the plaintiff class had sued three of the class representatives in state court for non-payment of litigation costs.

Following a hearing, I ruled that the representatives should be removed, the lawyer should be disqualified as class counsel, and the remaining class representatives should undertake to secure new counsel independent of counsel who had been disqualified. Judge Walinski upheld that ruling.

Thereafter, the defendants challenged the compliance of the remaining class representatives with the directive that they secure counsel for the class independent of the attorney who had been disqualified as class counsel. I concluded that the remaining class representatives had not obtained counsel who were independent of the former class counsel, and I recommended that class certification be denied. This ruling was also upheld by Judge Walinski. A subsequent appeal was dismissed voluntarily.

Both of my decisions resulted from unusual circumstances that had no duplicate in any decision that I was able to locate.

The attorney whose removal I ordered later sued me and filed judicial misconduct complaints against me and Judge Walinski. Those matters are discussed in my answers to Questions 9 and 10 in Section IV.

Shellhammer v. Lewallan, No. C82-689 (Nov. 22, 1983).

This was a case brought under the Fair Housing Act in which the plaintiffs, a husband and wife, claimed that their tenancy had been terminated by the landlord after the wife had refused to engage in sexual activities with him. I was the first judicial officer to hold that sexual harassment of the sort alleged in the complaint constituted unlawful discrimination on the basis of gender under that statute. The Sixth Circuit upheld the outcome of this case on appeal.

United States v. Yee, 129 F.R.D. 629 (N.D. Ohio 1990).  
United States v. Yee, 134 F.R.D. 161 (N.D. Ohio 1990),  
aff'd sub nom. United States v. Bonds, F.3d (6th Cir. 1993)(Slip Op. Nos. 91-3608/3609/3610, Dec. 15, 1993)

The government in this case undertook to obtain approval to use DNA evidence. This case involved the first extensive challenge in a federal court to such evidence, and the record that I developed during five weeks of hearings has been used in state and federal courts throughout the country in ruling on the admissibility of DNA evidence.

In the first decision, I granted the defendants' request for extensive prehearing discovery. That decision, which was not appealed by the government to the District Judge, was the first instance in which a DNA laboratory was required to divulge substantial information about its procedures.

In the second decision, I held that DNA evidence obtained by the F.B.I.'s protocol and procedures met standards of admissibility. That decision, which is the most extensive reported examination of the admissibility of DNA evidence, was affirmed by the Sixth Circuit in United States v. Bonds, F.2d (6th Cir. 1993)(Slip Op., No. 91-3608/3609/3610, Dec. 15, 1993).

Women's Pavilion, Inc. v. Moriarity, No. 91CV7250 (April 6, 1992, April 8, 1992).

This case involved a suit by a local abortion clinic against anti-abortionists who had, according to the complaint, interfered unlawfully with the clinic's legitimate operations.

In the first decision I held that the clinic and its physician did not have to disclose the identities of the clinic's patients. This decision involved important

questions of privilege and discovery in the context of this and similar cases.

In the second decision I held that an individual plaintiff: a) could sue the defendants under RICO (though her pleading in this case was deficient), b) could not maintain claims of trespass and interference with her employment contract, and c) could assert an assault claim.

In addition, the second decision also held that a corporate plaintiff: a) could not bring an assault and battery claim, b) could proceed to trial on its interference with contract claim, c) sue on behalf of its patients, staff, and employees, and d) maintain its RICO claim against the defendants without alleging economic harm.

Judge Potter rejected my ruling as to the RICO claim and dismissed the case (remanding the state claims back to state court). The approach taken in my decision on the use of RICO by abortion clinics conforms to the Supreme Court's subsequent decision in National Organization for Women v. Scheidler, U.S. , 114 S.Ct. (1994).

In re John W. Young v. Endsley, No. C86-7903 (May 2, 1988), rev'd, 872 F.2d 176 (6th Cir. 1989)

In this case I held that a statutory limitation on the liability of shipowners was not applicable to the owners of pleasure boats. My decision was reversed by the Sixth Circuit. The case is significant because it addresses the issue of whether persons injured in boating accidents involving pleasure craft can recover damages in excess of the value (which is often quite low) of the boat and its goods.

b. Reversals by the Court of Appeals

D. Ct. No.           Caption and Summary  
Ct. App. No.

77-372               Hand v. Central Transport, Inc.  
84-3850

This was an antitrust case in which I recommended that summary judgment be granted in the defendant's favor; that recommendation was upheld by the District Judge.

The court of appeals reversed. Hand v. Central Transport, 779 F.2d 8 (6th Cir. 1985). The



court held that the proper standard had been applied, but that evidence submitted by the plaintiff in his objections to the District Judge should have been taken into account.

78-174  
83-3747

Heid v. Secretary of H.H.S.

This was a social security disability case in which I entered an order denying benefits to the plaintiff.

The court of appeals remanded to the Secretary for further consideration in light of a statute that required such result for cases pending in the federal courts as of Sept. 19, 1984 (my decision had been entered on Sept. 14, 1983).

79-50  
84-3039

Lowe v. Chem-Trol Chemical Co., Inc.

This was an action under the Vietnam Era Veterans Readjustment Act in which I recommended that summary judgment be entered for the plaintiffs; that recommendation was upheld by the District Judge.

The court of appeals reversed. Raypole v. Chem-Trol Chemical Co., Inc., 754 F.2d 169 (6th Cir. 1985). Noting that the case was one of first impression, the appellate court held that contributions that I concluded had been required under the Act had not been mandated by the Act.

79-137  
84-3041

Raypole v. Chemi-trol Chemical Co., Inc.

This is a companion case to the preceding case.

79-328  
81-3130

Philips v. Secretary of H.H.S.

This is a social security case in which I recommended that benefits not be awarded; the District Judge upheld that recommendation.

The court of appeals held that substantial evidence did not support the Secretary's decision to deny benefits.

79-493  
80-3764

Linton v. Perini

This was a habeas corpus case in which I recommended that relief be denied; that recommendation was upheld by the District Judge.

The court of appeals, Linton v. Perini, 656 F.2d 207 (6th Cir. 1981), held that, regardless of the absence of prejudice to the defendant, the petitioner's Sixth Amendment right to counsel had been denied when a continuance by newly retained counsel had been denied, and trial had commenced ten days after that lawyer had first appeared.

81-63  
82-3329

Smith v. Perini

This was a habeas corpus case in which I recommended dismissal on the basis that the petitioner had failed to exhaust his state court remedies and that, in any event, his claims were without merit. My recommendation was adopted by the District Judge.

The court of appeals, agreeing that exhaustion had not occurred, ordered that the case be dismissed for want of exhaustion without prejudice to the petitioner to relitigate the merits of his claims once exhaustion had been accomplished. Between the filing of my Report and Recommendation and the court of appeal's reversal, the Supreme Court had held in Rose v. Lundy, 455 U.S. 509 (1982), that where a petition contains unexhausted claims, it must be dismissed without consideration of the merits.

81-436  
84-3777  
86-3421

Nichols v. Perini

This was a habeas corpus case in which I twice recommended that relief be granted on the basis that the petitioner had not been informed adequately about the sentencing consequences of a plea of guilty.

My first Report and Recommendation, which had been adopted by the District Judge, was reversed on the basis that I had misinterpreted the applicable sentencing statute. The case was remanded, and I again

found that the petitioner had not understood the sentencing consequences. That decision was upheld by the District Judge

The court of appeals reversed. Nichols v. Perini, 818 F.2d 554 (6th Cir. 1987). The court held that I had failed to take into account factual findings by the Ohio courts in their review of the petitioner's claims.

81-499  
83-3066

Hurst v. Schweiker

This was a social security case in which I recommended denial of benefits and the recommendation was adopted by the District Judge.

The court of appeals, Hurst v. Schweiker, 725 F.2d 53 (6th Cir. 1984), held that substantial evidence did not support the denial of benefits.

81-594  
84-3453

Billings v. Bharmota

This was a prisoner civil rights case in which I recommended that the defendant's motion for summary judgment be denied. That recommendation was upheld by the District Judge.

The court of appeals reversed on the basis that the defendant's conduct had not shown deliberate indifference to the plaintiff's medical needs.

81-604  
83-3582

Bell & Beckwith v. USA

This was an interpleader action brought by a stock broker to resolve the ownership of funds in its custody. The parties consented to my jurisdiction, and, following a pretrial conference, I entered an order directing disbursement of the funds.

The court of appeals reversed, Bell & Beckwith v. United States, 766 F.2d 910 (6th Cir. 1985), on the basis that there had been no federal question jurisdictional basis for entertaining the interpleader action.

81-774  
84-3445

Riverview Investments v. Ottawa County  
Community Improvement Corp.

This was a civil rights and antitrust case in which the plaintiff, a landowner who had an agreement with a shopping center for development of his property, claimed that the defendants' refusal to issue industrial revenue bonds (such issuance being a condition of the plaintiff's agreement with the shopping center) violated the civil rights act and antitrust laws. I recommended summary judgment in defendants' favor, and that recommendation was approved by the District Judge.

The court of appeals held that the decision regarding the civil rights claim had been correct; it remanded on the antitrust claim for further development of the record in light of intervening Supreme Court decisions. Riverview Investments, Inc. v. Ottawa County Improvement Corp., 769 F.2d 324 (6th Cir. 1985).

82-10  
83-3347  
83-3202

Hazelwood v. Bharmota

This was a medical malpractice case in which I recommended that summary judgment be granted to the defendants because the plaintiff failed to file the complaint within the applicable limitations period. The recommendation was adopted by the District Judge.

The court of appeals vacated and remanded for further consideration in light of an intervening decision by the Ohio Supreme Court.

82-208  
85-3093  
85-3069

Oglebay Norton Co. v. CSX Corp.

This was an action brought by a shipowner against the operator of a dock, in which the plaintiff sought indemnification from the dockowner after a seaman's claim against the shipping company had been settled. The parties consented to my jurisdiction, and I entered judgment after a nonjury trial denying the indemnity claim but awarding contribution.

The court of appeals held that I had misapplied the legal standard applicable to the plaintiff's indemnity claim.

82-528  
84-3176

Franchinni v. Secretary of H.H.S.

This was a social security disability case in which I recommended denying benefits to the plaintiff. The District Court upheld my recommendation.

On appeal, the court of appeals remanded to the Secretary for further consideration in light of a statute that required such result for cases pending in the federal courts as of Sept. 19, 1984 (my decision had been entered on Nov. 22, 1983).

82-876  
83-3919

Faust v. Heckler

This was a social security case in which I ordered that benefits be denied.

On appeal, the court of appeals remanded to the Secretary for further consideration in light of a statute that required such result for cases pending in the federal courts as of Sept. 19, 1984 (my decision had been entered on Oct. 25, 1983).

CR83-129  
84-3534

USA v. Bell

This was a criminal case in which I recommended that the defendant's motion to suppress be granted. The basis for that recommendation was a finding that an F.B.I. agent had not had an adequate basis for frisking the defendant. My recommendation was upheld by the District Judge.

The court of appeals reversed, United States v. Bell, 762 F.2d 495 (6th Cir. 1985), on the basis that the agent had had a sufficient cause for the frisk.

83-238  
84-3873  
87-3014

Leal v. Perini

This was a habeas corpus case in which I twice recommended that relief be granted to the petitioner on the basis that the prosecution had improperly withheld material evidence to which the petitioner had been entitled (a taped conversation, a prior inconsistent statement by the state's principal witness, and lie detector results indicating untruthfulness on the part of that witness).

Each of my recommendations was upheld by the District Judge.

In its first decision, the court of appeals remanded for further consideration in light of an intervening Supreme Court decision. On remand, I again recommended granting relief, and the recommendation was approved by the District Judge.

In its second decision, the court of appeals held that the evidence that had been wrongfully withheld had not been material to the petitioner's conviction. The petitioner has subsequently received a governor's commutation.

83-266  
84-3348

Steingraber v. Heckler

This was a social security case in which I ordered denial of benefits.

The court of appeals remanded to the Secretary for further consideration in light of evidence that the plaintiff had undergone back surgery following entry of my decision and while the case was pending before the appellate court.

83-536  
85-3016  
85-3290  
88-4047

Tierney v. City of Toledo

This was a civil rights case brought by a officer against the City of Toledo and its Police Patrolmens' Union, in which the plaintiff alleged that the "fair share" agreement between the City and Union violated his First Amendment rights due to inadequate procedures for ensuring that the plaintiff's contribution was spent solely for collective bargaining purposes.

The parties consented to my jurisdiction. Following an injunction hearing, I held that the union's procedures met constitutional standards.

The court of appeals upheld that decision. Tierney v. City of Toledo, 785 F.2d 310 (6th Cir.), vacated, 475 U.S. 1115 (1986). Thereafter, following an intervening Supreme Court decision, the appellate court's decision was vacated, and it remanded the case to me for further proceedings.

Following further proceedings, I ruled that the union's revised procedures met constitutional requirements.

That decision was reversed by the Sixth Circuit, Tierney v. City of Toledo, 824 F.2d 1497 (6th Cir. 1987), on the basis that the procedures that I had approved were not sufficient to protect the plaintiff's First Amendment rights.

Thereafter, I again found the union's plan, as further revised, to be acceptable. In addition, I rejected the plaintiff's demand for extensive access to the union's books and records.

That decision was affirmed in part and reversed in part by the Sixth Circuit in Tierney v. City of Toledo, 917 F.2d 927 (6th Cir. 1990), with the court directing further proceedings relative as to whether the audit procedures were adequate to verify expenditures and requiring me to order the union to make specific disclosures concerning its income and expenditures.

83-536  
84-3869

Central States Southeast and Southwest Area Pension Fund v. Transservice Systems, Inc.

This was an action brought by a pension fund to collect contributions from the defendant, who was the former employer of a beneficiary of the fund. Following a nonjury trial (the parties having consented to my jurisdiction), I held in favor of the plaintiff.

The court of appeals remanded for further consideration with regard to an issue that it concluded I had not adequately considered and for further clarification of my original decision.

85-730  
84-3274

Wallace v. Hubbard

This was a pro se prisoner civil rights case alleging inadequate medical treatment; the only named defendant was the warden. I recommended that the defendant's dismissal motion be granted; that recommendation was adopted by the District Judge.

The court of appeals reversed on the basis that the plaintiff should be given time in which to undertake to amend his complaint to state more clearly the parties against whom he was seeking relief.

83-854  
84-3052

Akbar v. Seiter

This was a pro se prisoner civil rights case in which the plaintiff claimed that regulations regarding clothing violated his First Amendment rights. I recommended that the complaint be dismissed on the basis of res judicata, and that recommendation was upheld by the District Judge.

The court of appeals affirmed in part and reversed in part, with the reversal being based on the determination that some of plaintiff's claims had not been resolved in his earlier litigation.

83-1084  
85-3703

Ward v. Secretary of H.H.S.

This was a social security case in which I recommended that benefits be denied, and that recommendation was upheld by the District Judge.

The court of appeals affirmed in part and vacated and remanded for the purpose of consideration of decisions by that court that had been rendered after the date of my Report and Recommendation.

84-7016  
84-3420

Brown v. Seiter

This was a pro se prisoner civil rights case, in which I recommended dismissal, and that recommendation was upheld by the District Judge.

The court of appeals affirmed in part and reversed in part on the basis that the complaint adequately stated a cause of action as to one of the defendants.

84-7124  
85-3258

McLaughlin v. Excel Wire & Cable Co.

This was an age discrimination case in which I recommended that summary judgment be granted for the defendant. I concluded that plaintiff had not filed his administrative complaint



within the requisite period and an election of remedies precluding other claims had occurred. That recommendation was upheld by the District Judge.

The court of appeals reversed, holding that equitable tolling had extended the period for filing and no election of remedies had occurred.

84-7388  
86-3562

Crawford v. Secretary of H.H.S.

This was a social security case in which the parties consented to my jurisdiction and in which I denied benefits.

The court of appeals held that substantial evidence had not supported the Secretary's denial of benefits.

84-7623  
86-3738

Hoffman v. Glidden

This was an employment discrimination case that was referred to me for Special Master hearing. I recommended that defendant's motion for summary judgment be granted, and that recommendation was adopted by the District Judge.

The court of appeals reversed on the basis that there was a genuine dispute of material fact concerning the alleged pretextuality of the defendant's reasons for its actions.

84-7758  
86-3491

Berry v. Secretary of H.H.S.

This was a social security case in which the parties consented to my jurisdiction and I ruled that benefits be denied.

The court of appeals reversed on the basis that the Secretary's decision to deny benefits was not supported by substantial evidence.

84-7777  
86-3886

Brown v. Secretary of H.H.S.

This was a social security case in which I recommended that benefits be denied, and that recommendation was upheld by the District Judge.

The court of appeals reversed on the basis that the Secretary's decision to deny benefits was not supported by substantial evidence.

84-8054  
87-3352

Canderm, Inc. v. Elder Pharmaceuticals, Inc.

This was a breach of contract and tortious interference with contractual relations case in which the parties consented to my jurisdiction. Prior to trial (which resulted in a verdict for the plaintiff), I dismissed plaintiff's claims as to one defendant and its punitive damages claim; those rulings were upheld by the court of appeals. I also had ruled prior to trial that the defendant had not been entitled to advance a particular defense.

That ruling was reversed on appeal on the basis that there were material disputes of fact requiring determination of by the jury. Canderm, Inc. v. Elder Pharmaceutical, Inc., 862 F.2d 597 (6th Cir. 1988).

84-8088  
85-3967

Hardin v. Secretary of H.H.S.

This was a social security case in which the parties had consented to my jurisdiction and I ordered that benefits be awarded.

The court of appeals remanded on the basis of an intervening decision by that court.

85-7464  
87-3006

In re Bell & Beckwith

This was an action brought by the trustee of a bankrupt stock brokerage to recoup funds paid to an attorney who had been retained by the firm's principal after the principal's fraud had been uncovered. The parties consented to my jurisdiction. Following trial, I found that the attorney had neither known nor had reason to know that the funds that he had been paid at the outset of his representation of the principal were proceeds of the fraud.

The court of appeals reversed, holding that the attorney had been under a duty of inquiry and thus was chargeable with knowledge that the funds he had received had derived from the fraud. In re Bell & Beckwith, 838 F.2d 844 (6th Cir. 1988).

86-7903  
88-3483

Endsley v. Young

This was an admiralty case in which the parties consented to my jurisdiction. I granted summary judgment in favor of a party injured by an explosion on a pleasure boat. That judgment was limited to the issue of liability: I held that a statutory limitation of a vessel owner's liability was not applicable to the owners of pleasure boats.

The court of appeals, reversed, holding that the statutory limitation of liability was applicable to commercial ships and pleasure craft alike. In re John Young, 872 F.2d 176 (6th Cir. 1989).

87-7684  
89-3750  
89-3777

Rodriguez v. Frankenmuth Mutual Ins. Co.

This was a diversity case in which, following trial and return of a jury verdict in favor of the plaintiff, I entered judgment notwithstanding the verdict in favor of the defendant. I held that there had been a failure of proof as to proximate cause and damages.

The court of appeals reversed, holding that adequate evidence supported the jury's verdict.

89-7031  
90-3371

Simpson v. Diversitech General, Inc.

This was an employment discrimination case in which the parties consented to my jurisdiction. Following trial, I entered judgment for the defendant on the basis that defendant had met its burden of proof in a "mixed motives" case that its decisions would have been the same without regard to the racial animus of one of its employees.

The court of appeals held that the defendant had not met that burden.

90CV7617  
92-3821

Fifth Third Bank v. Dziersk, et al.

This was a diversity case in which I granted summary judgment in favor of the plaintiff, which claimed that the defendant bank had wrongfully accepted deposit of a check from the plaintiff payable to two individuals

without the signature of one of the individuals having been subscribed to the check.

The court of appeals reversed, holding that I had erred when I declined to permit the defendant bank to assert a contributory negligence defense.

I am aware of no decision by the court of appeals in which, though my decisions were affirmed, the court was significantly critical of my substantive or procedural rulings.

c. Significant Federal or State Constitutional Decisions

In re Affidavit for Issuance of Multiple Search Warrants, No. 85-7070M (Dec. 5, 1985).

In this case an individual whose property had been seized claimed that its continued retention by the government constituted a violation of due process. I rejected his claim, but directed the government to proceed with a forfeiture proceeding by a date certain. There was no appeal. The case was significant because it raised interesting issues of the ability of the state to hold seized property without proceeding promptly with further investigation and return of criminal charges.

Barnett v. Bell, No. C 80-563 (July 2, 1986).

Plaintiffs in this case contended that the conditions at the Hancock County Jail violated the Eighth Amendment. I concluded that the conditions were not constitutionally defective and that the plaintiffs were not entitled to relief. Judge Potter upheld my ruling. An appeal was voluntarily dismissed. The significance of the case related to its institutional reform aspects.

Culp v. City of Toledo, No. C 88-7760 (July 30, 1990).

This was a suit by a dismissed employee of the City of Toledo, who claimed that the Federal Constitution and state law had been violated by the means by which he had been terminated. I rejected many of his claims, but also concluded that his right to due process had been violated. Following my ruling, the case was settled. The case was significant because it involved an interpretation in light of the due process clause of a provision of the City charter requiring that terminations be based on cause.

Doe v. City of Toledo, C 81-772 (March 20, 1986).

This case involved an application by a television station to disclose the name of a plaintiff who had been permitted to proceed anonymously with a civil claim to recover funds that had been seized by a police officer. I held that such disclosure should occur. There was no appeal. The significance of the case resulted from the conflict between the media's right of access and the individual's right of privacy where no criminal charges were pending.

Downton v. Perini, 511 F. Supp. 258 (N.D. Ohio 1981).

This was a case of first impression in any federal court. I held that an attorney's threat to withdraw from further representing his client in a capital murder case unless the client accepted his recommendation to plead guilty led to an involuntary plea and denial of the right to counsel. My recommendation that habeas relief be granted was upheld. An appeal was dismissed voluntarily.

Glover v. McMackin, No. 3:90CV7232 (Sept. 18, 1990, July 23, 1992).

This was a habeas corpus case in which I concluded that the defendant's conviction violated the double jeopardy clause of the Fifth Amendment. The Sixth Circuit remanded for further evidence. Glover v. McMackin, 950 F.2d 1236 (6th Cir. 1990). After taking further evidence, I again concluded that the double jeopardy clause had been violated, and recommended that relief be granted. Judge Potter upheld my ruling. There was no appeal. The case involved a significant issue under the double jeopardy clause.

Hernandez v. County of Seneca, No. C 82-475 (July 20, 1983).

This was a civil rights case challenging the conditions of confinement at the Seneca County Jail. Following an injunction hearing, I concluded that the conditions with regard to danger of and from fire justified granting injunctive relief. There was no appeal. The case was important because it involved important issues under the Eighth Amendment and resulted, somewhat unusually, in a order directing that a county jail be closed, rather than rehabilitated or reconstructed to conform to constitutional requirements.

Tierney v. City of Toledo, No. C83-430 (Aug. 2, 1984; Dec. 11, 1984; March 26, 1985; April 27, 1988; Nov. 8,

1988). Court of Appeals, Tierney v. City of Toledo, (No. 85-3016 & 85-3290), Jan. 14, 1986; 824 F.2d 1497 (6th Cir. 1987); 917 F.2d 927 (6th Cir. 1990).

This is a series of opinions involving a challenge to the union's agency fee rebate procedure. I initially held that the procedures afforded appropriate constitutional protection to the First Amendment interests of the plaintiffs. That decision was affirmed in an unpublished opinion on appeal by the Sixth Circuit.

Thereafter, the Supreme Court decided Chicago Teachers Union v. Hudson, 475 U.S. 252 (1986). That Court also vacated the Sixth Circuit's affirmance and remanded for further consideration in light of Hudson. When the case returned to me, I found the changes that had been instituted in the union's plan were adequate. That decision was reversed by the Sixth Circuit. Tierney v. City of Toledo, 824 F.2d 1497 (6th Cir. 1987).

After that decision, I again found the plan, as amended, acceptable. In addition, I rejected the plaintiff's demand for extensive access to the union's books and records. This decision was reversed in part and affirmed in part by the Sixth Circuit. Tierney v. City of Toledo, 917 F.2d 927 (6th Cir. 1990). Thereafter the parties negotiated a settlement.

This series of opinions was significant because they involved important and, at the time they were decided, unsettled issues under the First Amendment about the constitutionality of "fair share" programs and related procedural questions.

\* \* \* \* \*

In addition to the foregoing decisions, the following were cases raising constitutional issues in which my decisions were reversed by the Court of Appeals. Summaries of these decisions appear in \$15.b. and copies of the opinions are included with the other materials submitted with regard to that section.

Brown v. Seiter, No. C84-7016

Billings v. Bharmota, No. C81-594

Leal v. Perini, No. C83-238

Linton v. Perini, No. C79-493

Nichols v. Perini, No. 81-436

Riverview Investments v. Ottawa County Community Improvement Corp., No. C84-3445

USA v. Bell, No. CR83-129

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Lucas County Mental Health Board                      1981-87  
Board Member (appointed)

Lucas County Children Services Board                      1987-92  
Board Member (appointed)

Childrens' Trust Fund    1986-92  
Board Member (appointed)

Juvenile Justice Advisory Board    1990-92  
Board Member (appointed)

I have never been a candidate for elective public office.

17. Legal Career:

- a. Describe chronologically your legal career after graduation from law school including:

1. whether you served as a clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

I did not serve as a clerk to a judge.

2. whether you practiced alone, and if so, the addresses and dates;

While a law professor at the University of Toledo (1970-79), I participated in three cases in the Lucas County, Ohio, Juvenile Court. In two of these cases I was appointed by the court to represent parents of children alleged to have been abused or neglected. In the third case I represented grandparents seeking to visit with and obtain custody of their grandchildren.

In 1978 and 1979 I consulted in two cases with lawyers defending clients in criminal cases

involving electronic surveillance by the government. This work was done at home.

Other than these matters, I do not recall any other instances in which I engaged in the practice of law on my own.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

Gardner, Carton, Douglas, Chilgren & Waud  
[now: Gardner, Carton & Douglas]  
321 N. Clark St. Associate  
Chicago, Illinois 60610 1966-68

Cook County Legal Assistance Fndtn.  
1146 Westgate St. Staff Attorney  
Oak Park, Illinois 60301 1968-70

Church Foundation of Greater Chicago  
112 East Chestnut St. Volunteer Atty.  
Chicago, Illinois 60611 1966-70

Lucas County Prosecutor's Office  
Lucas County Courthouse Asst. Prosecutor  
Toledo, Ohio 43624 1972-73

- b. 1. What has been the general character of your law practice, dividing it into periods with dates of its character has changed over the years?

While employed as an associate with Gardner, Carton, Douglas, Chilgren & Waud in Chicago (1966-68), I worked with most, if not all of the partners and associates on a broad range of matters. The work encompassed personal injury defense, contract and commercial law, corporate matters, securities underwriting, real estate, probate, and taxation.

From 1968-70, I was a staff attorney with the Cook County Legal Assistance Foundation, assigned to the agency's Evanston, Illinois, office. During that time, I represented poor clients in housing, consumer, welfare, and juvenile law matters.

Beginning shortly after my employment with Gardner, Carton, Douglas, Chilgren & Waud, and continuing until we moved from Chicago in 1970, I was a volunteer legal aid attorney with the Church Foundation of Greater Chicago.



I worked one night a month interviewing clients in a neighborhood office located in a church basement. Where appropriate, I thereafter either represented those clients or referred them to other counsel. This work encompassed housing, consumer, and welfare matters.

For a period of about ten months while I was teaching at the University of Toledo, I served on a part-time basis as an Assistant Lucas County Prosecutor in charge of the Juvenile Court docket.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

The clients at Gardner, Carton, Douglas, Chilgren & Waud were primarily companies located or doing business in the Chicago area. The firm's clients were those typical of a moderate sized large city law firm. I had no specialty while working there.

The clients whom I represented as a Staff Attorney with the Cook County Legal Assistance Foundation (and, as well, as a volunteer with the Church Federation) were poor people who otherwise would not have had counsel. During my second year with the Foundation, I handled all of the juvenile court cases in the office, and developed a degree of specialization in that area.

During my time with the Lucas County Prosecutor's Office, I, along with student interns authorized to practice under Ohio's student practice rule, represented the state in delinquency and nondelinquency matters. This called for expertise in criminal law and procedure, juvenile law, and juvenile court procedure.

- c. 1. Did you appear in court frequently, occasionally, or not at all?

While working with Gardner, Carton, Douglas, Chilgren & Waud, I appeared in court occasionally. Those appearances were limited to pretrial motions and pretrial conferences, and occurred principally in the Circuit Court (i.e., general trial court).

When working with the Cook County Legal Assistance Foundation, I appeared in a large number of courts, including federal district court, the Cook County Circuit Court and municipal courts in Chicago and its suburbs. I would be in court several times weekly.

Though I attended court while teaching at the Law School of the University of Toledo, I rarely participated in

proceedings. Instead, I would supervise students enrolled in the Law School's criminal law clinical program.

During the approximately ten month period that I worked part-time as an Assistant County Prosecutor, I would be in juvenile court two or three times a week, usually for an hour or two on each occasion.

2. What percentage of these appearances was in:

- |                             |     |
|-----------------------------|-----|
| (a) federal courts:         | 5%  |
| (b) state courts of record: | 95% |
| (c) other courts            | 0%  |

3. What percentage of your litigation was:

- |               |     |
|---------------|-----|
| (a) civil:    | 90% |
| (b) criminal: | 10% |

4. State the approximate number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

With Gardner, Carton, Douglas, Chilgren & Waud, I tried no cases to verdict or judgment.

With the Cook County Legal Assistance Foundation, I tried approximately twenty cases to verdict or judgment. I was sole counsel in these cases.

While a part-time Assistant County Prosecutor, I tried approximately ten cases to verdict or judgment.

5. What percentage of these trials was:

- |              |      |
|--------------|------|
| (a) jury;    | 0%   |
| (b) non-jury | 100% |

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe briefly the nature of your participation in the litigation and the final disposition of the case.

While a legal aid attorney, I asserted successfully a defense of unconscionability against collection agencies in a couple of cases. At the time, this was a relatively novel legal issue

which was being asserted principally by legal aid lawyers. The cases were thereafter dismissed. I was sole counsel.

In several juvenile cases as a legal aid attorney I raised issues relating to pretrial discovery and the right to jury trial. Either the discovery motions would be overruled or discovery would be forthcoming informally without a ruling. The demands for trial by jury were overruled. I was sole counsel.

With the Chief Attorney and other lawyers in our legal aid office, I represented a group of Black Northwestern University students who were subjected to disciplinary proceedings that might have led to their expulsion. As a result of our efforts, due process procedures were developed and implemented. I do not recall the outcome of those proceedings, though I believe the students were not severely disciplined.

While a law professor at the University of Toledo I was appointed in two cases by the Lucas County, Ohio, Juvenile Court to represent parents of children alleged to have been abused or neglected. In those cases I encouraged the court to use an innovative procedural mechanism to work toward restoration of custody to the parents under controlled circumstances. In another case I successfully asserted the right of grandparents to visit with grandchildren who had been left with a child welfare agency by their parents; in due course and over the objection of the agency, which sought to place the children in separate foster homes, the grandparents were permitted to adopt the children.

None of these matters resulted in reported decisions. I have no recollection of the names of the cases or individual parties. The following, however, are attorneys with whom I worked while practicing as an attorney in the Chicago area. Except for the lawyers with whom I worked at Gardner, Carton & Douglas, I have indicated their relationship to me as of that time.

Robert K. Downs (Volunteer, Church Federation)  
Downs & Downs, P.C. 708 848-0700  
1010 Lake Street #620  
Oak Park, Illinois 60301

Robert G. Freeman (Associate, Cook Co. Legal Asst. Fndtn.)  
125 Longs Peak Drive 303 823-6622  
P.O. Box 1126  
Lyons, Colorado 80540

Hon. Marvin Gavin (Exec. Dir., Cook Co. Legal Asst. Fndtn.)  
 Circuit Court of Cook County 708 210-4606  
 16501 South Kedzie  
 Markham, Illinois 60426

Hon. Curtis Heaston (Exec. Dir., Cook Co. Legal Asst. Fndtn.)  
 Circuit Court of Cook County 312 443-4337  
 Richard J. Daley Center  
 Chicago, Illinois 60602

Hon. Leo E. Holt (Supervisor, Cook Co. Legal Asst. Fndtn.)  
 Circuit Court of Cook County 708 210-4220  
 16501 South Kedzie  
 Markham, Illinois 60426

William L. Morrison 312 644-3000  
 Gardner, Carton & Douglas  
 Quaker Tower, Suite 3400  
 321 North Clark St.  
 Chicago, Illinois 60610-4795

Prof. Sheldon H. Nahmod (Associate, Cook Co. Legal Asst.)  
 Chicago Kent College of Law 312 906-5261  
 Illinois Institute of Technology  
 565 West Adams St.  
 Chicago, Illinois 60661-3691

John F. Notz 312 644-3000  
 Gardner, Carton & Douglas  
 Quaker Tower, Suite 3400  
 321 North Clark St.  
 Chicago, Illinois 60610-4795

Maria Ann Skirnack (Associate, Cook Co. Legal Asst.)  
 19 Rockwood Road West 516 365-7186  
 Plandome, New York 11030

Joe A. Sutherland 312 644-3000  
 Gardner, Carton & Douglas  
 Quaker Tower, Suite 3400  
 321 North Clark St.  
 Chicago, Illinois 60610-4795

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation. In this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

I believe that my most significant contributions have been made while a law teacher, judicial officer, and legal writer, rather than during my four years as a practicing attorney.

Certainly my most extensive experience with litigation has come during the fourteen years that I have been serving as United States Magistrate. Throughout my time of service, I have been responsible for all social security and habeas corpus cases. For the first several years over 100 social security cases and more than 60 habeas corpus cases were filed annually. Recently, there has been some decline in the number of filings in these categories, especially in the social security cases. For the past five years there have been between 40 and 70 social security cases filed annually. For the past three years, there have been about 45 habeas cases filed annually.

In addition, for several years, I was responsible for initial hearing and determination of all pretrial motions in all civil rights cases; approximately 130 cases in this category were filed annually during that period. For several years, these cases generated a substantial volume of motions that were referred to me. The extent of my work in this area has diminished in the past few years, due to the appointment of a pro se law clerk who prepares opinions in prisoner civil rights cases, a decline in some years in the number of filings in the other civil rights categories, and an increase of my own trial docket and a decrease in the District Judge's dockets.

Throughout my tenure, I have also had a large number and variety of matters referred to me in other types of civil litigation. Among these have been anti-trust, securities, personal injury and product liability, contract, commercial cases, and patent. I estimate that I have handled the pretrial motion work in a dozen or more cases annually from these categories; several of those cases involved extensive pretrial motion practice.

Since shortly after being appointed, I have been responsible for initial hearing and determination of all pretrial matters in all criminal cases, of which about 90 are filed annually. I empanel and supervise the grand juries, issue warrants, conduct detention hearings, hold hearings on motions to suppress, adjudicate motions to dismiss and for discovery, and handle any other pretrial matters in criminal cases. The volume and complexity of pretrial motion work in this area of the docket has increased in the past few years as the government has filed several multi-defendant, multi-count drug cases.

Finally, my own civil docket has expanded steadily throughout my time of service as Magistrate, as lawyers have consented to have me be substituted for the District Judge. I have had extensive civil jury and nonjury trial experience, and my consent docket is presently about 130 cases. This is about a half to a third the size of the docket of some of the active District Judges in our District.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have been contributing to the Judicial Retirement System since 1989. The benefits of this annuity program will be forfeited upon retirement under 28 U.S.C. §371(a), relating to Article III judges.

I am a participant in the Thrift Savings Plan contributing five percent of my salary. I plan to continue doing so, and to withdraw the funds on retirement.

While at the University of Toledo I participated in the State Teachers Retirement System. I will receive an annuity of \$1,700 per month from that program on reaching age 65.

I have an annuity that I purchased while a law professor at the University of Toledo with the Aetna Life Insurance Company. The present account value is \$6,900. I anticipate receiving the benefits at age 65.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

The only potential area of conflict of which I am aware would arise in cases in which the University of Toledo (my wife's employer) is a party. I have recused and will continue to recuse myself from cases involving the University.

I anticipate no potential conflicts of interest with regard to my finances, and I will adhere to the requirements of the Code of Judicial Conduct concerning any conflicts of interest.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so explain.

I expect to do the writing for the law publishers (Clark Boardman Callahan and Anderson Publishing Company) that I have done in the past. I expect, accordingly, to update my treatises, The Law of Electronic Surveillance (Clark Boardman Callahan) and 2 Andersons Ohio Family Law: Juvenile Court Practice and Procedure, write the annual Criminal Procedure Handbook, and edit the Criminal Law Review anthology of law review articles.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See attached Financial Disclosure Report.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

Net Worth Statement Attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No.



## NET WORTH

James G. Carr ss#323-32-7729 Eileen M. Carr ss#112-34-1606

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

| ASSETS   |            | LIABILITIES                                      |            |
|--|------------|--|------------|
| Cash on hand and in banks                                      | 11 000 00  | Notes payable to banks—secured                   |            |
| U.S. Government securities—add schedule                        |            | Notes payable to banks—unsecured                 |            |
| Listed securities—add schedule                                 | 636 600 00 | Notes payable to relatives                       |            |
| Unlisted securities—add schedule                               |            | Notes payable to others                          |            |
| Accounts and notes receivable:                                 |            | Accounts and bills due                           |            |
| Due from relatives and friends                                 |            | Unpaid income tax                                |            |
| Due from others  |            | Other unpaid tax and interest                    |            |
| Doubtful   |            | Real estate mortgages payable—add schedule       | 58 000 00  |
| Real estate owned—add schedule<br>4525 Wedgewood, Toledo, Ohio | 226 000 00 | Chattel mortgages and other liens payable        |            |
| Real estate mortgages receivable                               |            | Other debts—itemize: debit in checking account   | 5 000 00   |
| Autos and other personal property                              | 65 000 00  |  |            |
| Cash value—life insurance                                      | 1 000 00   |  |            |
| Other assets—itemize:  |            |  |            |
|  |            |  |            |
|  |            | Total Liabilities                                | 63 000 00  |
|  |            | Net Worth  | 876 600 00 |
| Total Assets   | 939 600 00 | Total Liabilities and net worth                  | 939 600 00 |
| CONTINGENT LIABILITIES   |            | GENERAL INFORMATION                              |            |
| As endorser, co-maker or guarantor                             |            | Are any assets pledged? (Add schedule)           | NO         |
| On leases or contracts   |            | Are you defendant in any suits or legal actions? | NO         |
| Legal Claims   |            | Have you ever taken bankruptcy?                  | NO         |
| Provision for Federal Income Tax                               |            |  |            |
| Other special debt:  |            |  |            |

**Listed Securities**James G. Carr  
Eileen M. CarrBonds/Description (Jt. Ownership)

|   |         |
|---|---------|
| Ohio St Bldg Auth St, 6.50%, issued 9/90<br>matures 9/1/96              | 53,863  |
| Massillon Oh City Sch Dist, 6.50%,<br>issued 2/90, matures 12/97        | 55,193  |
| Ohio St Liquor Profits, 6.80%, issued 6/89<br>matures 3/1/98            | 27,751  |
| Ohio St Higher Edl 6.70%, issued 6/90<br>matures 5/1/99                 | 561168  |
| Cincinnati Oh New Pub Hsg Auth, 6.00%,<br>issued 6/68, matures 7/1/99   | 51,000  |
| Westerville Oh MNV Pk, 6.20%<br>issued 6/91, matures 9/15/99            | 54,916  |
| Ohio St Wtr Dev Auth Rev, 6.00%,<br>issued 10/78, matures 9/1/2000      | 16,417  |
| Cleveland Ohio Ser A Rfdg AMBAC<br>6.30% issued 5/91, matures 10/1/2001 | 112,564 |
| TOTAL   | 427,820 |

Mutual Funds (JT)

|   |         |
|---|---------|
| Fidelity Advisor Equity                       | 33,537  |
| Fidelity Advisor Income                       | 32,678  |
| Merrill Lynch Int'l Equity Fund Class B       | 25,714  |
| Merrill Lynch Global Allocation Fund Class B  | 24,613  |
| Merrill Lynch Developing Capital Markets Fund | 10,593  |
| Merrill Lynch Latin America Fund Class B      | 11,080  |
| ML Capital Fund Class B                       | 33,818  |
| TOTAL   | 172,033 |

Mutual Funds (James SEP)

|   |        |
|---|--------|
| Merrill Lynch Fund for Tomorrow Class B | 7,366  |
| Thompson Opportunity Fund Class B       | 5,313  |
| Merrill Lynch Basic Value Fund Class B  | 5,292  |
| TOTAL                                   | 17,971 |

Mutual Funds (Eileen IRA)

|   |       |
|---|-------|
| Merrill Lynch Fund for Tomorrow Class B | 3,849 |
| Thompson Opportunity Fund Class B       | 3,095 |

|       |       |
|-------|-------|
| TOTAL | 6,944 |
|-------|-------|

|                               |        |
|-------------------------------|--------|
| CMA Ohio Municipal Money Fund | 11,871 |
|-------------------------------|--------|

Real Estate Mortgages Payable

Mother-in-law's condominium located at  
608 Broad Avenue South  
Naples, Florida  
current balance       \$ 38,500

## NET-WORTH

Maureen Carr

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

| ASSETS                                  |     |        | LIABILITIES                                      |    |        |
|---|-----|--------|--|----|--------|
| Cash on hand and in banks               |     |        | Notes payable to banks—secured                   |    |        |
| U.S. Government securities—add schedule |     |        | Notes payable to banks—unsecured                 |    |        |
| Listed securities—add schedule          | 67  | 800.00 | Notes payable to relatives                       |    |        |
| Unlisted securities—add schedule        |     |        | Notes payable to others                          |    |        |
| Accounts and notes receivable:          |     |        | Accounts and bills due                           |    |        |
| Due from relatives and friends          |     |        | Unpaid income tax                                |    |        |
| Due from others                         |     |        | Other unpaid tax and interest                    |    |        |
| Doubtful                                |     |        | Real estate mortgages payable—add schedule       |    |        |
| Real estate owned—add schedule          |     |        | Chattel mortgages and other liens payable        |    |        |
| Real estate mortgages receivable        |     |        | Other debts—itemize:                             |    |        |
| Autos and other personal property       | 125 | 00.00  |  |    |        |
| Cash value—life insurance               |     |        |  |    |        |
| Other assets—itemize:                   |     |        |  |    |        |
|   |     |        |  |    |        |
|   |     |        | Total Liabilities                                |    | 0.00   |
|   |     |        | Net Worth  | 80 | 300.00 |
| Total Assets                            | 80  | 300.00 | Total Liabilities and net worth                  | 80 | 300.00 |
| CONTINGENT LIABILITIES                  |     |        | GENERAL INFORMATION                              |    |        |
| As endorser, cosigner or guarantor      |     |        | Are any assets pledged? (Add schedule.)          | NO |        |
| Coleases or contracts                   |     |        | Are you defendant in any suits or legal actions? | NO |        |
| Legal Claims                            |     |        | Have you ever taken bankruptcy?                  | NO |        |
| Provision for Federal Income Tax        |     |        |  |    |        |
| Other special debt                      |     |        |  |    |        |

Maureen M. Carr

Mutual FundsMkt. ValueGovernment Income Securities Inc.  
Thompson Opportunity Fund Class B30,837  
24,223

TOTAL

55,060

CMA Money Fund

12,710

Megan Carr

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

| ASSETS                                  |     |        | LIABILITIES                                      |     |        |
|---|-----|--------|--|-----|--------|
| Cash on hand and in banks               | 10  | 000 00 | Notes payable to banks—secured                   |     |        |
| U.S. Government securities—add schedule |     |        | Notes payable to banks—unsecured                 |     |        |
| Listed securities—add schedule          | 81  | 200 00 | Notes payable to relatives                       |     |        |
| Unlisted securities—add schedule        |     |        | Notes payable to others                          |     |        |
| Accounts and notes receivable:          |     |        | Accounts and bills due                           |     |        |
| Due from relatives and friends          |     |        | Unpaid income tax                                |     |        |
| Due from others                         |     |        | Other unpaid tax and interest                    |     |        |
| Debtful                                 |     |        | Real estate mortgages payable—add schedule       |     |        |
| Real estate owned—add schedule          |     |        | Chattel mortgages and other liens payable        |     |        |
| Real estate mortgages receivable        |     |        | Other debts—liabilities:                         |     |        |
| Automobiles and other personal property | 12  | 500 00 |  |     |        |
| Cash value—life insurance               |     |        |  |     |        |
| Other assets—liabilities:               |     |        |  |     |        |
|   |     |        |  |     |        |
|   |     |        | Total Liabilities                                |     | 0 00   |
|   |     |        | Net Worth  | 103 | 700 00 |
| Total Assets                            | 103 | 700 00 | Total Liabilities and net worth                  | 103 | 700 00 |
| CONTINGENT LIABILITIES                  |     |        | GENERAL INFORMATION                              |     |        |
| As endorser, cosigner or guarantor      |     |        | Are any assets pledged? (Add schedule)           | NO  |        |
| On leases or contracts                  |     |        | Are you defendant in any suits or legal actions? | NO  |        |
| Legal Claims                            |     |        | Have you ever taken bankruptcy?                  | NO  |        |
| Provision for Federal Income Tax        |     |        |  |     |        |
| Other special debt:                     |     |        |  |     |        |

Megan A. Carr

Mutual FundsMkt. ValueGovernment Income Securities Inc.  
Thompson Opportunity Fund Class B  
Thompson Target Fund19,866  
27,651  
29,974

TOTAL

7744915,255

CBA Money Fund

3,754

## NET WORTH

Darrah Carr

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

| ASSETS                                  |    |        | LIABILITIES                                      |    |        |
|---|----|--------|--|----|--------|
| Cash on hand and in banks               | 10 | 000 00 | Notes payable to banks—secured                   |    |        |
| U.S. Government securities—add schedule |    |        | Notes payable to banks—unsecured                 |    |        |
| Listed securities—add schedule          | 06 | 500 00 | Notes payable to relatives                       |    |        |
| Unlisted securities—add schedule        |    |        | Notes payable to others                          |    |        |
| Accounts and notes receivable:          |    |        | Accounts and bills due                           |    |        |
| Due from relatives and friends          |    |        | Unpaid income tax                                |    |        |
| Due from others                         |    |        | Other unpaid tax and interest                    |    |        |
| Doubtful                                |    |        | Real estate mortgages payable—add schedule       |    |        |
| Real estate owned—add schedule          |    |        | Chattel mortgages and other liens payable        |    |        |
| Real estate mortgages receivable:       |    |        | Other debts—liabilities:                         |    |        |
| Automobile and other personal property  | 2  | 000 00 |  |    |        |
| Cash value—life insurance               |    |        |  |    |        |
| Other assets—liabilities:               |    |        |  |    |        |
|   |    |        |  |    |        |
|   |    |        | Total Liabilities                                |    | 0 00   |
|   |    |        | Net Worth  | 98 | 500 00 |
| Total Assets                            | 98 | 500 00 | Total Liabilities and net worth                  | 98 | 500 00 |
| CONTINGENT LIABILITIES                  |    |        | GENERAL INFORMATION                              |    |        |
| As endorser, comaker or guarantor       |    |        | Are any assets pledged? (Add schedule.)          |    | NO     |
| On leases or contracts                  |    |        | Are you defendant in any suits or legal actions? |    | NO     |
| Legal Claims                            |    |        | Have you ever taken bankruptcy? NO               |    |        |
| Provision for Federal Income Tax        |    |        |  |    |        |
| Other special debt                      |    |        |  |    |        |



Eileen M. Carr, Custodian  
Darrah E. Carr

Mutual Funds

Mkt. Value

|                                   |        |
|-----------------------------------|--------|
| Government Income Securities Inc. | 16,973 |
| Thompson Opportunity Fund Class B | 33,776 |
| Thompson Target Fund              | 29,974 |
| TOTAL                             | 80,723 |
| CBA Money Fund                    | 5,754  |

## NET-WORTH

Caitlin Carr

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

| ASSETS                                    |     |        | LIABILITIES                                      |    |        |
|---|-----|--------|--|----|--------|
| Cash on hand and in banks                 | 10  | 000 00 | Notes payable to banks - secured                 |    |        |
| U.S. Government securities - add schedule |     |        | Notes payable to banks - unsecured               |    |        |
| Listed securities - add schedule          | 83  | 900 00 | Notes payable to relatives                       |    |        |
| Unlisted securities - add schedule        |     |        | Notes payable to others                          |    |        |
| Accounts and notes receivable:            |     |        | Accounts and bills due                           |    |        |
| Due from relatives and friends            |     |        | Unpaid income tax                                |    |        |
| Due from others                           |     |        | Other unpaid tax and interest                    |    |        |
| Doubtful                                  |     |        | Real estate mortgages payable - add schedule     |    |        |
| Real estate owned - add schedule          |     |        | Chattel mortgages and other liens payable        |    |        |
| Real estate mortgages receivable          |     |        | Other debts - itemize:                           |    |        |
| Automobiles and other personal property   | 500 | 00     |  |    |        |
| Cash value - life insurance               |     |        |  |    |        |
| Other assets - itemize:                   |     |        |  |    |        |
|   |     |        |  |    |        |
|   |     |        | Total Liabilities                                |    | 0 00   |
|   |     |        | Net Worth  | 94 | 400 00 |
| Total Assets                              | 94  | 400 00 | Total Liabilities and net worth                  | 94 | 400 00 |
| CONTINGENT LIABILITIES                    |     |        | GENERAL INFORMATION                              |    |        |
| As endorser, comaker or guarantor:        |     |        | Are any assets pledged? (Add schedule)           |    | NO     |
| On leases or contracts                    |     |        | Are you defendant in any suits or legal actions? |    | NO     |
| Legal Claims                              |     |        | Have you ever taken bankruptcy?                  |    | NO     |
| Provision for Federal Income Tax          |     |        |  |    |        |
| Other special debt:                       |     |        |  |    |        |

Eileen M. Carr, Custodian  
Caitlin E. Carr

| <u>Mutual Funds</u>                | <u>Mkt. Value</u> |
|------------------------------------|-------------------|
| Government Income Securities, Inc. | 15,987            |
| Thompson Opportunity Fund Class B  | 19,593            |
| Thompson Target Fund               | 43,041            |
| TOTAL                              | 78,621            |
| CBA Money Fund                     | 5,222             |

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

For more than three years I was a volunteer attorney working with a legal aid program developed and implemented by the Church Federation of Greater Chicago. This work, which I began while employed with the law firm, encouraged me to become employed as a legal aid attorney with the Cook County Legal Assistance Foundation. After working for about a year in an office in Englewood on Chicago's South Side, I set up and helped to staff an office sponsored by our parish in Rogers Park, in Northeast Chicago.

While a law professor at the University of Toledo, my principal areas of responsibility were the Law School's criminal law clinical programs. In addition to a defender and prosecutor component, I developed a consumer protection clinical program. This program enhanced considerably the ability of the City of Toledo's Consumer Protection Agency to enforce ordinances and statutes intended to protect consumers.

In addition, I implemented a program through the University's financial aid office whereby financially needy students were placed in law-related positions with governmental agencies and offices in our area. This program enabled many students who either would not have received financial aid or who would not have received law-related experience to gain those benefits.

I was one of the founders in 1974 of the Toledo Area Center for the Prevention of Child Abuse and Neglect, which ultimately became the Family and Child Abuse Prevention Center. I served on that board until 1981. In addition, I served on the Lucas County Mental Health Board, Lucas County Children Services Board, and Lucas County Childrens Trust Fund. The time expended on these activities was, I estimate, about six hours monthly as a general rule, and more on occasion.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization

which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?

I belong to no organizations that discriminate.

While a college student, I was a member of a fraternity that denied admission to a Jewish student on the basis of the refusal of a single member to vote for his admission. I, along with all the other members, wanted him to become a member, argued unsuccessfully against that refusal, and voted in favor of his admission.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

The Toledo Bar Association interviewed candidates for the federal bench in May, 1993, and I was recommended for appointment.

I was contacted by the Bar Association, and submitted a resume and was scheduled for an interview. That was the extent of the Bar Association's process.

My efforts to secure a nomination began in late Summer, 1993, when I expressed my desire to be nominated and asked the support of local Democratic political leaders. Thereafter I informed some attorneys of my interest. In addition, I spoke with several other persons in Toledo and elsewhere about my desire to be nominated. When asked by anyone with whom I spoke as to what they could do, I told them that they could write letters (without sending copies to me) to our Senators and otherwise speak favorably about me and my qualifications. As a result of these efforts and, I believe, my performance as a Magistrate Judge, I was interviewed by senatorial staff members and our Senators. After they recommended that I be nominated, I was interviewed by representatives of the Office of Policy Development of the Justice Department, investigated by the F.B.I., and interviewed by a representative of the American Bar Association.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include;

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

I believe that judicial power should be exercised with restraint, but that it should also be exercised effectively when required by the Constitution and laws of the United States.

A judge must give the parties a full and fair hearing, seek to ascertain the facts from the evidence, and apply the law as best it can be discerned. A Judge is to implement the law, and, in doing so, to refrain from imposing personal preferences or political or policy choices.

A judge's primary responsibility is not merely to decide disputes, but to end them. He or she is most likely to accomplish that objective by maintaining not only the appearance but preserving the actuality of impartiality, trying to make clear to the litigants and their counsel that their case is as important to him or her as it is to them, and sending the parties from the courtroom with a sense that they could receive no more fair or attentive hearing anywhere else. If the judge is able to do so, the unsuccessful litigant is more likely to accept the outcome, leave off the distraction and disruption of litigation, and begin to restore his or her life to more useful and productive pursuits.

Judicial authority is most appropriately viewed as restrictive, rather than aggressive. Correction of constitutional deficiency is generally limited to directing that such deficiency be remedied by those responsible for causing the constitutional problem. The executive and legislative branches are primarily responsible for accomplishing compliance with constitutional and legal obligations. The role of the judiciary is in general supplementary -- to assist by prohibiting, when such is necessary -- but not to usurp or supplant the authority and responsibility of the other branches of government.

My view that judicial power is to be exercised with restraint reflects my understanding of the duty of the judiciary under the Constitution. It reflects as well a perception that excessive judicial entanglement in the activities of other institutions impairs not only those institutions, but can adversely affect the judiciary as well. Such adverse effects include diversion of scarce judicial resources from other matters for which the judiciary is responsible and a diminution of public respect for the judiciary as a neutral arbiter of disputes.

## I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

CLARENCE COOPER

2. Address: List current place of residence and office address(es).

Office Address: Georgia Court of Appeals  
408 State Judicial Building  
Atlanta, Georgia 30334

Home Address: 3203 Kingsdale Drive, S.W.  
Atlanta, Georgia 30311

3. Date and place of birth.

May 5, 1942; Decatur (DeKalb County) Georgia

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Date of Marriage: November 24, 1973

Wife's Maiden Name: Shirley Mae Elder

Occupation: Food Services Coordinator (Nutritionist)  
School Nutrition Program  
Fulton County School System  
5270 Northfield Blvd.  
College Park, Georgia 30349

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Harvard University  
John F. Kennedy School of Government  
Cambridge, Massachusetts  
Degree: Master's In Public Administration  
Year: June 1978

Massachusetts Institute of Technology  
Community Fellow Program  
Department of Urban Studies & Planning  
Degree: Diploma  
Year: June 1978



National College of the State Judiciary  
 School for Judges  
 Reno, Nevada  
 Degree: Diploma  
 Year: 1977 & 1981

Leadership Georgia  
 Leadership Training Program  
 Atlanta, Georgia  
 Degree: Certificate  
 Year: 1976

Leadership Atlanta  
 Leadership Training Program  
 Atlanta, Georgia  
 Degree: Certificate  
 Year: 1975

Howard University School of Law  
 Washington, D.C. 20059  
 Dates attended: 1964 - 1965  
 Reason for leaving: Transferred to Emory University to  
 integrate its law school in 1965

Emory University School of Law  
 1380 Oxford Rd., N.E.  
 Atlanta, Georgia 30322  
 Degree: Juris Doctor (1967)  
 Year: 1965 - 1967

Clark College (N/K/A Clark Atlanta University)  
 James P. Brawley & Fair  
 Atlanta, Georgia 30314  
 Degree: B.A. History  
 Year: 1960-1964

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

From 12/9/85 to 12/2/88, I served on the board of directors of the International Friendship Force, which is a non-profit organization that promotes peace and good will among people of the world through cultural exchanges which allow foreigners and Americans to visit with one another as hosts and guests in their respective countries.

In 1990, I became a member of the board of directors of the Atlanta Convention & Visitors Bureau, a non-profit organization whose primary responsibility is to market the City of Atlanta in such a way that tourists and conventions are attracted to the City. Because I am a sitting judge, my participation is limited and I do not participate in any fundraising activities, nor do I allow my name to be used in connection with any marketing strategy.

I serve on the board of directors of the Metropolitan Atlanta Community Foundation, having been appointed to the board in 1990. This is a philanthropic organization whose primary objective is to fund community-based programs that will address various community needs and have a positive impact on the social and economic conditions of a particular community. Through small grants, we are able to promote the general welfare of many neighborhoods and communities.

In 1993, I agreed to serve on the board of directors of the Georgia Health Decisions, which is a non-profit organization whose board represents a cross-section of the state on various health issues. This organization is now in the process of gathering data on how Georgians view their health care system and how Georgians prioritize their health needs.

Fulltime Employment:

|  |              |
|--|--------------|
| Georgia Court of Appeals                 | 1990-Present |
| Fulton Superior Court                    | 1980-1990    |
| The City of Atlanta Municipal Court      | 1975-1980    |
| Fulton County District Attorney's Office | 1968-1975    |
| Atlanta Legal Aid Society                | 1967-1968    |

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

Yes  
 U.S. Army  
 1968 to 1970  
 E-6; Serial # US 53 457 468  
 Honorable Discharge

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Omega Man of the Year Award, 1991 (Highest award given by Omega Psi Phi Fraternity)

Al Thompson Award for Community Service, 100% Wrong Club,  
1989

Thurgood Marshall Award, Outstanding Jurist, NAACP, 1988

Community Fellows Program, M.I.T., 1978

One of the Most Outstanding Men of America, 1974

Bronze Star, U.S. Army, 1970 (for tour of duty in Vietnam)

Certificate (or letter) of Commendation, U.S. Army, 1968

National Defense Service Medal, U.S. Army

Good Conduct Medal, U.S. Army

Vietnam Service Medal, U.S. Army

Vietnam Company Medal, U.S. Army

Man of the Year, Clark College, 1982

Most Studious, Clark College, 1964

Bicentennial Panel, 1987

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

|  |                            |
|--|----------------------------|
| Lawyers Club of Atlanta  | State Bar of Georgia       |
| Federal Bar Association  | Atlanta Bar Association    |
| National Bar Association   | Gate City Bar Association  |
| American Bar Association   | Old Warhorse Lawyer's Club |
| Supreme Court Commission on<br>Racial & Ethnic Bias in the<br>Court System |                            |

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Butler Street Y.M.C.A.  
Atlanta Urban League  
The Friendship Force International  
The Atlanta Branch NAACP (Active in Lobbying)  
The Atlanta Convention & Visitors Bureau  
Metropolitan Atlanta Community Foundation  
Georgia Alliance for Children (Active in Lobbying)  
Omega Psi Phi Fraternity

Kappa Boule (Sigma Pi Phi Fraternity)  
100 Black Men of Atlanta  
Georgia Health Decisions

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.  
Superior Courts of Georgia, 1967  
State Courts of Georgia, 1967  
Georgia Court of Appeals, 1967  
Georgia Supreme Court, 1967  
U. S. District Court of the Northern District of Georgia, 1967
12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.
- "The Judiciary and Its Budget," Massachusetts Institute of Technology, Community Fellows Program, 1978  
(See Attachment 1A)
- The Atlanta Fulton County Juvenile Justice Commission Report, 1986 (I chaired the commission and was responsible for the content of the report) (See Attachment 1B)
- "A Judge's Remarks to New Bar Admittees," YLS News, February 1989, pp. 2 and 3. (See Attachment 1C)
- Note: I have not given any speeches or written any articles involving constitutional law or legal policy.**
13. Health: What is the present state of your health? List the date of your last physical examination.
- My health is good.  
June, 1993 (date of last physical)
14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

City of Atlanta Municipal Court/ 1975-80 (appointed)

The City Municipal Court of the City of Atlanta has jurisdiction over all cases involving the violation of municipal ordinances and also has jurisdiction to hold preliminary hearings.

Fulton Superior Court/ 1980-1990 (elected)

The Superior Courts of Georgia exercise original, exclusive and/or concurrent jurisdiction in all civil and criminal cases granted to them by the constitution and laws of Georgia. They also exercise the power of a court of equity and have appellate jurisdiction in some instances.

Georgia Court of Appeals/ 1990-Present

The Court of Appeals is a court of review and exercises appellate and certiorari jurisdiction in all cases not reserved to the Supreme Court or conferred on other courts by law. The decisions of the Court of Appeals insofar as not in conflict with those of the Supreme Court shall bind all courts except the Supreme Court as precedents.

\*The following percentages reflect my trial court experience as well as my appellate court experience:

What percentage of your litigation was:

|          |     |
|----------|-----|
| Civil    | 70% |
| Criminal | 30% |

PERCENTAGE OF CASES PRESIDED OVER

|               | <u>Number</u>      | <u>Role</u>     |
|---------------|--------------------|-----------------|
| Jury Trials   | 200 (est.) (62.5%) | Trial Judge     |
| Bench Trials  | 120 (est.) (37.5%) | Trial Judge     |
| Appeals Court | *1,080 (est.)      | Appellate Judge |

\*Opinions

15. Citations: If you are or have been a judge, provide:  
 (1) citations for the ten most significant opinions you have written: (If published, give name of case and citations)  
 (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for

significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Note: See Attachment 2A for citations for ten most significant opinions written and Attachment 2B, a short summary and citations for opinions reversed or where judgment was affirmed with significant criticism. As to (3), I have not, during my tenure on the Georgia Court of Appeals, handled any federal or constitutional issues inasmuch as these issues are reserved exclusively for the Georgia Supreme Court.

16. Public Office: State (chronologically) any public office you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

I have held no other public office, other than judicial. In 1973, I was an unsuccessful candidate for seat on the Fulton County Commission.

17. Legal Career: Note: See explanation below

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;
2. whether you practiced alone, and if so, the addresses and dates;
3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

EXPLANATION: Chronological description of law practice experience

After finishing law school, I was actively engaged in the practice of law between 1967 and 1975, and occupied the following positions:

Assistant District Attorney  
Fulton County (1968 -1975)

Fulton County District Attorney's Office  
136 Pryor Street, S.W.  
Atlanta, Georgia 30303

While employed as an assistant district attorney, I was drafted into the U.S. Army and was subsequently granted a military leave by the District Attorney to fulfill my military obligation.

Law Clerk, JAGC Office  
U.S. Army (1968-1970)  
Department of Army  
Washington, D.C.

While serving my country as a GI in Vietnam it was my job to process claims for and against the U.S. Army.

Attorney  
Atlanta Legal Aid Society (1967)  
151 Spring Street  
Atlanta, Georgia 30335

During my employment with the Atlanta Legal Aid Society, I represented poor people who could not afford to hire private counsel to represent them in litigated civil disputes.

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

As an Assistant District Attorney, I was in charge of two departments: Automobile Condemnations and Uniform Reciprocal Enforcement of Child Support.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

I represented poor people as a legal aid attorney. As an Assistant District Attorney, I represented the State of Georgia. (Prior to becoming a judge, I had always worked in the public sector.)

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I appeared in court from time-to-time in my capacity as both a prosecutor (1968-75) and an attorney for legal aid (1967) representing indigents.

2. What percentage of these appearances was in:
- |                                   |     |
|-----------------------------------|-----|
| (a) FEDERAL COURT                 | 1%  |
| (b) STATE COURTS                  | 96% |
| (c) OTHER COURTS (Juvenile Court) | 3%  |
3. What percentage of your litigation was:
- |               |     |
|---------------|-----|
| (a) civil;    | 95% |
| (b) criminal. | 5%  |
4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.
- |            |                                 |
|------------|---------------------------------|
| CRIMINAL - | Approx. 15 cases (sole counsel) |
| CIVIL -    | Approx. 15 cases (sole counsel) |
5. What percentage of these trials was:
- |               |     |
|---------------|-----|
| (a) jury;     | 1%  |
| (b) non-jury. | 99% |
18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
- the date of representation;
  - the name of the court and the name of the judge or judges before whom the case was litigated; and
  - The individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
- (See Attachment 3)
19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)



In the case of Charlotte Buckner, individually and as natural mother of Tameka Buckner, deceased and Kina Buckner, deceased v. Brown Transport (companion cases: Fulton Superior Court civil action nos. D-29931, D-29932, and D-29933) a wrongful death action, I was instrumental in getting the parties to settle a complicated case (involving the application of Alabama law) that would have taken quite a while to try. My involvement in the case came at the request of counsel, who felt too much was at stake for both parties. The case settled for four million dollars.

I currently co-chair the Georgia Supreme Court Commission on Racial & Ethnic Bias in the Court System. The commission is now conducting public hearings throughout the state in an effort to ascertain whether or not the problem (be it actual or perceptual) is systemic in nature. After the commission concludes its fact-finding mission, it will submit a written report to the Supreme Court of Georgia with recommendations.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

While serving as a Superior Court Judge in Fulton County, I participated in the county's deferred compensation plan for several years. My participation in the plan automatically terminated when I was appointed to fill a vacancy on the Georgia Court of Appeals. I allowed the sum of money that had been deferred to remain with the investor until the year 2002, at which time the amount deferred will be returned to me in periodic monthly payments over a period of time.

As an Appellate Court Judge, I now participate in the State of Georgia's deferred compensation plan. My participation will terminate when I leave the Georgia Court of Appeals for the federal bench. At that time I plan to make the same arrangements with the State investor as I did with the County investor. That is to say, I will allow whatever sum has accumulated to remain with the investor until the year 2002.

I also own shares of stock in the Coca Cola Company, Toys R Us, Home Depot and CEMAX. Should cases be assigned to me involving any or all of the above companies, I shall make it known to the parties and recuse myself from presiding over such cases. In the alternative I may decide to sell my stock.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

Should cases be assigned to my division of court involving any or all of the aforementioned companies, I shall make it known to the parties and ask to be recused from the case. I intend to follow the guidelines of the Code of Judicial Conduct as it relates to conflicts.

I can foresee the possibility of one of the companies in which I have a financial interest becoming a party to a civil lawsuit assigned to my division of court; and if such were to occur, I would resolve the conflict or potential conflict in the manner described above.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See attached Financial Disclosure Report.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for)

(See Attachment 4)

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No, I have never held a position nor played a role in a political campaign. However, while in law school, I did distribute campaign literature for Representative William Alexander, who was seeking re-election to his House seat in the Georgia General Assembly in 1966. Mr. Alexander is now a Fulton Superior Court judge. My role was so minor that I doubt if he will remember.

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

As a judge, I cannot engage in pro bono legal work. However, I do represent the Georgia Court of Appeals on the State Bar's Pro Bono Committee and have given speeches encouraging lawyers to become more involved in pro bono cases.

I also serve on the Advisory Committee for the International Friendship Force. The Friendship Force promotes international exchanges between and among people from different parts of the world. (One might say that the Friendship Force serves as an unofficial ambassador for this country.)

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?

No

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Yes

Shortly after President Clinton took office, I was told that two federal district court judges in Atlanta, Marvin Shoob and Richard Freeman, had taken Senior Judges status, thereby creating two judicial vacancies that were to be filled by presidential appointment.

Because I had been a judge for over 17 years and had always wanted to become a federal judge, I immediately wrote Senator Sam Nunn and expressed a desire to fill one of the two vacancies in the Atlanta area. Senator Nunn, in a letter to me, stated that a judicial screening committee would be created to interview applicants who were interested in federal judgeships and that the screening committee would contact me. After the committee was created, the committee, in response to my letter to Senator Nunn, sent me a questionnaire to be executed and returned to Senator Nunn and the members of the screening committee. I executed the questionnaire and mailed copies of my responses to Senator Nunn and the nine member Judicial Screening Committee.

Several weeks later, I was contacted by a member of the judicial screening committee and told when and where to report for my interview with the committee. I was interviewed by the nine-member committee for approximately one hour. My interview was thorough but friendly, and each member questioned me relative to my qualifications to serve as a federal district court judge.

A few weeks after my initial interview, I received a telephone call from an aide in Senator Nunn's office to schedule a personal confidential interview. My interview with Senator Nunn lasted at least 45 minutes to and an hour. We discussed my qualifications, my views on judicial activism and a host of other law related issues. At the end of the interview Senator Nunn told me that I would be hearing from his office soon.

Several weeks following my interview with Senator Nunn, he telephoned me at my residence and told me that he had decided to recommend me for appointment to fill one of the two vacancies on the federal district court bench in Atlanta and that he wanted my permission to recommend my name to the President of the United States. I, of course, was elated and gladly told him he had my permission to refer my name to the President.

Since my interview with Senator Nunn, I have undergone background investigations conducted by the Department of Justice, the Federal Bureau of Investigation and the American Bar Association. Besides being personally interviewed, I have executed questionnaires and submitted documents pertinent to the information sought by each of these agencies.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be

interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism: have been said to include:

- a. A tendency by the judiciary toward problem solving rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extended to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

If one were to define the role of a judge in our system of government, one would first refer to the concept of separation of powers in the United States Constitution. This concept not only clearly defines the role of the judiciary, but it also vividly defines what roles the other two branches of the government are to play. The judicial branch in conjunction with the legislative and executive branches of our government play a vital role in the administration of justice.

Quite simply, a judge must interpret and apply the laws enacted by the legislative branch. A judge should not use his/her judicial position to enact laws since the enactment of laws is exclusively reserved to another branch of government. Nor should a judge execute laws since that function is exclusively reposed in the executive branch of government. Where the law is not clear, a judge should seek to determine the legislative intent as to the particular area of the law involved and guard against imposing his or her own personal view. Therefore, the concept of separation of powers as well as our system of checks and balances clearly delineates the respective roles of each branch of government. These roles should not overlap but complement one another.

In short, it is the judge's responsibility to ensure not only a fair and impartial hearing, but also a hearing in a dignified, orderly manner.

Once a judge clearly understands his/her role in the administration of justice, he/she must then focus on the legal issue(s) in cases before him/her. Before he/she can act in a judicial manner, he/she must ascertain whether or not the parties have standing and that the legal issue is ripe for resolution. He/she must then ascertain whether or not there exists precedent to guide him/her in his/her decision. Once he/she has done this, he/she must render a decision based upon the law.

## ATTACHMENT 2A

(In response to question 15)

CITATIONS TO TEN MOST SIGNIFICANT CASES

1. Macon Telegraph Publishing Co. v. Tatum, 208 Ga. App. 111, 430 S.E.2d 18 (1993)
2. J & A Pipeline Co. v. DeKalb County, 208 Ga. App. 123, 430 S.E.2d 13 (1993)
3. Dorsey v. State, 206 Ga. App. 709, 426 S.E.2d 224 (1992)
4. Weeks v. State, 206 Ga. App. 431, 425 S.E.2d 421 (1992)
5. Circle H Development, Inc. v. Woodstock, 206 Ga. App. 473, 425 S.E.2d 891 (1992)
6. Restina v. Crawford, 205 Ga. App. 887, 424 S.E.2d 79 (1992)
7. Shepard v. Federal Land Bank of Columbia, 205 Ga. App. 254, 421 S.E.2d 763 (1992)
8. Agan v. State, 203 Ga. App. 363, 417 S.E.2d 156 (1992)
9. In re Jones, 198 Ga. App. 228, 401 S.E.2d 278 (1990)
10. Mapp v. State, 197 Ga. App. 7, 397 S.E.2d 476 (1990)



## ATTACHMENT 2 B

(In response to question 15)

CASES REVERSED OR AFFIRMED WITH SIGNIFICANT CRITICISM

1. Fountain v. Atlanta Casualty Co., 200 Ga. App. 643, 409 S.E.2d 239 (1991), reversed in Atlanta Casualty Co. v. Fountain, 262 Ga. 16, 413 S.E.2d 450 (1992).

The Supreme Court reversed our opinion holding that the insurance company's declaratory judgment action was inappropriate because the petition for declaratory judgment did not disclose why the insurance company needed direction from the court. The Supreme Court reasoned that the insurance company had adequately demonstrated a need for a legal judgment that would control its future action.

2. CSX Transportation, Inc. v. Levant, 200 Ga. App. 856, 410 S.E.2d 299 (1991), reversed in CSX Transportation, Inc. v. Levant, 262 Ga. 313, 417 S.E.2d 320 (1992).

In this appeal of a personal injury action brought under the Federal Employer's Liability Act (FELA), we upheld the jury's award of one million dollars to the plaintiff. The Supreme Court reversed, finding that the jury's award was excessive and that the jury must have been awarding punitive damages which are not allowed in FELA actions.

3. Nelson v. Felton Pearson Co., 195 Ga. App. 92, 392 S.E.2d 274 (1990), reversed in Felton Pearson Co. v. Nelson, 260 Ga. 513, 397 S.E.2d 431 (1990).

The Supreme Court reversed our construction of OCGA 34-9-105 (b), which sets forth the procedure for appealing a decision of the State

Board of Worker's Compensation. The Supreme Court construed the statute differently, noting that its construction was consistent with the policy of the statute in promoting a speedy resolution of worker's compensation cases.

4. Baxley Veneer & Clete Co. v. Maddox, 198 Ga. App. 235, 401 S.E.2d 282 (1990), reversed in Baxley Veneer & Clete Co. v. Maddox, 261 Ga. 309, 404 S.E.2d 554 (1991).

On appeal, we held that there was evidence from which a jury could determine that there had been part performance of an oral contract such as to remove the contract from the operation of the statute of frauds. Consequently, we affirmed the trial court's denial of defendant's motion for directed verdict. The Supreme Court disagreed and reversed, finding that the evidence was not sufficient to reach the jury.

5. Blige v. State, 205 Ga. App. 133, 421 S.E. 2d 547 (1992), reversed in Blige v. State, 263 Ga. 244, 430 S.E.2d 761 (1993).

The Supreme Court affirmed our decision which upheld the defendant's conviction. However, the Supreme Court disapproved our decision to the extent that it suggested that the State could comment on the defendant's failure to call an expert witness without laying the proper foundation.

6. Findley v. Davis et al., 202 Ga. App. 332, 414 S.E.2d 317 (1991), reversed in Davis et al. v. Findley, 262 Ga. 612, 422 S.E.2d 859 (1992).

On appeal, we held that plaintiff's allegation that defendant charged excessive fees for legal services in violation of the Code of Professional Responsibility was sufficient to sustain a claim for legal malpractice. The Supreme Court reversed, finding that a violation of the Code of Professional Responsibility alone could not establish a basis for a legal malpractice action.

7. Corim, Inc. v. Belvin et al., 202 Ga. App. 396, 414 S.E.2d 491 (1991), reversed in Crossroads Bank of Ga. et al. v. Corim, Inc., 262 Ga. 364, 418 S.E.2d 601 (1992).

The Supreme Court reversed our determination that a properly recorded judgment lien had priority over a perfected purchase money security interest. The Supreme Court construed two ambiguous statutes differently, holding that the general scheme of the UCC reflected a preference for purchase money security interests and that a judgment lienholder should not be equated with a lien creditor.

8. Hummel v. Gainesville Radiology Group, P. C., 205 Ga. App. 157, 421 S.E.2d 333 (1992), reversed in Gainesville Radiology Group, P. C. v. Hummel, 263 Ga. 91, 428 S.E.2d 786 (1993).

The Supreme Court reversed our determination that a grossly inattentive juror's failure to answer a material question during voir dire was tantamount to giving an untruthful answer and could not be considered harmless error. The Supreme Court held that no new trials will be granted under such circumstances unless the movant can demonstrate that a juror failed to honestly answer a material question

on voir dire and that a correct response would have provided a valid basis for a challenge for cause.

9. York Rite Bodies of Freemasonry of Savannah v. Bd. of Equalization of Chatham County, 202 Ga. App. 487, 414 S.E.2d 749 (1991), reversed in York Rite Bodies of Freemasonry v. Bd. of Equalization of Chatham County, 261 Ga. 558, 408 S.E.2d 699 (1991).

In part of our opinion, we held that the properties of two masonic organizations were not entitled to the ad valorem tax exemption allowed for public charities because the properties were used as meeting places. The Supreme Court reversed holding that the fact that the properties were used as meeting places did not preclude their use from being exclusively devoted to charitable purposes.

10. McDaniel v. Hendricks, 195 Ga. App. 252, 393 S.E.2d 4 (1990), reversed in McDaniel v. Hendricks, 260 Ga. 857, 401 S.E.2d 260 (1991).

In this medical malpractice action, we held that the plaintiff's expert affidavit was based on a local standard of care and was insufficient to withstand the defendant-physician's motion for summary judgment. The Supreme Court reversed, relying on favorable inferences which could be drawn from the expert affidavit.

ATTACHMENT 3Attachment #3 (Response to Question #18)

TRIAL EXPERIENCE DURING THE TIME I WAS EMPLOYED AS AN ATTORNEY WITH ATLANTA LEGAL AID AND THE FULTON COUNTY DISTRICT ATTORNEY'S OFFICE:

NOTE: Since there are no computerized or verifiable records readily available, the following cases represent my best recollection of the facts and data surrounding each.

In the Interest of James Butler, et al. (Juvenile Delinquents):

In 1967, while employed as a legal services attorney, I represented three juveniles who had been charged with burglary. Their defense prior to and during the trial was that they were somewhere else, not necessarily together, on the day of the burglary. Even though their alibi defense was somewhat weak, the juvenile court judge had no alternative but to dismiss the case because the eye witness, a neighbor, who claimed to have seen them enter the home of the elderly victim could not give a positive identification at trial. Realizing the weakness in my clients' alibi defense, I noted that the eye witness, because of age and infirmity was not absolutely sure of whom she saw and the time at which she witnessed the incident. My cross examination of the eye witness regarding the identity of the youngsters she saw was very effective.

Date of Trial: 1967 (Summer)  
 Court & Judge: Judge Elmo Holt, Fulton County Juvenile Court  
 Co-Counsel: Sole Counsel  
 Defense Counsel: Unknown

Emma Thomas v. Department of Family & Children Services:

In this case, there was a regulation of the Department of Family and Children Services known as "the substitute father rule." In essence, this rule required social workers to make random calls at the home of mothers who were receiving Aid to Dependent Children benefits and if they found a man in the house then the man would be declared to be a "substitute father" and the children's welfare benefits would be automatically terminated. This rule was first challenged in the Superior Court of Fulton County and later in the U. S. District Court in the Middle District of Georgia. We were able to obtain temporary injunctive relief, thereby temporarily enjoining the enforcement of the "substitute father rule." Thereafter, the Department of Family and Children Services was permanently enjoined by a three-judge panel.

Date of Trial: Unknown

Court & Judge: Judge Durwood Pye, Fulton Superior Court;  
Three Judge Panel Judge Boodle, Judge Griffin  
Bell and Judge Elliott

Co-Counsel: William Skinner (Lead Counsel)  
Suite 485 One West Court Sq.  
Decatur, Georgia 30030  
(404) 377-0466

Defense Counsel: Unknown

**Clara Jones' Welfare Case: (An Administrative Hearing)**

In early 1968, I represented a young woman before the Fulton County Welfare Board. The young woman's public assistance had been terminated prior to a hearing on the issues of whether or not a substitute father had been rooming and boarding with her. (The woman had four children and they were literally starving.) I argued that termination of public assistance in the absence of a hearing was in violation of the "due process clause" of the U.S. Constitution. Several days after the hearing, the Welfare Department reinstated public assistance to her.

Date of Trial: 1968

Court & Judge: Administrative Law Judge

Co-Counsel: Sole Counsel

Defense Counsel: Unknown

**State v. Robert Tucker: Rape Case**

Defendant raped victim in the presence of her two grandchildren, ages 8 and 9. Although both children testified to facts that would indicate rape, the jury (which deliberated eight hours) returned a verdict of not guilty. I was very upset over the fact that the jury did not believe the two children who were credible witnesses. The jurors (some of whom were questioned after the trial) found it difficult to believe that the defendant, who was young, attractive, well-dressed, would want to rape a woman who was much older and unattractive. Because of the above two factors, the jury felt that the sexual encounter was consensual. This was my first and only capital felony case.

Date of Trial: Two-day trial; occurred in 1971 or 72

Court & Judge: Judge Elmo Holt, Fulton Superior Court

Co-Counsel: Sole Counsel

Defense Counsel: Attorney Billy L. Spruell  
4840 Roswell Road., N.E.  
Atlanta, Georgia 30342-2635  
(404)257-0777

Rachael Kendricks v. Social Security Administration:

While working as an Assistant District Attorney, I obtained permission to assist my cousin, Rachael Kendricks, now deceased, in preparing her case for argument before the Social Security Board. Although I do not recall the exact details of her problem with the Social Security Administration, I do know that she had been denied certain benefits to which she was entitled by virtue of her medical condition (poor health). She won her case and the benefits denied or terminated were reinstated.

Date of Trial: 1971 (approx.)  
 Court & Judge: Hearing Officer  
 Co-Counsel: Co-Counsel Unknown  
 Defense Counsel: Unknown

State v. Fred Thomas: Habitual Traffic Violator Act

Defendant had been found guilty of numerous traffic violations, including several DUI's. Under the above Act, which is designed to remove habitual traffic offenders from the streets, the defendant was found to be a habitual violator and his driving privileges were suspended for five (5) years. I overcame the argument that this Act was expost facto. This conviction was among the first in Georgia under this Act.

Date of Trial: Unknown  
 Court & Judge: Presiding Judge, Fulton Superior Court  
 Co-Counsel: Sole Counsel  
 Defense Counsel: Unknown

State v. T. Krunckleton: Uniform Reciprocal Enforcement of Support

Petition of support was filed against defendant in a New York court. New York sent petition here and a hearing on parentage was held since defendant denied that he was the father of twins. Although twins were born out of wedlock, there was evidence which indicated that the defendant provided the mother of the twins with a home and paid the entire hospital bill. Later, the defendant signed the twins' birth certificate. Defendant was found to be the father. This was a "hotly" contested case.

Date of Trial: Unknown

Court & Judge: Presiding Judge, Fulton Superior Court  
 Co-Counsel: Sole Counsel  
 Defense Counsel: Unknown

**State v. Charles McLeod: Automobile Condemnation**

Defendant sought to recover his auto, which had been impounded for a drug violation while his son had possession of it. In order to substantiate impoundment, I had to connect defendant with offense by showing that he had knowledge of the illegal use.

Date of Trial: Unknown  
 Court & Judge: Presiding Judge, Fulton Superior Court  
 Co-Counsel: Sole Counsel  
 Defense Counsel: Unknown

**Mary Doe's Petition of Support: (URESA Case)**

A Michigan woman, who claimed that her ex-husband was a member of the "Dixie Mafia," filed a petition for child support under the Uniform Reciprocal Enforcement of Support Act against her former spouse who had fled to Atlanta, Georgia, to escape his child support obligation. When the sheriff attempted to serve him with the petition of support at the address which she had given, the sheriff discovered that the ex-husband was not a resident at that address. When told by the Michigan court that the sheriff was unable to serve her former husband at the address provided, the woman started making long distance telephone calls to my office, claiming that we were either afraid to serve him or that we were being paid to protect him because of his alleged ties to the "Dixie Mafia". Despite misgivings about our sincere efforts to serve her ex-husband, she continued to send us information--including his photo--concerning his whereabouts and various aliases he might be using. After service was made on him sometime later, he absconded after being placed under order to make his child support payments.

Date of Trial: Unknown  
 Court & Judge: Presiding Judge, Fulton Superior Court  
 Co-Counsel: Sole Counsel  
 Defense Counsel: Unknown

**In the Interest of: Several Juveniles: (Cannot recall names)**

In 1973, while assigned to Fulton Juvenile Court as a prosecutor, I prosecuted several juveniles who had been charged with



shoplifting at a downtown department store. I can't remember what items they were accused of taking, but the items were inexpensive and collectively did not exceed \$100 in value. The juveniles, together with their attorney, argued that they had not left the store at the time they were stopped by the store's security guard. They claimed that they were going to pay for the items prior to leaving the store. However, the evidence showed that the items taken were concealed and stashed under their clothes and were not openly visible in their hands as they went about the store. Each boy was found delinquent and each was placed on supervised probation.

Date of Trial: 1973 (approx.)  
Court & Judge: Judge John S. Langford or Judge Tom Dillon  
Co-Counsel: Sole Counsel  
Defense Counsel: Unknown

ATTORNEYS WHO APPEARED BEFORE ME DURING MY TENURE ON THE FULTON  
SUPERIOR COURT BENCH:

Hunter S. Allen, Jr.  
Allen & Peters  
1360 Peachtree St., N.E.  
Suite 1700  
Atlanta, Georgia 30309-3200  
(404) 874-1700

Attorney Marvin S. Arrington  
Arrington & Hollowell  
191 Peachtree St., N.E.  
Suite 3550  
Atlanta, Georgia 30303  
(404) 658-9900

Attorney James E. Butler, Jr.  
Butler, Wooten, Overby & Cheeley  
P. O. Box 2766  
Columbus, Georgia 30902  
(706) 322-1990

Attorney Robert Goldstucker  
Nall, Miller, Owens Hocutt & Howard  
Suite 200  
66 Luckie St., N. W.  
Atlanta, Georgia 30303  
(404) 522-0707

Attorney G. Conley Ingram  
Alston & Bird  
One Atlantic Ctr.  
1201 W. Peachtree St., N.E.  
Atlanta, Georgia 30309  
(404) 881-7000

Attorney Paul Kilpatrick, Jr.  
Pope, McGlamry, Kilpatrick & Morrison  
720 Broadway  
Columbus, Georgia 31901  
(706) 324-0050

Attorney Charles T. Lester, Jr.  
Sutherland, Asbill & Brennon  
999 Peachtree St., N.E.  
Suite 2300  
Atlanta, Georgia 30309  
(404) 853-8000

Attorney Jack Mallard  
30 Waddell St.  
Marietta, Georgia 30061  
(404) 528-3087

Attorney Charles Neal Pope  
Pope, McGlamry, Kilpatrick & Morrison  
720 Broadway  
Columbus, Georgia 31901  
(706) 324-0050

Attorney Daniel S. Reinhardt  
Troutman Sanders  
600 Peachtree St., N. E.  
Suite 5200  
Atlanta, Georgia 30308  
(404) 885-3206

Attorney Richard Sinkfield  
Rogers & Hardin  
229 Peachtree St., N.E.  
2700 Cain Tower  
Atlanta, Georgia 30303-1637  
(404) 522-4700

Attorney Bernard Taylor  
Alston & Bird  
One Atlantic Ctr.  
1201 W. Peachtree St.  
Atlanta, Georgia 30309  
(404) 881-7288  
(404) 572-4600

## ATTACHMENT 4

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) yourself, your spouse, and other immediate members of your household.

| ASSETS   |                |           | LIABILITIES                                      |                |           |
|--|----------------|-----------|--|----------------|-----------|
| Cash on hand and in banks                                  | 25,024         | 39        | Notes payable to banks—secured                   | 16,439         | 50        |
| U.S. Government securities—add schedule US SAVINGS E BONDS | 150            | 00        | Notes payable to banks—unsecured                 |                | 00        |
| Listed securities—add schedule                             | 73,853         | 30        | Notes payable to relatives                       |                | 00        |
| Unlisted securities—add schedule                           |                | 00        | Notes payable to others                          |                | 00        |
| Accounts and notes receivable:                             |                |           | Accounts and bills due                           | 4,980          | 86        |
| Due from relatives and friends                             |                | 00        | Unpaid income tax                                |                | 00        |
| Due from others  |                | 00        | Other unpaid tax and interest                    |                | 00        |
| Doubtful   |                | 00        | Real estate mortgages payable—add schedule       | 56,319         | 88        |
| Real estate owned—add schedule                             | 122,600        | 00        | Chattel mortgages and other liens payable        |                | 00        |
| Real estate mortgages receivable                           |                | 00        | Other debts—itemize:                             |                |           |
| Autos and other personal property                          | 38,450         | 00        | Metropolitan Life—Loan                           | 2,897          | 30        |
| Cash value—life insurance                                  | 6,854          | 86        | Howard Barron, C.P.A.                            | 465            | 00        |
| Other assets—itemize:                                      |                |           | Georgia Alliance for Children (pledge)           | 600            | 00        |
| Deferred Compensation                                      | 89,499         | 47        | Professional and Other Dues                      | 825            | 00        |
| Tax Shelter Annuity  | 69,062         | 48        |  |                |           |
| IRA(s)   | 10,974         | 17        | Total liabilities                                | 82,527         | 50        |
|  |                |           | Net Worth  | 353,941        | 00        |
| <b>Total Assets</b>  | <b>436,468</b> | <b>67</b> | <b>Total liabilities and net worth</b>           | <b>436,468</b> | <b>67</b> |
| CONTINGENT LIABILITIES                                     |                |           | GENERAL INFORMATION                              |                |           |
| As endorser, comaker or guarantor                          |                | 00        | Are any assets pledged? (Add schedule.)          | No             |           |
| On leases or contracts                                     |                | 00        | Are you defendant in any suits or legal actions? | No             |           |
| Legal Claims   |                | 00        | Have you ever taken bankruptcy?                  | No             |           |
| Provision for Federal Income Tax                           |                | 00        |  |                |           |
| Other special debt   |                | 00        |  |                |           |

## INVESTMENTS

|   |                            |                       |
|---|----------------------------|-----------------------|
| U.S. Savings Bonds (Series E)                     | \$150.00                   | Government Securities |
| I. Campaign Account                               |                            |                       |
| Bonds   | \$10,428                   |                       |
| Mutual Funds                                      | 21,340                     | Listed Securities     |
| II. IRA Accounts:                                 |                            |                       |
|   | 9,205                      |                       |
|   | 2,769 (spouse)             |                       |
| III. Personal Investments                         |                            |                       |
|   |                            | Listed Securities     |
| Stock:  |                            |                       |
| Coca Cola   | - 300 shares @ 42.50/share |                       |
| CEMAX   | - 100 shares @ 41.00/share |                       |
| Home Depot  | - 300 shares @ 36.25/share |                       |
| Toys R Us   | - 300 shares @ 35.25/share |                       |
| First Southern Bank                               | - 100 shares @ 5.00/share  |                       |
| IV. Money Market \$800                            |                            |                       |
|   |                            | Listed Securities     |
| V. Bank Accounts                                  |                            |                       |
| Wachovia  |                            |                       |
| Investment  | \$ 133.59                  |                       |
| Checking:   | 672.08                     |                       |
| Citizens Trust Bank                               |                            |                       |
| Time Deposit                                      | \$ 7,779.08                |                       |
| Fulton County School System Credit Union (spouse) |                            |                       |
| Checking:   | \$13,539                   |                       |
| Savings:  | 198                        |                       |
| VI. Value of Real Estate                          |                            |                       |
| (Personal Residence):                             | \$122,600.00               |                       |
| VII. Deferred Compensation/Tax Shelter            |                            |                       |
| Fulton County Deferred Compensation Plan          | \$56,488.88                |                       |
| State of Georgia Deferred Compensation Plan       | \$33,010.59                |                       |
| Tax Shelter Annuity (Travelers)                   | \$69,062.49                |                       |
| VIII. Value of Vehicles                           |                            |                       |
| 1988 Mazda  | \$6,900                    |                       |
| 1991 Ford Explorer                                | 13,550                     |                       |

## IX. Insurance (Cash Value)

|                        |            |
|------------------------|------------|
| Allmerica Financial    | \$3,287.60 |
| Metropolitan Life      | 3,567.26   |
| (Loan Amt. \$2,897.31) |            |

## X. Value of Personal Property

|                           |          |
|---------------------------|----------|
| Mink Coat                 | \$10,000 |
| Jewelry                   | 3,000    |
| Computer & Printer        | 3,000    |
| Cameras & Video Equipment | 2,000    |

## LIABILITIES

## Loans

|                                      |            |
|--------------------------------------|------------|
| A. Metropolitan Insurance            | \$2,987.31 |
| B. Mortgage balance First Union Bank | 56,319.88  |
|                                      | (9/22/93)  |
| C. First Union Bank Equity Account   | 16,439.50  |

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY  
QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name (include any former names used).**

Frank Mays Hull

2. **Address: List current place of residence and office address(es).**

Residence: 3452 Woodhaven Road, NW  
Atlanta, Georgia 30305

Office: Judge Frank M. Hull  
Superior Court of Fulton County  
Atlanta Judicial Circuit  
T4705 Fulton County Judicial Center  
185 Central Avenue, SW  
Atlanta, Georgia 30305

3. **Date and place of birth.**

December 9, 1948 - Augusta, Richmond County, Georgia.

4. **Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

Date of marriage: April 16, 1977  
Spouse: Mr. Antonin Aeck ("Tony")  
Occupation: Architect  
Employer: Lord, Aeck & Sargent, Inc., an architectural firm  
400 Colony Square, Suite 300  
1201 Peachtree Street, NE  
Atlanta, Georgia 30361-6303

5. **Education:** List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

1973, J.D., cum laude, Emory University School of Law, Atlanta, Georgia; attended 1970-1973

1970, B.A., Randolph-Macon Woman's College, Lynchburg, Virginia; attended 1966-1968 for freshman and sophomore years, and 1969-1970 for senior year.

University of Reading, Reading, England; attended September 1968-July 1969 as part of Junior Year Abroad Program of Randolph-Macon Woman's College.

6. **Employment Record:** List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

August 1990-Present: Judge, Superior Court of Fulton County  
Atlanta Judicial Circuit  
Atlanta, Georgia

November 1984-  
August 1990: Judge, State Court of Fulton County  
Atlanta, Georgia

1974-1984: From 1974-1980 I was an associate; in 1980  
I became the first female partner in a law  
firm of 150 attorneys.  
Powell, Goldstein, Frazer & Murphy  
Atlanta, Georgia

1973-1974: Law Clerk  
Judge Elbert P. Tuttle  
United States Court of Appeals  
for the Fifth Circuit  
Atlanta, Georgia

Summer 1972: Summer Associate after second year of law school with  
firm of Powell, Goldstein, Frazer & Murphy  
Atlanta, Georgia

Summer 1971: Summer Associate after first year of law school with firm  
of Burnside, Dye & Miller  
Augusta, Georgia



7. **Military Service:** Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Emory School of Law

- 1973: J.D. cum laude Emory University School of Law  
 1973: Order of the Coif (academic honor society)  
 1973: Wall Street Journal Award (to one senior for overall achievement)  
 1973: Who's Who in American Colleges and Universities  
 1973: National Fellow, American Association of University Women  
 1972-1973: Notes/Comments Editor, Journal of Public Law (now Emory Law Review)  
 1971: M. P. Laughlin Writing Award (to one freshman)

9. **Bar Associations:** List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

1. 1992-Present: State of Georgia Commission on Family Violence, Atlanta, Georgia (appointed by Governor Zell Miller)
  - a) 1992-Present: Chair, Subcommittee to establish Family Violence Task Forces in Georgia's 45 judicial circuits
2. 1973-Present: Member, State Bar of Georgia, Atlanta, Georgia
  - a) 1991-Present: Member, State Bar of Georgia Bench & Bar Committee (to improve interaction between Bench and Bar)
  - b) 1990-Present: Member, State Bar of Georgia Correctional Facilities and Services Committee (promotes/oversees "BASICS" program offering employment workshops for inmates prior to release)
  - c) 1988-1991: Member, State Bar of Georgia Committee on Women and Minorities in the Profession
  - d) 1991-1993: Executive Committee, Georgia State-Federal Judicial Council, Atlanta, Georgia
3. 1990-Present: Member, Council of Superior Court Judges, State of Georgia, Atlanta, Georgia
  - a) 1990-1993: Chair, Gender/Racial/Ethnic Fairness Committee
  - b) 1991-1993: Member, Uniform Rules Committee

4. 1984-1990: Member, Council of State Court Judges, State of Georgia, Atlanta, Georgia
  - a) 1987-1990: Member, Uniform Rules Committee
  - b) 1987-1990: Member, Program Committee
5. 1974-Present: Member, American Bar Association, Chicago, Illinois
  - a) 1978-1985: Vice-Chairman, ABA's Fidelity and Surety Law Committee (fidelity/surety bonds for contractors/financial institutions)
  - b) 1979-1982: Financial Secretary and Long Range Planning Committee, ABA's Tort and Insurance Practice Section
  - c) 1981-1985: Editorial Staff, The Construction Lawyer, published by ABA's Forum Committee on Construction Industry
  - d) 1983-1985: Chairman, Contract Documents Division, ABA's Forum Committee on Construction Industry
6. 1992-Present: Fellow, American Bar Foundation, Chicago, Illinois
7. 1974-Present: Member, Atlanta Bar Association, Atlanta, Georgia
  - a) 1977-1979: Board of Directors, Atlanta Council of Younger Lawyers
  - b) 1977-1979: Chairman, ACYL Northern District of Georgia Casenotes Committee (prepared summary of unreported decisions in United States District Court for Northern District of Georgia)
8. 1984-Present: Member, Gate City Bar Association, South Fulton Bar Association, North Fulton Bar Association, and Georgia Association of Black Women Attorneys, Atlanta, Georgia
9. 1985-Present: Member, National Center for State Courts, Williamsburg, Virginia
10. 1985-Present: Member, American Judicature Society, Chicago, Illinois
  - a) 1990-Present: National Board of Directors
11. 1988-Present: Member, National Association of Women Judges, Washington, D.C.
12. 1975-Present: Member, Georgia Association of Women Lawyers, Atlanta, Georgia
13. 1988-1991: Member, State of Georgia Commission on Gender Bias in Judicial System, Atlanta, Georgia (appointed by Chief Justice of Georgia Supreme Court)
  - a) 1988-1991: Chair, Domestic Violence Subcommittee
14. 1988-1991: Board of Directors, Atlanta Volunteer Lawyers Foundation, Atlanta, Georgia (recruits pro bono attorneys and provides pro bono representation to low income clients; funded by court filing fee)
15. 1984-Present: Member, Lawyers Club of Atlanta, Atlanta, Georgia

16. 1991-Present: Member, Bleckley American Inn of Court, Atlanta, Georgia  
 a) 1992-Present: Executive Committee
17. 1991: Visiting Judge, Georgia Supreme Court, for one case where sitting Justice had to recuse. See York Rite Bodies of Freemasonry of Savannah, Georgia, et al. v. Board of Equalization of Chatham County, 261 Ga. 558, 408 S.E.2d 699 (1991).

10. **Other Memberships:** List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

I do not belong to any organizations that are active in lobbying before public bodies.

All other organizations to which I belong are:

- 1986-Present Member, Leadership Atlanta, Inc., Atlanta, Georgia  
 1992-1993 Selection Committee for Applicants for 1993-1994 Class  
 1988-1989 Co-Chair for Criminal Justice Program Committee  
 1986-1987 Class of Leadership Atlanta

1976-1979 Board of Directors, Metro Atlanta Mediation Center, Inc. (operates The Bridge, a non-profit family counseling center)

- 1979-Present Member, Cathedral of St. Philip, Atlanta, Georgia  
 1983-1991 Sunday School teacher  
 1990-1992 Outreach Committee (awards grants)  
 1988-1991 Sunday School teacher in outreach program at Emmaus House, Capitol Avenue, Atlanta, Georgia  
 1985-1989 Assistant Den Leader, Den 5, Troop 74, Boy Scouts of America troop at the Cathedral

Present member: Atlanta Women's Network, Speech School Guild, Atlanta Botanical Garden, High Museum of Art, Randolph-Macon Woman's College Alumni Association-Atlanta Chapter. (I do not recall the exact dates I joined each organization but have been a member for over five years.)

11. **Court Admission:** List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of memberships. Give the same information for administrative bodies which require special admission to practice.

- 1973 United States Court of Appeals for the Fifth Circuit  
 1974 United States District Court for Northern District of Georgia, Georgia Supreme Court, Georgia Court of Appeals, and Superior Court of Fulton County  
 1977 United States Supreme Court  
 1982 United States Court of Appeals for the Eleventh Circuit

12. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

"Pyramid Marketing Plans and Consumer Protection: State and Federal Regulations", 21 Journal of Public Law 445 (1972) (now Emory Law Review)

"Civil Procedure--Application of Long-Arm Statute to Foreign Corporation", 8 Georgia State Bar Journal 414 (1972)

"Bankruptcy of Principal: Reclamation and Other Common Problems Facing the Principal and Its Surety", 12 Forum 200 (1976) (Topic of paper for TIPS at ABA's 1976 Annual Meeting in Atlanta; The Forum is a legal periodical published by the ABA's Tort and Insurance Practice Section - "TIPS")

"Surety's Liability for Attorneys' Fees and Court Costs Under Fidelity Bonds", 14 Forum 634 (1979) (Topic of paper and speech for TIPS at ABA's 1978 Annual Meeting in New York)

"The ABC's of Unidentifiable Employee Coverage", 15 Forum 948 (1980) (Topic of paper and speech for TIPS at ABA's Mid-Winter Meeting in New York)

13. **Health:** What is the present state of your health?

Excellent.

List the date of your last physical examination.

May 18, 1993.

14. **Judicial Office:** State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Current judicial office: August 1990-Present  
 Judge, Superior Court of Fulton County  
 Atlanta Judicial Circuit  
 Atlanta, Georgia

Governor Joe Frank Harris appointed me to this Court in 1990. I was re-elected in November, 1992 for a four-year term (1993-1997). This is a general jurisdiction State trial court with jurisdiction over felony criminal cases, all civil cases both at law and in equity, and all divorce cases. There is no limitation on the jurisdiction.

**Previous judicial office:** November 1984-August 1990:  
 Judge, State Court of Fulton County  
 Atlanta, Georgia

Governor Joe Frank Harris appointed me to this Court in 1984. I was re-elected in 1986 and again in 1990. This is a limited jurisdiction trial court with jurisdiction over misdemeanor criminal cases and all civil cases except divorces, claims in equity, and cases involving title to real property.

In summary, I have been re-elected as a State trial judge three times (in 1986, 1990, and 1992), and have never been an unsuccessful candidate in a judicial election.

For nine years as a trial judge on two trial courts, I have handled (a) over 2,500 felony criminal cases on Superior Court and over 5,000 misdemeanor criminal cases on State Court, and (b) over 3,000 civil cases in Superior and State Courts. I have presided over at least 200 jury trials, 300 bench trials, and thousands of criminal pleas and non-jury motions in civil and criminal cases.

15. **Citations:** If you are or have been a judge, provide:
- (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court on such opinions; If any of the opinions listed were not officially reported, please provide copies of the opinions.
  - (1) Copies and citations of ten significant opinions are attached as Exhibit 2.
  - (2) To the best of my knowledge, no appellate opinions have affirmed my decisions with significant criticism. A summary of appellate opinions where my decisions were reversed is attached in Exhibit 3.
  - (3) Citations for significant opinions on federal or state constitutional issues are included and identified in Exhibit 2.
16. **Public Office:** State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

I have not held any elected public office other than the judicial offices outlined in question 14 above. I have been appointed to several State Commissions:

- 1992-Present: State of Georgia Commission on Family Violence, Atlanta, Georgia (appointed by Governor Zell Miller)
- a) 1992-Present: Chair, Subcommittee to establish Family Violence Task Forces in Georgia's 45 judicial circuits

1988-1991: Member, State of Georgia Commission on Gender Bias in Judicial System, Atlanta, Georgia (appointed by Chief Justice of Georgia Supreme Court)  
 a) 1988-1991: Chair, Domestic Violence Subcommittee

17. **Legal Career:**

a. **Describe chronologically your law practice and experience after graduation from law school including:**

1. **whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;**

1973-1974 Law Clerk  
 Judge Elbert P. Tuttle  
 United States Court of Appeals for the Fifth Circuit  
 Atlanta, Georgia 30303

2. **whether you practiced alone, and if so, the addresses and dates;**

I have not practiced alone.

3. **the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;**

1974-1984 From 1974-1980 I was an associate; in 1980 I became the first female partner in a law firm of 150 attorneys.  
 Powell, Goldstein, Frazer & Murphy  
 Sixteenth Floor  
 191 Peachtree Street, NE  
 Atlanta, Georgia 30303  
 (404) 572-6600

Summer 1972 Summer Associate after second year of law school  
 Powell, Goldstein, Frazer & Murphy  
 Sixteenth Floor  
 191 Peachtree Street, NE  
 Atlanta, Georgia 30303  
 (404) 572-6600

Summer 1971 Summer Associate after first year of law school  
 Burnside, Dye & Miller  
 Augusta, Georgia  
 (This law firm no longer exists.)

- b. 1. **What has been the general character of your law practice, dividing it into period with dates if its character has changed over the years?**

In my prior law practice for 10 years with Powell, Goldstein, Frazer & Murphy, I had a general trial practice and worked on over 200 cases in federal and state courts, which involved a broad range of areas such as: contracts, banking, loans, civil rights, all areas of the UCC, construction law, federal copyright infringement, insurance, real estate, surety and guaranty relationships, employee dishonesty, creditors' rights, employment and age discrimination, materialmen's liens, subrogation, fidelity bonds, performance and payment bonds, professional malpractice, receiverships, personal injury, divorce, contracts, torts, equity, executor/administrator bonds, and fiduciary relationships.

2. **Describe your typical former clients, and mention the areas, if any, in which you have specialized.**

I specialized in civil litigation and represented a broad spectrum of clients in a wide range of cases. Here are a few examples:

- 1) In both state and federal courts, I represented numerous businesses, banks, commercial lenders, and bank customers in cases involving real estate transactions, the Uniform Commercial Code, loans, and/or other banking transactions.
- 2) A federally insured state bank in Georgia failed in 1976. I represented the Federal Deposit Insurance Corporation in at least 24 lawsuits in federal and state courts regarding the receivership and the assets/liabilities of that insolvent state bank.
- 3) With funding from the National Education Association, I represented in federal courts (a) plaintiff teachers in actions against local school boards for racial discrimination in faculty employment and (b) a plaintiff teacher in an action against a local school board for age discrimination in faculty employment.
- 4) A significant part of my law practice involved construction contract litigation and arbitration. I represented owners, contractors, subcontractors, and surety companies in numerous construction contract claims, litigation, and arbitration, especially involving performance and payment bonds.
- 5) In federal court, I handled at least a dozen copyright infringement cases for Broadcast Music, Inc. as a plaintiff.

- 6) Insurance companies issue fidelity bonds to banks and businesses insuring for losses caused by employee dishonesty. I represented numerous insured businesses and insurance companies in prosecuting and defending commercial fidelity bond cases.
- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.
- I appeared in court frequently.
2. What percentage of these appearances was in:
- (a) federal courts: 50% in law practice  
 (b) state courts of record: 50% in law practice  
 (c) other courts: not applicable
3. What percentage of your litigation was:
- (a) civil: 100% in law practice  
 (b) criminal: I handled several pro bono criminal cases in law practice.
4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.
- Approximately fifteen. In the first three years of law practice, I was generally associate counsel under the supervision of a partner. In the last seven years of law practice, I generally was lead counsel on the cases I handled.
5. What percentage of these trials was:
- (a) jury: 15%  
 (b) non-jury: 85%
18. **Litigation:** Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
- (a) the date of representation;  
 (b) the name of the court and the name of the judge or judges before whom the case was litigated; and  
 (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.



The following is a summary of ten significant cases which I personally handled while with Powell, Goldstein, Frazer & Murphy.

While other attorneys at this firm may be listed in the pleadings, I was the attorney with primary responsibility for the work in these cases. I personally handled all court appearances in all of the cases listed below, whether at trial, at oral argument, on appeal, or at any court hearings on motions. I also personally drafted the pleadings and briefs filed in these cases and personally conducted the discovery in these cases.

1. **Fred E. Rizk, et al. v. James H. Jones, and others as trustees of First Commerce Realty Investors**, 148 Ga. App. 473, 251 S.E.2d 360 (1978), **aff'd**, 243 Ga. 545, 255 S.E.2d 19 (1979).

Plaintiff borrowers sued my lender client, First Commerce Realty Investors ("FCRI"), a Louisiana REIT, for \$2 million in damages for breach of a development loan for 300 acres in Gwinnett County, Georgia. My client FCRI counterclaimed for over \$3 million in already past due debt under the initial acquisition loan.

The trial court granted summary judgment to my client FCRI on its counterclaims against the plaintiff borrowers, which was affirmed on direct appeal. After the appeal, the main Complaint by the plaintiff was still left to be tried. The case was settled for an immediate payment of \$2.5 million from the plaintiff borrowers to my client FCRI.

**Trial Court:**

Judge Reid Merritt\*  
Superior Court of Gwinnett County  
Lawrenceville, Georgia

\*Judge Merritt is now in private practice:  
PO Box 686  
368 South Perry Street  
Lawrenceville, Georgia 30245  
(404) 963-9933

**Appellate Court:**

The Honorable Julian Webb\*\*  
Georgia Court of Appeals  
Atlanta, Georgia

\*\*Judge Webb is now in private practice:  
118 West Second Street  
P.O. Box 277  
Donalsonville, Georgia 31745-0277  
(912) 524-2456

**Counsel for opposing parties:**

Counsel for plaintiffs in trial court:  
Mr. Robert W. Beynart  
Mr. David K. Whatley  
Smith, Cohen, Ringel, Kohler & Martin\*  
Atlanta, Georgia

\*Both attorneys are now with different law firms:

Mr. Robert W. Beynart  
Smith, Gambrell & Russell  
Suite 3100 Promenade II  
1230 Peachtree Street, N.E.  
Atlanta, Georgia 30309-3592  
(404) 815-3500

Mr. David K. Whatley  
Fortson & White  
300 Atlanta Financial Center  
3333 Peachtree Road, N.E.  
Atlanta, Georgia 30326-1042  
(404) 239-1900

**Counsel for plaintiffs' appeal:**

Mr. A. Felton Jenkins, Jr.  
King & Spalding  
42nd Floor  
191 Peachtree Street, N.E.  
Atlanta, Georgia 30303-1740  
(404) 572-4600

2. **Receivership action of In re Hamilton Bank and Trust Company, Civil Action No. C-24035 (Fulton Superior Ct., 1976-79).**

The Department of Banking and Finance of the State of Georgia took possession of the insolvent state bank and petitioned the court to appoint the FDIC as receiver. I represented the FDIC as receiver. When FDIC is appointed receiver of a bank, it has two options: (1) to sell the assets/liabilities of the failed bank to an ongoing bank or (2) to proceed with a straight liquidation. This closed state bank's liabilities (i.e., customer deposits) far exceeded its assets (i.e., loan portfolio).

The FDIC as receiver (1) sold for over \$22 million in cash the loans in default to FDIC in its corporate capacity as insurer and (2) sold for over \$33 million to the National Bank of Georgia the liabilities (i.e., customer deposits) with an offsetting amount of good assets (i.e., good loans plus the \$22 million cash from FDIC in its corporate capacity as insurer). This allowed the ongoing bank to take over the customer deposits without any interruption in service and with customers receiving 100% of their deposits. The FDIC in its corporate capacity as insurer then proceeded to collect the loans in default in an attempt to recoup its cash payment of over \$22 million made to facilitate the sale of liabilities to the ongoing bank.

I also represented the FDIC as receiver in the receiver's ongoing reports to the trial court on the status and resolution of the receivership.

**Court:**

Judge John S. Langford  
Superior Court of Fulton County  
Atlanta Judicial Circuit  
185 Central Avenue, S.W.  
Atlanta, Georgia 30303  
(404) 730-4305

**Counsel for opposing party:**

The insolvent state bank did not employ counsel to oppose the receivership. Since all depositors received 100% of their deposits, they did not oppose the actions of the FDIC as receiver.

I also represented the FDIC in its corporate capacity as insurer in at least 24 lawsuits in state and federal courts to collect the various delinquent loans purchased from FDIC as receiver of the state bank. For example, see FDIC v. Jones, 161 Ga. App. 867, 291 S.E.2d 70 (1982); FDIC v. West, 149 Ga. App. 342, 254 S.E.2d 392; aff'd, 244 Ga. 396, 260 S.E.2d 89 (1979).

3. Federal Deposit Insurance Corporation v. Fidelity and Deposit Company of Maryland v. Thomas M. Hutcheson, et al., Civil Action File No. C77-1762A (U.S.D.Ct., N.D.Ga. 1977-79).

FDIC in its corporate capacity as insurer sued to collect money owed under a fidelity bond for losses caused by dishonesty of employees of a closed state bank. The FDIC in its corporate capacity as insurer purchased the rights of the closed state bank under the fidelity bond. The case involved myriad issues, such as the authorization of the dual capacities of the FDIC under federal statutes and decisional law, especially 12 USCA § 1823; subject matter jurisdiction issues under 12 USCA § 1819 and 28 USCA § 1345; whether the superior equities doctrine and other law precluded third party complaint against the directors of the closed state bank and numerous other discovery and procedural issues. The case was ultimately settled.

Court:

Senior Judge Albert J. Henderson\*  
United States Court of Appeals  
for the Eleventh Circuit  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303  
(404) 331-6816

Counsel for opposing party:

Mr. John W. Hinchey  
Phillips, Hinchey & Reid\*\*  
Atlanta, Georgia

\*Judge Henderson presided over this case as a Judge on the United States District Court for the Northern District of Georgia.

\*\*Mr. Hinchey is now with another law firm:  
Mr. John W. Hinchey  
King & Spalding  
42nd Floor  
191 Peachtree Street, N.E.  
Atlanta, Georgia 30303-1740  
(404) 572-4600

4. Hilson, et al. v. Washington County Board of Education, et al., Civil Action No. 2449 (U.S.D.Ct., M.D.Ga. 1977-79).

With funding from the National Education Association, I represented the plaintiff teachers in this class action against this school board for racial discrimination in faculty employment. The class was certified, and the liability issue was tried before Judge Owens. After my clients prevailed on the liability issue, the school board reinstated the teachers but still refused to pay damages and back pay requested by certain teachers. I then began trying the individual teacher's damage claims. After recovering damages in the first teacher's damage trial, the school

board settled the remaining damage claims. Half of my attorneys' fees were also recovered by my client.

**Court:**

Chief Judge Wilbur D. Owens, Jr.  
United States District Court  
Middle District of Georgia  
Macon Division  
P. O. Box 65  
Macon, Georgia 31202  
(912) 752-3491

**Counsel for opposing parties:**

The Honorable Thomas A. Hutcheson\*  
State Court of Washington County  
P.O. Box 621  
Sandersville, Georgia 31082-0621  
(912) 552-6911

\*Judge Hutcheson handled this case while in private practice.

The Honorable Denmark Groover, Jr.  
Groover & Childs  
P. O. Box 898  
Macon, Georgia 31202-0898  
(912) 745-4712

5. **Thelma Davis v. Griffin Spalding County Board of Education, 445 F.Supp. 1048 (U.S.D.Ct.,N.D.Ga. 1975).**

With funding from the National Education Association, I represented the plaintiff Thelma Davis in her claim against the local school board for age discrimination in faculty employment and for impermissibly enacting a 65 mandatory retirement age when the mandatory state retirement system allowed teachers to retire as late as age 70. Plaintiff Davis was employed continuously as a classroom teacher for 21 years but was not rehired solely because of her age. The state law provided for mandatory retirement of public school teachers at age 70, but the local school board, after allowing plaintiff to teach for three years past age 65, passed a new mandatory retirement at age 65. Plaintiff had criticized the defendant's school policies, worked for the defeat of a local school bond referendum as unnecessary, and worked with the NEA to change teachers' contracts.

The trial court granted my client's motion for summary judgment based on the pendent state law claim that the local school board was not authorized to enact the mandatory retirement age of 65 because the state's public policy prevailed over the local school board's right to set a lower mandatory retirement age. The trial court also awarded back pay to my client, plaintiff Thelma Davis, finding the defendant local school board had not timely raised the defense of lack of capacity to be sued, that the consent to be sued waived governmental immunity, and that the local school board had sufficient local resources to pay a judgment for back pay without transgressing state law authorizing use of state funds for educational purposes only.

**Court:**

Senior Judge Albert J. Henderson\*  
 United States Court of Appeals  
 for the Eleventh Circuit  
 56 Forsyth Street, N.W.  
 Atlanta, Georgia 30303  
 (404) 331-6816

**Counsel for opposing party:**

Mr. Dow N. Kirkpatrick, II  
 Alston & Bird  
 One Atlantic Center  
 1201 W. Peachtree Street  
 Atlanta, Georgia 30309-3424  
 (404) 881-7346

\*Judge Henderson presided over this case as a Judge on the United States District Court for the Northern District of Georgia.

6. **The Travelers Indemnity Company v. A. M. Pullen & Co., 161 Ga. App. 784, 289 S.E.2d 792 (1982) (cert. denied).**

I represented the plaintiff Travelers, which issued surety bonds for a construction contractor based on financial statements certified by defendant Pullen, an accounting firm. The contractor became bankrupt and defaulted on various projects. My client Travelers sued Pullen for over \$30 million in damages for negligence, breach of contract and fraud in preparation and certification of the financial statements. The trial court granted summary judgment to defendant Pullen, finding that plaintiff Travelers was a third party not in privity and Travelers could not sue Pullen.

As a matter of law the appellate court reversed and held that my client Travelers as a third party could sue Pullen. After I obtained the reversal on appeal and Travelers' right to sue, my client Travelers received a substantial settlement from defendant Pullen which is protected by a non-disclosure agreement.

**Trial Court:**

Chief Judge William W. Daniel  
 Superior Court of Fulton County  
 Atlanta Judicial Circuit  
 185 Central Avenue, S.W.  
 Atlanta, Georgia 30303  
 (404) 730-4318

**Appellate Court:**

The Honorable A. W. Birdsong, Jr.  
 Georgia Court of Appeals  
 412 State Judicial Building  
 40 Capitol Square, S.W.  
 Atlanta, Georgia 30334  
 (404) 656-3454

**Counsel for opposing party:**

Mr. George B. Haley, Jr.  
 Mr. Richard R. Cheatham  
 Kilpatrick & Cody  
 1100 Peachtree Street  
 Suite 2800  
 Atlanta, Georgia 30309-4530  
 (404) 815-6370

7. Phoenix Insurance Co., et al. v. Aetna Casualty & Surety Co., 144 Ga. App. 555, 241 S.E.2d 445 (1978).

I represented the defendant Aetna in a complicated insurance, reinsurance and fidelity bond dispute. The trial court granted summary judgment against my client Aetna for over \$1 million. I handled the appeal and that summary judgment was reversed in toto in 1978. The case was ultimately dismissed against Aetna. When the case was refiled by the same plaintiff in 1983, I moved for summary judgment on behalf of Aetna based on certain statute of limitation defenses, and the plaintiff voluntarily dismissed its case with prejudice in July 1984.

Trial Court:

Judge Claude Shaw (deceased)  
Superior Court of Fulton County  
Atlanta Judicial Circuit

Appellate Court:

The Honorable A. W. Birdsong, Jr.  
Georgia Court of Appeals  
412 State Judicial Building  
40 Capitol Avenue, S.W.  
Atlanta, Georgia 30334  
(404) 656-3454

Counsel for opposing party:

The Honorable Sam F. Lowe, Jr. (deceased)  
Atlanta, Georgia

8. Presidential Ltd. v. Highlands Insurance Co. v. Beale Roofing and GAF Corporation, Civil Action File No. C77-120A (U.S.D.Ct.,N.D.Ga. 1977-79).

The plaintiff Presidential Ltd. entered into a construction contract with P. C. Dinkins for construction of a hotel. The defendant Highlands Insurance Company, as surety, issued performance and payment bonds on behalf of the contractor Dinkins who later defaulted under his construction contract. I represented the plaintiff Presidential Ltd. in this lawsuit to collect over \$800,000 under the bonds due to Dinkins' breach of his construction contract.

My client's damages resulted from myriad construction defects, unpaid materialmen/subcontractors, and delay in completion of the hotel. The defendant surety filed a third party complaint against the roof subcontractor and the manufacturer of the roofing materials. My client plaintiff Presidential Ltd. recovered \$640,000 in settlement after extensive litigation.

Court:

Judge Robert L. Vining, Jr.  
United States District Court  
Northern District of Georgia  
P. O. Box 6226  
Rome, Georgia 30162-6226  
(706) 291-5671

Counsel for opposing party:

For defendant Highlands Insurance Company  
Mr. John W. Hinchey\*  
Mr. Albert E. Phillips\*\*  
Phillips, Hinchey & Reid  
Atlanta, Georgia

Both attorneys are now with different law firms:

\*Mr. John W. Hinchey  
King & Spalding  
42nd Floor  
191 Peachtree Street, N.E.  
Atlanta, Georgia 30303-1740  
(404) 572-4600

\*\*Mr. Albert E. Phillips  
Phillips & Reid  
1200 Harris Tower  
233 Peachtree Street, N.E.  
Atlanta, Georgia 30303  
(404) 659-6000

For defendant GAF Corporation  
Mr. John A. Chandler  
Sutherland, Asbill & Brennan  
999 Peachtree Street, N.E.  
Suite 2300  
Atlanta, Georgia 30309-3964  
(404) 853-8029

For defendant Beale Roofing Company  
Mr. Stephen M. Phillips  
Hendrick, Spanos & Phillips, P.C.  
1410 Peachtree Center Tower  
230 Peachtree Street, N.E.  
Atlanta, Georgia 30303  
(404) 522-1410

9. The Fidelity & Guaranty Company of New York v. The First National Bank of Atlanta, Civil Action No. C80-1416A (U.S.D.Ct., N.D.Ga. 1980-82).

Aetna Casualty & Surety Company hired me to defend Aetna's insured, The First National Bank of Atlanta, which had paid over \$1 million in forged checks. An employee of General Foods Corporation forged checks drawn on General Foods' checking account at the First National Bank of Atlanta. General Foods recovered its losses from its surety, The Fidelity & Guaranty Company of New York, under a fidelity bond covering employee dishonesty. General Foods assigned to the surety all claims against third parties based on the forged checks. Thereafter, the surety, Fidelity & Guaranty Company of New York, sued the First National Bank of Atlanta for paying the checks bearing a forged drawer signature.

The bank's defenses were, inter alia, (1) that General Foods' negligence substantially contributed to the making of the forged checks, thereby barring recovery under the Uniform Commercial Code as adopted in Georgia in O.C.G.A. § 109A-3-406 and (2) that General Foods failed to give the bank notice of the unauthorized checks within 60 days after the bank statements were made available, thereby precluding General Foods from asserting unauthorized signatures against the bank as provided in the UCC as adopted in Georgia in O.C.G.A. § 109A-4-406. The case was ultimately settled.

Court:

Judge Robert L. Vining, Jr.  
United States District Court  
Northern District of Georgia  
P. O. Box 6226  
Rome, Georgia 30162-6226  
(706) 291-5671

Counsel for opposing party:

Mr. John W. Hinchey\*  
Mr. Albert E. Phillips\*\*  
Phillips, Hinchey & Reid  
Atlanta, Georgia

Both attorneys are now with different law firms:

\*Mr. John W. Hinchey  
King & Spalding  
42nd Floor  
191 Peachtree Street, N.E.  
Atlanta, Georgia 30303-1740  
(404) 572-4600

\*\*Mr. Albert E. Phillips  
Phillips & Reid  
1200 Harris Tower  
233 Peachtree Street, N.E.  
Atlanta, Georgia 30303  
(404) 659-6000

10. Chrysler Credit Corporation v. Southlake Dodge, Inc. and Paul F. Fusillo,  
Civil Action File No. C75-434 (U.S.D.Ct.,N.D.Ga. 1983-84).

The plaintiff Chrysler Credit made a loan to Southlake Dodge, a car dealership, which my client Paul Fusillo guaranteed. In 1974, the plaintiff Chrysler Credit received a summary judgment for \$217,928.51 on the loan against the defendants. The defendants' original counsel never responded to plaintiff's motion. As the motion was unopposed, judgment was entered. After the judgment was entered, Chrysler Credit took possession of all collateral for the loan and sold the vehicles, equipment, accounts receivable, and all assets of the car dealership. For nine years, Chrysler Credit took no action and the judgment became dormant.

Nine years later, in 1984, Chrysler Credit sought to revive the 1974 judgment and seek a deficiency from my client defendant Fusillo. In 1984 I was retained to defend Mr. Fusillo in connection with the revival and deficiency motions. Defendant Fusillo contended the judgment already was satisfied not only in fact but also by virtue of an accord and satisfaction. Alternatively, defendant Fusillo asserted that Georgia law presumes the collateral equals the debt because Chrysler Credit could not show its sale of the collateral was commercially reasonable under O.C.G.A. § 11-9-504. There were numerous other defenses. Ultimately, the Court denied Chrysler Credit's motion to seek a deficiency, and my client Fusillo prevailed as a matter of law.

Court:

Senior Judge Charles A. Moyer, Jr.  
United States District Court  
Northern District of Georgia  
2342 U.S. Courthouse  
75 Spring Street, S.W.  
Atlanta, Georgia 30303  
(404) 331-4559

Counsel for opposing party:

Mr. Gregory J. Digel  
Branch, Pike, Ganz & O'Callaghan  
15th Floor, Two Midtown Plaza  
1360 Peachtree Street, N.E.  
Atlanta, Georgia 30309-3507  
(404) 898-8000



19. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

The vast majority of my law practice was civil litigation involving over 200 lawsuits in federal and state courts, as outlined in questions 17 and 18 above.

In addition to handling many lawsuits in federal and state trial courts, my law practice also involved: (a) construction contract cases before the American Arbitration Association; (b) construction contract claim negotiations where disputes arose between parties during the course of construction on a project; (c) investigation of claims for and against insurance companies, rendering written opinions as to coverage, and negotiating settlements.

My legal activities also included extensive involvement and leadership roles in local, state and national bar associations and activities, as outlined in question 9 above.

Finally, I have served on many committees, State commissions, and the boards of non-profit organizations, all of which seek to improve the civil and criminal justice system, as also outlined in questions 9 and 16 above.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

If confirmed, I will resign from my present position as Judge of the Superior Court of Fulton County and will withdraw all funds in my State of Georgia and Fulton County retirement plans and transfer these funds to my existing, personal IRA account. I will have no continuing financial interest in any pension or retirement plan or otherwise as a result of any current or prior employment.

I have no financial or business relationships to sever or for which to be compensated.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the positions to which you have been nominated.**

I will follow all guidelines and standards of the Code of Judicial Conduct for United States District Court Judges. Among other procedures, I will not preside over any matter, or hear the case of any party, which presents a conflict of interest, a potential conflict of interest, or the appearance of a conflict of interest.

I am not aware of any categories of litigation or financial arrangements which will present potential conflicts of interest during my service, except as follows:

- (a) I have not had a financial interest in my prior law firm of Powell, Goldstein, Frazer & Murphy since 1984. However, to avoid even the appearance of a conflict, I, as a State trial judge for nine years, have not presided over cases where my former law firm represents a party. I plan to continue that practice as a federal judge.
- (b) My husband has an interest in certain limited businesses and real estate outlined in our financial statements in Exhibit 5. Of course, I would not preside over any matter involving my husband's businesses or real estate.
3. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**
- None.

4. **List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)**

A copy of the financial disclosure report, required by the Ethics in Government Act of 1978, is attached as Exhibit 4.

5. **Please complete the attached financial net worth statement in detail (Add schedules as called for).**

See Exhibit 5.

6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

No.

### III. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

In my law practice, I handled several pro bono civil and criminal cases as an attorney. As a lawyer, I participated in Atlanta Legal Aid's Saturday volunteer lawyer program where private attorneys staffed the Atlanta Legal Aid office on Saturday and accepted four to five clients per Saturday.

During 1988-1991, I served on the Board of Directors of the Atlanta Volunteer Lawyers Foundation ("AVLF"), which recruits attorneys to handle pro bono civil cases in Fulton County and provides pro bono attorneys to over 1,000 low income clients in Fulton County, Georgia.

During 1990-1992, I served on the Outreach Committee of my church which awards over \$100,000 in grants to numerous non-profit organizations assisting the disadvantaged.

During 1988-1991, I volunteered as a Sunday School teacher for elementary school age children at Emmaus House, serving children from poor inner-city families.

During 1976-1979 I served on the Board of Directors of Metro Atlanta Mediation Center, Inc., which operates The Bridge, a non-profit family counseling center providing services to low income families.

During 1990 to the present, I have served as a member of the State Bar of Georgia Correctional Facilities and Services Committee which, *inter alia*, promotes and oversees the "BASICS" program offering employment workshops for inmates prior to release.

2. **The American Bar Association's commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?**

No.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

Senator Sam Nunn of Georgia established a Judicial Selection Advisory Committee with nine members, which was chaired by Atlanta lawyer Gordon Giffin of the firm of Long, Aldridge & Norman. All interested persons were invited to apply. All applicants completed an extensive questionnaire and submitted writing samples by May, 1993. All applicants were interviewed by the entire Judicial Selection Advisory Committee in June, 1993. Thereafter, Senator Nunn personally interviewed numerous candidates for the two vacancies on the United States District Court for the Northern District of Georgia. Senator Nunn subsequently recommended me as a candidate for one vacancy to President Bill Clinton. Subsequently, I completed questionnaires for the Department of Justice, the Federal Bureau of Investigation, and the American Bar Association. I was interviewed in person by official representatives of the Department of Justice, the Federal Bureau of Investigation, and the American Bar Association.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.**

No.

5. **Please discuss your views on the following criticism involving "judicial activism".**

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Federal trial judges should, and generally do, decide individual cases based on the relevant facts and applicable law, resolve only the grievance before them, and do not employ an individual plaintiff as a vehicle for the imposition of far-reaching orders extending to a broad class of individuals or institutions. In fact, various elements combine to limit the role of the Federal judiciary. For example, Federal trial courts have specific, limited jurisdiction as to what cases may be heard and decided. Standing and ripeness requirements further limit what Federal trial courts can hear and decide. In addition, Federal trial judges are bound by a large body of judicial precedent, plus legislative enactments significantly controlling the cases and issues to be decided.

AD-10  
Rev. 1/93

## FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics  
Reform Act of 1989, Pub. L. No.  
101-194, November 30, 1989  
(5 U.S.C.A. App. 6, §§101-112)

|   |  |  |
|---|--|--|
| 1. Person Reporting (Last name, first, middle initial)<br><b>HULL, FRANK MAYS</b>   | 2. Court or Organization<br><b>United States District Court<br/>for Northern District of Georgia</b>   | 3. Date of Report<br><b>Feb. 10, 1994</b>                                  |
| 4. Title (Article III Judges indicate active or senior status; Magistrate Judges indicate full- or part-time)<br><b>United States District Court Judge - Active</b>                                       | 5. Report Type (check appropriate type)<br><input checked="" type="checkbox"/> Nomination, Date <b>Feb. 9, 1994</b><br><input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final | 6. Reporting Period<br><b>1/1/93 - 12/31/93</b><br><b>1/1/94 - 2/10/94</b> |
| 7. Chambers or Office Address<br><b>Judge, Fulton Superior Court<br/>Atlanta Judicial Circuit<br/>185 Central Ave., SW., Room T4705<br/>Atlanta, Georgia 30303</b>  | 8. On the basis of the information contained in this Report, it is, in my opinion, in compliance with applicable laws and regulations _____<br>Reviewing Officer Signature _____                                       |  |
| <b>IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on last page.</b> |  |  |

## I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

POSITION

NAME OF ORGANIZATION/ENTITY

NONE (No reportable positions)

|                              |  |
|------------------------------|--|
| Director, Board of Directors | American Judicature Society, Chicago, Illinois |
| Member                       | State of Georgia Commission on Family Violence |

## II. AGREEMENTS. (Reporting individual only; see p. 8-9 of Instructions.)

DATE

PARTIES AND TERMS

NONE (No reportable agreements)

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

DATE

SOURCE AND TYPE

GROSS INCOME

(Honoraria only)

(yours, not spouse's)

NONE (No reportable non-investment income)

|                  |  |  |
|------------------|--|--|
| 1/1/93 - 1/31/94 | State of Georgia, Superior Courts of Georgia<br>(Judge's Salary) | \$ 70,948.28 (1993)<br>6,112.00 (1994) |
| 2/1/93 - 1/31/94 | Board of Commissioners of Fulton County<br>(Judge's Salary)      | \$ 29,933.74 (1993)<br>2,550.00 (1994) |
| 3                |  |  |
| 4/1/93 - 1/31/94 | Lord, Aeck & Sargent, Inc (Architect's Salary)                   | \$ 5                                   |
| 5                |  | \$                                     |
|                  |  | \$                                     |

EXHIBIT 4

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

HULL, FRANK MAYS

Date of Report

Feb. 10, 1994

**IV. REIMBURSEMENTS and GIFTS** - transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

|                          | <u>SOURCE</u>                                     | <u>DESCRIPTION</u> |
|--------------------------|---|--------------------|
| <input type="checkbox"/> | NONE (No such reportable reimbursements or gifts) |                    |
| 1                        |   |                    |
| 2                        | Not applicable under Section 102(h)               |                    |
| 3                        |   |                    |
| 4                        |   |                    |
| 5                        |   |                    |
| 6                        |   |                    |
| 7                        |   |                    |
| 8                        |   |                    |

**V. OTHER GIFTS.** (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp.15-16 of Instructions.)

|                          | <u>SOURCE</u>                       | <u>DESCRIPTION</u> | <u>VALUE</u> |
|--------------------------|-------------------------------------|--------------------|--------------|
| <input type="checkbox"/> | NONE (No such reportable gifts)     |                    |              |
| 1                        |                                     |                    |              |
| 2                        | Not applicable under Section 102(h) |                    | \$           |
| 3                        |                                     |                    | \$           |
| 4                        |                                     |                    | \$           |
|                          |                                     |                    | \$           |

**VI. LIABILITIES.** (Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp.16-18 of Instructions.)

|                                     | <u>CREDITOR</u>                  | <u>DESCRIPTION</u> | <u>VALUE CODE*</u> |
|-------------------------------------|----------------------------------|--------------------|--------------------|
| <input checked="" type="checkbox"/> | NONE (No reportable liabilities) |                    |                    |
| 1                                   |                                  |                    |                    |
| 2                                   |                                  |                    |                    |
| 3                                   |                                  |                    |                    |
| 4                                   |                                  |                    |                    |
| 5                                   |                                  |                    |                    |
| 6                                   |                                  |                    |                    |
| 7                                   |                                  |                    |                    |

\* VALUE CODES: J = \$15,000 or less    K = \$15,001 to \$50,000    L = \$50,001 to \$100,000    M = \$100,001 to \$250,000  
 N = \$250,001 to \$500,000    O = \$500,001 to \$1,000,000    P = More than \$1,000,000



FINANCIAL DISCLOSURE REPORT (cont'd)

|  |                                     |
|--|-------------------------------------|
| Name of Person Reporting<br>HULL, FRANK MAYS | Date of Report<br>February 10, 1994 |
|--|-------------------------------------|

VII. INVESTMENTS and TRUSTS -- income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

| A.<br>Description of Assets<br>(Including trust assets)<br><small>Indicate, where applicable, owner of the asset by using the parentheticals: (J) for joint ownership of reporting individual and spouse, (S) for separate ownership by spouse, (OC) for ownership by dependent child.<br/>Place "(X)" after each asset exempt from prior disclosure.</small>   | B.<br>Income during reporting period     |   | C.<br>Gross Value at end of reporting period       |   | D.<br>Transactions during reporting period          |                        |                         |                        |  |                      |   |  |  |  |                |  |   |  |   |                       |                              |                                      |              |                              |
|---|--|---|--|---|---|------------------------|-------------------------|------------------------|--|----------------------|---|--|--|--|----------------|--|---|--|---|-----------------------|------------------------------|--------------------------------------|--------------|------------------------------|
|   | (1)<br>AST-1 Code (A-E)                  | (2)<br>Type (e.g., Div., rent or Int.)              | (3)<br>Value Code (J-F)                            | (4)<br>Value Method Code (Q-W)                        | If not exempt from disclosure                       |                        |                         |                        |  |                      |   |  |  |  |                |  |   |  |   |                       |                              |                                      |              |                              |
|   |  |   |  |   | (5)<br>Type (e.g., buy, sell, exercise, redemption) | (2)<br>Date: Month/Day | (3)<br>Value Code (J-F) | (4)<br>Gain Code (A-B) | (5)<br>Identity of buyer/seller (if private transaction) |                      |   |  |  |  |                |  |   |  |   |                       |                              |                                      |              |                              |
| <input type="checkbox"/> NONE (No reportable income, assets, or transactions)   |  |   |  |   |   |                        |                         |                        |  |                      |   |  |  |  |                |  |   |  |   |                       |                              |                                      |              |                              |
| <sup>1</sup> Real Estate-1452 Woodhaven Rd. NW Atlanta, Fulton County, GA   |  | None  | N  | W   |   |                        |                         |                        |  |                      |   |  |  |  |                |  |   |  |   |                       |                              |                                      |              |                              |
| <sup>2</sup> 25% Real Estate-37 Stoney Creek Hilton Head, Beaufort Co., SC  | D  | Rent  | M  | W   |   |                        |                         |                        |  |                      |   |  |  |  |                |  |   |  |   |                       |                              |                                      |              |                              |
| <sup>3</sup> Undev. Real Estate-22 acres Henry Co., GA  |  | None  | L  | W   |   |                        |                         |                        |  |                      |   |  |  |  |                |  |   |  |   |                       |                              |                                      |              |                              |
| <sup>4</sup> Stocks/Bonds in IRA account Smith Barney Shearson  | B  | Div/Int/CG  | L  | T   |   |                        |                         |                        |  |                      |   |  |  |  |                |  |   |  |   |                       |                              |                                      |              |                              |
| <sup>5</sup> Fulton Co. Retirement Plan   |  | None  | K  | T   |   |                        |                         |                        |  |                      |   |  |  |  |                |  |   |  |   |                       |                              |                                      |              |                              |
| <sup>6</sup> Superior Ct Judges Retirement Plan   |  | None  | J  | T   |   |                        |                         |                        |  |                      |   |  |  |  |                |  |   |  |   |                       |                              |                                      |              |                              |
| <sup>7</sup> Real Estate-Ltd partner Pinewood Ltd., DeKalb Co., GA  |  | None  | J  | W   |   |                        |                         |                        |  |                      |   |  |  |  |                |  |   |  |   |                       |                              |                                      |              |                              |
| (S) <sup>8</sup> 25% stock in architectural firm Lord, Aeck & Sargent, Inc.   |  | None other than salary                              | N  | U   |   |                        |                         |                        |  |                      |   |  |  |  |                |  |   |  |   |                       |                              |                                      |              |                              |
| (S) <sup>9</sup> 401(K) Retirement Plan & Trust* Lord, Aeck & Sargent, Inc.   | E  | Div/Int/CG  | O  | T   |   |                        |                         |                        |  |                      |   |  |  |  |                |  |   |  |   |                       |                              |                                      |              |                              |
| (S) <sup>10</sup> Stocks/Bonds in IRA account Smith Barney Shearson   | B  | Div/Int   | K  | T   |   |                        |                         |                        |  |                      |   |  |  |  |                |  |   |  |   |                       |                              |                                      |              |                              |
| (S) <sup>11</sup> Real Estate-Stock in Co-Op Parking, Inc. Atlanta, Fulton Co., GA  | D  | Div M   | W  |   |   |                        |                         |                        |  |                      |   |  |  |  |                |  |   |  |   |                       |                              |                                      |              |                              |
| (S) <sup>12</sup> Real Estate-Ltd Partner Peachtree So. Ltd., Atlanta, GA   |  | None  | K  | W   |   |                        |                         |                        |  |                      |   |  |  |  |                |  |   |  |   |                       |                              |                                      |              |                              |
| (S) <sup>13</sup> Real Estate-2200 W Wesley Rd Atlanta, Fulton Co., GA  |  | None  | K  | W   |   |                        |                         |                        |  |                      |   |  |  |  |                |  |   |  |   |                       |                              |                                      |              |                              |
| (S) <sup>14</sup> 25% Real Estate, 37 Stoney Creek Hilton Head, Beaufort Co., SC  | D  | Rent  | M  | W   |   |                        |                         |                        |  |                      |   |  |  |  |                |  |   |  |   |                       |                              |                                      |              |                              |
| (D) <sup>15</sup> Stocks/Bonds, RHA's two acct* Smith Barney Shearson   | E  | Div/Int/CG  | N  | T   |   |                        |                         |                        |  |                      |   |  |  |  |                |  |   |  |   |                       |                              |                                      |              |                              |
| (D) <sup>16</sup> Stocks/Bonds, MHA's acct* Smith Barney Shearson   | C  | Div/Int/CG  | K  | T   |   |                        |                         |                        |  |                      |   |  |  |  |                |  |   |  |   |                       |                              |                                      |              |                              |
| (D) <sup>17</sup> Real Estate Highlands, Macon Co., NC  |  | None  | M  | W   |   |                        |                         |                        |  |                      |   |  |  |  |                |  |   |  |   |                       |                              |                                      |              |                              |
| (D) <sup>18</sup> 25% Real Estate-37 Stoney Creek Hilton Head, Beaufort Co., SC   | D  | Rent  | M  | W   |   |                        |                         |                        |  |                      |   |  |  |  |                |  |   |  |   |                       |                              |                                      |              |                              |
| (D) <sup>19</sup> Real Estate-2200 W Wesley Rd Atlanta, Fulton Co., GA  |  | None  | L  | W   |   |                        |                         |                        |  |                      |   |  |  |  |                |  |   |  |   |                       |                              |                                      |              |                              |
| 20  |  |   |  |   |   |                        |                         |                        |  |                      |   |  |  |  |                |  |   |  |   |                       |                              |                                      |              |                              |
| <table border="0"> <tr> <td>1 Income/Gain Codes:</td> <td>A=\$1,000 or less<br/>(See Col. B1 &amp; D4)</td> <td>B=\$1,001 to \$2,500<br/>F=\$25,001 to \$50,000</td> <td>C=\$2,501 to 5,000<br/>G=\$100,001 to \$1,000,000</td> <td>D=\$5,001 to \$15,000<br/>H=More than \$1,000,000</td> </tr> <tr> <td>2 Value Codes:</td> <td>J=\$15,000 or less<br/>(See Col. F1 &amp; D3)</td> <td>K=\$15,001 to \$50,000<br/>M=\$50,001 to \$1,000,000</td> <td>L=\$50,001 to \$100,000<br/>N=More than \$1,000,000</td> <td>O=\$100,001 to \$1,000,000<br/>P=More than \$1,000,000</td> </tr> <tr> <td>3 Value Method Codes:</td> <td>Q=Appraisal<br/>(See Col. C2)</td> <td>R=Cost (real estate only)<br/>V=Other</td> <td>S=Assessment</td> <td>T=Cash/Market<br/>W=Estimated</td> </tr> </table> |  |   |  |   |   |                        |                         |                        |  | 1 Income/Gain Codes: | A=\$1,000 or less<br>(See Col. B1 & D4) | B=\$1,001 to \$2,500<br>F=\$25,001 to \$50,000 | C=\$2,501 to 5,000<br>G=\$100,001 to \$1,000,000 | D=\$5,001 to \$15,000<br>H=More than \$1,000,000 | 2 Value Codes: | J=\$15,000 or less<br>(See Col. F1 & D3) | K=\$15,001 to \$50,000<br>M=\$50,001 to \$1,000,000 | L=\$50,001 to \$100,000<br>N=More than \$1,000,000 | O=\$100,001 to \$1,000,000<br>P=More than \$1,000,000 | 3 Value Method Codes: | Q=Appraisal<br>(See Col. C2) | R=Cost (real estate only)<br>V=Other | S=Assessment | T=Cash/Market<br>W=Estimated |
| 1 Income/Gain Codes:  | A=\$1,000 or less<br>(See Col. B1 & D4)  | B=\$1,001 to \$2,500<br>F=\$25,001 to \$50,000      | C=\$2,501 to 5,000<br>G=\$100,001 to \$1,000,000   | D=\$5,001 to \$15,000<br>H=More than \$1,000,000      |   |                        |                         |                        |  |                      |   |  |  |  |                |  |   |  |   |                       |                              |                                      |              |                              |
| 2 Value Codes:  | J=\$15,000 or less<br>(See Col. F1 & D3) | K=\$15,001 to \$50,000<br>M=\$50,001 to \$1,000,000 | L=\$50,001 to \$100,000<br>N=More than \$1,000,000 | O=\$100,001 to \$1,000,000<br>P=More than \$1,000,000 |   |                        |                         |                        |  |                      |   |  |  |  |                |  |   |  |   |                       |                              |                                      |              |                              |
| 3 Value Method Codes:   | Q=Appraisal<br>(See Col. C2)             | R=Cost (real estate only)<br>V=Other                | S=Assessment                                       | T=Cash/Market<br>W=Estimated                          |   |                        |                         |                        |  |                      |   |  |  |  |                |  |   |  |   |                       |                              |                                      |              |                              |

\*See attached list of stocks/bonds

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

HULL, FRANK MAYS

Date of Report

Feb. 10, 1994

## VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

As a current Judge of the Superior Court of Fulton County, Georgia, I participate in retirement plans with the State of Georgia and Fulton County listed in items VII (5) and (6). Upon becoming a United States District Court Judge, I will resign my present judgeship, withdraw those retirement funds, and transfer them to my IRA account in item VII (4).

## IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature

*Frank M. Hull*Date *10 Feb. 1994*

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, § 104, AND 18 U.S.C. § 1001.)

## FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Judicial Ethics Committee  
Administrative Office of the  
United States Courts  
Washington, DC 20544

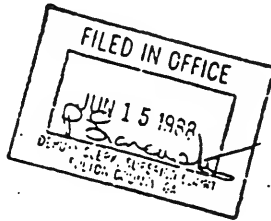
IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

John R Harris

CIVIL ACTION FILE NO.

D5469

v.  
Frank W Huff



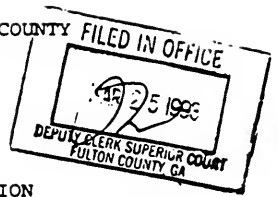
ORDER

The above case coming on for hearing, after having been published as provided by law, and no appearance having been made, the same is dismissed for want of prosecution without prejudice.

This 14<sup>th</sup> day of June, 1988.

Clarence Cooper  
JUDGE CLARENCE COOPER  
Fulton Superior Court, A.J.C.

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA



JERRY LARRY COLLIER,

Petitioner,

v.

DAVID C. EVANS, LANSON  
NEWSOME, NEAL B. CHILDERS,  
and THE HONORABLE FRANK  
M. HALL,

Respondents.

\*  
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\*  
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\*  
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\*  
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CIVIL ACTION

NO. E-07920

ORDER

This matter came on before this Court on February 25, 1993, for oral argument on Petitioner's request for mandamus relief.


The gravamen of Petitioner's assertion was that the agreement that he entered into in Civil Action No. D-76039 was invalid and should be set aside. Counsel for the Respondents denied there was any impropriety in the agreement, but agreed to vacate the judgment in said case if the Petitioner would return the \$750.00 earlier paid to him and to a trial by jury. Petitioner agreed to do so and, hence, Petitioner's request for mandamus relief is denied as moot.

It is hereby ORDERED that the Petitioner has until March 31, 1993, to return to the State Law Department the sum of \$750.00 which was tendered to him in settlement of Civil Action No. D-76039. No extensions of time shall be given to the Petitioner to return the money. If the money is returned

in a timely fashion, Civil Action No. D-76039 can be re-opened. In the event the Petitioner fails to return the money to the State Law Department by March 31, 1993, the matter will be set for further hearing.

This order is based upon an offer made by the Respondents in open Court on February 25, 1993.

So ordered, this <sup>24th</sup> 19th day of March, 1993.

  
\_\_\_\_\_  
GEORGE B. CULPEPPER, III  
Senior Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

JUL 2 1993

JEFFREY MILLS

vs.

HONORABLE FRANK M. HULL

1:92-CV-1463-RCF

ORDER

This action is before the court on plaintiff's various motions [#17-1] [#18-1] [#20-1] and [#21-1],<sup>1</sup> and defendant Judge Frank M. Hull's motion for reconsideration [#25-1] or, in the alternative, for summary judgment [#25-2]. All motions are unopposed.<sup>2</sup>

Background

Plaintiff, proceeding pro se, alleges that Judge Hull declared plaintiff incompetent and ordered him institutionalized in violation of his constitutional rights. Judge Hull, asserting the doctrine of judicial immunity, moved to dismiss plaintiff's action. This court denied Judge Hull's motion in light of plaintiff's pro se status, plaintiff's broad allegations of wrongdoing, and the very high standard for succeeding on a motion to dismiss. See Order of April 16, 1993 [April Order], at 1-3.

<sup>1</sup>Each of plaintiff's motions attempts to complain of wrongdoing by Judge Hull. However, the motions recite incomprehensible and/or irrelevant information without requesting relief.

<sup>2</sup>Failure to file a response shall indicate that there is no opposition to the motion. LR 220-1(b), NDGa.

Discussion

Judge Hull requests that the court reconsider its April Order and grant the motion to dismiss. The court finds a grant of summary judgment a more appropriate alternative. Under Fed. R. Civ. P. 56, the court should grant a motion for summary judgment where "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." The movant carries her burden by showing the court that there is "an absence of evidence to support the nonmoving party's case." Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 2554 (1986).

The evidence submitted indicates that after plaintiff was arrested for violating the Georgia Controlled Substances Act, his case was assigned to Judge Hull. Affidavit of Judge Frank M. Hull, at ¶ 2-4. Based on plaintiff's indigence, Judge Hull appointed a lawyer to represent plaintiff. Id. at ¶ 5. Plaintiff's appointed counsel requested a forensic services examination to determine plaintiff's mental state. Id. Judge Hull ordered that examination. Id. The evidence also shows that Judge Hull performed only judicial actions with regard to plaintiff. Id. at 8. Plaintiff has offered nothing to indicate that Judge Hull acted outside of her official capacity or that Judge Hull acted outside her jurisdiction.

"Judicial immunity is an absolute immunity; it applies even where a judge acts maliciously." Harris v. Deveau, 780 F.2d 911, 914 (11th Cir. 1986). A judge is entitled to such immunity

provided: (1) the judge dealt with the plaintiff in a judicial capacity, and (2) the judge did not act "in the 'clear absence of all jurisdiction.'" Id. (quoting Stump v. Sparkman, 435 U.S. 349, 357, 98 S. Ct. 1099, 1105 (1978)).

#### 1. Judicial Capacity

Judge Hull's affidavit indicates: (1) that Judge Hull performed a typical judicial function in ordering plaintiff to undergo a mental examination; (2) that Judge Hull acted in open court; (3) that she ordered the evaluation because plaintiff's criminal case was pending before her; and (4) that the actions of which plaintiff complains arose directly from plaintiff's visit to Judge Hull in Judge Hull's official capacity. Plaintiff has offered no evidence to the contrary. Thus, defendant has established that she acted in her judicial capacity.

#### 2. Jurisdiction

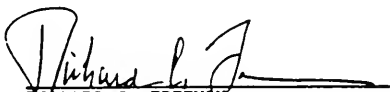
This court can find that Judge Hull acted in the clear absence of all jurisdiction only "if [Judge Hull] completely lack[ed] subject matter jurisdiction." Harris, 780 F.2d at 916 (citing Dykes v. Hosemann, 776 F.2d 942 (11th Cir. 1985) (en banc)). It is undisputed that Judge Hull acted within her jurisdiction when she granted plaintiff's criminal counsel's request for a mental evaluation of plaintiff.

Therefore, the court finds that Judge Hull is entitled to judicial immunity and, correspondingly, grants Judge Hull's motion for summary judgment.



Accordingly, plaintiff's various motions which attempt to assert wrongdoing, but which request no relief [#17-1] [#18-1] [#20-1] and [#21-1] are DENIED. Defendant Judge Frank M. Hull's motion to reconsider [#25-1] is DENIED as MOOT, and her alternative motion for summary judgment [#25-2] is GRANTED. The Clerk is DIRECTED to dismiss this action as to Judge Frank Hull.

SO ORDERED, this 21 day of June, 1993.

  
RICHARD C. FREEMAN  
SENIOR UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

JUN 22 1993

BY [unclear] CLERK  
[unclear] CLERK

ORIGINAL

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF GEORGIA  
 ATLANTA DIVISION

FILED IN CLERK'S OFFICE  
 U.S.D.C. ATLANTA

JUL 05 1990

LETTER IN THE CLERK'S OFFICE  
 BY *R. Jackson*

LARRY BRANT SARGEANT :

vs. :

CIVIL NO. 1:90-cv-1181-ODE

FULTON COUNTY, FULTON COUNTY :  
 JAIL PERSONNEL, FULTON COUNTY :  
 MORMONS :

ORDER

This civil rights action is before the court for a frivolity determination pursuant to 28 U.S.C. §1915(d).

This case purportedly arose after Fulton County police officers arrested Plaintiff and seized his car on March 23, 1990.<sup>1</sup> Plaintiff, acting pro se, claims this arrest was made without a warrant or probable cause and therefore constitutes an unlawful search and seizure. Plaintiff also alleges that he was attacked, apparently just prior to his arrest, by elders of the Mormon Church, who were not arrested. In his initial complaint, Plaintiff, a self-described "Holy Profit of God, since 1962 and the President of the Church of Jesus Christ of Latter Day Saints since 1951," seeks one billion dollars in real damages and one billion dollars in punitive damages.

In an amended complaint, Plaintiff further alleges that at 11:00 A.M. on March 23, 1990, he was booked into the Fulton County Jail and confined with a large number of inmates in a

<sup>1</sup>Plaintiff apparently is presently incarcerated at the Fulton County Jail in Atlanta, Georgia.

small holding cell. Plaintiff claims he became ill from the smoke. He asserts he begged the guards for relief and around midnight he was taken to another room, where he did not receive treatment for his vomiting condition, which was caused by a bleeding ulcer. Plaintiff states that he was forced to wait in the room until the guards finished their card game at 2:00 A.M. As relief, Plaintiff requests that the Defendant jail personnel each be fined in the amount of \$1000.00 and imprisoned for one year.

In his additional amended complaint, Plaintiff asserts that the Defendant Mormons evaded paying income taxes. He requests that this court sentence them to serve life imprisonment at Fort Leavenworth and order them "hung on the Haliyards [sic] of the U.S.S. Constitution and towed out off Plymouth Rock, seven miles and Drawn and Quartered and Fed to the Fish, by the Destroying Angel of God, the Holy Ghost and Holy Angel, known as the Lion of the Tribe of Judah."

On June 1, 1990, Plaintiff filed an additional complaint alleging that he was brought to court on May 7, 1990, but not permitted to appear and that he was appointed a public defender after he pleaded not guilty. He asserts that a Magistrate set his bail at \$800.00, but was told that it had been increased to \$2,800.00. Plaintiff alleges that he was brought to court on June 1, 1990. He claims that Judge Frank Hull offered to release him on time served under a plea of guilty. Plaintiff further avers that Judge Hull found him incompetent to

stand trial and ordered him sent to St. Regis Medical Center for thirty days. As relief, Plaintiff requests that the court fine Judge Hull \$10,000 for violating his constitutional rights.

Under 28 U.S.C. §1915(d), the court is authorized to dismiss an in forma pauperis complaint "if satisfied that the action is frivolous or malicious." Neitzke v. Williams, 490 U.S. \_\_\_, 109 S. Ct. 1829 (1989). Where the legal theory or factual contentions asserted in the complaint lack an arguable basis, a claim is frivolous. Id. Having read and considered Plaintiff's complaints, the court finds them frivolous.

Under the circumstances stated in the complaints, the venerable common law tenet of judicial immunity applies. Imbler v. Pachtman, 424 U.S. 423 n. 20 (1976). Insofar as the complaint may seek review of any determinations of a superior or municipal court of the State of Georgia, in this procedural posture, the court lacks subject matter jurisdiction. This court possesses "no power whatsoever to sit in direct review of state court decisions." District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983) (quoting Atlantic Coastline Railroad Co. v. Locomotive Engineers, 398 U.S. 281 (1970)).

As to the claims against the Fulton County Jail personnel, Plaintiff has chosen an inappropriate forum in which to seek the relief he requests. However, construing the pro se complaint in the broadest possible light, it contains facts which arguably may state a claim, such that dismissal at this stage of the proceedings would be inappropriate. Neitzke at 1829

(standard under 28 U.S.C. §1915(d) not co-equal to Fed.R.Civ.P. 12(b)(6)).

As to the tax related allegations against the un-named Mormon elders, Plaintiff lacks standing to pursue that claim. See Valley Forge College v. Americans United, 454 U.S. 464 (1982). Insofar as the complaint could possibly be construed to assert any other claims against these Defendants, because Plaintiff does not allege that these individuals are state actors or provide any basis for diversity jurisdiction, the court declines to exercise jurisdiction.

Accordingly, Plaintiff's claims against Judge Hull and the Mormon elders are DISMISSED as frivolous pursuant to 28 U.S.C. §1915(d). The claims against Fulton County and the Fulton County Jail may proceed.

The Clerk is DIRECTED to forward sufficient United States Marshal Service forms and summons forms to Plaintiff. Upon receipt, Plaintiff is hereby ORDERED to complete the forms and return them to the Clerk within thirty (30) days from the entry date of this order so that process may be served on Defendants. This action shall proceed no further until these forms are returned. A failure to timely comply with this order will result in a dismissal of this action pursuant to L.R. 230-3. Should Plaintiff fail to so comply, the Clerk is DIRECTED to resubmit this case to the Magistrate after the aforementioned time.

Plaintiff is further DIRECTED to serve upon Defendants or their counsel a copy of every additional pleading or other document he files in this matter. He shall include with each filing a certificate stating the date on which he mailed an accurate copy of that document to Defendants or their counsel. This court shall disregard any papers submitted which have not been properly filed with the Clerk or do not include the certificate of service. Plaintiff is DIRECTED to keep the court and Defendants informed of his current address at all times during the pendency of this action.

SO ORDERED, this 5 day of July, 1990.

  
ORINDA D. EVANS  
UNITED STATES DISTRICT Judge

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PROPERTY CLERK

**FINANCIAL STATEMENT**  
**Frank M. Hull\***

| ASSETS   |           | LIABILITIES                                      |           |
|--|-----------|--|-----------|
| Cash on hand and in banks  | \$ 3,324  | Notes payable to banks - secured                 | \$ 0      |
| U.S. Government securities   | 0         | Notes payable to banks - unsecured               | 0         |
| Listed securities  | 0         | Notes payable to relatives                       | 0         |
| Unlisted securities  | 0         | Notes payable to others                          | 0         |
| Accounts and notes receivable.   | 0         | Accounts and bills due                           | 0         |
| Due from relatives, friends, others  | 0         | Unpaid income tax                                | 0         |
| Real estate owned  |           | Other unpaid tax and interest                    | 0         |
| 100% interest in primary residence<br>3452 Woodhaven Road, N.W. \$450,000<br>Atlanta, Georgia    |           | Real estate mortgages payable                    | 30,000    |
| 25% interest in vacation/rental home<br>37 Stoney Creek Road \$ 50,000<br>Hilton Head Island, SC |           |  | 11,000    |
| Interest in Pinewood Ltd. P'ship<br>apartment complex \$ 10,000<br>DeKalb County, Georgia        |           | Chattel mortgages and other liens payable        | 0         |
| 100% interest in 22 acres<br>undeveloped property<br>Henry County, Georgia \$ 65,000             |           | Other debts - itemize:                           | 0         |
|  | 575,000   |  |           |
| Real estate mortgages receivable   | 0         |  |           |
| Autos and other personal property  |           |  |           |
| 1989 Ford Taurus 5,000   |           |  |           |
| 1986 Chevrolet Suburban 2,000  |           |  |           |
| Art, jewelry, furniture 35,000   |           |  |           |
|  | 42,000    |  |           |
| Cash value - life insurance  | 0         |  |           |
| Other assets - itemize   |           |  |           |
| IRA account (statement attached)   | 55,660    |  |           |
| Fulton County Retirement Plan  | 38,889    | Total liabilities                                | \$41,000  |
| Superior Court Judges Retirement Plan  | 6,373     | Net worth  | \$680,246 |
| Total assets   | \$721,246 | Total liabilities and net worth                  | \$721,246 |
| <b>CONTINGENT LIABILITIES</b>  |           | <b>GENERAL INFORMATION</b>                       |           |
| As endorser, comaker or guarantor  | None      | Are any assets pledged? (Add schedule)           | No        |
| On leases or contracts   | None      | Are you defendant in any suits or legal actions? | No        |
| Legal Claims   | None      | Have you ever taken bankruptcy?                  | No        |
| Provision for Federal Income Tax   | None      |  |           |
| Other special debt   | None      |  |           |

\*These are assets in name of Frank M. Hull and do not include assets in name of husband Antonin Aeck ("Tony"). See separate Financial Statement of husband attached herein.

**EXHIBIT 5**

## Portfolio details

This section shows the holdings in your account. It reflects values as of the close of business on 01/28/94.

### Money funds

| Description                               | No. of shares | Market value | Accrued dividends | Annualized Dividend Yield | Comment |
|---|---------------|--------------|-------------------|---------------------------|---------|
| SMITH BARNEY SHEARSON DAILY DIVIDEND FUND | 54.40         | \$ 54.46     | \$ .02            | 2.721%                    |         |
| Total value of money funds                |               | \$ 54.46     | \$ .02            |                           |         |

### Stocks

| Common stocks             | Exchange | No. of shares | Price    | Yield  | Anticipated Income (annualized) | Market value | Comment     |
|---------------------------|----------|---------------|----------|--------|---------------------------------|--------------|-------------|
| ZWEIG TOTAL RETURN FD INC | NYSE     | 675.7135      | \$ 10.75 | 6.139% | \$ 445.97                       | \$ 7,263.92  | Symbol: ZTR |
| Total value of stocks     |          |               |          |        | \$ 445.97                       | \$ 7,263.92  |             |

### Mutual funds

Dividend yield is the estimated annual income, assuming the current dividend, divided by the fund's market price at the end of the statement period. Current dividend for funds not sponsored by Smith Barney Shearson is based on information provided by an outside vendor and is not verified by Smith Barney Shearson. Anticipated annualized income is the market value multiplied by the dividend yield.

| Description  | Number of shares | Price    | Dividend Yield | Anticipated Income (annualized) | Market value | Comment |
|--|------------------|----------|----------------|---------------------------------|--------------|---------|
| FORTIS ADVANTAGE PORTFOLIOS ASSET ALLOCATION INC     | 1,291.258        | \$ 15.04 | 2.493%         | \$ 484.22                       | \$ 19,420.52 |         |
| SMITH BARNEY SHEARSON PREMIUM TOTAL RETURN FUND CL B | 1,760.237        | 16.43    |                |                                 | 28,920.69    |         |
| Total value of mutual funds                          |                  |          |                | \$ 484.22                       | \$ 40,341.21 |         |



**FINANCIAL STATEMENT**  
Antonin Aeck\*

| ASSETS   |             | LIABILITIES                                      |             |
|--|-------------|--|-------------|
| Cash on hand and in banks  | \$ 5,000    | Notes payable to banks - secured                 | \$ 0        |
| U.S. Government securities                                       | 0           | Notes payable to banks - unsecured               | 0           |
| Listed securities  | 0           | Notes payable to relatives                       | 0           |
| Unlisted securities - 25% stock in<br>Lord, Aeck & Sargent, Inc. | 223,344     | Notes payable to others                          | 0           |
| Accounts and notes receivable:                                   | 0           | Accounts and bills due                           | 0           |
| Due from relatives, friends, others                              | 0           | Unpaid income tax                                | 0           |
| Real estate owned  |             | Other unpaid tax and interest                    | 0           |
| 33 1/3% interest in two acre<br>residential lot                  | \$ 40,000   | Real estate mortgages payable                    | 11,000      |
| Peachtree South Ltd - owns<br>parking lot, Atlanta, Georgia      | \$ 26,000   | Chattel mortgages and other liens payable        | 0           |
| Co-op Parking, Inc. - owns<br>parking lot, Atlanta, Georgia      | \$102,000   | Other debts - itemize:                           | 0           |
| 25% interest in vacation/rental home<br>37 Stoney Creek Road     | \$ 50,000   |  |             |
| Hilton Head Island, SC   | 218,000     |  |             |
| Real estate mortgages receivable                                 | 0           |  |             |
| Autos and other personal property                                |             |  |             |
| 1985 Mercedes  | \$ 7,500    |  |             |
| 1986 Chevrolet Suburban  | 2,000       |  |             |
| Art, jewelry, furniture  | 35,000      |  |             |
|  | 44,500      |  |             |
| Cash value - life insurance                                      | 0           |  |             |
| Other assets - itemize:  |             |  |             |
| IRA account (statement attached)                                 | 36,369      |  |             |
| 401(k) Retirement Plan & Trust<br>(statement attached)           | 501,586     | Total liabilities                                | \$ 11,000   |
|  |             | Net worth  | \$1,017,799 |
| Total assets   | \$1,028,799 | Total liabilities and net worth                  | \$1,028,799 |
| CONTINGENT LIABILITIES   |             | GENERAL INFORMATION                              |             |
| As endorser, comaker or guarantor                                | None        | Are any assets pledged? (Add schedule)           | No          |
| On leases or contracts   | None        | Are you defendant in any suits or legal actions? | No          |
| Legal Claims   | None        | Have you ever taken bankruptcy?                  | No          |
| Provision for Federal Income Tax                                 | None        |  |             |
| Other special debt   | None        |  |             |

\*These are assets in name of Antonin Aeck and do not include assets in name of spouse Frank M. Hull. See separate Financial Statement of Frank M. Hull attached hereto.

EXHIBIT 5

**ANTONIN AECK  
IRA ACCOUNT**

**Portfolio details**

*This section shows the holdings in your account. It reflects values as of the close of business on 01/31/94.*

**Money funds**

| Description                       | No of shares | Market value       | Accrued dividends | Annualized Dividend Yield | Comment |
|-----------------------------------|--------------|--------------------|-------------------|---------------------------|---------|
| DREYFUS LIQUID ASSETS INC         | 1,756.56     | \$ 1,756.56        |                   |                           |         |
| <b>Total value of money funds</b> |              | <b>\$ 1,756.56</b> | <b>\$ 0.00</b>    |                           |         |

**Stocks**

| Common stocks                 | Exchange | No of shares | Price     | Yield | Anticipated income (annualized) | Market value        | Comment                 |
|-------------------------------|----------|--------------|-----------|-------|---------------------------------|---------------------|-------------------------|
| ACX TECHNOLOGIES IHC          | OTC      | 100          | \$ 35.125 |       |                                 | \$ 3,512.50         | Symbol: ACXT            |
| APPLE COMPUTER INC            | OTC      | 50           | 32.75     | 1.405 | 24.00                           | 1,637.50            | Symbol: AAPL:Rated: B + |
| BANK SOUTH CORP               | OTC      | 200          | 16.00     | 2.00  | 64.00                           | 3,200.00            | Symbol: BKSO:Rated: B-  |
| COCA-COLA CO                  | NYSE     | 100          | 40.875    | 1.663 | 68.00                           | 4,087.50            | Symbol: KO:Rated: A +   |
| EQUITABLE COS INC             | NYSE     | 100          | 29.75     | .672  | 20.00                           | 2,975.00            | Symbol: EQ              |
| GENERAL MOTORS CORP           | NYSE     | 50           | 61.25     | 1.306 | 40.00                           | 3,062.50            | Symbol: GM:Rated: B-    |
| HCA HOSP CORP OF AMERICA CL A | NYSE     | 100          | 38.875    |       |                                 | 3,887.50            | Symbol: HCA             |
| HOME DEPOT INC                | NYSE     | 50           | 39.00     | .307  | 6.00                            | 1,950.00            | Symbol: HD:Rated: B +   |
| HUMANA INC                    | NYSE     | 100          | 20.25     |       |                                 | 2,025.00            | Symbol: HUM:Rated: B +  |
| KNOWLEDGEWARE INC             | OTC      | 200          | \$ 16.00  |       |                                 | \$ 3,200.00         | Symbol: KNOW            |
| NATIONSBANK CORP              | NYSE     | 100          | 50.75     | 3.625 | 184.00                          | 5,075.00            | Symbol: NBR:Rated: A-   |
| <b>Total value of stocks</b>  |          |              |           |       | <b>\$ 406.00</b>                | <b>\$ 34,812.50</b> |                         |

LORD, BECK, & BARGENT, INC.  
401(K) RETIREMENT PLAN AND TRUST

|                                    |           |                            |                     |
|------------------------------------|-----------|----------------------------|---------------------|
| ANTONIN BECK                       |           | Investment Elections as of |                     |
| Social Security Number:            | 5/15/1971 | Deferral %:                | 3.00                |
| Date of Hire:                      | 5/15/1971 | 0.00 %                     | Capital Fund        |
| Pre 1993 Company Match Vesting %:  | 100.00    | 25.00 %                    | Basic Value Fund    |
| Post 1992 Company Match Vesting %: | 100.00    | 75.00 %                    | Phoenix Fund        |
| Profit Sharing Vesting %:          | 100.00    | 0.00 %                     | Corporate Bond Fund |
|                                    |           | 0.00 %                     | Ready Assets/CHA    |

|                  |           |                           |                 |                     |
|------------------|-----------|---------------------------|-----------------|---------------------|
| Previous Balance | New Loans | LOAN ACTIVITY THIS PERIOD | Interest Repaid | Outstanding Balance |
| 0.00             | 0.00      | Principal Repaid          | 0.00            | 0.00                |
|                  |           | 0.00                      |                 |                     |

BEGINNING BALANCE

|                    | CAPITAL FUND | BASIC VALUE FUND | PHOENIX FUND | CORPORATE BOND FUND | GLOBAL FUND | TOTAL        |
|--------------------|--------------|------------------|--------------|---------------------|-------------|--------------|
| Contributions:     | \$0.00       | \$119,669.68     | \$351,526.80 | \$0.00              | \$0.00      | \$471,196.48 |
| Pre-tax Deferrals: | 0.00         | 197.40           | 592.20       | 0.00                | 0.00        | 789.60       |
| Post 1992 Match    | 0.00         | 761.40           | 2,284.20     | 0.00                | 0.00        | 3,045.60     |
| Profit Sharing     | 0.00         | 0.00             | 0.00         | 0.00                | 0.00        | 0.00         |
| Rollover           | 0.00         | 0.00             | 0.00         | 0.00                | 0.00        | 0.00         |
| Loans & payments:  |              |                  |              |                     |             |              |
| New loans          | 0.00         | 0.00             | 0.00         | 0.00                | 0.00        | 0.00         |
| Principal repaid   | 0.00         | 0.00             | 0.00         | 0.00                | 0.00        | 0.00         |
| Interest repaid    | 0.00         | 0.00             | 0.00         | 0.00                | 0.00        | 0.00         |
| Earnings           | 0.00         | 857.51           | 25,697.74    | 0.00                | 0.00        | 26,555.25    |
| Distributions      | 0.00         | 0.00             | 0.00         | 0.00                | 0.00        | 0.00         |
| Forfeitures        | 0.00         | 0.00             | 0.00         | 0.00                | 0.00        | 0.00         |
| Transfers          | 0.00         | 0.00             | 0.00         | 0.00                | 0.00        | 0.00         |
| BALANCE            | 0.00         | 121,485.99       | 380,100.94   | 0.00                | 0.00        | 501,586.93   |
| VESTED BALANCE     | \$0.00       | \$121,485.99     | \$380,100.94 | \$0.00              | \$0.00      | \$501,586.93 |

YEAR TO DATE TOTALS

|                   | CAPITAL FUND | BASIC VALUE FUND | PHOENIX FUND | CORPORATE BOND FUND | GLOBAL FUND | TOTAL     |
|-------------------|--------------|------------------|--------------|---------------------|-------------|-----------|
| Contributions:    | 366.60       | 761.40           | 1,917.60     | 0.00                | 0.00        | 3,045.60  |
| Pre-tax Deferrals | 0.00         | 761.40           | 2,284.20     | 0.00                | 0.00        | 3,045.60  |
| Post 1992 Match   | 0.00         | 0.00             | 0.00         | 0.00                | 0.00        | 0.00      |
| Profit Sharing    | 0.00         | 0.00             | 0.00         | 0.00                | 0.00        | 0.00      |
| Rollover          | 0.00         | 0.00             | 0.00         | 0.00                | 0.00        | 0.00      |
| Earnings          | 5,822.57     | 19,997.25        | 65,180.29    | 0.00                | 0.00        | 90,997.11 |
| Distributions     | 0.00         | 0.00             | 0.00         | 0.00                | 0.00        | 0.00      |

You are always 100% vested in the value of your contributions. Please refer to the upper left portion of this statement for your vesting percentages for the company match and profit sharing contributions. Please contact your Plan Administrator if you have any questions regarding your statement.

**FINANCIAL STATEMENT**  
**Richard Hull Aeck**  
**(Minor Child)**

| ASSETS  |            | LIABILITIES                                      |           |
|---|------------|--|-----------|
| Cash on hand and in banks   | \$ 1,500   | Notes payable to banks - secured                 | \$ 0      |
| U.S. Government securities  | 0          | Notes payable to banks - unsecured               | 0         |
| Listed securities   | 500        | Notes payable to relatives                       | 0         |
| Unlisted securities   | 0          | Notes payable to others                          | 0         |
| Accounts and notes receivable:                                    | 0          | Accounts and bills due                           | 0         |
| Due from relatives, friends, others                               | 0          | Unpaid income tax                                | 0         |
| Real estate owned   |            | Other unpaid tax and interest                    | 0         |
| Thirty acres undeveloped property<br>in Highlands, North Carolina | \$ 60,000  | Real estate mortgages payable                    | 0         |
| 25% interest in vacation/rental home<br>37 Stoney Creek Road      | \$ 50,000  | Charrel mortgages and other liens payable        | 0         |
| Hilton Head Island, SC  |            | Other debts - itemize:                           | 0         |
| 33 1/4% interest in two acre<br>residential lot                   | \$ 40,000  |  |           |
|   | 150,000    |  |           |
| Real estate mortgages receivable                                  | 0          |  |           |
| Autos and other personal property                                 | 0          |  |           |
| Cash value - life insurance                                       | 0          |  |           |
| Other assets - itemize:   |            |  |           |
| Trust account (statement attached)                                | 36,319     |  |           |
| Guardianship account (statement attached)                         | 275,248    | Total liabilities                                | \$ 0      |
|   |            | Net worth  | \$463,567 |
| Total assets  | \$ 463,567 | Total liabilities and net worth                  | \$463,567 |
| CONTINGENT LIABILITIES  |            | GENERAL INFORMATION                              |           |
| As endorser, comaker or guarantor                                 | None       | Are any assets pledged? (Add schedule)           | No        |
| On leases or contracts  | None       | Are you defendant in any suits or legal actions? | No        |
| Legal Claims  | None       | Have you ever taken bankruptcy?                  | No        |
| Provision for Federal Income Tax                                  | None       |  |           |
| Other special debt  | None       |  |           |

EXHIBIT 5

**RICHARD HULL AECK  
TRUST ACCOUNT**

**Portfolio details**

*This section shows the holdings in your account. It reflects values as of the close of business on 01/28/94.*

**Money funds**

| Description                               | No. of shares | Market value    | Accrued dividends | Annualized Dividend Yield | Comment |
|---|---------------|-----------------|-------------------|---------------------------|---------|
| SMITH BARNEY SHEARSON DAILY DIVIDEND FUND | 49.93         | \$ 49.93        | \$ .02            | 2.71%                     |         |
| <b>Total value of money funds</b>         |               | <b>\$ 49.93</b> | <b>\$ .02</b>     |                           |         |

**Bonds**

*Some prices provided by outside pricing services may be inaccurate. They are provided only as a guide to determine portfolio value. For more specific values, please call your Financial Consultant. Call features shown indicate the next regularly scheduled call date and price. Your holdings may be subject to other redemption features including sinking funds or extraordinary calls.*

| Corporate bonds                                 | Amount             | Interest rate | Maturity date | Price  | Anticipated Income (annualized) | Market value       | Comment   |
|---|--------------------|---------------|---------------|--------|---------------------------------|--------------------|---|
| STONE CONTAINER CORP NOTES<br>REG-DTD 6/25/1992 | \$ 5,000.00        | 10.75%        | 06/15/97      | 101.00 | \$ 537.50                       | \$ 5,050.00        | Rated B7/B-<br>in cash account<br>Exchange: NYSE<br>Next call on 06/15/95<br>Call price \$ 104.00 |
| <b>Total value of corporate bonds</b>           | <b>\$ 5,000.00</b> |               |               |        | <b>\$ 537.50</b>                | <b>\$ 5,050.00</b> |   |

| Municipal bonds  | Amount              | Interest rate | Maturity date | Price   | Anticipated Income (annualized) | Market value        | Comment                          |
|--|---------------------|---------------|---------------|---------|---------------------------------|---------------------|----------------------------------|
| DOUGLASVILLE-DOUGLAS CNTY GA<br>WTR & SWR AUTH WTR & SWR REV<br>-REG-MBIA DT 7/1/91 FC/12/1/91 | \$ 15,000.00        | 5.40%         | 06/01/94      | 101.016 | \$ 810.00                       | \$ 15,152.40        | Rated AAA/AAA<br>in cash account |
| DOUGLASVILLE DOUGLAS CNTY GA<br>WTR & SWR AUTH WTR & SWR REV<br>-REG-MBIA DT 7/1/91 FC/12/1/91 | 10,000.00           | 5.90          | 06/01/97      | 107.632 | 590.00                          | 10,763.20           | Rated AAA/AAA<br>in cash account |
| <b>Total value of municipal bonds</b>  | <b>\$ 25,000.00</b> |               |               |         | <b>\$ 1,400.00</b>              | <b>\$ 25,915.60</b> |                                  |
| <b>Total value of bonds</b>  | <b>\$ 30,000.00</b> |               |               |         | <b>\$ 1,937.50</b>              | <b>\$ 30,965.60</b> |                                  |

**Mutual funds**

*Dividend yield is the estimated annual income, assuming the current dividend, divided by the fund's market price at the end of the statement period. Current dividend for funds not sponsored by Smith Barney Shearson is based on information provided by an outside vendor and is not verified by Smith Barney Shearson. Anticipated annualized income is the market value multiplied by the dividend yield.*

| Description  | Number of shares | Price    | Dividend yield | Anticipated income (annualized) | Market value   | Comment            |
|--|------------------|----------|----------------|---------------------------------|----------------|--------------------|
| SMITH BARNEY SHEARSON PREMIUM TOTAL RETURN FUND CL B | 322.875          | \$ 16.43 |                |                                 | \$ 5,304.01    | In cash account    |
| <b>Total value of mutual funds</b>                   |                  |          |                |                                 | <b>\$ 0.00</b> | <b>\$ 5,304.01</b> |

**RICHARD HULL ABECK  
GUARDIANSHIP ACCOUNT**

**Portfolio details**

This section shows the holdings in your account. It reflects values as of the close of business on 07/28/92.

| Description                               | No. of Shares | Market Value | Accrued Dividends | Reinvested Dividend Total | Comment |
|---|---------------|--------------|-------------------|---------------------------|---------|
| SMITH BARNEY SHEARSON DAILY DIVIDEND FUND | 1.44          | \$ 1.44      |                   | 2.721%                    |         |
| Total value of money funds                |               | \$ 1.44      |                   | \$ 0.00                   |         |

**Bonds**

Some prices provided by outside pricing services may be inaccurate. They are provided only as a guide to determine portfolio value. For more specific values, please call your Financial Consultant. Call features shown indicate the next regularly scheduled call date and price. Your holdings may be subject to other redemption features including sinking funds or extraordinary calls.

| U. S. Government and Federal Agency bonds  | Amount        | Interest rate | Maturity date | Price   | Anticipated Income (annualized) | Market Value  | Comment      |
|--|---------------|---------------|---------------|---------|---------------------------------|---------------|--------------|
| U.S. TREASURY NOTE SER Q 85 DTD 8/12/1992  | \$ 20,000.00  | 4.025%        | 08/15/95      | 101.158 | \$ 1,925.00                     | \$ 20,231.20  |              |
| Value of U. S. Government and Federal Agency bonds                                 | \$ 20,000.00  |               |               |         | \$ 1,925.00                     | \$ 20,231.20  |              |
| Municipal bonds  | Amount        | Interest rate | Maturity date | Price   | Anticipated Income (annualized) | Market Value  | Comment      |
| FULTON CNTY GA BLDG AUTH REV RFDG JUDICIAL CTR FACS PROJ RG DTD 10/1/91 F/C 5/1/92 | \$ 25,000.00  | 5.70%         | 01/01/96      | 103.66  | \$ 1,325.00                     | \$ 25,915.00  | Rated AA/A   |
| CHEROKEE CNTY SCH SYS GA GEN OBLG RFDG BDS REG DTD 2/1/92 F/C 8/1/92               | 15,000.00     | 5.00          | 06/01/97      | 104.11  | 750.00                          | 15,618.50     | Rated A1     |
| FULTON CNTY GA BLDG AUTH REV RFDG JUDICIAL CTR FACS PROJ RG DTD 10/1/91 F/C 5/1/92 | 25,000.00     | 5.50          | 01/01/98      | 106.728 | 1,375.00                        | 26,544.50     | Rated AA/A   |
| ALPHARETTA GA VAR PURP G/O BDS REG DTD 5/1/92 F/C 5/1/92                           | 25,000.00     | 5.30          | 05/01/98      | 104.398 | 1,325.00                        | 26,149.50     | Rated A1/AA- |
| WALTON CNTY GA WTR & SWR REV REG DTD 10/1/91 F/C 5/1/92                            | 20,000.00     | 5.00          | 01/01/99      | 104.29  | 1,000.00                        | 20,858.00     | Rated AA/AAA |
| ALPHARETTA GA VAR PURP G/O BDS REG DTD 5/1/92 F/C 5/1/92                           | 25,000.00     | 5.50          | 05/01/99      | 105.346 | 1,375.00                        | 26,338.50     | Rated A1/AA- |
| CHEROKEE CNTY SCH SYS GA GEN OBLG RFDG BDS REG DTD 2/1/92 F/C 8/1/92               | 20,000.00     | 5.40          | 06/01/99      | 105.78  | 1,080.00                        | 21,156.00     | Rated A1     |
| AUGUSTA-RICHMOND CO GA COLISEUM REF REV ESCROWED TO CITY REG DTD 5/1/78            | 25,000.00     | 6.10          | 02/01/00      | 109.718 | 1,525.00                        | 27,429.50     |              |
| CLAYTON CNTY GA SCH DIST GENL OBLG RFDG REG DTD 8/1/92 F/C 2/1/93                  | 20,000.00     | 5.125         | 02/01/00      | 105.240 | 1,025.00                        | 21,049.20     | Rated A1/AA- |
| AUGUSTA GA WTR & SWR REV REG DTD 12/1/91 F/C 5/1/92                                | \$ 15,000.00  | 5.85%         | 05/01/00      | 109.183 | \$ 871.50                       | \$ 16,374.45  | Rated A      |
| AUGUSTA-RICHMOND CO COLISEUM AUTH GA REV REF ESCROWED TO CITY REG DTD 5/1/78       | 25,000.00     | 6.10          | 02/01/01      | 110.346 | 1,525.00                        | 27,568.50     |              |
| Value of municipal bonds   | \$ 240,000.00 |               |               |         | \$ 13,182.50                    | \$ 255,015.05 |              |
| Total value of bonds   | \$ 260,000.00 |               |               |         | \$ 14,107.50                    | \$ 275,246.95 |              |

**FINANCIAL STATEMENT**  
**Molly Hull Aeck**  
 (Minor Child)

| ASSETS   |                  | LIABILITIES                                      |                  |
|--|------------------|--|------------------|
| Cash on hand and in banks  | \$ 500           | Notes payable to banks - secured                 | \$ 0             |
| U.S. Government securities   | 500              | Notes payable to banks - unsecured               | 0                |
| Listed securities  | 0                | Notes payable to relatives                       | 0                |
| Unlisted securities  | 0                | Notes payable to others                          | 0                |
| Accounts and notes receivable:   | 0                | Accounts and bills due                           | 0                |
| Due from relatives, friends, others  | 0                | Unpaid income tax                                | 0                |
| Real estate owned  |                  | Other unpaid tax and interest                    | 0                |
| Thirty acres uodeveloped property<br>in Highlands, North Carolina \$ 60,000      | 60,000           | Real estate mortgages payable                    | 0                |
| 33 1/4% interest in two acre<br>residential lot in<br>Atlanta, Georgia \$ 40,000 | 40,000           | Chattel mortgages and other liens payable        | 0                |
|  | 100,000          | Other debts - itemize:                           | 0                |
| Real estate mortgages receivable   | 0                |  |                  |
| Autos and other personal property  | 0                |  |                  |
| Cash value - life insurance  | 0                |  |                  |
| Other assets - itemize:  |                  |  |                  |
| Trust account (statement attached)   | 45,184           |  |                  |
|  |                  | <b>Total liabilities</b>                         | <b>\$ 0</b>      |
|  |                  | <b>Net worth</b>                                 | <b>\$146,184</b> |
| <b>Total assets</b>  | <b>\$146,184</b> | <b>Total liabilities and net worth</b>           | <b>\$146,184</b> |
| CONTINGENT LIABILITIES   |                  | GENERAL INFORMATION                              |                  |
| As endorser, comaker or guarantor  | None             | Are any assets pledged? (Add schedule)           | No               |
| On leases or contracts   | None             | Are you defendant in any suits or legal actions? | No               |
| Legal Claims   | None             | Have you ever taken bankruptcy?                  | No               |
| Provision for Federal Income Tax   | None             |  |                  |
| Other special debt   | None             |  |                  |

MOLLY HULL AECK  
TRUST ACCOUNT

Portfolio details

This section shows the holdings in your account. It reflects values as of the close of business on 01/28/04.

| Description                               | No. of shares | Market value | Accrued dividends | Annualized Dividend Yield | Comment |
|---|---------------|--------------|-------------------|---------------------------|---------|
| SMITH BARNEY SHEARSON DAILY DIVIDEND FUND | 1,187.79      | \$ 1,107.79  | \$ 1.25           | 2.721%                    |         |
| Total value of money funds                |               | \$ 1,107.70  | \$ 1.25           |                           |         |

Money funds

Some prices provided by outside pricing services may be inaccurate. They are provided only as a guide to determine portfolio value. For more specific values, please call your Financial Consultant. Call features shown indicate the next regularly scheduled call date and price. Your holdings may be subject to other redemption features including sinking funds or extraordinary calls.

Bonds

| Corporate bonds   | Amount       | Interest rate | Maturity date | Price   | Anticipated income (annualized) | Market value | Comment   |
|---|--------------|---------------|---------------|---------|---------------------------------|--------------|---|
| STONE CONTAINER CORP NOTES<br>REG-DTD 8/25/1992   | \$ 5,000.00  | 10.75%        | 06/15/07      | 101.00  | \$ 537.50                       | \$ 5,050.00  | Rated B2/B-<br>in cash account<br>Exchange: NYSE<br>Next call on 06/15/05<br>Call price \$ 104.00 |
| Value of corporate bonds  |              |               |               |         |                                 |              |   |
|   | \$ 5,000.00  |               |               |         | \$ 537.50                       | \$ 5,050.00  |   |
| Municipal bonds   | Amount       | Interest rate | Maturity date | Price   | Anticipated income (annualized) | Market value | Comment   |
| DOUGLASVILLE-DOUGLAS CNTY GA<br>WTR & SWR AUTH WTR & SWR REV<br>-REG-MBIA DT 7/1/01 FAC12/1/01  | \$ 15,000.00 | 5.40%         | 06/01/04      | 101.016 | \$ 810.00                       | \$ 15,152.40 | Rated AAA/AAA<br>in cash account  |
| DOUGLASVILLE-DOUGLAS CNTY GA<br>WTR & SWR AUTH WTR & SWR REV<br>-REG-MBIA-DT 7/1/01 FAC 12/1/01 | 15,000.00    | 5.00          | 06/01/07      | 107.632 | 865.00                          | 16,144.60    | Rated AAA/AAA<br>in cash account  |
| Value of municipal bonds  |              |               |               |         |                                 |              |   |
|   | \$ 30,000.00 |               |               |         | \$ 1,675.00                     | \$ 31,297.20 |   |
| Total value of bonds  |              |               |               |         |                                 |              |   |
|   | \$ 35,000.00 |               |               |         | \$ 2,225.50                     | \$ 36,347.20 |   |

Mutual funds

Dividend yield is the estimated annual income, assuming the current dividend, divided by the fund's market price at the end of the statement period. Current dividend for funds not sponsored by Smith Barney Shearson is based on information provided by an outside vendor and is not verified by Smith Barney Shearson. Anticipated annualized income is the market value multiplied by the dividend yield.

| Description  | Number of shares | Price    | Dividend yield | Anticipated income (annualized) | Market value | Comment         |
|--|------------------|----------|----------------|---------------------------------|--------------|-----------------|
| SMITH BARNEY SHEARSON PREMIUM TOTAL RETURN FUND CL B | 464.659          | \$ 16.43 |                |                                 | \$ 7,637.80  | In cash account |
| Total value of mutual funds                          |                  |          |                | \$ 0.00                         | \$ 7,637.80  |                 |



UNITED STATES SENATE  
Committee On The Judiciary  
Washington, DC 20510-0275

## I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Mary Mona Lisi

2. Address: List current place of residence and office address(es).

Home:

355 Stone Ridge Drive  
East Greenwich, RI 02818

Office:

Office of Disciplinary Counsel  
Fogarty Judicial Annex  
24 Weybosset Street  
Providence, RI 02903

3. Date and place of birth.

September 4, 1950  
Providence, RI

- 4.
- Martial Status
- (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Married.  
Stephen J. Reid, Jr., Attorney  
Blish & Cavanagh  
Commerce Center  
30 Exchange Terrace  
Providence, RI 02903

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

University of Rhode Island  
Kingston, Rhode Island  
September, 1968 - June, 1972                      B.A. 1972

University of Rhode Island  
 Kingston, Rhode Island  
 September, 1973 - August, 1974  
 Course work in Master's Program.  
 No degree awarded; I left to attend  
 law school

Temple University School of Law  
 Philadelphia, Pennsylvania  
 August, 1974 - May, 1977 J.D. 1977

National College for Criminal Defense  
 University of Houston  
 Houston, Texas  
 May, 1980 - June, 1980  
 Certificate of Completion Trial Practice I  
 6/80

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnership,s institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

9/72-6/73 Prout Memorial High School  
 Wakefield, Rhode Island  
 History Teacher

6/73-8/73 Scholastic International  
 New York City, New York  
 Tour Chaperone

8/73-8/74 University of Rhode Island  
 Kingston, Rhode Island  
 Hall Director

9/74-5/76 University of Pennsylvania  
 Veterinary Hospital  
 Philadelphia, Pennsylvania  
 Receptionist

9/75-5/76 Professor Jerome Sloan  
 Temple University School of Law  
 Philadelphia, Pennsylvania  
 Law Clerk

5/76-8/76 US Attorney  
 Providence, Rhode Island  
 Law Clerk

9/76-5/77 US Attorney  
Philadelphia, Pennsylvania  
Law Clerk

9/77-10/77 RI Hospital Trust Bank  
Providence, Rhode Island  
Paralegal

10/77-7/81 Rhode Island Public Defender  
Providence, Rhode Island  
Assistant Public Defender

8/81-10/82 Office of the Child Advocate  
Providence, Rhode Island  
Assistant Child Advocate

8/81-10/82 Private Law Practice  
Providence, Rhode Island

10/82-12/87 Office of the Court Appointed Special  
Advocate  
Rhode Island Family Court  
Providence, Rhode Island  
Director

1/88-10/90 Office of Disciplinary Counsel  
Rhode Island Supreme Court  
Providence, Rhode Island  
Deputy Disciplinary Counsel

10/90-present Office of Disciplinary Counsel  
Rhode Island Supreme Court  
Providence, Rhode Island  
Chief Disciplinary Counsel

Military Service: Have you had any military service?  
If so, give particulars, including the dates, branch  
of service, rank or rate, serial number and type of  
discharge received.

No.

Honors and Awards: List any scholarships,  
fellowships, honorary degrees, and honorary society  
memberships that you believe would be of interest to  
the Committee.

1986 Named one of the "Providence 350" in recognition  
of my activities as a children's rights advocate

1987 Recipient of the "Meritorious Service to the  
Children of America Award" from the National Counsel  
of Juvenile and Family Court Judges

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

American Bar Association  
 Rhode Island Bar Association  
 Rhode Island Women's Bar Association  
 (Vice President 1988)  
 Rhode Island Women Lawyers Association  
 (President 1981)  
 National Court Appointed Special Advocate Association  
 (Treasurer 1984-86; President 1986-88; Board Member  
 1988-1992)  
 National Organization of Bar Counsel

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies.

Urban League of Rhode Island

Please list all other organizations to which you belong.

None

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Rhode Island\* admitted 10/12/77  
 United States District Court, Rhode Island  
 admitted 11/8/77  
 Massachusetts\* admitted 6/9/78

\*Please note I am listed as voluntary inactive since I am prohibited from practicing law outside the office of Disciplinary Counsel.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

None.

13. Health: What is the present state of your health?  
List the date of your last physical examination.

Excellent  
January, 1993

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

N/A

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Yes. In February, 1991, I was appointed by Governor Bruce Sundlun to serve on the Select Commission to Investigate the Failure of RISDIC ("Commission"). The Commission was created by an act of the RI Legislature. Its purpose was to investigate the failure of the private insurer of credit union and bank deposits which result in the closure of 45 financial institutions by the Governor. The Commission had subpoena power, held confidential investigative depositions, and televised public hearings. I served on the Commission from February, 1991 until December, 1992 when we issued our final report. I served on the Commission without compensation.

## 17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:
1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk; No
  2. whether you practiced alone, and if so, the addresses and dates;
  3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;
- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?
2. Describe your typical former clients, and mention the areas, if any in which you have specialized.

October, 1977 - July, 1981

Rhode Island Public  
Defender  
100 North Main Street  
Providence, RI 02903

From October, 1977 to March, 1980, I was an Assistant Public Defender assigned to the Juvenile Division. I represented indigent juvenile offenders in delinquency actions and indigent adult offenders charged with civil child abuse and neglect. From March, 1980 to July, 1981, I was supervising attorney of the Juvenile Division. In addition to maintaining a full caseload, I supervised four attorneys, two clerical workers, and an investigator.

August, 1981 - October, 1982

Assistant Child  
Advocate (part-time)  
Office of the Child  
Advocate  
260 West Exchange Street  
Providence, RI

I was responsible for reviewing placements of children in the care of the Department for Children and Their Families, and representing the Child Advocate before the Family Court. I left the Child Advocate's office when I was appointed Director of the CASA program.

August, 1981 - October, 1982                      Private Practice

My practice consisted primarily of guardianships in domestic relations cases before the Family Court.

Office Address:  
27 Prudence Avenue  
Providence, RI

October, 1982 - December, 1987      Director  
    Court Appointed  
    Special Advocate  
    Program  
    Rhode Island Family  
    Court  
    One Dorrance Plaza  
    Providence, RI 02903

I had full administrative responsibility for the CASA Program. I supervised a staff of five attorneys, three social workers, three coordinators, and four secretaries. I also recruited and trained more than 200 volunteer CASAs who together with our professional staff represented the best interests of abused and neglected children before the Family Court. I maintained a case load which required frequent appearances before the Rhode Island Family Court.

January, 1988 - October, 1990              Deputy Disciplinary  
    Counsel  
    Rhode Island Supreme  
    Court  
    250 Benefit Street  
    Providence, RI 02903

I was responsible for the investigation and presentation of complaints to the Disciplinary Board. I also prosecuted several formal matters before the Board. In September, 1989, upon the resignation of former Judge Fuyat, and at the direction of the Chief Justice, I conducted the investigation of Judge Fuyat's borrowing money from attorneys who appeared before him. I drafted the petitions for formal disciplinary action, prepared memoranda, and tried each of the 30 cases presented to the Disciplinary Board and the Rhode Island Supreme Court.

October, 1990 - present

Chief Disciplinary  
Counsel  
RI Supreme Court  
24 Weybosset Street  
Providence, RI 02903

I have full administrative responsibility for the Office of Disciplinary Counsel. I supervise four attorneys, a confidential investigator, and four secretaries. I continue to try formal disciplinary matters before the Board and to present cases before the Supreme Court.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Frequently

2. What percentage of these appearances was in:

(a) federal courts  
0%

(b) state courts of record;  
100%

(c) other courts  
0%

3. What percentage of your litigation was:

(a) civil  
1977-81 30%  
1981-present 100%

(b) criminal  
1977-81 70%



4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

From October, 1977 through July, 1981, I served as an Assistant Public Defender. My caseload included status offenses, misdemeanors, felonies, and civil child abuse and neglect cases. I conservatively estimate that I tried at least 100 cases to conclusion, including a first degree murder case. With the exception of the murder trial, I was sole counsel.

From October, 1982 through December, 1987, I represented abused and neglected children in trials and review hearings before the RI Family Court. My representation in those cases was as a guardian ad litem. In that capacity, I participated fully in trial, conducting direct and cross-examination of witnesses. Again, in this capacity I conservatively estimate having participated in at least 50 trials as sole counsel.

From 1988 to the present, I have tried approximately 40 attorney discipline cases before the Rhode Island Supreme Court Disciplinary Board. (Board) The Board is an administrative adjudicative body. Contested matters are tried in accordance with the Board's Rules of Procedure and the Rhode Island Rules of Evidence. In addition, I appear before the Rhode Island Supreme Court on a regular basis at disciplinary show cause hearings.

5. What percentage of these trials was:

- (a) jury  
0%
- (b) non-jury  
100%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
- (a) the date of representation;
  - (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
  - (c) The individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
- 1) Carter v. Kritz 560 A2d 360 (RI 1989)

Kritz is an attorney misconduct case. The case is significant because it is the first case in RI brought against an attorney for sexual misconduct with his clients. I prosecuted this case for the office of Disciplinary counsel. I interviewed each of the victims and prepared them to testify. On the day of the hearing, Mr. Kritz admitted all factual allegations and rule violations. The Board found that Mr. Kritz had used his position as an attorney to take advantage of his clients and recommended that he be suspended from the practice of law for not less than one year. The Supreme Court concurred.

Dates of trial: 11/8/88; 1/18/89; 3/6/89

Judge: This case was tried before a three-member panel of the RI Supreme Court Disciplinary Board. The panel members were: Marifrances McGinn, Esquire, Robert Kilmarx, Esquire, and N. Jameson Chace, Esq.

Co-counsel: None

Respondent's counsel: William A. Dimitri, Jr., Esq.  
733 Douglas Avenue  
Providence, RI 02908  
(401) 273-9092

2) Carter v. Peotrowski 568 A2d 1032 (RI 1990)

Upon my appointment as Deputy Disciplinary Counsel, I was assigned to conduct an investigation of Mr. Peotrowski's fitness to practice law in conjunction with his Petition for Reinstatement. Mr. Peotrowski had been disbarred in 1982 and had served a prison term for obtaining money under false pretenses and forgery. My investigation revealed that Mr. Peotrowski had, since his disbarment, engaged in the unlawful practice of law, had used the name of a fictitious or deceased person who was purported to have given him powers of attorney in connection with several petitions filed in the Courts, and he had misrepresented facts to the courts. I presented all of this information to the Board during a three day trial. In addition, I tried three other petitions alleging misconduct which had remained in a pending status since the order of disbarment entered. The Board found that Mr. Peotrowski's readmission would be detrimental to the integrity of the bar and to the public interest. In its recommendation to the Court, the Board advised that not only should the Petition for reinstatement be denied, but that Mr. Peotrowski never be allowed to practice law again. The Court denied the Petition for Reinstatement.

This case is significant because it sets forth the standard for readmission after disbarment. As a result of my work on this case, I developed a Reinstatement Protocol for the office of Disciplinary Counsel. The Protocol is used in every reinstatement case to insure a thorough, uniform investigation and report.

Dates of trial: 3/16/89; 4/5/89; 4/20/89

Disciplinary Board Members: Ralph P. Semonoff  
(deceased)  
N. Jameson Chace, Esq.  
James V. Aukerman, Esq.

Co-counsel: None

Respondent's Counsel: John H. Ruginski, Jr., Esq.  
1 Park Row  
Providence, RI 02903  
(401) 272-7966

3) Lisi v. Hines 610 A2d 113 (RI 1992)

This is an attorney discipline case. Mr. Hines was under suspension at the time of the trial of this matter. In this case, Mr. Hines had failed to turned over to his client \$10,000 which he was holding in escrow. Mr. Hines admitted that he had converted the money to his own use. Mr. Hines did make restitution prior to the trial. I argued that the proper sanction should be disbarment, especially in view of the fact that Mr. Hines was currently under suspension for two other findings of misconduct. The Board and the court agreed. Mr. Hines remains disbarred.

Dates of trial: 7/16/91

Disciplinary Board Members: Carol A. Zangari, Esq.  
Diane Finkle, Esq.  
R. Kelly Sheridan, Esq.

Co-counsel: None

Respondent's Counsel: Mr. Hines was pro se. Current address and phone number are unknown.

- 4) In Re Crystal, Joshua and Jacqueline A. 448 A2d 1226  
(RI 1982)

This case was a civil child dependency case based on the mother's psychiatric condition. The trial Judge found no evidence of abuse or neglect but did find that the children were dependent. The basis of the Judge's finding was that the mother had had a history of mental disorder and that there was a great possibility that she would have another psychotic episode. A psychiatrist testified that the mother could not adequately care for her children while she experienced such episodes.

I represented the mother in this case. The trial Judge found that there was a "strong possibility" that the children would suffer physical and mental harm if returned to the mother even though he agreed that the mother had made progress, that she was trying to improve the situation, and that she had enlisted the assistance of her own father to care for the children.

On appeal, the Supreme court affirmed the trial Judge's finding. This case refined the standard in dependency cases of what constitutes evidence that the child is "likely to suffer physical and/or emotional harm."

Dates of trial: July, 1980

Judge and Court: Hon. Robert G. Crouchley, RI Family Court (Ret.)

Co-Counsel: None

Counsel for the State: Thomas M. Bohan  
Department for Children Youth &  
Family  
610 Mount Pleasant Avenue  
Providence, RI  
(401) 457-4718

5) In Re Francis J 456 A2d 1174 (RI 1983)

Francis was 17 years old at the time she was charged with first degree murder. Because of her age, she was tried in the RI Family Court as a juvenile. Francis was alleged to have stabbed to death a woman outside the door of Francis' apartment. Francis gave a statement to the police admitting that she had stabbed the decedent. At trial, Francis testified that another person stabbed the woman and that individual had asked Francis to assume responsibility because she would be treated less harshly as a juvenile than the other person would be as an adult.

The trial Judge did not find Francis credible. He adjudicated her delinquent by reason of an act that would have constituted murder if committed by an adult. Francis was sentenced to the Training School until her 21st birthday.

A significant issue we raised in this case was whether Francis' confession should be suppressed on the grounds that she had not had an opportunity to consult with her mother in private before giving her statement to the police. The Supreme Court held that the confession was admissible and denied the appeal.

I and another assistant public defender worked on this case. During trial, I conducted the direct examination of Francis.

Date of trial: 10/79

Judge and Court: Hon. Edward P. Gallogly (Ret)  
RI Family Court

Co-counsel: John E. Farley, Esq.  
Assistant Attorney General  
72 Pine Street  
Providence, RI 02903  
(401) 277-2424

Prosecutor: Edward DiPippo  
422 Broadway  
Providence, RI  
(401) 861-5500

The following five cases were tried separately before the RI Supreme Court Disciplinary Board and presented separately before the RI Supreme Court. The Court opinion consolidates them along with several others that I also tried under the caption Lisi v. Several Attorneys 596 A2d 313 (RI 1991). I had been assigned full responsibility for investigation, preparation of charges of formal disciplinary action, trial, memoranda, and presentation to the RI Supreme Court of the matters reported in Lisi v. Several Attorneys. These were cases of first impression in Rhode Island. The Court found that the attorneys had prejudiced the administration of justice by loaning money to a Family Court Judge before whom they appeared. The Judge was removed from the bench and disbarred before the trials of these matters took place.

- 6) In the Matter of Gordon & Levitt. See Lisi v. Several Attorneys, 596 A2d 313 (RI 1991) Gordon and Levitt were partners in a law firm. Gordon practiced before the RI Family Court on a regular basis. From 10/88 to 7/89, he was attorney of record and trial counsel in seventeen domestic relations cases which appeared on the calendar of then Family Court Judge Fuyat. Included among those seventeen cases was a hotly contested matter, the trial of which took 24 days. One of the issues before the Judge was Gordon's petition for attorneys' fees totalling approximately \$120,000. Five days before the trial started, Gordon met privately with the Judge and agreed to give the Judge a \$4,000 check drawn on his firm client's account in exchange for the Judge's post-dated check. While the trial was in progress, the Judge asked Gordon if his firm would represent Fuyat with regard to a pending refinance of the Judge's home. Gordon agreed and directed the Judge to call his partner, Levitt. Levitt spoke with the Judge and agreed to represent him. A few days later, however, the Judge called to say that the financing had been delayed. The Judge inquired if Levitt could arrange a "bridge loan". Levitt then arranged a loan of \$20,000, using funds of a real estate business in which he, Gordon, and other non-attorneys were partners. Levitt was aware of Gordon's trial before Fuyat and the petition for attorneys' fees. Neither Gordon or Levitt informed opposing counsel of their financial dealings with the Judge. The Judge was removed from the bench prior to rendering a decision in the case.

I prosecuted this case for the Office of Disciplinary Counsel. Mr. Gordon was suspended for a period of one year. Mr. Levitt was suspended for period of six months.

Trial dates: 1/8/91

Disciplinary Board Members: Hon. William C. Hillman  
(now U.S. Bankruptcy Court  
Boston)  
Lester Salter, Esq.  
E. Howland Bowen, Esq.

Respondent's counsel: Gordon: John A. Tramonti, Jr.  
808 Hospital Trust Bldg.  
Providence, RI 02903  
(401) 751-5433

Levitt: Stephen J. Fortuanto  
The Summit East  
Suite #310  
300 Centerville Road  
Warwick, RI 02886  
(401) 737-7200

- 7) In the Matter of Chace & Forte See Lisi vs. Several Attorneys, 596 A2d 313 (RI 1991) This case was tried before a specially constituted panel of former Disciplinary Board members. The special panel was assigned by the RI Supreme Court because Mr. Chace had served as a member and as Chairman of the Disciplinary Board during the investigation and at the time of the commission of the acts under investigation by the office of Disciplinary Counsel Judge Forte is and was at the time of the hearing a Family Court Judge. He had previously been Chace's law partner.

Prior to Forte's appointment to the bench, he was responsible for the firm's domestic relations practice. While he had cases pending before Fuyat, he agreed to arrange a loan for the Judge. The source of the loan was Chace's family business. Neither Chace nor Forte advised opposing counsel of the loan. Shortly after arranging the loan, Forte agreed to make an investment with Fuyat in a real estate venture. Forte gave Fuyat a check for \$20,000 as his share in the purported investment. Again, Forte did not advise opposing counsel of this arrangement.

Chace was suspended for a period of 30 days. Forte was publicly censured.

Dates of trial: 11/2/90

Disciplinary Board Members: Hon. William C. Hillman  
(now U.S. Bankruptcy Court  
Boston)  
Lester H. Salter, Esq.  
Charles H. Anderson, Esq.

Co-counsel: None



Respondent's counsel: Joseph A. Kelly, Esq.  
155 South Main Street  
Providence, RI 02903  
(401) 331-7272

- 8) In the Matter of Toro. See Lisi vs. Several Attorneys, 596 A2d 313 (RI 1991) Mr. Toro made three five thousand dollar loans to former Judge Fuyat between 10/87 and 12/88. Throughout that period of time, Toro continued to appear before the Judge, but he never advised opposing counsel of his loans to the Judge.

Mr. Toro was publicly censured.

Date of trial: 10/30/90

Disciplinary Board Members: Hon. Edward C. Clifton  
(now Judge, RI District Court)  
Marifrances McGinn, Esq.  
Marilyn Shannon-McConaghy,  
Esq.

Co-counsel: None

Respondent's counsel: Joseph A. Kelly, Esq.  
155 South Main Street  
Providence, RI 02903  
(401) 331-7272

- 9) In the Matter of Comolli. See Lisi vs. Several Attorneys, 596 A2d 313 (RI 1991) Mr. Comolli made three loans to former Judge Fuyat totalling \$15,000. The first loan was made in the Judge's chambers at the conclusion of several matters Mr. Comolli had handled for the Bureau of Family Support. Mr. Comolli admitted that at the time he made that loan he could foresee that he would appear before Fuyat on a contested matter at some point in the future. Even though Mr. Comolli had been told by a senior partner that the first loan was "incorrect", Mr. Comolli made two more loans.

Mr. Comolli was suspended for 30 days.

Date of trial: 11/15/90

Disciplinary Board Members: Ralph P. Semonoff  
(deceased)  
Carol A. Zangari, Esq.  
E. Howland Bowen, Esq.

Co-counsel: None

Respondent's counsel: Thomas J. Liguori, Esq.  
 P.O. Box 1277  
 855 Beach Street  
 Westerly, RI 02891  
 (401) 596-7751

- 10) In the Matter of Newman. See Lisi vs. Several Attorneys, 596 A2d 313 (RI 1991) Mr. Newman made an \$8,500 loan to Judge Fuyat which was never repaid. During the time the loan remained outstanding, Mr. Newman had approximately 80 cases on Judge Fuyat's calendar. Mr. Newman never asked the Judge for repayment nor did he advise opposing counsel of his loan to the Judge.

Mr. Newman was publicly censured.

Date of trial: 10/18/90

Disciplinary Board Members: George Salem, Esq.  
 E. Howland Bowen, Esq.  
 Carol A. Zangari, Esq.

Co-counsel: None

Respondent's counsel: Thomas J. Liguori, Esq.  
 P.O. Box 1277  
 855 Beach Street  
 Westerly, RI 02891  
 (401) 596-7751

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

In 1992, the RI Supreme Court voted to adopt the recommendations of the RI Supreme Court Ethics Task Force as those recommendations related to attorney disciplinary procedure. I appeared before the Task Force and the Court to advocate adoption of most of the ABA's McKay Commission recommendations. The Court did promulgate new rules which bring Rhode Island in substantial conformity with the recommendations of the ABA. In particular, the rules now require the participation of non-attorney members of the Disciplinary Board and publication of formal charges of misconduct upon a finding of probable cause by the Board. I drafted the rule amendments at the request of the Court.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangement you have made to be compensated in the future for any financial or business interest.

|   |          |
|---|----------|
| Rhode Island State Employers Retirement Fund                  | \$47,197 |
| Lincoln National Life Insurance Company Deferred Compensation | \$11,757 |

The amounts reported represent my contribution to the funds.

I intend to remove the funds from the Rhode Island State Employees Retirement Fund upon my resignation from state service. Those funds will be re-invested in a qualified retirement plan.

I do not anticipate receipt of the Lincoln National funds until retirement.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I will recuse myself from any involvement in matters where my husband's law firm has any interest and/or participation.

I intend to follow the mandates of the Code of Judicial Conduct in any situation likely to present any potential conflict of interest.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

Copy of Financial Disclosure Report attached.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

Attached

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

While still in law school, I volunteered with the Defender Association of Philadelphia to work with indigent juvenile offenders.

In 1984, I was elected Treasurer of the National Court Appointed Special Advocate Association. After serving two years as Treasurer, I was elected to a two year term as President. I went on to serve four more years as a director of the Association. The National CASA Association is a non-profit membership organization dedicated to providing abused and neglected children with trained volunteer advocates in the Juvenile and Family Courts throughout the United States. The Association has been recognized by the White House (1986 recipient of the "President's Volunteer Recognition Award") and child advocacy organizations for the excellent work it does. As an officer and director of the Association, I participated in setting policy and direction and represented the Association at numerous national and local conferences. I continue to donate time to the Association on an as needed basis.

From 1987 to 1990, I served as a member of the Board of Directors of the Urban League of Rhode Island.

From 1988 to 1991, I served as a Volunteer Judge in the Mock Trial Competition for junior and senior high schools sponsored by the Rhode Island Legal/Education Partnership.

From 1989 to 1991, I served as a member of the Board of Directors of the Ocean State Adoption Resource Exchange.

In addition to the volunteer activities listed above, my entire professional career has been dedicated to public service.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

From 1989 to August, 1993, my husband and I held a family membership at Potowomut Golf Club in East Greenwich, RI. The club does not restrict or exclude membership on the basis of race, sex, or religion; however, there were rules and policies which disparately affected female members. Specifically, women were excluded from one of the grille rooms and women had restricted access to tee times. Prior to my resignation in August, 1993, the club had taken several steps to address and remedy the situation.

In June of 1993, I wrote to the Board of Governors urging them to take action to eliminate the discriminatory policies described above. In July of 1993, I appeared before the Board and reiterated my objection to those policies and asked that the Board adopt the recommendations to eliminate inequities in membership which had been developed by the Long Range Planning Committee. In August of 1993, my husband and I resigned from the club.

Shortly after our resignation from membership, the Board adopted a resolution to open the grille room to all members. The Board also voted to recommend to the membership that changes be made in the club by-laws to eliminate gender based access to tee times. The membership ratified those by-laws changes at the annual meeting held on January 27, 1994.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

There is no selection commission in my jurisdiction. In March, 1993, I wrote to Senator Claiborne Pell to express my interest in appointment to the U.S. District Court. I met with Senator Pell and his staff. We discussed my educational background, trial experience, and administrative experiences. I had a second interview with Senator Pell and his staff where

we discussed my qualifications in greater detail. I provided Senator Pell with the names of individuals who are knowledgeable about my legal ability and my integrity.

After Senator Pell recommended my nomination to the President, I was interviewed by agents of the FBI and staff from the United States Department of Justice. I was also interviewed by members of the ABA Standing Committee on the Federal Judiciary.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The federal judiciary must look to Article III of the United States Constitution and the acts of Congress for the parameters of its authority. A federal judge does not make law or policy. Those responsibilities and powers are vested in the Congress and the Executive Branch. The responsibility of a federal judge is to find facts and apply the law as enacted by Congress and in keeping with the interpretation of the law by the appellate courts.

The judge must at the outset of litigation make findings as to the standing of the parties, and a determination as to whether there exists a concrete, definite, real dispute which may be redressed by an order of specific relief from the Court.

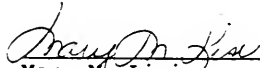
A federal district court judge is ill-equipped to serve as an "administrator with continuing oversight responsibilities". However, the judge, in deciding an actual case or controversy may nonetheless affect the way in which those individuals who are responsible for the internal administration of organizations or institutions which may be before the court, will comply with the orders of the court.

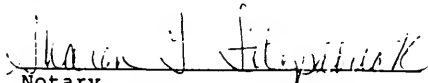


AFFIDAVIT

I, Mary M. Lisi, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

January 31, 1994

  
\_\_\_\_\_  
Mary M. Lisi

  
\_\_\_\_\_  
Notary

**Sharon G. Fitzpatrick**  
My Commission Expires July 10 1995

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Date of Report

Lisi, Mary M.

1/31/94

**IV. REIMBURSEMENTS and GIFTS** - transportation, lodging, food, entertainment.  
 (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

SOURCEDESCRIPTION
 NONE (No such reportable reimbursements or gifts)

|   |        |  |
|---|--------|--|
| 1 | Exempt |  |
| 2 |        |  |
| 3 |        |  |
| 4 |        |  |
| 5 |        |  |
| 6 |        |  |
| 7 |        |  |
| 8 |        |  |

**V. OTHER GIFTS.** (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp.15-16 of Instructions.)

SOURCEDESCRIPTIONVALUE
 NONE (No such reportable gifts)

|   |        |  |    |
|---|--------|--|----|
| 1 | Exempt |  | \$ |
| 2 |        |  | \$ |
| 3 |        |  | \$ |
| 4 |        |  | \$ |

**VI. LIABILITIES.** (Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp.16-18 of Instructions.)

CREDITORDESCRIPTIONVALUE CODE\*
 NONE (No reportable liabilities)

|   |  |  |
|---|--|--|
| 1 |  |  |
| 2 |  |  |
| 3 |  |  |
| 4 |  |  |
| 5 |  |  |
| 6 |  |  |
| 7 |  |  |

\* VALUE CODES: J = \$15,000 or less    K = \$15,001 to \$50,000    L = \$50,001 to \$100,000    M = \$100,001 to \$250,000  
 N = \$250,001 to \$500,000    O = \$500,001 to \$1,000,000    P = More than \$1,000,000

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Date of Report

Lisi, Mary M.

1/31/94

## VII. INVESTMENTS AND TRUSTS - income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

| A.<br>Description of Assets<br>(including trust assets)<br><br>Indicate, where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.<br><br>Place "(X)" after each asset exempt from prior disclosure. | B.<br>Income during reporting period  |   | C.<br>Gross Value at end of reporting period  |   | D.<br>Transactions during reporting period      |                     |                      |                     |   |
|---|---|---|---|---|---|---------------------|----------------------|---------------------|---|
|   | (1)   | (2)   | (1)   | (2)   | If not exempt from disclosure                   |                     |                      |                     |   |
|   | Asset Code (A-S)  | Type (S, Div, Inst or Int.)   | Value Code (J-P)  | Value Method Code (Q-V)   | (1) Type (A-S, buy, sell, exchange, redemption) | (2) Date: Month/Day | (3) Value Code (J-P) | (4) Gain Code (A-S) | (5) Identity of Buyer/Seller (if private transaction) |
| <input type="checkbox"/> NONE (No reportable income, assets, or transactions)   |   |   |   |   |   |                     |                      |                     |   |
| 1 Lincoln National Life Ins. Deferred Compensation  | A   | Int   | J   | T   | Exempt  | -----               |                      |                     |   |
| 2 RI State Employees Retirement Fund  | A   | None  | K   | T   | Exempt  | -----               |                      |                     |   |
| 3 Fleet National Bank Providence, RI CD (J)   | A   | Int   | J   | T   | Exempt  | -----               |                      |                     |   |
| 4 Citizens Bank, Prov., RI Term Savings Acct (J)  | A   | Int   | J   | T   | Exempt  | -----               |                      |                     |   |
| 5 Citizens Bank, Prov. RI NOW Account (J)   | A   | Int   | J   | T   | Exempt  | -----               |                      |                     |   |
| 6 Nuveen Insured Municipal Bond Fund (J)  | A   | Div   | J   | T   | Exempt  | -----               |                      |                     |   |
| 7 Citizens Bank, Prov., RI IRA (S)  | A   | Int   | J   | T   | Exempt  | -----               |                      |                     |   |
| 8 Citizens Bank, Prov., RI Statement Savings (S)  | A   | Int   | J   | T   | Exempt  | -----               |                      |                     |   |
| 9 401-K (S)   | A   | Int   | J   | T   | Exempt  | -----               |                      |                     |   |
| 10 Target Benefit Plan (S)  | A   | Int   | K   | T   | Exempt  | -----               |                      |                     |   |
| 11  |   |   |   |   |   |                     |                      |                     |   |
| 12 Real Estate *See VIII Dania, Florida \$28,160  | A   | None  | K   | S   | Exempt  | -----               |                      |                     |   |
| 13 Citizens Bank, Prov. RI Savings Acct **See VIII  | A   | Int   | K   | T   | Exempt  | -----               |                      |                     |   |
| 14  |   |   |   |   |   |                     |                      |                     |   |
| 15  |   |   |   |   |   |                     |                      |                     |   |
| 16  |   |   |   |   |   |                     |                      |                     |   |
| 17  |   |   |   |   |   |                     |                      |                     |   |
| 18  |   |   |   |   |   |                     |                      |                     |   |
| 19  |   |   |   |   |   |                     |                      |                     |   |
| 20  |   |   |   |   |   |                     |                      |                     |   |
| 1 Income/Gain Codes:<br>(See Col. B1 & 9A)  | A=\$1,000 or less<br>F=\$15,001 to \$50,000<br>J=\$15,000 or less<br>K=\$50,001 to \$500,000<br>Q=Appraisal<br>U=Book Value | B=\$1,001 to \$2,500<br>F=\$50,001 to \$100,000<br>R=\$15,001 to \$50,000<br>O=\$100,001 to \$1,000,000<br>R=Cost (real estate only)<br>V=Other | C=\$2,501 to 5,000<br>G=\$100,001 to \$1,000,000<br>L=\$50,001 to \$100,000<br>P=More than \$1,000,000<br>S=Assessment<br>W=Estimated | D=\$5,001 to \$15,000<br>H=More than \$1,000,000<br>N=\$100,001 to \$250,000<br>T=Cash/Market |   |                     |                      |                     |   |

## FINANCIAL DISCLOSURE REPORT (cont'd)

| Name of Person Reporting | Date of Report |
|--------------------------|----------------|
| Lisi, Mary M.            | 1/31/94        |

## VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

\*Real Estate - Dania, Florida. This is my father's residence. The property is held  
as a joint tenancy with him.

\*\*Citizens Bank - Savings Account. This is a joint savings account with my father.  
The funds are his.

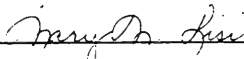
## IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature



Date

1/31/94

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, § 104, AND 18 U.S.C. § 1001.)

## FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Judicial Ethics Committee  
Administrative Office of the  
United States Courts  
Washington, DC 20544

## FINANCIAL STATEMENT

NET WORTH As Of December 31, 1993

Provide a complete, current financial net worth statement which itemizes in detail all assets (including accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate memt your household.

| ASSETS                                  |           | LIABILITIES                                      |           |
|---|-----------|--|-----------|
| Cash on hand and in banks               | 29821.00  | Notes payable to banks—secured                   | 0.00      |
| U.S. Government securities—add schedule | 0.00      | Notes payable to banks—unsecured                 | 0.00      |
| Listed securities—add schedule          | 2800.00   | Notes payable to relatives                       | 0.00      |
| Unlisted securities—add schedule        | 0.00      | Notes payable to others                          | 0.00      |
| Accounts and notes receivable:          |           | Accounts and bills due                           | 0.00      |
| Due from relatives and friends          | N/A       | Unpaid income tax                                | 0.00      |
| Due from others                         | N/A       | Other unpaid tax and interest                    | 0.00      |
| Doubtful                                | N/A       | Real estate mortgages payable—add schedule       | 132000.00 |
| Real estate owned—add schedule          | 350000.00 | Chattel mortgages and other liens payable        | 0.00      |
| Real estate mortgages receivable        | 0.00      | Other debts—itemize:                             | 0.00      |
| Autos and other personal property       | 5000.00   |  |           |
| Cash value—life insurance               |           |  |           |
| Other assets—itemize:                   |           |  |           |
| Deferred Compensation Lincoln National  | 11757.00  |  |           |
| RI State Employees Retirement Fund      | 47197.00  |  |           |
| Nuveen Insured Municipal Bond Fund      | 13972.00  | Total liabilities                                | 132000.00 |
| IRAs                                    | 17119.00  | Net worth  | 441066.00 |
| see Schedule Attached                   | 573066.00 | Total liabilities and net worth                  | 573066.00 |
| Total assets                            |           |  |           |
| CONTINGENT LIABILITIES                  |           | GENERAL INFORMATION                              |           |
| As endorser, cosigner or guarantor      | 0.00      | Are any assets pledged? (Add schedule, etc.)     | No        |
| On leases or contracts                  | 0.00      | Are you defendant in any suits or legal actions? | Yes       |
| Legal Claims                            | 0.00      | Have you ever taken bankruptcy?                  | No        |
| Provision for Federal Income Tax        | 0.00      |  |           |
| Other special debt                      | 0.00      |  |           |
|   | 0.00      |  |           |

MARY M. LISI

ASSETS

|  |           |
|--|-----------|
| 401K   | 6,000.00  |
| Target Benefit Plan                              | 22,400.00 |
| Joint Savings Account<br>with Mary Lisi's father | 22,000.00 |
| (these are my father's funds)                    |           |

\*Real Estate Owned

Residence: 355 Stone Ridge Drive  
 East Greenwich, RI 02818  
 (tenancy by the entirety)  
 Approximate Value: \$325,000.00

59 Catcay Court  
 Dania, FL 33004  
 (joint tenancy with my father;  
 this is his residence)  
 Approximate Value: \$25,000.00

LIABILITIESReal Estate Mortgages Payable

Citizens Mortgage Corporation  
 mortgage on 355 Stone Ridge Drive  
 East Greenwich, RI 02818  
 Balance as of 12/31/93: Approximately \$118,000.00

Citizens Bank Equity Mortgage  
 mortgage on 355 Stone Ridge Drive  
 East Greenwich, RI 02818  
 Balance as of 12/31/93: Approximately \$14,000.00

FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics Reform Act of 1989, Pub. L. No. 101-194, November 30, 1989 (5 U.S.C.A. App. 6, §§101-112)

AD-10 Rev. 1/93

|   |  |  |
|---|--|--|
| 1. Person Reporting (Last name, first, middle initial)<br><br>Lisi, Mary M.   | 2. Court or Organization<br><br>United States District Court<br>District of Rhode Island   | 3. Date of Report<br><br>1/31/94                                 |
| 4. Title (Article III judges indicate active or senior status; Magistrate judges indicate full- or part-time)<br><br>Nominee - United States District Court Judge | 5. Report Type (check appropriate type)<br><input checked="" type="checkbox"/> Nomination, Date <u>1/27/94</u><br><input checked="" type="checkbox"/> Initial ___ Annual ___ Final ___ | 6. Reporting Period<br><br>January 1, 1993 -<br>January 14, 1994 |
| 7. Chambers or Office Address<br><br>24 Weybosset Street<br>Providence, RI 02818  | 8. On the basis of the information contained in this Report, it is, in my opinion, in compliance with applicable laws and regulations ___<br><br>Reviewing Officer Signature _____     |  |

**IMPORTANT NOTES:** *The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on last page.*

I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

POSITION NAME OF ORGANIZATION/ENTITY

NONE (No reportable positions)

Director National Court Appointed Special Advocate  
Association, Seattle, Washington

II. AGREEMENTS. (Reporting individual only; see p. 8-9 of Instructions.)

DATE PARTIES AND TERMS

NONE (No reportable agreements)

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

DATE SOURCE AND TYPE GROSS INCOME (yours, not spouse's)

NONE (No reportable non-investment income)

|   |      |  |              |
|---|------|--|--------------|
| 1 | 1992 | State of Rhode Island - Chief Disciplinary Counsel | \$ 65,515.90 |
| 2 | 1993 | State of Rhode Island - Chief Disciplinary Counsel | \$ 71,669.18 |
| 3 | 1994 | State of Rhode Island - Chief Disciplinary Counsel | \$ 2,171.28  |
| 4 | 1992 | Blish & Cavanagh - Attorney                        | \$ (s)       |
| 5 | 1993 | Blish & Cavanagh - Attorney                        | \$ (s)       |
|   | 1994 | Blish & Cavanagh - Attorney                        | (s)          |

## I. BIOGRAPHICAL INFORMATION (PUBLIC)

## 1. Full name (include any former names Used.)

Willie Louis Sands

## 2. Address: List current place of residence and office address(es).

Home: 1657 Twin Pines Drive  
Macon, Georgia 31211

Office: Room 310  
Bibb County Courthouse  
661 Mulberry Street  
Macon, Georgia 31201

## 3. Date and place of birth.

April 12, 1949; Bradley, Jones County, Georgia

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Married. Spouse: Karla Jonita Heath-Sands  
Occupation: Community Service Director/TV Weathercaster  
Employer: WMAZ T.V.  
P.O. Box 5008  
Macon, Georgia 31213

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Mercer University, 9/67 - 6/71  
B.A. Degree (Double Major): (June 6, 1971)  
(a) Political Science  
(b) Music

Walter F. George School of Law, 8/71 - 6/74  
Juris Doctor Degree (June 2, 1974)

6. Employment Record: List (by year) all business or professional corporations,



**companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

- 6/74 to 9/74 - District Attorney's Office. Macon Judicial Circuit. Macon, Georgia. Chief Legal Assistant to District Attorney.
- 9/74 to 12/74 - United States Army. First Lieutenant, United States Army Reserves. Ft. Gordon, Georgia.
- 1/75 to 11/78 - District Attorney's Office, Macon Judicial Circuit (Bibb, Peach and Crawford Counties, Georgia). Assistant District Attorney [During certain periods during my tenure as an assistant, I was technically an employee of the State of Georgia.]
- 1976 to Present - Steward Chapel African Methodist Episcopal Church. Organist/Minister of Music & Officer.
- approx. 1975 to 1977 - Family Counseling Center. Member, Board of Directors.
- 11/78 to 12/87 - United States Department of Justice (United States Attorney's Office, Middle District of Georgia). Assistant United States Attorney
- 1984 to 1991 - Investors, Ltd. Partner. (Investment partnership club)
- 12/87 to 4/91 - Mathis, Sands, Jordan & Adams, P.C. Partner, Law Firm (Macon and Milledgeville, Georgia)
- 1991 to Present - State of Georgia. Superior Court Judge. Macon Judicial Circuit. Macon, Georgia.
- 1992 to Present - Macon Symphony Board, Director
- 1993 to Present - Community Foundation of Central Georgia, Inc., Director
- 1993 to Present - Bank Corporation of Georgia/First South Bank, N.A., Director
- 1994 to Present - Board of Visitors, Walter F. George School of Law. Member.

7.

**Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**

Yes. I was commissioned a Second Lieutenant in the United States Army Signal Corps on June 6, 1971. While a college ROTC cadet, I performed six (6) weeks of basic training at Ft. Bragg, North Carolina in the Summer of 1970. After law school, I entered upon active duty (for training only) at the rank of 1<sup>st</sup> Lieutenant at Fort Gordon, Georgia from September - December, 1974. I also performed active duty as a reservist assigned to a regular army unit at Fort Gordon in the Fall of 1978. After completing reserve duty, I resigned my commission in 1980.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

I attended Mercer University substantially on academic scholarship (undergraduate school). Tapped into Scabbard and Blade Military Honor Society.

Member of Moot Court Board of Advisors, Walter F. George School of Law. 1973-74

Graduate, Leadership Georgia, 1986

Graduate, Leadership Macon, 1985

Named to Outstanding Young Men of America, 1984

9. **Bar Associations:** List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

State Bar of Georgia

Bench & Bar Committee: 1991-Present

Macon Bar Association

President: 1991-92

President-Elect: 1990-91

Secretary: 1989-90

Treasurer: 1988-89

Law Day Chair/Co-Chair: approx. 1988 (and in a previous year)

Court Security Committee: 1992-93

Council of Superior Court Judges

Uniform Rules Committee: 1992 to 1993

Bench & Bar Committee: 1991 to Present

Sentence Review Panel: 1993  
 Legislative Committee: 1993 to 1994 (term)  
 Council Director Search Committee: 1993

American Bar Association: 1991 to Present

American Judicature Society: 1991 to Present

Georgia Commission on Family Violence:  
 Vice-President 1992 to Present

Georgia Supreme Court Committee  
 for Gender Equality: 1993 to Present

Georgia Supreme Court Task Force on  
 Substance Abuse: 1991 to Present

**10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies.**

The Georgia Commission on Family Violence and the Georgia Supreme Court Committee for Gender Equality have specific charges to review and suggest legislation or comment on the same. In that sense each has direct contact with the State legislature and, therefore, indirectly, other public bodies. The Legislative Committee of the Council of Superior Court Judges communicates matters of legislative interest to the judiciary and vice-versa.

**Please list all other organizations to which you belong.**

Walter F. George School of Law Alumni Assoc. Board  
 City Club of Macon<sup>1</sup>  
 Alpha Phi Alpha Fraternity, Inc. (Epsilon Beta Lambda Chapter)  
 Community Foundation of Ga., Inc. (Board Member)  
 Mercer University's 30th Anniversary Planning Committee (commemorates 30 years of African-American enrollment)  
 Sigma Pi Phi Fraternity (Beta Chi Boule)  
 Homosophian Club  
 Macon Symphony

**11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.**

<sup>1</sup>Membership Criteria information attached - See, attachment, question 10.

United States Supreme Court, August 8, 1980

United States Court of Appeals for the Eleventh Circuit, October 1981

United States Court of Appeals for the Fifth Circuit, December 29, 1978

United States District Court for the Middle District of Georgia, November 21, 1978

Supreme Court of Georgia, January 8, 1975

Court of Appeals of Georgia, January 8, 1975

Superior Courts of Georgia, October 28, 1974

United States District Court for the Southern District of Georgia (*pro hac vice*, only) May, 1990

12. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

I have no published writings other than judicial opinions. With regard to speeches referencing constitutional law or legal policy, I have only made short talks to groups following the ABA Law Day Theme in a given year or the most general informational comments to school children regarding the form of our government without written documentation.

13. **Health:** What is the present state of your health? List the date of your last physical examination.

Very good. September 22, 1993.

14. **Judicial Office:** State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I am presently a Superior Court Judge for the State of Georgia, Macon Judicial Circuit. I was appointed by Governor Zell Miller and sworn in on April 30,

1991. The Superior Court is the trial court of general jurisdiction established under the State constitution. Its jurisdiction includes felony criminal and civil matters, as well as equity. The Superior Court also sits as a court of review in that it hears appeals from administrative bodies such as the Workers' Compensation Board. At the appropriate time it will be necessary to stand for election to remain in the position following appointment.

15. **Citations:** If you are or have been a judge, provide:

(1) Citations for the ten most significant opinions you have written;<sup>2</sup>

I am a trial court judge. Therefore, I do not routinely write opinions in the usual sense of the word. However, I do make rulings which occasionally include a written decision or order. Ten of those which I believe are significant follow:

NOTE: I have attached copies of the below listed orders and copies of unpublished opinions, where appropriate.

- (a) State of Georgia v. Kenneth D. Bright, Indictment No. SU90CR-368-4, Superior Court of Muscogee County (Specially appointed to hear a recusal action). Order.
- (b) Emanuel R. Solomon, M.D. v. J. Gregory Jones, M.D., Civil Action No. 81989, Superior Court of Bibb County, Georgia. Findings, Verdict and Judgment. Affirmed: Jones v. Solomon, 207 Ga. App. 592 (1993).
- (c) State of Georgia v. Altonio Brooks, Indictment No. 38737-02, Superior Court of Bibb County, Georgia. Order.
- (d) Kathryn L. Baker v. Charles R. Whalen and Vineville Tire Co., Civil Action No. 79740, Superior Court of Bibb County, Georgia. Order.
- (e) Atlantic Cotton Mills, Inc. v. Rivoli Crossing Baptist Church, Inc. and First Rebecca Baptist Church, Inc., Civil Action No. 87972, Superior Court of Bibb County, Georgia. Order. [Judgement Reversed. Supreme Court of Georgia, Case No. S93A1334. November 24,

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<sup>2</sup>Since I am a trial judge, I am not often required to write opinions in handling the routine business of the Court. In fact, a very important or significant case may not require a written opinion, as such. Therefore, significant written opinions, as reflected here, should not be equated as necessarily the most significant cases handled.

1993.] See, copy of opinion attached under Question 15(2), *infra*.

- (f) Dr. Frank W. Barr v. Dr. Margaret Barr and Margaret Barr v. Frank W. Barr, Civil Action Nos. 83713 and 83455, respectively. Superior Court of Bibb County, Georgia. Orders.
- (g) Walker, et al v. Central of Georgia Railroad, Civil Action No. 79491, Superior Court of Bibb County, Georgia. Orders.
- (h) State of Georgia v. Willie James Clay, Indictment No. 40099-01. Superior Court of Bibb County, Georgia. Order granting Motion to Suppress.
- (i) Christine L. Gleason v. Melton Joe Starks, Superior Court of Bibb County, Georgia, Civil Action No. 87666. Order.
- (j) Lance Efreem Shelley v. Debra Gray Shelley, Civil Action No. 86977. Order.

- (2) **A short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;**

Only two decisions that I rendered have been reversed: (1) Glover v. Scott, et al., 435 S.E.2d 250 (1993). The Georgia Court of Appeals found as error my affirmation of the decision of the Board of Review of Employment Security to deny unemployment benefits to a fired employee. (2) Atlantic Cotton Mills, Inc. v. Rivoli Crossing Baptist Church, Inc. and First Rebecca Baptist Church, Inc., Supreme Court of Georgia, Case No. S93A1334. Decided: November 24, 1993. The Court agreed with my analysis and fact findings in a complex multi-congregational dispute regarding title to property, but disagreed with my conclusion that a reversionary interest had not been triggered by the action of the titled congregation. (Copy of opinion attached.)

- (3) **constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.**

None.

16. **Public Office: State (chronologically) any public offices you have held, other**

than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

- |    |  |              |
|----|--|--------------|
| 1. | Assistant District Attorney (appointed)<br>Macon Judicial Circuit          | 1975-78      |
| 2. | Assistant United States Attorney<br>Middle District of Georgia (appointed) | 1978-87      |
| 3. | Georgia Supreme Court Task Force<br>on Substance Abuse (appointed)         | 1991-Present |
| 4. | Georgia Commission on Family<br>Violence (appointed)                       | 1992-Present |
| 5. | Georgia Supreme Court Committee<br>for Gender Equality (appointed)         | 1993-Present |

**17. Legal Career:**

**a. Describe chronologically your law practice and experience after graduation from law school including:**

- 1. whether you served as a clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;**

I did not clerk for a judge. However, I did clerk for the District Attorney's Office for the Macon Judicial Circuit.

- 2. whether you practiced alone, and if so, the addresses and dates;**

I did not practice alone.

- 3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;**

6/74 to 9/74 - Chief Legal Assistant to the District Attorney. Macon Judicial Circuit. Bibb County Courthouse; 610 Mulberry Street; Macon, Georgia 31201. Supervised law clerks and drafted appellate

briefs.

9/74 to 12/74 - 1<sup>st</sup> Lieutenant. Signal Corps. Active Duty for Training Only. United States Army Signal School. Ft. Gordon, Georgia.

1/75 to 11/78 - Assistant District Attorney. Macon Judicial Circuit. Bibb County Courthouse; 610 Mulberry Street; Macon, Georgia 31201.

11/78 to 12/87 - Assistant United States Attorney for the Middle District of Georgia. United States Courthouse; Mulberry and Third Streets; Macon, Georgia 31201.

12/87 to 4/91 - Partner. Mathis, Sands, Jordan & Adams, P.C. Private Practice of Law. Main Office: 425 S. Wayne Street; Milledgeville, Ga. 31061. Macon Address: P.O. Box 928; Macon, Georgia 31202.

4/91 to Present - Judge. Superior Court. Macon Judicial Circuit. Bibb County Courthouse; 610 Mulberry Street; Macon, Georgia 31201.

- b. 1. **What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?**

Immediately after graduating from law school in June of 1974, I continued as chief legal assistant to the District Attorney for the Macon Judicial Circuit, so that I might take the bar exam in July, 1974 and because I was scheduled to enter active duty with the United States Army Signal School at Ft. Gordon, Georgia in the fall. My major responsibilities were to supervise other summer law clerks and interns and to serve as the chief appellate brief writer for the office.

I ended my employment with the district attorney's office and entered active duty (Signal Officer's Basic Course) in September, 1974. While on active duty, I received notice that I passed the Georgia Bar Exam. My active military course of duty ended in December, 1974. Thereafter, I returned to Macon, Georgia.

I accepted employment as an assistant district attorney for the Macon Judicial Circuit in January, 1975. I was the first African-American so appointed in the history of the circuit (and possibly the first in the State outside of Atlanta-Fulton County, Georgia). As an assistant, I prosecuted felony and related misdemeanor cases in the Superior Courts of Bibb, Peach and Crawford Counties. Among the



charges personally prosecuted were: Murder, lesser homicides, kidnapping, rape, armed robbery, burglary, and theft cases. I also prosecuted cases in the Juvenile Courts of the circuit, including allegations of delinquency, deprivation and similar actions brought against parents or affecting the rights of parents and children in that court.

My duties as an assistant district attorney also included representing the State in felony preliminary hearings, inquests, search warrant preparation, criminal investigations, in civil suits within the responsibility of the district attorney relating to public nuisances, and appellate brief writing. I also established and administered the Child Support Recovery Unit for the circuit in 1975, pursuant to newly enacted federal child support enforcement legislation. At the time I left the district attorney's office, to accept appointment as an assistant United States attorney, I was the major crimes prosecutor and the second most senior attorney in years of service on the District Attorney's staff.

I was appointed to be Assistant United States Attorney for the Middle District of Georgia by then-Attorney General Griffin Bell on November 7, 1978. I was assigned to the criminal section of the Macon Division (the district's largest of seven divisions). I became the senior attorney in that division within a year of my appointment and remained so throughout my tenure.

As an assistant, I was responsible for investigating and prosecuting violations of federal criminal statutes and related regulatory rules for numerous federal agencies within my division, including the Federal Bureau of Investigation; the Secret Service; the Bureau of Alcohol, Tobacco, and Firearms; Immigration and Naturalization; Department of Education; Department of Commerce; United States Postal Service; Internal Revenue Service; etc. As an assistant, I was also responsible for appellate briefs and arguments to the United States Court of Appeals level. I practiced regularly, first in the United States Court of Appeals for the Fifth Circuit, and later in the United States Court of Appeals for the Eleventh Circuit.

While an Assistant U. S. Attorney (from November, 1978 until December, 1987), I prosecuted major drug and racketeering cases, multi-million dollar fraud cases, tax evasion and fraud cases, threats against the President, illegal automatic weapons cases, agricultural fraud, electric power plant construction fraud, mail and wire fraud, bank fraud, counterfeiting, airplane hijacking, false claims, interstate travel violations, thefts from interstate commerce, bank robbery, etc.

In December of 1987, I resigned my position as an assistant United States Attorney in order to enter private practice. Together with the following attorneys, I formed Mathis, Sands, Jordan & Adams, P.C. with offices in Macon, Georgia and Milledgeville, Georgia: Charles A. Mathis, Jr., D. James Jordan, and Virgil L. Adams.

Mathis, Sands, Jordan & Adams, P.C. was a general practice law firm with emphasis toward the development of a personal injury and related areas of practice. However, the firm continued to provide legal representation in State and Federal criminal cases, domestic relations, corporate, real estate, wills and estates, and cases involving civil rights throughout my tenure with the firm.

I served as Vice President of the firm. While associated with the firm, I handled cases in the following areas: Federal and State criminal defense, personal injury, domestic relations, wills and estates, employment, civil rights and Federal civil forfeiture. I also handled a limited number of cases before administrative agencies: EEOC (United States Air Force, United States Postal Service, State of Georgia). Additionally, I handled some corporate and real estate matters, including matters for the City of Macon.

I ended my relationship with Mathis, Sands, Jordan & Adams, P.C. (now Mathis, Jordan & Adams, P.C.) on April 29, 1991. On April 30, 1991, I was sworn in as a Superior Court Judge for the Macon Judicial Circuit upon appointment by the Honorable Zell Miller, Governor of Georgia.

**2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.**

As an assistant district attorney, I represented the State of Georgia, and hence, the citizens of Georgia in the prosecution of all levels of felony charges and related misdemeanor violations. These included murder, rape, armed robbery, kidnapping, aggravated assault, other crimes against persons and crimes against property, including fraud. Additionally, I represented the State in actions in the Juvenile Court, preliminary hearings, grand jury proceedings, and inquests. At the direction of the district attorney, I also, organized, established and administered the Child Support Recovery Unit which engaged in actions to establish paternity and to establish and enforce the payment of child support by absent parents. The clientele included victims of crimes from all strata in

the three-county judicial circuit which included persons from every facet of society from the very poor and rural communities to the very urban and wealthy communities. My public clientele included all of these.

As an assistant United States attorney, I represented the citizens of the United States, predominately, in 18 counties of the 70-county district. While I prosecuted a full cross-section of federal criminal offenses, I specialized in complex fraud, tax, and racketeering-related prosecutions. Additionally, I drafted and argued all appeals of cases I prosecuted to the Circuit Court of Appeals level.

During the private practice of law, my clientele and that of the firm were very diverse and inclusive with regard to race, sex, and income levels. I represented businesses and laborers, the very young and the elderly. I would describe my specialty as litigation, while in public and private practice.

- c. 1. **Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.**

I appeared in court frequently. The frequency varied as follows: While an assistant district attorney, I was in court virtually every day handling hearings and trials due to an enormous caseload. Later, as an Assistant United States Attorney, I was in court frequently, though not as often in trial, because of the typically smaller caseload in Federal court as compared to State court. However, the federal cases tried were generally far more complex. My in-court frequency was further reduced upon entry into private practice due to the reduced caseload of a private practitioner as compared to a public practitioner. Nonetheless, my court appearances remained relatively regular and frequent.

2. **What percentage of these appearances was in:**
- |     |                               |      |
|-----|-------------------------------|------|
| (a) | federal court;                | 55%  |
| (b) | state courts of record;       | 44%  |
| (c) | other courts.                 | .5%  |
|     | [(d) administrative tribunals | .5%] |
3. **What percentage of your litigation was:**
- |     |       |     |
|-----|-------|-----|
| (a) | civil | 28% |
|-----|-------|-----|

(b) criminal

72%

4. **State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.**

I conservatively estimate the total number of cases I tried to verdict or judgment in courts of record at 200. I was usually chief or sole counsel, and on a few occasions, associate counsel. This estimate neither includes the countless minor and petty offenses I have tried, nor, matters tried before magistrate judges.

5. **What percentage of these trials was:**

|     |          |     |
|-----|----------|-----|
| (a) | jury     | 75% |
| (b) | non-jury | 25% |

18. **Litigation:** Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

- 1) United States of America v. Two Hundred, Ninety-Seven Thousand, Eight Hundred, Ninety-Five Dollars (\$297,895.00) In United States Currency, The House and Lot. Civil Action No. 89-113-VAL

I represented Herbert Grady Bowen, one of three individuals who filed a claim and answer to a forfeiture complaint. He was the owner of several hundred thousand dollars of cash deposited in a bank by his claimant brother, who had acted as his financial advisor. The major source of Bowen's cash was his share of an inheritance from his deceased mother, and his half of a wrongful death settlement resulting from the death of his son, who was struck by a tractor trailer rig. Bowen withdrew this lawfully deposited money from his Florida bank in the form of cash.

After keeping the money in his home under the constant fear that he would be robbed, Bowen decided to take the money to his brother's home in Georgia. Bowen was in relatively ill health and was interested in using the money to invest for his retirement. His brother had a background in personal finance and agreed to help him determine what was best. The brother concluded and recommended that the money should be placed in an annuity. However, the money needed to be deposited, but the brother was fearful that the word might get out in his small town that he had sacks of cash if he took it all to the bank at once. According to the brother, he understood his local banker to explain that the money could be deposited and not reported ("publicized" in his mind) by the bank so long as the deposit was less than \$10,000.00.

Thereafter, the brother made deposits of all the money through the drive-in window of the bank. A bank employee, consistent with bank policy, reported the deposits, suspecting that money laundering was afoot. A joint investigation by Federal law enforcement, including the IRS, resulted in the money and the brother's car and house (the brother's spouse also had an interest in the house), being taken for forfeiture for violation of money laundering statutes. (28 U.S.C. §§ 1345 and 1356, and 18 U.S.C. § 981(a)(i)(A)).

My role in the case was that of defense attorney for Herbert Grady Bowen, the owner of the money. My client denied, that any of the money was derived from illegal sources, that he made the deposits and contended that he relied on his brother. He also asserted, along with his brother, that the brother thought that he had acted consistently with his banker's explanation. The government filed a civil complaint for forfeiture. All claimants answered in opposition to the action for forfeiture. The government moved for summary judgment and contended that the deposits were *per se* violations. Thus, the government argued, all the property sought for forfeiture, including the money, should be forfeited without regard to the source of the money or the parties' intent. The trial court denied the government's motion for summary judgment with regard to my client's interest in the cash.

This case was settled by consent order of forfeiture. Its significance points out some potential resulting unfairness and inequity in the operation and effect of civil forfeiture law: if strictly enforced without regard to the merits; and, if the enlightened and balanced participation of a jury is denied. In all probability, this case settled because the government did not succeed in its motion for summary judgment as to my client and faced the real possibility that a jury would accept the defendants' explanation, particularly where the government could not show that the money was the fruit of illegal conduct or that the parties' intended to violate the law. An amount was forfeited to the government and the remaining funds plus

accrued interest, along with all other personal property, was returned to the claimants.

Parties: The United States of America;  
Herbert Grady Bowen;  
Charles Ben Bowen, Jr.;  
Mary Keneece Bowen.

Co-Counsel: None

Counsel for Charles Ben Bowen, Jr. and Mary Keneece Bowen:

Floyd M. Buford Sr.  
Buford & Buford  
P.O. Box 4747  
Macon, Georgia 31208  
(912) 742-3605

Opposing Counsel: Charles E. Cox, Jr., A.U.S.A.  
P.O. Box U  
Macon, Georgia 31202-0076  
(912) 752-3511

Date of Disposition: April 30, 1991

Court: United States District Court for the Middle District of  
Georgia, Valdosta Division

Judge: Hon. Wilbur D. Owens, Jr.

2) Ridley v. Grandison, 260 Ga. 6, 389 S.E.2d 746 (1990).

Ridley is a domestic relations case wherein the wife sued the husband for divorce based upon an alleged common law marriage. I was lead counsel for, and represented, the wife at trial and as appellee on appeal to the Georgia Supreme Court.

The parties' relationship began in the State of Virginia, which did not recognize common law marriages. However, the parties moved to Macon, Georgia and purchased a home and furnishings where they (along with the wife's minor son) lived for several years. The husband denied the existence of a common law marriage; contended that one could not have been formed; and, concluded that his affair with another could not be adulterous.

The jury found that a common law marriage did exist, set aside as fraudulent an earlier transfer of the marital residence by the husband to his father, and gave the wife alimony for a period of years. The Supreme Court of Georgia affirmed the judgment for the wife by a vote of four to three. Although the majority did not comment extensively, the dissenting opinions strongly criticized the common law marriage doctrine and suggested the need for the legislature to consider a change in the law. Thus, the opinion expresses the concerns of a significant minority of the justices of the State's highest Court on an issue which significantly touches on the marital rights and responsibilities of Georgians.

Date of Trial: November 9, 1988

Co-Counsel: For Mae Grandison  
Mr. Charles A. Mathis, Jr.  
Mathis, Jordan & Adams, P.C.  
425 S. Wayne Street  
Milledgeville, GA 31061-3445  
Telephone: (912) 452-9387

Court: Bibb County Superior Court, Macon, Georgia  
Honorable Hal Bell, Judge

Opposing Counsel: (1) For Defendant Jerome Ridley  
Mr. Earl Thomas Shaffer, Jr.  
Shaffer & Combs  
550 Liberty Savings Tower  
210 Second Street  
Macon, Georgia 31201-2738  
Telephone: (912) 746-2472

(2) For Defendant Jerome Ridley  
Mr. Doye E. Green  
Sell & Melton  
P.O. Box 229  
Macon, Georgia 31297-2899  
Telephone: (912) 746-8521

3) U. S. v Power Piping Company  
87-39-MAC

Power Piping was one of numerous cases brought by the U. S. Justice Department through certain U. S. Attorney's offices throughout the country, including the Middle District of Georgia. Civil and criminal investigations of a defaulted nuclear power plant construction project in the

State of Washington revealed a network of fraud perpetrated against power plant owners by certain pipe and pipe fitting companies. Victim owners included the Georgia Power Company, which operated plants in Georgia, and other plants owned by companies in Washington, Texas, Louisiana, etc. I participated as the assistant United States attorney responsible for prosecuting fraud discovered in connection with the power plant construction within the Middle District of Georgia.

The investigations and prosecutions were carried out by interstate task forces consisting of selected FBI agents, IRS agents, and Assistant United States Attorneys and others. I was the sole assistant assigned to prosecute the fraud perpetrated on Georgia Power Company at its new plant Sherer in Forsyth, Georgia. Power Piping Company, a Pittsburgh, Pennsylvania corporation, was successfully prosecuted for fraudulent sales and installations of approximately one million, two hundred-thirty thousand dollars. This case, and those similar and related, disclosed the substantial negative impact, both financially and in lost or reduced services, on vital public monopolies and the communities they served. Upon conclusion of successful prosecution, which I handled, Defendant corporation paid \$1,221,249.80 in restitution and was fined a quarter of a million dollars.

Court: United States District Court for the Middle District of Georgia

Case No.: 87-39-MAC

Judge: Honorable Wilbur D. Owens, Jr.

Opposing Counsel: Mr. Joseph H. Davis (local counsel)  
Chambless, Higdon and Carson  
P.O. Box 246  
Macon, Georgia 31298-5399  
Telephone: (912) 745-1181

Thomas A. Donovan  
Kilpatrick & Lockhart  
1500 Oliver Building  
Pittsburgh, PA 15222-5379  
(412) 355-6466

Disposition Date: December 14, 1987

- 4) U. S. v. Lorenzo E. Lacayo, Kosta Stanojevich, Pedro Enrique Cabrera, and Vincente Pablo Acena  
CR-86-41-MAC(WDO)



This case involved a Czech national whose specialty was arbitrage (large, often international financial arrangements). This case also involved three other individuals, including two South American nationals. They were charged with a conspiratorial arrangement to commit bank fraud and wire fraud by the use of worthless cashier's checks drawn on an offshore "bank" located in the Republic of the Marshall Islands. I was the assistant United States attorney who supervised the grand jury investigation and prosecuted the case after indictment.

As background, the "bank" essentially existed on paper with only a mailbox in the Islands as an office. The group attempted to pass cashier checks at a branch of the Citizens and Southern National Bank in Macon, Georgia in the total amount of \$162,523.00. Agents of the F.B.I. were able to arrest them in the act and confiscate the bogus checks. Jurisdiction of the two individuals who had ties outside of the United States was maintained through a complex grand jury procedure. This procedure was significant because there first had to be an investigation which could clearly establish that the "bank" was insolvent, non-existent, or not properly licensed, before the fraud could be established. Several hundred thousand dollars of the "bank's" worthless cashier's checks had been successfully passed in Florida and Virginia because legitimate banks did not discover their worthless nature until weeks or months after the checks had been forwarded for payment. This was so because the scheme, as previously and successfully executed, allowed fraudulent checks to be recovered by the defendants or their agents and destroyed, leaving no physical evidence. Since, we were able to capture some major participants, recover the checks, and hold them long enough to complete the case investigation, not only were defendants successfully prosecuted in the Middle District of Georgia, but it became possible for other jurisdictions to prosecute them as well.

Court: United States District Court for the Middle  
District of Georgia

Judge: Honorable Wilbur D. Owens, Jr.

Date of Disposition: August 4, 1987

Opposing Counsel: For Lacayo:  
William J. Surowiec, P.A.  
Public Defender's Office  
1320 N.W. 14th Street  
Miami, Florida 33125  
(305) 545-1600, Ext. 3836  
(Pled Guilty to Ct. 1 on 7/22/87. Sentenced on  
10/6/87.)

For Stanojevich:

John M. Kierman, Attorney-at-Law  
2790 Calloway Road  
Suite 100  
Miami, Florida 33165  
(Pled Guilty to Ct. 9 on 8/4/87. Sentenced  
10/6/87.)

For Cabrera:

Mr. William Castro, P.A.  
Suite 601  
2153 Coral Way  
Miami, Florida 33145  
(Indictment Dismissed.)

For Acena:

Mr. Mark Eram Frederick, P.A.  
P.O. Box 385  
Suite 1, Destin Professional Center  
737 Highway 98 E.  
Destin, Florida 32541  
Telephone: (904) 837-2115

5) U.S. v. Curtis Beebee  
85-20-MAC

This Defendant was prosecuted by me, as assistant United States attorney, for threatening the President of the United States of America (after having been previously charged for similar offenses and after commitment for mental treatment under relevant federal law relating to criminal responsibility of mentally incompetent defendants).

On this occasion the defendant was prosecuted pursuant to recently enacted federal legislation intended to address, more appropriately, defendants whose conduct was due to or mitigated by mental disease or defect, etc. In prosecuting this defendant, I developed for the district the appropriate and necessary pleadings in order to handle the case consistent with the significant law changes. I understand that the procedure I developed and pleadings I prepared were shared outside the district by the Secret Service to aid in similar prosecutions as the new law was implemented and applied.

Beebee was found not guilty by reason of insanity, but was committed to the custody of the Attorney General of the United States because he then suffered from a mental disease within the meaning of the

applicable federal commitment statute.

Disposition Date: 2/12/86

Judge: Honorable Wilbur D. Owens, Jr.

Opposing Counsel: P. Craig Davis  
Akin & Davis  
P.O. Box 14  
Macon, Georgia 31202-0014  
Telephone: (912) 742-8441

6) U. S. v. Edward Starling  
85-16-MAC

This case involved the prosecution of one of the most pervasive and dedicated mass tax return frauds prosecuted in the district by the IRS. As the assistant United States attorney, I directed a lengthy and complex grand jury investigation and the actual prosecution of all the defendants charged.

Starling, with the assistance of several co-conspirators, operated a "mobile tax service" through much of a large area of the district. He preyed mainly on minority wage earners by telling them that "the 'rich' people do it [claim deductions falsely] all the time." By showing deductions in certain areas of the return, i.e., miscellaneous, losses, and contributions, etc., Starling succeeded in obtaining substantial refunds which he split 50/50 with the taxpayers, minus a preparation charge. His activities not only earned him several hundred thousand tax free dollars, but financially destroyed many of his modest and poor former clients when the scheme was discovered and past taxes, interest and penalties were levied against them by the Internal Revenue Service.

Starling's scheme demonstrated how vulnerable the IRS was to fraudulent refund schemes where the perpetrator had apparent inside knowledge of internal tax return review and evaluation procedures employed by the IRS itself. In addition to conspiracy and aiding and assisting in the preparation of false and fraudulent returns, Starling also pleaded guilty to false impersonation of an officer of the United States.

Court: United States District Court, Middle District of Georgia

Judge: Honorable Wilbur D. Owens, Jr.

Date of Disposition: December 18, 1985

Co-Counsel: None

Opposing Counsel: For Starling:  
Michael E. Bergin  
117 West Broad St, Suite 105  
Fairburn, Georgia 30213  
Telephone: (404) 964-5500  
Disposition Date: 12-18-85

For Smith:  
W. Ashley Hawkins  
27 N. Lee Street  
P.O. Box 325  
Forsyth, Georgia 31029-0325  
Telephone:  
Disposition Date: 8/13/85

For Linda Thompson:  
Robert C. Norman, Jr.  
Jones, Cork & Miller  
500 Trust Company Bank Building  
Macon, Georgia 31298  
Telephone: (912) 745-2821  
Charge Dismissed: 12/30/85

For Davis:  
A. Kenneth Secret  
Secret and Associates  
Bona Allen Building, Suite 500  
133 Luckie St., N.W.  
Atlanta, Georgia 30303  
Telephone: (404) 577-2000  
Disposition Date: 8/5/85

For Mitchell:  
Michael E. Bergin  
215 Senoia Rd.  
Fairburn, Georgia 30213-1535  
Telephone: (912) 964-5500  
Disposition Date: 12/13/85

7) United States v. William Carlton Lawson

84-19 MAC, 84-20 MAC & 84-21 MAC

I supervised the investigation of these cases with several federal agencies. The cases involved a Middle Georgia farmer and cotton warehouseman who had successfully defrauded a financial subsidiary of Citicorp of more than four million dollars through a sophisticated fraudulent cotton sales scheme. This was the largest such loss ever suffered by the subsidiary and the largest such fraud case to have been brought in the Middle District of Georgia up to that time.

Additionally, Lawson was prosecuted for defrauding the United States Department of Agriculture. The criminal investigation, which followed a private civil action, required more than a year to complete and prepare due to the tremendous number of false documents which had to be traced through several cotton manufacturing companies. After having been confronted with a mountain of documentary evidence, Lawson entered a plea of guilty, and was sentenced to the Federal penitentiary.

I was the sole assistant assigned to prosecute Lawson on all charges. These cases disclosed the significant potential, and actual, vulnerability of both public agencies and private financial institutions to fraud in the commercial agriculture area where heavy government subsidies are often present. The defendant was able to take advantage of very complex private and government financing arrangements which he used to maintain and conceal his fraudulent conduct and which resulted in total losses of over six million dollars.

Court: United States District Court for the Middle District of Georgia  
 Judge: Honorable Wilbur D. Owens, Jr.

Co-Counsel: none

Opposing Counsel: Charles T. Erion  
 Erion & Exum  
 P.O. Box 6414  
 Macon, Georgia 31208-6414  
 Telephone: (912) 742-0168

Denmark Groover (Motion for Reduction of Sentence)  
 Groover & Childs  
 P.O. Box 898  
 Macon, Georgia 31203-0898  
 Telephone: (912) 745-4712

Disposition Date: September 11, 1984

- 8) United States v. Lynwood Fincher, 723 F.2d 862 (11th Cir. 1984). Case No. 83-8037

I prosecuted Fincher for conspiracy to manufacture and deal in illegally converted firearms. Specifically, he and his co-defendants were prosecuted for converting approximately eighteen (18) semi-automatic Mack 10 pistols to fully automatic. Their purpose was to exchange the converted weapons for illegal drugs from Central or South American drug suppliers. They had learned that substantial illegal drugs could be obtained in exchange for automatic weapons.

The government learned of the intended activities through a known government informant. At the request of the government agents investigating the case, the informant met with Fincher and acted as his conduit to contact other individuals known to be willing to participate in the proposed scheme. The informant was the critical link between Fincher, the mastermind, and the converters and suppliers of the weapons. Fincher was convicted upon trial and appealed. Affirmed and Held: A government informant acting on behalf of the government can be the necessary link between co-conspirators who are otherwise knowingly and intentionally involved to accomplish the illegal purpose even though all the co-conspirators do not personally know each other.

Cite: U.S. v Fincher, 723 F.2d 862 (11th Cir. 1984) (No. 83-8037)

Court: U.S. District Court for the Middle District of Georgia

Judge: Honorable Wilbur D. Owens, Jr.

Date of Disposition: 11/2/82

Opposing Counsel:

For Fincher:

Margaret C. Johnson  
1312 Briarcliff Rd., N.E., #11  
Atlanta, Georgia 30306  
Telephone: (404) 659-7799

For Alden:

W. Terrell Wingfield  
350 Second Street  
Macon, Georgia 31201  
Telephone: (912) 742-0965  
Current: Cox Enterprises, Inc.

P.O. Box 105353  
Atlanta, GA 30348-5353  
(404) 843-5844

For Barron:  
Thomas Witcher  
Rich, Bass, Kidd & Witcher  
118 East Trinity Place  
Decatur, Georgia 30030  
(404) 371-5050

For McDonald:  
Russell M. Boston  
Sell & Melton  
P.O. Box 163  
Macon, Georgia 31202  
Telephone: (912) 746-8521

For Taylor:  
Tommy C. Mann  
1210 Macon Federal Tower  
Macon, Georgia 31201  
Telephone: (912) 742-3381

For Jackson:  
Steven A. Kermish  
133 Carnegie Way, Suite 1000  
Atlanta, Georgia 30303  
(404) 525-0457

9) United States v. Livingston, et al  
79-00073-MAC

This case is probably the most significant and demanding case that I litigated. Livingston was the subject of a federal Racketeer Influenced Corrupt Organization (RICO) investigation which had been underway by the United States Attorney's Office; the Federal Bureau of Investigation; the Internal Revenue Service; the Bureau of Alcohol, Tobacco, and Firearms; and other federal and local law enforcement agencies for several years prior to my appointment as an Assistant United States Attorney. Because of threats, intimidation and fear, all the local potential witnesses were afraid and refused to come forward or cooperate with prosecution. The major defendant had a reputation for acts of violence in the protection of his organization from investigation and prosecution.

However, within months of my appointment, a break came in the case, when certain individuals incarcerated in the State of Texas indicated an ability and willingness to cooperate. My predecessors had either resigned or transferred and as a result, I became the senior attorney for the Macon Division and took charge of the investigation, which continued for several more months. The difficulty with the case was the need to interview the newly discovered witnesses and locate corroborative witnesses and documentary evidence without alerting the key target. This target was so bold that he actually came to the United States Attorney's Office in Macon and challenged the United States Attorney himself and the investigators to "prosecute me or get off my [back]." He was confident that a case had not been and could not be developed against him.

The investigation succeeded, and the target and others were brought to trial on charges including (but not limited to): conspiracy, interstate travel violations, tax violations, drug violations, and extortion. A conviction was obtained, and he was sentenced to the federal penitentiary. The investigation involved localities in Georgia, Florida, Texas, Louisiana, and Tennessee. Livingston was the last and toughest of a line of major criminal organizational heads in the Middle Georgia area to be prosecuted. As a result of the successful prosecution, my life (and the lives of several federal agents and local law enforcement officers, including the sheriff) was threatened. Therefore, prosecution of the case not only required a sophisticated and highly secret investigation, and involved complex evidentiary matters, but also required participants who were literally willing to put their lives and personal safety on the line in order to enforce the law and bring these defendants to justice.

Main case affirmed on appeal without opinion (habeas corpus action), United States v. Livingston, 756 F.2d 884 (11th Cir. 1985).

Plea of Guilty to related charge (Case No. 79-00071-MAC) reversed at United States v. Livingston, 665 F.2d 1003 (11th Cir. 1982).

Date of Disposition: March 18, 1980 (79-73-MAC)

Judge: Honorable Wilbur D. Owens, Jr.

Court: U.S. District Court, Middle District of Georgia

Opposing Counsel: For Livingston:



Robert B. French  
Box 596  
Ft. Payne, Alabama 35967  
Telephone: (205) 845-2250

AND

Floyd M. Buford  
165 First Street  
Macon, Georgia 31201  
Telephone: (912) 742-3605

AND

Ms. Daryl Dantzler  
Attorney-at-Law  
Mercer University Law School  
Macon, Georgia 31207  
Telephone: (912) 752-2601

For McPherson:

O. Hale Almand, Jr.  
389 Mulberry Street  
Macon, Georgia 31201  
Telephone: (912) 746-2237

- 10) Whitehead v. Hasty, 235 Ga. 331, 219 S.E.2d 443 (1975).  
Bibb County Superior Court, Civil Action No. 43280-75.

This case was one of the first I tried as an Assistant District Attorney. It was an action for civil injunction by the District Attorney, in his official capacity as attorney for the public, for the purpose of abating the operation of a "massage parlor" where certain sexual acts were performed by employees, (not including actual sexual intercourse) in the regular course and operation of the business.

This establishment, and others similar, were being erected in the community and other areas but with substantial protest from the general public, businesses, and residents located near these establishments. At that time there were no Georgia criminal statutes which specifically dealt with the complained of activity, and in fact, a number of criminal cases in other jurisdictions had been reversed on appeal or dismissed.

I was assigned to accomplish the cessation of the conduct which was under complaint. Upon investigation and legal research, I determined that the acts could possibly be enjoined under existing and long-standing nuisance statutes. An injunctive action was filed, served and tried. The trial court found that a public nuisance existed and ordered the same abated. It should be noted that no attempt was made either by the injunctive action or the court's order to prevent the operation of a legitimate massage business, but each was only directed at the sexual conduct which was specifically ordered abated. However, since the operators were unable to carry out the admitted primary purpose of their business, it closed. Defendants appealed. Held: Affirmed.

Court: Superior Court of Bibb County, Georgia

Judge: Honorable Hal Bell

Date of Disposition: February, 1975

Opposing Counsel: Richard M. Nichols  
(Not now believed to be a practicing attorney)

19. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

My legal career prior to becoming a judge has emphasized the litigation side of practice. However, my practice experience has been much broader. For example, as a clerk for the local district attorney's office, I was involved in extensive research and writing on behalf of the district attorney and his attorney staff. This included drafting appellate briefs. My brief writing included the first petition for writ of certiorari from the Court of Appeals of Georgia to the Georgia Supreme Court (Wiley v. State, 131 Ga.App. 511, 206 S.E.2d 140 (1974) (No. 49154). An adverse decision of the appeals court was reversed involving a revocation of probation and sentence under the State's First Offender Statute (cite: O.C.G.A. §42-8-60 *et seq.*)

In addition to my work as a felony prosecutor for the district attorney's office, I worked regularly in the Juvenile Court and established and administered a Child Support Recovery Unit in 1975, pursuant to

newly passed federal law intended to involve district attorneys' offices in the establishment of paternity and the enforcement of child support obligations. The major part of this activity was to interview mothers so that putative fathers could be identified and contacted. Contractual arrangements for support and affidavits of paternity were usually obtained without litigation. Litigation was instituted, when necessary.

As an assistant U.S. Attorney, I was involved in numerous sensitive investigations directed at public corruption and racketeering organizations and illegal drug organizations. I also handled investigations and prosecutions of fraud against the government, including in the guaranteed loan area for the Department of Education and cases within the responsibility of the Department of Commerce. In carrying out these investigations and prosecutions, I also worked with the following law enforcement agencies: Federal Bureau of Investigation, Drug Enforcement Agency, U.S. Postal Inspector, U.S. Department of Immigrations, Internal Revenue Service, Secret Service, Department of Agriculture, etc., and local law enforcement agencies.

In private practice I was a general practitioner, but with an emphasis on litigation. I represented criminal defendants in significant felony cases in state and federal courts by appointment of the court and on retainer. These cases included property and crimes against persons, bank robbery and drug offenses.

I was appointed to represent a co-defendant in a federal drug prosecution which was reputed to be the largest and most significant to the district. Some defendants received sentences as great as life without parole. My client was acquitted by directed verdict on motion following the close of the government's case in chief. I was sole counsel for that defendant, who was, incidentally, the only defendant acquitted.

While in private practice, I also represented a significant local developer in a zoning matter involving a conflict between local county and city ordinances with superseding federal regulations. The matter was resolved in my client's favor without litigation.

Additionally, since becoming a Superior Court judge, I have also been involved in professionalism activities inspired and promoted by the Chief Justice of the Georgia Supreme Court, a member of the Commission on Family Violence, the Committee on Gender Equality, and the Bench and Bar Committee. Over the last two years, I have been a part of a drug abuse task force in reviewing the effects of drug abuse and addiction on the resources of the Court system.

**II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)**

- 1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

If confirmed, I will resign my present position (superior court judge), and as a result, would receive the following in addition to any unpaid regular salary due me: \$15,172.41, as of February, 1994. This amount represents my retirement account in the Superior Court Judges retirement fund.

With regard to my former firm, Mathis, Sands, Jordan & Adams, now Mathis, Jordan & Adams, P.C., I was paid a lump sum representing my interest in the firm, except for cases originated by me or left as a part of my pending active files, but retained by the firm. By agreement of April 23, 1991, I am to receive 10% of the fees from those cases to the extent the same exceed the lump sum already received. Those cases have been identified and records are maintained for payment purposes as each case is closed. Additionally, I own a one-quarter undivided interest in the building and the lot on which one of the law offices is located. It is expected that the same will be sold to the remaining partners in the firm as soon as the details can be worked out.

My relationship with my former partners is known, and neither will practice before me until all ties are severed and after an appropriate time has passed, unless the same is waived by all parties after full disclosure, and there exists no appearance of impropriety.

As a member of the Board of Directors of Bank Corporation of Georgia/First South Bank, N.A., I own 100 shares of stock purchased at \$10 per share. I will resign the Board upon nomination and confirmation and would, of course, recuse myself from hearing any matters involving the corporation, affiliates, officers, directors or any matter relating thereto which could give rise to actual or an appearance of conflict.

- 2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the**

**categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

Since my financial, present and former, business interests are very limited, I do not expect frequent conflicts, if any. As stated above, I will recuse myself from any cases involving a conflict, or the appearance of same. Since my assignment, if confirmed, will be in the Middle District of Georgia, Albany-Americus Division, it is unlikely that any actual conflict will develop with regard to my former law partners because my former firm's federal practice is limited in scope, and largely to the Macon Division of the district which is handled by two other active judges. Likewise, the above corporation has only one branch in the entire fourteen-county Albany-Americus Division, while its major corporate office is located in the Macon Division. However, during my initial service, I will particularly check each case for any evidence of conflict and take action immediately to avoid the same when discovered. I will follow the guidelines of the Code of Judicial Conduct.

- 3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**

I have decided in the best interest of the position to which I have been nominated, and in fairness to my present and former associations, that I should terminate those relationships as soon as the same can be properly and reasonably accomplished. However, there are two possible exceptions. I have been named to the Board of Visitors of the Walter F. George School of Law (Mercer University). I would be honored to continue that service, unless I am prevented by some rule or conflict which becomes known to me. Of course, I would resign, as so directed, if any apparent conflict arose and, if confirmed. Additionally, I have been invited to be a charter member of the Board of Directors of the University of Georgia Fanning Leadership Center. If confirmed, I would not accept that position unless approved by the appropriate authority.

- 4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).**

See, Financial Disclosure Form attached, dated February 14, 1994.

- 5. Please complete the attached financial net worth statement in detail (Add**

schedules as called for).

COMPLETED STATEMENT AND SCHEDULES ATTACHED.

6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

No.

### III. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

I have endeavored to comply with Canon 2 of the American Bar Association's Code of Professional Responsibility in several different ways:

Consistent with the Judicial Canons, I have not solicited funds, even for charitable purposes, since becoming a judge. However, I have remained involved to the extent that I could, chiefly by speaking frequently to elementary, secondary and college students regarding various issues involving and affecting youth, as well as other organizations and groups.

I have talked regularly with young people of all ages (both in public and private institutions) emphasizing the importance of avoiding criminal activities and, hence, its consequences. I have also emphasized the importance of education, the establishment of appropriate goals, dedication to excellence, respect for self and others and personal responsibility.

I have participated in the local bar association's annual Law Day activities as a former Chair and while an officer of the local bar. This participation included establishing a federal court and courthouse tour for school students, and I have given brief talks regarding the year's ABA Law Day theme to similar and civic groups.

While an attorney, I also handled cases for the elderly and the indigent at lower rates, or under arrangements that allowed for flexible fee payments.

I did not always file vouchers for representation of indigent defendants represented at trial and on appeal.

I have served on the following Boards:

Family Counseling Center - The Center provided counseling to indigent and disadvantaged families. The Board was very active in seeking funds, establishing new programs and the promotion of healthy relationships through a series of plays dealing with race

relations and institutional racism, death and dying, and alcohol and drug abuse, etc., and their effect on the family. For these plays the group received the Volunteer of the Year Award. I participated in dozens of performances and follow-up discussions which required a minimum of one-half to one and one-half hours to do.

Boys & Girls Clubs of Macon - Included fund-raising and special programs to improve positive social and educational experiences for children within their communities, especially after school and during the summer and holidays. I participated in several annual television auctions which required several hours per auction and additional hours and days prior to and after completion of the auctions.

Kiwanis Club of Macon - Served as Chair for two summers to provide food for several hundred children during special summer camp for children with psychological problems or mental illness, etc. Three separate groups in one-week blocks were served each summer. My job was to personally coordinate the order and delivery of food from suppliers on a timely and scheduled basis to the campsite.

Volunteer Macon - Organization actively sought volunteers from the community to augment agencies, etc., or organizations which served the elderly, youth or disadvantaged or charities. I served as a member of the board of directors.

Macon Humane Society - Worked to provide and promote the humane treatment of animals. I served on the board of directors.

Macon Symphony - In addition to normal support for the orchestra and music in the local community, the Board has endeavored to make the music program available to youth, public and private schools and the disadvantaged. I serve on the board of directors.

Community Foundation of Central Ga., Inc. - Newly formed foundation for the Middle Georgia area to attract funds to improve philanthropic contributions to the quality of life in the community. Note: I do not participate in the solicitation of funds.

Macon Jaycees - Regularly put on programs for disadvantaged children such as magic shows, and provided food and toys to identified needy families. As a member, I was actively involved in the preparation phase of the programming, as well as the actual delivery of food, toys, etc., to families.



- 2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?**

In the past, I belonged to the Macon Jaycees (Junior Chamber of Commerce). I now understand that at some time in the past the organization may have enforced discriminatory membership practices. However, I have never supported such practices and have always supported open membership without regard to race, sex, religion, or national origin. In fact, I was one of the earliest African-American members of my local chapter. I also know of other minority members and believe the organization is now, and for many years has been, open to and has women members. I was a member in the 1970s.

I am presently a member of the Homosophian Civic Club, Inc., which was originally a men's club. I favor the admission of women. The Club is open to application from women and the constitution either has been or is being revised to reflect same. I have personally offered to sponsor a woman candidate, if she follows through on her stated intention to apply. [See, the attached copy of a letter to me, written at my request, from the organization's current president.]

- 3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interview in which you participated.)**

Yes. My name was among others reported to Senator Sam Nunn as qualified for the position for which I seek confirmation.

Senator Nunn, the Democratic Senior Senator from Georgia, appointed a committee to review the qualifications of persons evidencing an interest in being appointed to fill Federal judicial or U.S. attorney vacancies in Georgia. The committee was made up of a cross-section of individuals, including those from the legal and business professions.

The committee prepared and forwarded a 65-question questionnaire to each person who had been recommended or who had indicated an interest in an appointment. The completed questionnaire was due not later than Friday, April 30, 1993. A copy of the completed application was

required to be sent to each of the nine (9) members of the committee, and to Senator Nunn. Thereafter, each applicant was interviewed at a time scheduled by the committee. I submitted a timely application.

Following the completion of interviews for each vacancy for each federal district, the committee provided to Senator Nunn the names of a number of persons whom they believed to be qualified for each position. Senator Nunn later personally interviewed each person referred to him by the committee as qualified. Thereafter, he notified his chosen recommendee, announced and forwarded his recommendations to President Clinton. In this way, I was recommended for the vacancy in the Middle District of Georgia, Albany-Americus Division.

In September of 1993, I received from the Office of the White House Counsel copies of forms required to be completed, as a part of the nomination process following recommendation to the President. Included were forms for submission to the Department of Justice, the American Bar Association, the United States Senate, the Federal Bureau of Investigation, and certain financial disclosures and waivers. I completed each requested document and forwarded them to the Office of the Counsel.

Thereafter, I was contacted by an official of the Department of Justice who interviewed me initially by telephone. It is my understanding that assigned Department of Justice officials or representatives reviewed and verified references and followed up on my documentation and interviewed persons familiar with me personally and professionally. I later travelled to the Department of Justice where I was personally interviewed at length by a panel of Justice officials.

Prior to my interview at the Department of Justice, I was personally interviewed by an agent of the Federal Bureau of Investigation. This interview was a part of my official background check carried out by the Bureau. The agency had previously been provided documentation which I had completed for use in the investigation.

Prior to my Department of Justice interview, I was directed, by a Department of Justice official, to forward my American Bar Association documents to the appointed ABA official. I immediately complied and was later personally interviewed in Atlanta, Georgia by an American Bar Association representative. A report was prepared by the representative which was later forwarded to the Department of Justice by the ABA Standing Committee on Federal Judiciary.

On February 9, 1994, I returned a personal call to the White House Counsel. During the call, I was advised that the President had earlier that day formally forwarded my nomination to the United States Senate as his

nominee to the United States District Court for the Middle District of Georgia.

On the same day, I was directed, by an official of the Department of Justice, to complete the required Financial Disclosure Report and submit it to the Judicial Ethics Committee, Administrative Office of the Courts, not later than Monday, February 14, 1994. I complied. I was also directed to review and update, where necessary, the United States Senate Questionnaire for Judicial Nominees (the instant form) for submission as soon as possible in order that the Senate Judiciary Committee may properly consider my nomination.

At all times, I was warmly and respectfully treated in an atmosphere and environment which I felt was directed at selecting qualified candidates for each position.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.**

No.

5. **Please discuss your views on the following criticism involving "judicial activism."**

**The role of the Federal judiciary within the Federal government, and within society generally has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:**

- a. **A tendency by the judiciary toward problem-solution rather than grievance-resolution;**
- b. **A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;**
- c. **A tendency by the judiciary to impose broad, affirmative duties upon governments and society;**
- d. **A tendency by the judiciary toward loosening jurisdictional**

**requirements such as standing and ripeness; and**

- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.**

As a sitting judge, it has been my practice to refrain from public comment or criticism of the decisions or actions of judges. This I have done for two basic reasons: (1) As a judge, it is inappropriate for me to openly criticize the decisions and actions of fellow judges in that to do so would tend to give the appearance of bias or prejudice on matters in controversy while the same are within the breast of the courts and under review. (2) The overall effect of such comments could very well serve to reduce respect for the court and its authority.

However, I sincerely respect and acknowledge the necessary and indispensable role of the United States Senate in reviewing and evaluating the qualifications of Federal judicial nominees. Therefore, I believe it appropriate that I comment, but that such comments be limited to only a discussion of my view and philosophy of judicial decision-making.

Well-founded and reasoned judicial decisions and rulings can best develop where due regard is given to legal precedence and procedure. In turn, this regard allows for and permits the development of clearly defined legal issues considered in the appropriate jurisdiction as dictated by the Constitution, by statute or binding precedent.

I also believe that our system of government works best, and as intended, when the constitutionally established separation of powers is recognized, acknowledged, and allowed to function. The political and legislative processes must be allowed to freely proceed and benefit from public debate and discourse. It is equally important, however, that every litigant have access to and the protection of our courts, consistent with the Constitution and with the laws enacted by the legislative body pursuant to and consistent with its powers under the Constitution.

A Federal judge must, to the best of his or her ability, decide only those issues properly before the Court, consistent with its jurisdiction as conferred by Article III of the United States Constitution and the statutes passed by Congress that also confer additional jurisdiction. This critical process must be carried out in a fair manner, based solely on the applicable law and relevant facts, without favor, affection, bias or prejudice. This, without in any way suggesting what would be my decision on any issue, I promise, to do, if confirmed.

ATTACHMENT: PART 4, FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

QUESTION 4

## FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics  
Reform Act of 1989, Pub. L. No.  
101-194, November 30, 1989  
(5 U.S.C.A. App. 6, §§101-112)AO-10  
Rev. 1/93

|   |  |   |
|---|--|---|
| 1. Person Reporting (Last name, first, middle initial)<br>Sands, Willie L.<br>(Preferred: W. Louis Sands)   | 2. Court or Organization<br>United States District Court<br>Middle District of Georgia   | 3. Date of Report<br>2/14/94            |
| 4. Title (Article III judges indicate active or senior status; Magistrate judges indicate full- or part-time)<br>United States District Court Judge | 5. Report Type (check appropriate type)<br><input checked="" type="checkbox"/> Nomination, Date <u>2/9/94</u><br>— Initial — Annual — Final                                      | 6. Reporting Period<br>1/1/93 - 1/31/94 |
| 7. Chambers or Office Address<br>Bibb Superior Court<br>Room 310 Bibb County Courthouse<br>Macon, Georgia 31201                                     | 8. On the basis of the information contained in this Report, it is, in my opinion, in compliance with applicable laws and regulations _____<br>Reviewing Officer Signature _____ |   |

**IMPORTANT NOTES:** The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on last page.

## I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

POSITION

NAME OF ORGANIZATION/ENTITY

 NONE (No reportable positions)

|        |  |
|--------|--|
| Member | Board of Visitors, Walter F. George School of Law &<br>Dean Search Committee & Executive Committee of Alumni |
| Member | Mercer University Planning Committee for 30th Year of<br>Black Enrollment                                    |

(cont'd)

## II. AGREEMENTS. (Reporting individual only; see p. 8-9 of Instructions.)

DATE

PARTIES AND TERMS

 NONE (No reportable agreements)

|         |  |
|---------|--|
| 4/23/91 | Stock purchase agreement which provides that seller be paid the greater of a lump sum or 10% of all fees actually received from the final disposition of identified cases in which seller had an interest at time of resignation from firm. Parties: W. Louis Sands, Seller, Mathis, Jordan, & Adams, P. C. (formerly Mathis, Sands, Jordan & Adams, P. C.), Charles A. Mathis, Jr., D. James Jordan and Virgil Adams, Purchasers. |
|---------|--|

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

DATE  
(Honoraria only)

SOURCE AND TYPE

GROSS INCOME  
(yours, not spouse's)
 NONE (No reportable non-investment income)

|              |   |              |
|--------------|---|--------------|
| 1/93 - 12/93 | Superior Courts of Georgia                        | \$ 72,494.03 |
| 1/93 - 12/93 | Bibb County Commissioners (county supplement)     | \$ 17,250.06 |
| 1/93 - 12/93 | Crawford County Commissioners (county supplement) | \$ 1,153.80  |
| 1/93 - 12/93 | Peach County Commissioners (county supplement)    | \$ 3,532.86  |
| 1/93 - 12/93 | Steward Chapel A.M.E. Church (organist)           | \$ 600.00    |

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Willie L. Sands

Date of Report

2/14/94

**IV. REIMBURSEMENTS and GIFTS - transportation, lodging, food, entertainment.**  
 (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

| SOURCE   | DESCRIPTION |
|--|-------------|
| <input type="checkbox"/> NONE (No each reportable reimbursements or gifts) |             |
| 1 "EXEMPT"   | "EXEMPT"    |
| 2  |             |
| 3  |             |
| 4  |             |
| 5  |             |
| 6  |             |
| 7  |             |
| 8  |             |

**V. OTHER GIFTS.** (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp.15-16 of Instructions.)

| SOURCE   | DESCRIPTION | VALUE    |
|--|-------------|----------|
| <input type="checkbox"/> NONE (No each reportable gifts) |             |          |
| 1 "EXEMPT"   | "EXEMPT"    | "EXEMPT" |
| 2  |             | \$       |
| 3  |             | \$       |
| 4  |             | \$       |
|  |             | \$       |

**VI. LIABILITIES.** (Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp.16-18 of Instructions.)

| CREDITOR  | DESCRIPTION                           | VALUE CODE* |
|---|---------------------------------------|-------------|
| <input type="checkbox"/> NONE (No reportable liabilities) |                                       |             |
| 1 Lincoln National Insurance Co.                          | Personal loan from cash value of Ins. | J           |
| 2   |                                       |             |
| 3   |                                       |             |
| 4   |                                       |             |
| 5   |                                       |             |
| 6   |                                       |             |
| 7   |                                       |             |

\* VALUE CODES: J = \$15,000 or less    K = \$15,001 to \$50,000    L = \$50,001 to \$100,000    M = \$100,001 to \$250,000  
 N = \$250,001 to \$500,000    O = \$500,001 to \$1,000,000    P = More than \$1,000,000

FINANCIAL DISCLOSURE REPORT (cont'd)

|   |                           |
|---|---------------------------|
| Name of Person Reporting<br>Willie L. Sands | Date of Report<br>2/14/94 |
|---|---------------------------|

VII. INVESTMENTS and TRUSTS - income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

| A.<br>Description of Assets<br>(including trust assets)<br><br>Indicate, where applicable, owner of the asset by using the parenthetical (1) for joint ownership of reporting individual and spouse, (S) for separate ownership by spouse, (DC) for ownership by dependent child.<br><br>Place "(X)" after each asset exempt from prior disclosure. | B.<br>Income during reporting period |                               | C.<br>Gross Value at end of reporting period |                         | D.<br>Transactions during reporting period |                    |                      |                     |  |   |   |   |
|---|--------------------------------------|-------------------------------|--|-------------------------|--|--------------------|----------------------|---------------------|--|---|---|---|
|   | (1)                                  | (2)                           | (1)  | (2)                     | If not exempt from disclosure:             |                    |                      |                     |  |   |   |   |
|   | Am. Code (A-B)                       | Type (C-F) Div. Inst. or Int. | Value Code (J-P)                             | Value Method Code (Q-W) | (1) Type (a-f) Acq. date                   | (2) Date Month Day | (3) Value Code (G-I) | (4) Sale Code (A-W) | (5) Identify pt. (Identify pt. (A-C) unless private transaction) |   |   |   |
| <input type="checkbox"/> NONE (No reportable income, assets, or transactions)   |                                      |                               |  |                         |  |                    |                      |                     |  |   |   |   |
| <sup>1</sup> 100 shares of common stock Bank Corporation of Ga.   |                                      |                               | J  | T                       | "  | E                  | X                    | E                   | M  | P | T | " |
| <sup>2</sup> Superior Court Judges Retirement account (unvested)  |                                      |                               | K  | T                       | "  | E                  | X                    | E                   | M  | P | T | " |
| <sup>3</sup> undivided interest in bldg. & lot - Baldwin County, Ga.  |                                      |                               | L  | S                       | "  | E                  | X                    | E                   | M  | P | T | " |
| 4   |                                      |                               |  |                         |  |                    |                      |                     |  |   |   |   |
| 5   |                                      |                               |  |                         |  |                    |                      |                     |  |   |   |   |
| 6   |                                      |                               |  |                         |  |                    |                      |                     |  |   |   |   |
| 7   |                                      |                               |  |                         |  |                    |                      |                     |  |   |   |   |
| 8   |                                      |                               |  |                         |  |                    |                      |                     |  |   |   |   |
| 9   |                                      |                               |  |                         |  |                    |                      |                     |  |   |   |   |
| 10  |                                      |                               |  |                         |  |                    |                      |                     |  |   |   |   |
| 11  |                                      |                               |  |                         |  |                    |                      |                     |  |   |   |   |
| 12  |                                      |                               |  |                         |  |                    |                      |                     |  |   |   |   |
| 13  |                                      |                               |  |                         |  |                    |                      |                     |  |   |   |   |
| 14  |                                      |                               |  |                         |  |                    |                      |                     |  |   |   |   |
| 15  |                                      |                               |  |                         |  |                    |                      |                     |  |   |   |   |
| 16  |                                      |                               |  |                         |  |                    |                      |                     |  |   |   |   |
| 17  |                                      |                               |  |                         |  |                    |                      |                     |  |   |   |   |
| 18  |                                      |                               |  |                         |  |                    |                      |                     |  |   |   |   |
| 19  |                                      |                               |  |                         |  |                    |                      |                     |  |   |   |   |
| 20  |                                      |                               |  |                         |  |                    |                      |                     |  |   |   |   |

1 Income/Gain Codes: A=\$1,000 or less; B=\$1,001 to \$2,500; C=\$2,501 to 5,000; D=\$5,001 to \$15,000; E=\$15,001 to \$50,000; F=\$50,001 to \$100,000; G=\$100,001 to \$1,000,000; H=more than \$1,000,000  
 2 Value Codes: A=\$15,000 or less; B=\$15,001 to \$50,000; C=\$50,001 to \$100,000; D=\$100,001 to \$250,000; E=\$250,001 to \$500,000; F=more than \$1,000,000  
 3 Value Method Codes: Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash/Market; U=Rock Value; V=Other; W=Estimated

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Willie L. Sands

Date of Report

2/14/94

## VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

VI 1. - This is a loan from the cash value of one of my personal insurance policies. A net cash value remains after deducting the full amount of the loan.

VII 2. - This is the expected distribution from my retirement account upon resignation of my present position, if confirmed.

3. - I am the owner of  $\frac{1}{2}$  undivided interest in the lot and building upon which one of the offices of my former law firm is located. I expect to dispose of my interest in said property as soon as the same is reasonably practical for all parties. I have no interest in the firm itself except as set out in Part II, above.

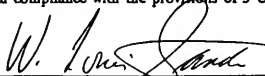
## IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature



Date 2/14/94

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, § 104, AND 18 U.S.C. § 1001.)

## FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Judicial Ethics Committee  
Administrative Office of the  
United States Courts  
Washington, DC 20544



FINANCIAL DISCLOSURE REPORT (cont'd) Name: Willie L. Sands Date: 2/14/94

I. POSITIONS (cont'd)

|                        |  |
|------------------------|--|
| Member                 | Board of Directors, City Club of Macon                               |
| Member                 | Board of Directors, Community Foundation of Central Georgia          |
| Member                 | Board of Directors, First South Bank of Middle Ga./Bank Corp. of Ga. |
| Member<br>& Vice Pres. | Georgia Commission on Family Violence                                |
| Member                 | Georgia Supreme Court Task Force on Substance Abuse                  |
| Member                 | Board of Directors of Macon Symphony                                 |
| Member                 | Board of Directors of Midsummer Macon (term ended - 1993)            |

III. NON-INVESTMENT INCOME. (cont'd)

|    |                  |  |             |
|----|------------------|--|-------------|
| 6. | 1/93 - 12/93     | First South Bank of Middle Ga. (Director)                | \$ 4,250.00 |
| 7. | 1/93 - 12/93     | WMAZ-TV (Weather Caster/Community Services Director) (S) | \$26,795.10 |
| 8. | 1/93 - 12/93     | Robert Cummings d/b/a Reflections Promotion (S)          | \$ 1,055.00 |
| 9. | 1/1/93 - 1/31/94 | Superior Courts of Georgia                               | \$ 6,112.00 |
| 0. | 1/1/93 - 1/31/94 | Crawford County Commissioners                            | \$ 115.38   |
| 1. | 1/1/93 - 1/31/94 | Peach County Commissioners                               | \$ 333.33   |
| 2. | 1/1/93 - 1/31/94 | Bibb County Commissioners                                | \$ 1,750.00 |
| 3. | 1/1/93 - 1/31/94 | First South Bank of Middle Ga.                           | \$ 750.00   |
| 4. | 1/1/93 - 1/31/94 | WMAZ-TV (S)  | \$ 2,640.00 |

FINANCIAL STATEMENT  
NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debt mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate member of your household.

| ASSETS  |               |           | LIABILITIES  |               |           |
|---|---------------|-----------|--|---------------|-----------|
| Cash on hand and in banks                       | 4202          | 80        | Notes payable to banks—secured   | 20021         | 35        |
| U.S. Government securities—add schedule         | 200           | 00        | Notes payable to banks—unsecured   | 1106          | 19        |
| Listed securities—add schedule                  |               |           | Notes payable to relatives   |               |           |
| Unlisted securities—add schedule                | 1000          | 00        | Notes payable to others  | 3000          | 00        |
| Accounts and notes receivable:                  |               |           | Accounts and bills due   | 14382         | 97        |
| Due from relatives and friends                  |               |           | Unpaid income tax  | -             |           |
| Due from others                                 |               |           | Other unpaid tax and interest  | -             |           |
| Doubtful  |               |           | Real estate mortgages payable—add schedule                                       | 91811         | 90        |
| Real estate owned—add schedule                  | 111777        | 50        | Chattel mortgages and other liens payable  | 8437          | 82        |
| Real estate mortgages receivable                | 94453         | 00        | Other debts—itemize:   |               |           |
| Autos and other personal property               |               |           | Educational loan (spouse)  | 5682          | 79        |
| Cash value—life insurance                       | 8909          | 85        |  |               |           |
| Other assets—itemize:                           |               |           |  |               |           |
| unpaid salary due from church organist position | 7000          | 00        |  |               |           |
| retirement account                              | 15172         | 41        |  |               |           |
|   |               |           |  |               |           |
| <b>Total assets</b>                             | <b>242715</b> | <b>56</b> | <b>Total liabilities</b>   | <b>144443</b> | <b>02</b> |
|   |               |           | <b>Net worth</b>   | <b>98272</b>  | <b>94</b> |
|   |               |           | <b>Total liabilities and net worth</b>   | <b>242715</b> | <b>96</b> |
|   |               |           |  |               |           |
| <b>CONTINGENT LIABILITIES</b>                   |               |           | <b>GENERAL INFORMATION</b>   |               |           |
| As endorser, cosigner or guarantor              | 769           | 20        | Are any assets pledged? (Add schedule.) Yes.                                     | 8437          | 82        |
| On leases or contracts                          |               |           | Are you defendant in any suits or legal actions? Yes, Child support modification |               |           |
| Legal Claims                                    |               |           | Have you ever taken bankruptcy? No.  |               |           |
| Provision for Federal Income Tax                |               |           |  |               |           |
| Other special debt                              |               |           |  |               |           |

ATTACHMENT: PART II, FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

QUESTIONS

## FINANCIAL STATEMENT

## NET WORTH

---

## SCHEDULES:

- 1.) U. S. Government securities - U. S. Savings Bonds
- 2.) Unlisted securities - 100 shares common stock, Bank Corporation of Ga.
- 3.) Real Estate Owned:
  - a) house and lot, Macon, Bibb County, Georgia
  - b)  $\frac{1}{2}$  undivided interest in building and lot Milledgeville, Baldwin County, Georgia
- 4.) Real Estate Mortgages payable:
  - a) home mortgage: \$45,127.62 \*
  - equity line       32,434.28 \*\*
  - b)  $\frac{1}{2}$  of mortgage on building & lot: \$14,250.00\*\*\*

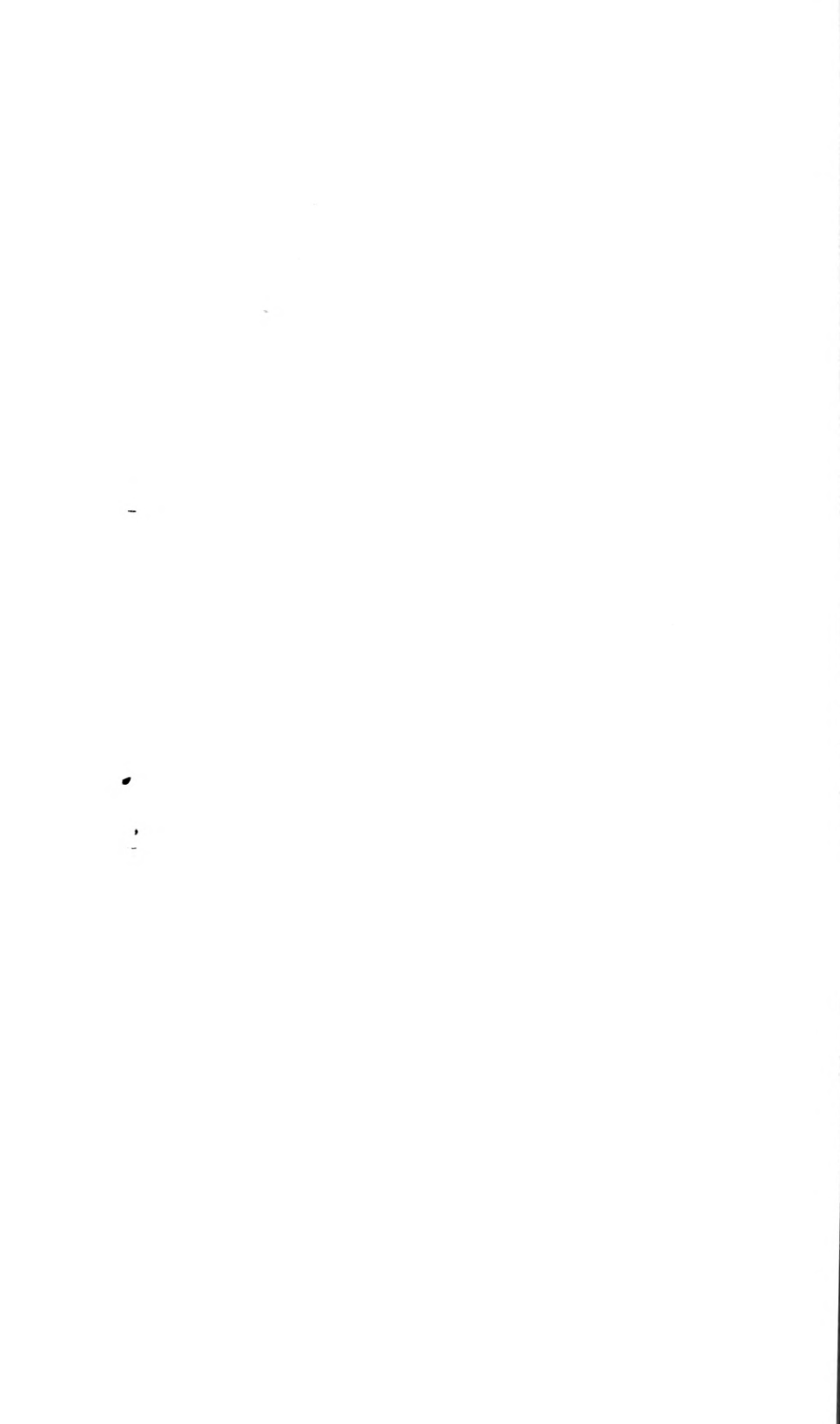
\*First Union Mortgage Corporation

\*\*First Union National Bank of Georgia

\*\*\*Century Bank &amp; Trust

## 5.) Pledged assets:

- a) 1993 Volvo (i/c/w its purchase, i.e. bank note)
  - b) grand piano \*
  - c) some furnishings\*
- \*Pledged i/c/w Associates, First Family Financial Services,  
& Yamaha Music Finance



# NOMINATION OF MICHAEL BROMWICH, TO BE INSPECTOR GENERAL, U.S. DEPARTMENT OF JUSTICE

FRIDAY, APRIL 22, 1994

U.S. SENATE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The committee met, pursuant to notice, at 11:04 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Dianne Feinstein presiding.

## OPENING STATEMENT OF SENATOR FEINSTEIN

Senator FEINSTEIN. The Judiciary Committee will come to order. This morning, the committee will conduct a hearing on the nomination of Michael Bromwich to be Inspector General of the Department of Justice.

Let me say for the record that the nominee has completed a very detailed questionnaire on his qualifications, his experience, his finances, and his philosophy. The portions of the questionnaire available to the public will be printed in the record of this hearing. We will also keep the record open for a limited time just in case members of the committee would like to submit written questions.

We have received dozens of letters in support of this nomination. We will place these letters in the record, also.

[See letters in support of Michael R. Bromwich, p. 444.]

Of course, we will place in the record any introductory statements. At this time, I would like to enter into the record a statement of Senator Orrin Hatch, the ranking minority member of this committee, and a statement by Senator Daniel Moynihan on the nomination of Michael Bromwich. These two statements will go into the record.

[The prepared statements of Senator Hatch and Senator Moynihan follow:]

## PREPARED STATEMENT OF SENATOR ORRIN G. HATCH

The Judiciary Committee today considers the nomination of Michael Bromwich to be Inspector General of the Department of Justice.

The Inspector General's duties, as set forth in Attorney General Order 1638-92, dated December 11, 1992, relate essentially to allegations concerning waste, fraud, and abuse at the Department of Justice, or by the Department's contractors grantees or other recipients of Departmental benefits.

Another office, the Office of Professional Responsibility (OPR), handles allegations of prosecutorial misconduct or unethical conduct by Department lawyers and allegations of misconduct by investigative and law enforcement personnel at the Department.

In my view, keeping OPR separate from, and independent of, the Inspector General's office is very important. The Attorney General should be able to turn to an independent office, headed by a nonpolitical, career lawyer, reporting directly to the Attorney General. Accordingly, I was troubled by reports that Attorney General Reno was considering the merger of the two offices.

Following correspondence from myself and several of my Republican colleagues on the committee, I was pleased to receive an April 5, 1994, letter from Attorney General Reno in which she advised me that she had "determined not to merge the [two offices] or in any other way to place OPR under the supervision of the IG."

Attorney General Reno added, "I am convinced that the continued separation of the functions and responsibilities of these two components will help to ensure that we maintain the highest standards of professionalism within the Department."

I construe these remarks as meaning that OPR will retain its current responsibilities as well as its status as a separate office.

I look forward to the nominee's testimony.

#### PREPARED STATEMENT OF SENATOR DANIEL PATRICK MOYNIHAN

Mr. Chairman, it is my great pleasure to introduce Michael Bromwich to this honorable Committee. I believe he will be an outstanding Inspector General at the Department of Justice.

Mr. Bromwich's credentials are exemplary. He spent almost ten years at Harvard University, graduating in Social Studies from Harvard College summa cum laude, receiving a Master of Public Policy Degree from the John F. Kennedy School of Government, and receiving his law degree from the Harvard Law School.

He has worked in the Criminal Division at the United States Attorney's Office in the Southern District of New York, served as an Associate Counsel and Special Counsel in the Office of Independent Counsel for the case of *United States v. Oliver North*, and was a partner in the law firm of Mayer, Brown and Platt. Mr. Bromwich was the first non-New York lawyer admitted to the New York Council of Defense Lawyers. Although he is originally from California, New York is proud to claim him. He currently serves as Assistant to the Attorney General at the Department of Justice.

Many distinguished Americans have endorsed Mr. Bromwich. Leonard Garment describes him as "an able and vigorous prosecutor." New York City Mayor Giuliani characterizes him as "a consummate professional: fair, objective and reasonable."

Mr. Chairman and members of the Committee, I am pleased to recommend Michael Bromwich to you, and to urge his speedy confirmation.

Senator FEINSTEIN. Although I have a statement, I would like very much to defer and I would like to introduce Representative Eleanor Holmes Norton and ask you if you would care to make an opening statement of introduction.

#### STATEMENT OF HON. ELEANOR HOLMES NORTON, A DELEGATE IN CONGRESS FROM THE DISTRICT OF COLUMBIA

Delegate NORTON. Thank you, Madam Chairperson. I do not need to tell you that the Inspector General of the Justice Department should be a person of unusually high integrity, great independence, deep experience, and keen intellect. That is a description of Michael Bromwich, whom I am happy to recommend to you, Madam Chairwoman, today.

Michael Bromwich is a Harvard College Phi Beta Kappa. He then went on to Harvard's John F. Kennedy School of Government, where he earned his master's in public policy, and then to the Harvard Law School. Mr. Bromwich has extensive and varied legal experience of the kind that will hold him in good stead in the position for which the President has nominated him.

He has had extensive experience as a U.S. attorney in the Southern District of New York. He has practiced here in the firm of Mayer, Brown and Platt, where he participated in complex litigation, including white collar crime and related matters, and the supervision of internal corporate and organizational investigations.

We are proud that he took the leadership in his law firm in developing a pro bono program for the representation of indigent defendants in the District of Columbia's Superior Court.

Mr. Bromwich was special counsel at the Office of Independent Counsel during the Iran-Contra hearings. He had substantial responsibility for key parts of that investigation. He handled the pre-trial proceedings for the immunized testimony of John Poindexter. He represented the Independent Counsel's Office in the remand proceedings in *U.S. v. Oliver North* and tried that case.

In the District, we are particularly proud that this talented young man and his young family live here, although I concede that he was born in California and his parents are still your constituents, Madam Chairwoman. With him here today are his wife, Felice; his son, Daniel, who is 7; his son, Jonah, who is 4. I am sorry to report that 1-year-old Kira had to be left home because of age. In any case, we are very, very pleased that he lives here and that the President has chosen to nominate him. I strongly recommend Michael Bromwich to you, Madam Chairwoman.

Senator FEINSTEIN. Thank you very much, Representative Norton, and welcome to this House. As you probably know, I am a big fan of yours and so I enjoy watching you in the House of Representatives, and I thank you very much for taking time to be here this morning.

Ms. NORTON. Thank you so much.

#### STATEMENT OF SENATOR FEINSTEIN

Senator FEINSTEIN. Now, I would like, as the Senator from California, to make a few introductory remarks. I am very pleased to also join with Ms. Norton in introducing Michael Bromwich, a native of California. He has been nominated by the President to serve as inspector general at the Department of Justice.

The inspector general, who supervises a nationwide field structure of more than 400 employees, is responsible for investigating allegations of Department of Justice employee misconduct and for preventing waste, fraud, and abuse in the Department's component operations and contracts through inspections and audits.

I won't repeat what Ms. Norton has said, but Mr. Bromwich was born in Los Angeles in 1953. He attended University Elementary School in Westwood and James Madison Junior High School in North Hollywood. He graduated from Ulysses S. Grant High School in North Hollywood and, as a high school student, took courses at UCLA. Then he went to a minor college, known as Harvard, somewhere on the east coast. He then returned to California to work each summer, and as a Harvard law student he worked two summers at the Los Angeles firm of Irell and Manella.

His mother and father, Leo and Rose Bromwich, each emigrated to the United States as a teenager. His father earned a doctorate degree in California. This is your father, I believe.

Mr. BROMWICH. This is actually both of them, Senator.

Senator FEINSTEIN. Both of them earned doctorate degrees?

Mr. BROMWICH. Yes.

Senator FEINSTEIN. Both earned doctorate degrees in California and taught for many years in the California State university system. They have resided for more than 30 years in Van Nuys, CA.

As Ms. Norton pointed out, Mr. Bromwich is an attorney with considerable experience in Federal law enforcement. He is well qualified to serve as the inspector general at Justice. She mentioned his undergraduate work at Harvard, his master's degree in public policy from the Harvard John F. Kennedy School of Government, and a law degree from Harvard.

After 3 years in private practice, he became a Federal prosecutor in the Southern District of New York. He served there from 1983 to 1986. He became chief deputy and then chief of the narcotics unit. You heard about his prosecution as a member of Lawrence Walsh's staff in the Iran-Contra investigation. Since 1989, he has been a partner in the Washington, DC, law firm of Mayer, Brown and Platt, where he has specialized in white collar criminal defense work.

Mr. Bromwich was nominated to serve as IG. The committee, I must say, has received numerous letters from experienced law enforcement officials, and I think these letters attest to his intelligence, his professionalism, his honesty, and his nonpartisan approach to Federal law enforcement.

I am very pleased to welcome you, Mr. Bromwich, and would ask that you perhaps introduce your family directly to the committee.

Mr. BROMWICH. Thank you very much, Madam Chairperson. As Ms. Norton indicated, with me today is my wife, Felice Friedman, who is a lawyer with the Office of International Affairs of the Securities and Exchange Commission. In the blue jacket is my son, Daniel, who is 7 years old and will be 8 in July.

Senator FEINSTEIN. Hi, Daniel.

Mr. BROMWICH. The fellow in the green shirt is my son, Jonah, who will be 5 next month.

Senator FEINSTEIN. Hi, Jonah.

Mr. BROMWICH. And he may tell you May 10th is his birthday.

Senator FEINSTEIN. Happy birthday.

Mr. BROMWICH. In the interests of minimizing disruption to the hearing, we have left their 1-year-old sister, Kira, at home, but she will be fully briefed. [Laughter.]

Senator FEINSTEIN. Thank you. We will now begin. Would you please stand and raise your right hand? Do you swear that the testimony you will give in this proceeding will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. BROMWICH. I do.

Senator FEINSTEIN. Thank you. Would you like to make an opening statement to the committee?

#### **TESTIMONY OF MICHAEL R. BROMWICH, TO BE INSPECTOR GENERAL, U.S. DEPARTMENT OF JUSTICE**

Mr. BROMWICH. Just very briefly, Madam Chairperson, I want to express my appreciation to the Chair for holding this hearing today. I want to note that I am deeply honored to have been nominated to this position by President Clinton. I look forward to working with the Congress and with the leadership of the Department of Justice in being the absolute best inspector general that I can be.



## QUESTIONING BY SENATOR FEINSTEIN

Senator FEINSTEIN. Mr. Bromwich, your questionnaire indicates that while you served in the office of U.S. attorney for the Southern District of New York, you were deputy chief, as I stated, and then chief of the narcotics unit. It also states that you served as associate counsel and special counsel for the Office of Independent Counsel on the Iran-Contra investigation.

How do you believe that these investigations and your management background prepare you for this office?

Mr. BROMWICH. Madam Chairperson, I spent roughly 7 years in Federal law enforcement, as you pointed out, first with the U.S. attorney's office in the Southern District of New York and then with the independent counsel responsible for investigating Iran-Contra. During those 7 years, I gathered substantial experience in running, managing, supervising complex investigations, and in my capacity as deputy chief and then briefly as chief of the narcotics unit, I had responsibility for supervising from 20 to 22 attorneys who were working on a large number of quite important narcotics investigations.

I had similar supervisory duties when I worked for Judge Walsh on the Iran-Contra investigation. I, for a substantial period of time, supervised a group of from 7 to 9 lawyers and 7 to 10 FBI and-IRS agents in doing a fairly substantial piece of that investigation that included looking at whether employees of the Central Intelligence Agency and Department of State committed any crimes.

So, I believe that my experience in Federal law enforcement and my experience in managing people, both lawyers and investigative agents, qualifies me for the position of inspector general.

Senator FEINSTEIN. Thank you very much. As you, I am sure, are aware, at one time Attorney General Reno was considering merging the Office of IG and the Office of Professional Responsibility into an expanded Office of Inspector General. Recently, she decided not to merge the two offices. That means, I take it, that the Office of Professional Responsibility will continue to investigate allegations of wrongdoing against attorneys and law enforcement agents, and that the Office of Inspector General will be responsible for the investigations and audits relating to the economy and efficiency of the Justice Department's programs and operations, and for detecting and preventing fraud and abuse, as I have stated.

Is this your understanding of how the functions will be divided?

Mr. BROMWICH. Yes, that is generally correct, Madam Chairperson. There will be responsibilities for the Office of Inspector General in investigating certain sorts of employee misconduct, but you are quite right that OPR will continue to have principal responsibility for investigations of misconduct that relate to allegations lodged against attorneys and law enforcement agents.

Senator FEINSTEIN. Do you believe there will be overlap, and if so, how would it be handled?

Mr. BROMWICH. There will undoubtedly be overlap. There may be cases in which lawyers and law enforcement agents are involved that also involve other employees of the Department of Justice, and I am quite hopeful that I will be able to work closely with the Of-

Office of Professional Responsibility to work cooperatively on matters in which we both have an interest.

At my initiative, I met recently with Mr. Shaheen and his deputy, Mr. Rogers, who are the top two officials in the Office of Professional Responsibility. It is not a secret that there has been tension in the past between OPR and the IG, and I am hopeful that we will be able to launch a new era and we will be able to minimize turf battles and maximize cooperation.

Senator FEINSTEIN. I think that is excellent. One of the things that I have been struck with is what a large department Justice is, with over 90,000 employees, and so I think your job is really a very critical and important one in the Department.

Mr. BROMWICH. I agree with you, Madam Chairperson.

Senator FEINSTEIN. I understand that the Office of Inspector General is divided into four sections—investigations, audits, inspections, and management—each headed by an assistant inspector general. What will be your enforcement priorities or goals for each of these sections?

Mr. BROMWICH. Madam Chairperson, what the inspector general has done up until now, and this is what I plan to continue, is to try to take a look at what are the most significant high-impact, high-risk areas of the Department's operations, and that is not just restricted, as you well know, to the Department of Justice. It also includes the U.S. attorneys offices. It includes INS, it includes the Marshals Service, it includes DEA, it includes the FBI, and so forth.

We are the principal sentinel to make sure that the Department is run as efficiently and effectively as possible, and we will continue to target those areas that are high-risk areas where there are substantial public funds expended and where there is a risk that public moneys are wasted. That is my principal job.

Senator FEINSTEIN. What would you say would be your number one priority when you go into that office?

Mr. BROMWICH. My number one priority is, in every way that I possibly can, both through the investigations, audits, and inspections functions, to promote the integrity of departmental personnel and departmental programs.

Senator FEINSTEIN. Now, it is fair to say that the Department that you are going to head is really the watch dog for Justice. I know that you are an employee at Justice, an assistant to the Attorney General. Do you feel you can go in and give her bad news, if necessary?

Mr. BROMWICH. Senator, it is my job to give her bad news, if it is necessary, and I have had a number of conversations, including recent conversations, with both the Attorney General and the Deputy Attorney General, and they have expressed their intention to give me whatever access that I need to them and to the Department as a whole in order to carry out the functions that I have.

They do recognize that I have responsibilities that require me to be independent, and I have no indication that they expect me to bow in that independence and to do things that will attempt to curry favor with them. They understand what the function and the role of the inspector general must be.

Senator FEINSTEIN. If you could have your druthers in terms of Justice within the area of this responsibility, 5 years down the line how would you like to be looked at as an inspector general?

Mr. BROMWICH. I would like in the future to be looked at as somebody who was a leader in the inspector general community throughout the executive branch of the Government, and someone who has left a record of doing everything within one person's and one organization's power to make the Department of Justice the most efficient, the most effective department in the Federal Government, and to have increased integrity in the Department in a way that everyone will acknowledge.

Senator FEINSTEIN. I will just once again put a priority of mine out on the table for you. I have told virtually everybody as a member of this committee when I have been present at one of these hearings that, as a Californian, a real department within Justice that I would like to see elevated in priority is INS, and have submitted some legislation that could be helpful in doing that by providing the funding.

I would hope that as you look at waste, fraud, abuse and other things that you would recognize that this today is a very important department which has functioned as more or less a stepchild or an orphan within the Department for a long time, and the time has really come to see that it has the wherewithal to do the job that it should be doing.

Mr. BROMWICH. I completely agree with you, Senator. As you probably know, a tremendous amount of the work that is currently done by the inspector general focuses on INS in audits, in inspections, in investigations, and I think that is critical to continue that effort and, if possible, to enhance it because there is no doubt that INS is an absolutely critical part of the Department of Justice. I recognize that.

Senator FEINSTEIN. Since no other Senators have come—I mean, this is just a wonderful way to have one of these hearings, I must say.

Mr. BROMWICH. It is fine for me so far, Senator.

Senator FEINSTEIN. Do you have any closing comments?

Mr. BROMWICH. I really don't, Senator. It has been a longer road than I expected from the time I was offered the job until the time I appeared before this committee, and I am just very much looking forward to moving on, if and when I am confirmed, and assuming the responsibilities of the Inspector General of the Department of Justice.

Senator FEINSTEIN. Well, thank you very much. I look forward to supporting your nomination and being able to work with you as a Senator. I thank you very much.

Mr. BROMWICH. Thank you very much, Senator Feinstein.

Senator FEINSTEIN. This hearing is adjourned.

[Whereupon, at 11:23 a.m., the committee was adjourned.]

[Submissions for the record follow:]

## SUBMISSIONS FOR THE RECORD

## I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (including any former names used)  
**Michael Ray Bromwich**
  
2. Address: List current place of residence and office addresses)  
**Residence:**  
**3806 Military Road, N.W., Washington D.C. 20015**  
  
**Office Address:**  
**United States Department of Justice**  
**10th and Constitution Avenue, N.W.**  
**Room 4121**  
**Washington D.C. 20530**
  
3. Date and place of birth.  
**December 19, 1953; Los Angeles, California.**
  
4. Marital Status (include maiden name of wife or husband's name). List spouse's occupation, employer's name, and business address(es).  
**Felice B. Friedman**  
**Lawyer**  
**Securities and Exchange Commission**  
**Office of International Affairs**  
**450 Fifth Street, N.W.**  
**Washington D.C. 20549**
  
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.  
**Harvard College, 1971-76, A.B., June 1976.**  
  
**John F. Kennedy School of Government, 1977-1980,**  
**M.P.P., 1980.**

Harvard Law School, 1976-80, J.D., 1980.

6. List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

A. Summer 1976:

Sherman Oaks Swim School  
Sherman Oaks, California  
Swim Instructor

B. Summer 1977:

Irell & Manella  
Los Angeles, California  
Summer Law Associate

C. Summer 1978:

1. U.S. Department of Justice  
Washington D.C. 20530  
Special Assistant  
Summer Law Clerk (6 weeks)
2. Irell & Manella  
Los Angeles, California  
Summer Law Associate (6 weeks)

D. School Year 1978-79:

John F. Kennedy School of Government  
Harvard University  
Cambridge, Massachusetts  
Teaching Assistant

## E. Spring 1979:

Consultant (with Professors James Q. Wilson  
and Mark H. Moore)  
Federal Bureau of Investigation  
Washington D.C.

## F. Summer 1979:

Fried, Frank, Harris, Shriver & Kampelman  
Washington D.C.  
Summer Law Associate

## G. School Year 1979-80:

John F. Kennedy School of Government  
Harvard University  
Cambridge, Massachusetts  
Teaching Assistant

## H. June 1980 - May 1983:

Foley & Lardner  
Washington D.C.  
Associate

## I. May 1983 - January 1987:

United States Attorney's Office for the  
Southern District of New York  
New York, New York  
Assistant United States Attorney

J. January 1987 - October 1989:  
November 1989 - January 1990 (part-time):  
May 1991 - September 1991 (part-time):

Office of the Independent Counsel:  
Iran-Contra  
Washington D.C.  
Associate Counsel ('87-'89)  
Special Counsel (part-time assignments)

## K. October 1989 - November 30, 1993:

Mayer, Brown & Platt  
 Washington D.C.  
 Partner

## L. December 1, 1993-present:

Assistant to the Attorney General  
 United States Department of Justice  
 Washington D.C.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Summa Cum Laude from Harvard College; Phi Beta Kappa.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

## A. Member of D.C. Bar.

## B. Member of American Bar Association and following sections and subcommittees:

1. Litigation Section  
 (Complex Crimes Committee)
2. Criminal Justice Section  
 (White Collar Crime Committee)

C. New York Council of Defense Lawyers.

D. Criminal Justice Act Panels:

1. U.S. District Court, District of Columbia
2. U.S. District Court, District of Maryland

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Lobbying Organizations:

World Wildlife Fund  
 American Automobile Association  
 Friends of WETA (Public Television)

Other Organizations:

Council for Excellence in Government  
 United States Holocaust Memorial Museum  
 Friends of the National Zoo  
 Temple Sinai  
 Murch Home & School Association (DC Public Schools PTA)  
 Harvard Law School Association  
 Northwest Branch Swim Club

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special permission to practice.

United States Supreme Court (1989)



United States Court of Appeals for the 2nd Circuit  
(1984)

United States Court of Appeals for the D.C.  
Circuit (1989)

United States District Court for the District of  
Columbia (1989)

United States District Court for the District of  
Maryland (1991)

District of Columbia Court of Appeals (1980)

Superior Court of the District of Columbia (1980)

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

A. Book Review, Law & Policy in International Business, Vol. 14:1227 (1983)

B. Participant in panel discussion, subsequently published as, "Symposium Issue on the Selection and Function of the Modern Jury," The American University Law Review, Vol. 40, No. 2, Winter 1991.

C. "Sentencing of Organizations," in Phylis Skloot Bamberger, ed., Practice Under the New Federal Sentencing Guidelines, Prentice-Hall Law & Business (1992 & 1993 Supp.)  
(co-author).

D. Participant in symposium, subsequently published as, "Iraqgate: The Making of an Investigation," Harper's, January 1993.

E. "Today is the Day to Implement Compliance Programs," New York Law Journal, July 26, 1993.

13. What is the present state of your health? List the date of your last physical examination.

Excellent. February 1991.

14. Public Offices: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for public office.

A. Assistant United States Attorney, Southern District of New York (1983-87)

1. Deputy Chief Narcotics Unit (September 1985-December 1986)

2. Chief, Narcotics Unit (December 1986-January 1987)

B. Associate Counsel, Office of Independent Counsel: Iran-Contra (1987-89)

C. Special Counsel, Office of Independent Counsel: Iran-Contra (December 1989-January 1990; May-September 1991).

15. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:
  1. whether you served as a clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;
  2. whether you practiced alone, and if so, the addresses and dates;
  3. the dates, names and addresses of law firms or offices, companies or governmental with which you have been connected, and the nature of your connection with each;
- b.
  1. What has been the general character of your law practice dividing it into periods with dates if its character has changed over the years?
  2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.
- c.
  1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.
  2. What percentage of these appearances was in:
    - (a) federal courts;
    - (b) state courts of record;
    - (c) other courts.
  3. What percentage of your litigation was:
    - (a) civil;
    - (b) criminal.
  4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

5. What percentage of these trials was:

- (a) jury;
- (b) non-jury.

I did not clerk for a judge after I graduated from Harvard Law School in 1980, nor have I ever never practiced law by myself. The chronology of my legal career is as follows:

From June 1980 to 1983, I was an associate in the D.C. office of Foley & Lardner, a law firm based in Milwaukee, Wisconsin. While I worked at the firm, the address of the D.C. office was 1775 Pennsylvania Avenue, N.W., Washington, D.C., 20006.<sup>1/</sup> During my time at the firm, I worked on projects involving litigation, regulatory enforcement, and administrative law, as well as in various other areas of the firm's practice. With the exception of one pro bono criminal appeal, my practice consisted entirely of civil matters. I did some legal work on behalf of a trade association in the oil industry and for various Milwaukee-based corporate clients of the firm. With the exception of the criminal pro bono matter referred to above, which I argued in the D.C. Court of Appeals, I made no court appearances in either state or federal court.

In May 1983, I was appointed an Assistant United States Attorney for the Southern District of New York. The address of that office is One Saint Andrews Plaza, New York, New York, 10007. I was hired by John S. Martin, Jr., now a federal judge in the Southern District of New York, but served most of my tenure under Rudolph W. Giuliani, now the Mayor of New York City. My entire tenure was served in the Criminal Division and more than 95% of the matters that I handled while in the Office was criminal. While an Assistant United States Attorney, I tried approximately a dozen cases, ranging in length from three days to two months. With one exception, these trials were all before a jury. In all of these cases, I was lead

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<sup>1/</sup> The firm's D.C. Office has moved to 3000 K Street, Suite 500, Washington D.C.

counsel for the government.<sup>2/</sup> In approximately half of these cases, I was sole counsel for the government.

In January 1984, after 10 months in the General Crimes Unit, I was transferred to the Narcotics Unit. In September 1985, Mr Giuliani appointed me Deputy Chief of the Narcotics Unit. In December 1986, shortly before I left the U.S. Attorney's Office, Mr. Giuliani appointed me Chief of the Narcotics Unit, with responsibility to direct and supervise the work of more than 20 lawyers. During the period I held these supervisory positions, I continued to handle my own investigations and cases. As a result, I was in court very frequently during my entire stay in the U.S. Attorney's Office. In addition to the trials that I tried to verdict, I argued approximately a dozen cases in the U.S. Court of Appeals for the 2nd Circuit.

In January 1987, I was appointed Associate Counsel by Lawrence E. Walsh, who in December 1986 was appointed Independent Counsel by a special division of the D.C. Circuit to investigate the Iran-Contra affair. I remained an Associate Counsel until October 1989. The address of the Independent Counsel was 555 13th Street, N.W., Suite 701W, Washington, D.C., 20004. I was designated by Judge Walsh as one of three members of the trial team in U.S. v. Oliver North, which was tried from January to May 1989. Shortly after the North case ended, I left the Office to return to private practice. On two occasions after my departure, I was appointed Special Counsel by Judge Walsh to handle matters relating to work that had taken place while I was still with the Office. Because of the nature of the Office, all of my work was in federal court and all related to criminal matters. I had no involvement in any aspect of the Independent Counsel's investigation that took place from 1988 through 1992. Nor did I have any role in drafting, reviewing or editing any aspect of the Independent Counsel's final report.

From October 1989 through November 30, 1993, I was a partner in the D.C. office of Mayer, Brown & Platt.

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<sup>2/</sup> With one exception, I tried these cases from beginning to end. The exception involved my completion of a trial begun by an Assistant U.S. Attorney who was arrested in mid-trial. In that case, I completed presenting the government's case, cross-examined the witnesses called during the defense case, and delivered the summation. This case is further described in my answer to question # 16, item # 5.

The address of the firm's D.C. Office is 2000 Pennsylvania Avenue, N.W., Suite 6500, Washington, D.C., 20006. I specialized in white-collar criminal defense and handled a wide variety of criminal matters and quasi-criminal matters (administrative investigations that are subject to referral to the Justice Department for criminal prosecution), as well as a small number of civil litigation matters. For the most part, I represented individuals in grand jury investigations and in connection with administrative investigations and proceedings. In addition, I developed an expertise in counseling companies on formulating and implementing internal compliance programs that satisfy the requirements established by the United States Sentencing Commission in the organizational sentencing guidelines, which became effective in November 1991. I supervised internal and private investigations on behalf of various individual and corporate clients. I would estimate that my practice was approximately 80% criminal or quasi-criminal and 20% civil.

During my four years with the firm, I tried one local and one federal criminal case to a jury. I also tried one non-jury case. I have served on the Criminal Justice Act panels of the U.S. District Courts for the District of Columbia and Maryland. I handled numerous criminal matters -- plus one administrative and one civil matter -- on a pro bono basis and have established and headed a criminal pro bono program at my firm in which law firm attorneys represent indigent defendants in D.C. Superior Court. More than 75% of my practice was in federal court, with the remainder in various state and local courts. Although the frequency of my court appearances while a partner at Mayer, Brown was far less than when I was a prosecutor, I nevertheless had a substantial number of court appearances. In addition to the three cases I have tried, I have also conducted evidentiary hearings and argued various motions.

16. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. United States v. Anthony Bari, et al., June-December 1983, Case No., 83 Cr. 462 (DNE), in the United States District Court for the Southern District of New York, before the Honorable David N. Edelstein, United States District Judge.

The decision of the Second Circuit affirming the convictions of the defendants is reported at 750 F. 2d 1169 (2d Cir. 1984).

I directed an investigation conducted by the U.S. Marshals Service in conjunction with the Bureau of Prisons into an attempted escape from the Metropolitan Correctional Center in Manhattan. The attempt was launched from a 9th floor dormitory that housed approximately fifteen inmates. Because no inmate succeeded in getting out of the dormitory and no prison official saw the activities of the inmates who were trying to escape, we had to base our case largely on the testimony of three inmate-witnesses who resided in the dormitory at the time of the attempted escape. Eventually, six inmates were indicted.

After a three-week trial, in which I served as lead trial counsel, the jury convicted five of the six inmates. The convicted inmates were sentenced to substantial terms of imprisonment that were set to run consecutively to the substantial sentences they were serving when they attempted to escape.

Opposing Counsel: Richard F. Ziegler, Esq. (Anthony Bari), Cleary, Gottlieb, Steen & Hamilton, One Liberty Plaza, New York, New York, 10006, (212) 225-2000; Frank Wohl, Esq. (Tyrone Faines), Lankler, Siffert & Wohl, 500 Fifth Avenue, 33rd Floor, New York, New York, 10110, (212) 921-8399; and Anthony J. Ferrara, Esq. (Marc Manns), Polstein & Ferrara, Two Park Avenue, New York, New York, 10016, (212) 725-1166.

2. United States v. Richard Calvin Brown, Rudolph Cook, et al., Case No. SS 84 Cr. 767(RLC), November 1983-April 1984, U.S. District Court for the Southern District of New York, before the Honorable Robert L. Carter, U.S. District Judge.

I investigated and prosecuted a case involving a series of armed bank robberies in Manhattan and the Bronx, one of which included the perpetrators taking a bank customer hostage during the robbery. Working with the New York Joint Bank Robbery Task Force -- an entity made up of FBI agents and New York City police detectives -- we determined that the robberies had been committed by the members of loosely-knit organization based in the Bronx, many of whose members had recently been released from prison after serving federal prison sentences for prior bank robberies.

Members of the Task Force were able to obtain confessions from several of the persons involved in the robberies. We obtained guilty pleas from four of the defendants, negotiated cooperation agreements with their lawyers, and relied on their testimony as well as other proof to prosecute the two remaining defendants. After a week-long trial, the jury convicted both defendants on all of the counts in which they were charged. The defendants both received lengthy prison sentences.

Opposing Counsel: Thomas Liotti, Esq. (Richard Calvin Brown), Liotti and Skelos, 1001 Franklin Avenue, Suite 300, Garden City, New York, (516) 739-3700; Susan Kellman, Esq. (Rudolph Cook), 20 Vesey Street, New York, New York, (212) 732-7200.

3. United States v. Alberto Pacheco-Garcia, October 1983-May 1984, Case No. SS 84 Cr. 64 (LPG), in the United States District Court for the Southern District of New York, before the Honorable Lee P. Gagliardi, United States District Judge.

I supervised the investigation and prosecution in a case involving a ring of defendants in the Bronx and Manhattan who defrauded individuals and banks out of substantial sums of money. The defendants' fraudulent scheme involved stealing large numbers of federal government checks from the mails, forging the



signatures of the rightful recipients, opening bank accounts under assumed names, depositing the stolen checks in the bank accounts, and writing checks on those bank accounts before the federal government could determine that the checks were stolen.

I coordinated the investigation conducted jointly by the Secret Service and the U.S. Postal Inspectors. By the conclusion of the investigation, approximately a dozen defendants pled guilty. The only defendant who went to trial was Alberto Pacheco-Garcia, who was convicted of conspiracy to defraud the United States and theft of government property. I was sole government counsel at trial.

Opposing Counsel: Harry C. Batchelder, Esq. (Pacheco-Garcia), 123 William Street, New York, New York, 10038, (212) 233-1884; Roland Thau, Esq. (E. Dulac), Federal Defender Services Unit of the Legal Aid Society, 52 Duane Street, New York, New York, 10007, (212) 285-2830.

4. United States v. Harold Barr, et al., January 1984-June 1985, Case No. 84 Cr. 82 (MEL), in the United States District Court for the Southern District of New York, before the Honorable Morris E. Lasker, United States District Judge.

The Second Circuit's decision affirming the convictions of the defendants convicted at trial, while remanding Barr's case for further proceedings before the District Court, is reported as United States v. Cohen, at 796 F. 2d 20 (1986). The District Court's opinion on certain pre-trial motions is reported at 605 F. Supp. 114 (S.D.N.Y. 1985). The District Court's opinion, following evidentiary hearings held pursuant to the Second Circuit's remand, is reported at 1989 U.S. District LEXIS 4294 (1989).

From January 1984, when agents of the New York Drug Enforcement Task Force arrested three defendants following a large-scale cocaine transaction, until March 1985, when a two-month long trial ended with the conviction of the principal defendants, I directed and supervised an investigation of large-scale narcotics trafficking involving cocaine, massive amounts of marihuana, and various psychedelic drugs. We enlisted the

cooperation and assistance of federal, state, and local police officials throughout the country and from the Royal Canadian Mounted Police.

The lead defendant, Harold Barr, purchased multi-kilogram quantities of cocaine from Colombian nationals based in Florida and distributed the cocaine and the other drugs to a network of drug distributors in New York City. The members of Barr's distribution network in turn sold the drugs to customers from around the country -- including Massachusetts, North Carolina, Michigan, and California -- and from Canada.

During the course of the investigation, we secured the cooperation of numerous co-conspirators, including two of Barr's top lieutenants, one of whom was his first cousin. In all, approximately twenty defendants either pled guilty or were convicted at trial. The lead defendant, Harold Barr, was convicted of conducting a continuing criminal enterprise and sentenced to a 20-year term of imprisonment.<sup>3/</sup>

Opposing Counsel: Michael Kennedy, Esq. (Harold Barr), 425 Park Avenue, New York, New York, (212) 935-4500; Michael Washor, Esq. (Eliot Cohen), 275 Madison Ave., New York, New York, (212) 980-6110; Robert Katzberg, Esq. (Jason Steinberg), Kaplan & Katzberg, 767 Third Avenue, 26th Floor, New York, New York, (212) 750-3100; Barry Fallick, Esq. (Gary Nudelman), Rochman, Platzer, Fallick, Rosmarin & Sternheim, 666 Third Avenue, New York, New York, 10017, (212) 697-4090; and Myron Beldock, Esq. (Oona Lind), Beldock, Levine & Hoffman, 99 Park Avenue, New York, New York, 10016, (212) 490-0400.

5. United States v. Gordon Lawson and Milan Lama, May-June 1985, Case No. 85 Cr. 403 (EW), in the United States District Court for the Southern District of New York, before the late Honorable Edward Weinfeld, United States District Judge; and United States v. Louis, July 1985-March 1986, Crim. No. 85 Cr. 708 (KTD), in the United States District Court for the Southern District of New York, before the Honorable Kevin Thomas Duffy.

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<sup>3/</sup> Following my departure from the U.S. Attorney's office, Barr's sentence was reduced by the District Court.

The Second Circuit summarily affirmed the convictions of the two defendants in Lawson in an unpublished order. The Second Circuit's affirmance of the Louis conviction is reported at 814 F.2d 852 (1986).

These two trials involved the shipment of heroin from Hong Kong to New York City through Seattle, Washington, in March 1985. The Lawson case was originally handled by another Assistant United States Attorney, who was arrested in mid-trial for having stolen money and drugs -- including the heroin exhibit relating to this case -- from a safe in the U.S. Attorney's Office. The United States Attorney, Rudolph W. Giuliani, asked me to complete the trial on behalf of the government and Judge Weinfeld granted me a postponement of the trial over a long weekend to become familiar with the case and review the transcript of proceedings that had already taken place. After the weekend adjournment, I presented the balance of the government's case and cross-examined one of the defendants. Both defendants were convicted and sentenced to terms of imprisonment. The Second Circuit summarily affirmed their convictions.

Following the completion of the Lawson trial, the investigation focused on the source of the heroin in Hong Kong. DEA agents based in Hong Kong, working together with Hong Kong customs and police officials, located and arrested George Kathovalappil Louis. Louis waived extradition and was transported to the U.S. in September 1985. I was sole trial counsel in Louis's trial. Louis was convicted by a jury and sentenced to a substantial prison term. The Second Circuit affirmed his conviction but remanded to the District Court for resentencing by another judge based on its determination that the District Court had sua sponte based its sentence on improper considerations.

Opposing Counsel: John P. Curley, Esq. (Gordon Lawson), Federal Defender Services Unit of The Legal Aid Society, 52 Duane Street, New York, New York, 10007, (212) 285-2830; Louis R. Aidala, Esq. (Milan Lama), 1133 Avenue of the Americas, New York, New York, (212) 302-4466; and David Eames, Esq. (George Louis), 450 Park Avenue, New York, New York, (212) 223-3000.

6. United States v. Delvecchio, September 1985-June 1986, Case No. 86 Cr. 305 (DNE), United States District Court for the Southern District of New York, before the Honorable David N. Edelstein, United States District Judge.

The decision of the U.S. Court of Appeals for the Second Circuit is reported at 816 F. 2d 859 (2d Cir. 1986).

I was sole trial counsel for the government in a case involving a conspiracy by the two defendants and others to sell approximately twenty-five kilograms of high-grade heroin for approximately \$ 2.5 million dollars. Although two other participants in the operation had been arrested in November 1982, the identity of one of the two defendants whom I prosecuted was not known until the spring of 1986 and the case against the other was at the time considered weak. In addition, one of the key witnesses in the case had been murdered in a gangland-style execution.

We gathered substantial additional evidence to strengthen the case against the two defendants. Following their arrest, the two defendants were convicted of conspiracy to distribute heroin and sentenced to substantial terms of imprisonment.<sup>4/</sup>

Opposing Counsel: David Levitt, Esq. (Richard Delvecchio) and the late Jack Lipson, Esq., Federal Defender Services Unit of the Legal Aid Society, 52 Duane Street, New York, New York, 10007, (212) 285-2830; Daniel Felber, Esq. (Angelo Amen), 285 West Broadway, New York, New York, (212) 422-4600.

7. United States v. Amen, et al., February-December 1986, Case No. 86 Cr. 60 (RLC), United States District Court for the Southern District of New York, before the Honorable Robert L. Carter, United States District Judge.

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<sup>4/</sup> The two defendants were also convicted by the jury of attempting to distribute five kilograms of heroin. Their conviction on the attempt charge was reversed by the Second Circuit.

The decision of the U.S. Court of Appeals for the Second Circuit is reported at 831 F. 2d 373 (2d Cir. 1987), cert. denied (as Abbamonte v. U.S.), 485 U.S. 1021 (1988). The opinion by the District Court disposing of the defendants' pre-trial motions is reported at 649 F. Supp. 974 (S.D.N.Y. 1986).5/

I directed the investigation and was lead trial counsel in a case involving high-level heroin trafficking in New York and Washington, D.C. Relying on court-ordered wiretaps, telephone calls taped at FCI Lewisburg, and multiple undercover purchases of high-grade heroin, we were able to demonstrate that two federal prison inmates arranged substantial heroin transactions through their confederates outside the prison by means of coded telephone calls and in-person visits in the prison's visiting room. In the final days of the investigation, we executed a search warrant at the residence of one of the defendants located on Long Island, New York, and seized five kilograms of high-grade heroin, eight kilograms of high-grade cocaine, and \$ 5.6 million in cash, which at the time was the largest cash seizure from an individual in DEA history.

The principal defendants, many of whom had substantial organized crime connections, either pled guilty prior to trial, or -- in the case of the three lead defendants -- were convicted after a month-long trial. The lead defendant, Oreste Abbamonte, Jr., one of the most notorious drug traffickers in New York City history -- and whose exploits as a teenager were chronicled in David Durk's The Pleasant Avenue Connection -- was convicted of conducting a continuing criminal narcotics enterprise and was sentenced to life in prison without parole at FCI Marion where he has limited access to telephones. Most of the remaining convicted defendants, including Michael Paradiso, a close associate of Gambino family boss John Gotti, received prison terms ranging from 20-40 years.

Opposing Counsel: Gerald L. Shargel, Esq. (Philip Vasta), 150 E. 58th Street, New York, New York, (212) 486-1717; Howard L. Jacobs, Esq. (Michael Paradiso),

/ The second Circuit's decision on the pre-trial detention of one of the defendants who subsequently pled guilty is reported as United States v. Romano, 799 F. 2d 17 (2d Cir. 1986).

401 Broadway, New York, New York, (212) 431-3710;  
 Martin G. Weinberg (Oreste Abbamonte, Jr.), Oteri,  
 Weinberg & Lawson, the Statler Building, 20 Park Plaza,  
 Suite 905, Boston, Massachusetts, 02116 (617) 227-3700.

8. United States v. Arnold Squitieri, Crim. No. 888 86  
 Cr. 60 (RLC), September 1985-December 1986, U.S.  
 District Court for the Southern District of New York,  
 before the Honorable Robert L. Carter, United States  
 District Judge.

Squitieri was a defendant in the case described in #7 above. Although he was originally one of the principal targets of the investigation, and although wiretaps were placed on his residence phones for several months, he played a limited role in the events that formed the core of that case. Squitieri was acquitted by the jury.

Despite Squitieri's substantial wealth, he claimed shortly after his arrest that he could not afford to retain counsel. The Court appointed Squitieri a lawyer at government expense. After the trial was over, we sought to compel Squitieri to repay the government the amounts it had expended in providing him with trial counsel. We did so based on solid information that Squitieri was a member of the Gambino crime family, was a particularly close associate of John Gotti, and derived substantial profits from not only narcotics trafficking but other organized criminal activities as well. After I took Squitieri's deposition and and we made a detailed submission to the court, Judge Carter ordered Squitieri to reimburse the government for the payments it made to Squitieri's court-appointed lawyer.<sup>6/</sup>

Opposing Counsel: Michael Hurwitz, 299 Broadway, New York, New York, (212) 619-4240; Robert Kiernan, Esq., Hoffman and Pollok, 260 Madison Avenue, New York, New York, (212) 679-2900.

9. United States v. John M. Poindexter, Oliver L. North, Richard Secord and Albert Hakim, Cr. No. 88-080-01 (HHG), -02 (GAG), -03, and -04 March 1988 through

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<sup>6/</sup> Approximately a year later, Squitieri was convicted of narcotics trafficking in the District of New Jersey and was sentenced to a lengthy term of imprisonment.

January 1990, December 1989-January 1990, U.S. District Court for the District of Columbia, before the late Honorable Gerhard A. Gesell (North) and the Honorable Harold H. Greene (Poindexter), U.S. District Judges.

I was involved in various aspects of the cases against Admiral Poindexter, Lt. Col. North, and Messrs. Secord and Hakim. The four defendants were indicted in March 1988. During the period March-June 1988, I participated in various pre-trial proceedings and argued some of the pre-trial motions. In June 1988, Judge Gesell granted the defendants' motions for severance and ordered four separate trials, one for each of the defendants.

I was selected as a member of the three-person trial team that represented the government in the prosecution of Lt. Col. North. John W. Kecker, Esq., was chief trial counsel. The charges against Lt. Col. North included, among others, making false statements to Congress, obstructing Congressional investigations, altering and destroying government documents, and accepting an unlawful gratuity. I examined some of the government's key accomplice witnesses and cross-examined a number of defense witnesses. Lt. Col. North was convicted on three counts and acquitted on the remaining counts by the jury. Lt. Col. North's convictions were reversed by the D.C. Circuit. Following a remand to the District Court, the government dropped the charges against him.

The decision of the D.C. Circuit Court of Appeals is reported at 910 F. 2d 843 (D.C. Cir. 1990), opinion withdrawn and superseded in part on rehearing, 920 F. 2d (D.C. Cir. 1990), cert. denied, 111 S. Ct. (1991). The decisions by Judge Gesell on various pre-trial motions produced twenty-three reported opinions. As published, they are reported in clusters: 698 F. Supp. 322 (D.D.C. 1988); 708 F. Supp. 364-405 (D.D.C. 1988-89) (ten separate opinions); 713 F. Supp. 1436-1455 (D.D.C. 1989) (ten separate opinions); 716 F. Supp. 644-656 (D.D.C. 1989) (two separate opinions).

Opposing Counsel: Brendan V. Sullivan, Jr., Esq., and Barry Simon, Esq., Williams & Connolly, 725 Twelfth Street., N.W., Washington D.C., 20005, (202) 434-5000.

After the North case was over, and after I had left the Office to enter private practice, I represented the Independent Counsel in certain pre-trial proceedings in the case against Admiral Poindexter. The pre-trial proceedings related to: 1) whether principal trial counsel for the government, Dan K. Webb and Howard M. Pearl, had been exposed to the immunized testimony provided to Congress by Admiral Poindexter in July 1987; and 2) whether the witnesses the government intended to call at Poindexter's trial were so tainted through such exposure that their testimony should be suppressed at trial.

Judge Greene ruled that there was no basis for disqualifying Messrs. Webb and Pearl from conducting the trial for the government. He also ruled that all of the witnesses from whom he heard testimony during the pre-trial hearing could properly testify at trial, with the exception of certain limits being imposed on the trial testimony of Lt. Col. North. Admiral Poindexter's convictions on five counts by a jury were reversed on appeal by the D.C. Circuit. I was not involved either in the trial of Admiral Poindexter or in the appeal.

The decision of the D.C. Circuit is reported at 951 F. 2d 369 (1991), cert. denied, 113 S. Ct. 656 (1992). The district court's opinion on the matters in which I participated are reported at 727 F. Supp 1488 (D.D.C. 1989).

Opposing Counsel: Richard W. Beckler, Esq., Fulbright & Jaworski, 801 Pennsylvania Ave., N.W., Washington D.C. 20004, (202) 662-0200.

10. United States v. Mohammad Z. Jafar, Cr. No. 91-123-A, April-June 1991, U.S. District Court for the Eastern District of Virginia, before the Honorable Claude Hilton, U.S. District Judge.<sup>7/</sup>

I represented a 31-year-old Iraqi national who was prosecuted by the government on two counts alleging that he violated the embargo on trade

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<sup>7/</sup> Judge Hilton presided over the trial. The pre-trial motions and other preliminary matters were handled by the then-chief judge, Albert V. Bryan, Jr.



between the U.S. and Iraq following Iraq's invasion of Kuwait on August 2, 1990. I began the representation of Mr. Jafar within a week of his indictment in April 1991. I was lead counsel for all of the pre-trial proceedings and conducted all aspects of the trial in court from opening statement through summation. Judge Hilton dismissed one of the charges for insufficient evidence after the government had rested its case. Mr. Jafar was acquitted by the jury on the remaining count. Following the acquittal, at my request, the government dismissed a charge against Mr. Jafar's father.

**Opposing Counsel:** Assistant U.S. Attorney Vincent Gambale, U.S. Attorney's Office for the Eastern District of Virginia, 1101 King Street, Suite 502, Alexandria, Virginia 22314, (703) 706-3700.

17. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

Over the last decade, I have had a series of jobs that required not only legal experience but also the ability to work with and supervise groups of lawyers and investigators. The cases described in my responses to question #16 -- particularly items #1-4 and #7-10 -- required me to devise investigative strategies in complex criminal investigations; direct and coordinate investigations involving law enforcement personnel from various federal, state, and local agencies; work closely with prosecutors in other districts; and supervise the preparation of complex cases for trial.

For example, the cases described at #7 and #8 in question # 16 above were the result of approximately a year of thorough investigation in conjunction with agents from the New York and Washington field offices of the Drug Enforcement Administration (DEA) and lawyers from the U.S. Attorney's Office for the District of Columbia. The case involved 1) frequent consultation among the various agencies involved in the

investigation; 2) the drafting and submission of lengthy wiretap applications based on law enforcement intelligence information and publicly available materials; 3) the monitoring and analysis of wiretaps placed on multiple phones used by people involved in narcotics trafficking and other organized criminal activity; 4) the acquisition and comprehensive review of tape recordings made at FCI Lewisburg of phone calls placed by inmates; 5) the coordination and supervision of large-scale undercover purchases of narcotics; 6) the supervision of other lawyers and a team of agents in the execution of multiple search warrants made at the time the investigation was terminated; and 7) the supervision of a trial team of three prosecutors and approximately a dozen DEA agents in preparing a month-long case for trial.

In addition to these activities, I actively supervised a group of 20-25 lawyers as Deputy Chief and briefly as Chief of the Narcotics Unit in the Southern District of New York. These supervisory responsibilities involved frequent contacts with DEA supervisors and agents, members of the New York Drug Enforcement Task Force, members of the New York-New Jersey Organized Crime Drug Enforcement Task Force, lawyers in the Office of the New York Special Narcotics Prosecutor, and day-to-day supervision and management of the lawyers in the Narcotics Unit.

While working in the Office of the Independent Counsel, I was responsible for coordinating the logistics of the grand jury investigation and serving as liaison to the 1987-88 grand jury and later to Judge Gesell. Beginning in the fall of 1987, I was assigned responsibility to head the investigative team examining the activities of the Department of State, the CIA, and the "private benefactors" assisting the Contras in Nicaragua. These responsibilities involved the supervision of 7-8 lawyers and approximately a dozen FBI and IRS agents.

In private practice, I worked with court officials to establish and supervise a program enabling lawyers in my firm to take on criminal cases in D.C. Superior Court for indigent defendants on a pro bono basis. In addition, one of the substantial criminal matters on which I worked required me to devise an investigative strategy and coordinate an 18-month long investigation designed to uncover evidence that would support a motion for a new trial.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

On December 1, 1993, I left the law firm of Mayer, Brown & Platt to begin working at the Department of Justice. I will receive all monies owed, including my capital account, which will be paid to me in a lump sum. The payments will be based on my portion of the firm's income for services provided to clients from January 1993 through November 30, 1993. I will receive no income based on any of the firm's services rendered to clients after November 30.

I will retain my investments in my independently managed 401(k) plan. Because I did not spend five years with the firm, my investments in the firm's mandatory savings plan have not vested and will be returned to me when I resign from the firm, along with the other monies described above. My investment share in the plan is reflected in the interests reported on pages 10 and 11 of the report submitted in response to question #4 below.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I will seek and follow the advice of the appropriate ethics officials of the Department of Justice before participating in any matter in which I or any member of my family may have a personal or financial interest.

I do not foresee any categories of litigation or any of my family's financial arrangements that are

likely to present conflicts of interest. With respect to specific conflicts that may arise in the course of fulfilling my duties, I will consult with the ethics advisors at the Department of Justice.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents honoraria, and other items exceeding \$ 500 or more. (If you prefer to do so, copies of the financial disclosure, required by the Ethics in Government Act of 1978, may be substituted here.)

Please see the attached copy of my Public Financial Disclosure Report, SF-278.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See net worth statement and related schedules attached at the end of this questionnaire. The materials were updated to include all financial transactions and related matters that took place up through and including January 1, 1994.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

In the fall of 1992 I attended several meetings of a group of approximately a dozen lawyers supporting the Clinton-Gore ticket to assist the campaign in developing positions on law enforcement and criminal justice matters, including community policing, boot camps, and various other issues. I had no title and no responsibilities other than attending periodic meetings. I estimate that I spent approximately ten hours on this activity.

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

During the approximately seven years that I have practiced law in the private sector, I have devoted substantial amounts of my time to serving the disadvantaged.

While I was at Foley & Lardner in the early 1980's, I represented an indigent defendant on a pro bono basis in the D.C. Court of Appeals. I spent substantial time speaking by phone with my incarcerated client, researching the various potential appellate issues, drafting the opening and reply briefs, consulting with partners in the firm who agreed to supervise my work, and arguing the case in the D.C. Court of Appeals. In addition to the work on this case, I was called upon at various times to help out on other pro bono projects in which the firm was involved.

After I returned to private practice in 1989, I devoted a very substantial portion of my time to pro bono matters. I was appointed by committees of judges in the United States District Courts for the District of Maryland and the District of Columbia to panels of lawyers deemed qualified to handle criminal cases involving the representation of indigent defendants. I took on matters on a pro bono basis in both courts. In addition, federal judges in the District of Columbia from time to time called on me to represent individual defendants in special circumstances, and the Federal Public Defender's Office requested that I represent witnesses in grand jury investigations. Although these assignments were for the most part in criminal cases, I accepted court appointments in civil cases as well. In addition, I established the program -- mentioned in my response to question #17 above -- in D.C. Superior Court that enabled lawyers in my firm to represent indigent defendants in criminal cases on a pro bono basis.

Altogether, my time records for the four years I spent at Mayer, Brown & Platt reflect that I spent a

total of approximately 800 hours on pro bono matters. This figure does not include the time spent to arrange for various associates in my firm to undertake pro bono projects and my active supervision of those projects.

I describe below specific pro bono matters that I undertook on behalf of indigent clients that took substantial amounts of my time.

A. In 1990, I was appointed by the U.S. District Court in D.C. to represent an indigent defendant charged with possessing with intent to distribute a small quantity of crack cocaine. Ultimately, my client entered a conditional guilty plea, reserving the right to appeal the District Court's ruling on a suppression issue. I handled all court proceedings in the District Court and supervised an associate's handling of the appeal in the D.C. Circuit. The D.C. Circuit's decision affirming the District Court's denial of the suppression is reported as United States v. Ramos, 960 F. 2d 1065 (D.C. Cir. 1992). Personal time spent: 165 hours.

B. From December 1990 through April 1992, on appointment from the U.S. District Court in D.C., I represented a Federal Protective Service police officer who had been sued in a personal injury action arising out of serious injuries suffered by the plaintiff in a high-speed chase.

The government originally agreed to represent the officer but subsequently took the position that his involvement in the chase was not within the scope of his employment. We persuaded the Court to certify that, contrary to the government's position, our client had at all times acted within the scope of his employment. Accordingly, the government was substituted as the defendant and our client was dismissed from the case. We began the representation on a pro bono basis. The Court on more than one occasion requested that we file a fee petition and subsequently ruled that we were entitled to certain fees and costs. The case, Mebane v. Turner, is reported at 789 F. Supp. 410 (D.D.C. 1992). The issue of attorneys' fees and costs is currently pending in the D.C. Circuit. Personal time spent: 205 hours.

C. In 1993, in an executive branch agency other than the Department of Justice, I represented a criminal investigator charged with serious violations of departmental rules and threatened with the loss of her job. After supervising an extensive investigation into the factual basis for the threatened dismissal, we reached a settlement permitting my client to voluntarily resign from the agency. Personal time spent: 108 hours.

2. Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?

No.

**Executive Branch PUBLIC FINANCIAL DISCLOSURE REPORT**

|  |   |   |   |   |
|--|---|---|---|---|
| Reporting Status<br>(Check appropriate boxes)<br><input type="checkbox"/> Incumbent<br><input checked="" type="checkbox"/> New Entrant, Nominee or Candidate<br><input type="checkbox"/> Former Appointee, Consultant, Director or Nomination (Month, Day, Year)<br><input type="checkbox"/> Prior | Calendar Year Covered by Report<br>1992   | Date of Appointment, Consultancy, Directorship or Nomination (Month, Day, Year)                       | Termination Date (If Applicable) (Month, Day, Year)   | Agency Use Only   |
| Reporting Individual's Name<br>BROMWICH<br>MICHAEL R.  | Title of Position<br>Inspector General<br>Department of Justice   | Department or Agency (If Applicable)  | OGE's Use Only  | OGE's Use Only  |
| Position for Which Filing<br>Inspector General   | Address (Include Street, City, State, and ZIP Code)<br>MAYER, BRIJUN + PLATT, 2000 PENN. AVE.<br>N.W., SUITE 6500, WASH. D.C. 20006 | Telephone No. (Include Area Code)<br>(202) 778-0617   | Fee for Late Filing<br>Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or an extension of time is granted, shall be subject to a \$200 fee. | Reporting Periods<br>Incumbents: The reporting period is the period beginning on the date of the filing of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.<br>Terminations: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.<br>Nominees, New Entrants and Candidates for President and Vice President:<br>Schedule A - The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.<br>Schedule B - Not applicable.<br>Schedule C, Part I (Liabilities) - The reporting period is the preceding calendar year and the current calendar year up to the date you choose that is within 31 days of the date of filing.<br>Schedule C, Part II (Agreements or Arrangements as of the date of filing)<br>Schedule D - The reporting period is the filing year calendar years and the current calendar year up to the date of filing. |
| Position Held with the Federal Government (If Not Same as Above)<br>Months (If Not Same as Above)  | Name of Congressional Committee Considering Nomination<br>Senate Judiciary Committee  | Do You Intend to Create a Qualified Divorced Trust?   | Date (Month, Day, Year)<br>August 31, 1993  | Date (Month, Day, Year)   |
| Provisional Name (next Subject to Senate Confirmation)   | Signature of Reporting Individual<br><i>Neil N. Bunnell</i>   | Date (Month, Day, Year)   | Signature of Other Reporter   | Date (Month, Day, Year)   |
| Confirmation<br>(If derived by agency)   | Signature of Designated Agency Ethics Official/Reporting Official   | Date (Month, Day, Year)   | Signature   | Date (Month, Day, Year)   |
| I CERTIFY that the information herein is true, complete and correct to the best of my knowledge and belief.  | Office of Government Ethics<br>Use Only   | Comments of Reporting Officials (If additional space is required, use the reverse side of this sheet) | I Check box if comments are contained on the reverse side: <input type="checkbox"/>   | Agency Use Only   |



**BROMWICH**

**SCHEDULE A**

**Assets and Income**  
 Identify each asset held for the production of income which had a fair market value exceeding \$1,000 at the close of the reporting period.  
 Identify each asset or source of income which generated over \$200 in income during the reporting period.

**Valuation of Assets at close of reporting period**

**Income: Type and amount. If 'None (or less than \$200)' is checked, no other entry is needed in Block C for that item.**

| 5.<br>DC<br>E<br>R<br>S<br>T | 6.<br>None <input type="checkbox"/><br>General Affairs Committee<br>Director & Staff, Washington, DC<br>Kempston Equity Fund<br>Director & Staff interim pay | BLOCK B  |                    |                     |                      |                       |                       |                         |                  |           |                    | BLOCK C  |               |                          |                |                 |                      |                           |                 |                   |                   | Date (Mo., Day, Yr.)<br>Only if Honorary |                     |                      |                         |                  |  |
|------------------------------|--|--|--------------------|---------------------|----------------------|-----------------------|-----------------------|-------------------------|------------------|-----------|--------------------|----------|---------------|--------------------------|----------------|-----------------|----------------------|---------------------------|-----------------|-------------------|-------------------|--|---------------------|----------------------|-------------------------|------------------|--|
|                              |  | Valuation of Assets at close of reporting period |                    |                     |                      |                       | Type                  |                         |                  |           |                    | Amount   |               |                          |                |                 |                      |                           |                 |                   |                   |  |                     |                      |                         |                  |  |
|                              |  | None (or less than \$1,001)                      | \$1,001 - \$15,000 | \$15,001 - \$50,000 | \$50,001 - \$100,000 | \$100,001 - \$250,000 | \$250,001 - \$500,000 | \$500,001 - \$1,000,000 | Over \$1,000,000 | Dividends | Rent and Royalties | Interest | Capital Gains | Excepted Investment Fund | Excepted Trust | Qualified Trust | Other (Specify Type) | None (or less than \$201) | \$201 - \$1,000 | \$1,001 - \$2,500 | \$2,501 - \$5,000 | \$5,001 - \$15,000                       | \$15,001 - \$50,000 | \$50,001 - \$100,000 | \$100,001 - \$1,000,000 | Over \$1,000,000 | Actual Amount<br>Only if "Other" specified |
| 1                            | Mayer, Brown + Platt<br>190 S. La Salle St.<br>Chicago, Illinois 60603   |  | X                  |                     |                      |                       |                       |                         |                  |           |                    |          |               |                          |                |                 | Low Partner Income   |                           |                 |                   |                   |  |                     |                      |                         | \$245,000        |  |
| 2                            | Quattis Mallet-Rovner, et al<br>1801 K Street, N.W., Ste. 1205 L<br>Wash., DC 20006  |  |                    |                     |                      |                       |                       |                         |                  |           |                    |          |               |                          |                |                 | Low Firm Salary      |                           |                 |                   |                   |  |                     |                      |                         | 112,500          |  |
| 3                            | Kemper Money Mkt. Fund   |  | X                  |                     |                      |                       |                       |                         |                  | X         |                    |          |               |                          |                |                 |                      |                           |                 |                   | X                 |  |                     |                      |                         |                  |  |
| 4                            | 20th Century Funds<br>U.S. Governments 18A   |  | X                  |                     |                      |                       |                       |                         |                  | X         |                    |          |               |                          |                |                 |                      |                           |                 |                   |                   |  |                     |                      |                         |                  |  |
| 5                            | 20th Century Funds<br>Ultra Fund   |  | X                  |                     |                      |                       |                       |                         |                  | X         |                    |          |               |                          |                |                 |                      |                           |                 |                   |                   |  |                     |                      |                         |                  |  |
| 6                            | 20th Century Funds<br>Vista Fund   |  | X                  |                     |                      |                       |                       |                         |                  | X         |                    |          |               |                          |                |                 |                      |                           |                 |                   |                   |  |                     |                      |                         |                  |  |

\* The reporting period per the supplemental instructions, is calendar year 1992 plus January through July 1993, in many cases where income data is not available for 1993. I have multiplied the 1992 amount by 7/12 & added it to 1992 amt.

1979 (Rev. 1-8-78)  
 U.S. Office of Governmental Accounting

Reporting Individual's Name

**BROMWICH**

**SCHEDULE A**

**3**

| BLOCK A           |   | BLOCK B   |                    | BLOCK C   |                      |                         |                  |           |                    |          |               |    |    |                          |                |                 |                      |                          |                 |                   |                   |                    |                     |                      |                         |                  |               |                           |                      |                 |  |  |  |  |  |  |
|-------------------|---|---|--------------------|---|----------------------|-------------------------|------------------|-----------|--------------------|----------|---------------|----|----|--------------------------|----------------|-----------------|----------------------|--------------------------|-----------------|-------------------|-------------------|--------------------|---------------------|----------------------|-------------------------|------------------|---------------|---------------------------|----------------------|-----------------|--|--|--|--|--|--|
| Assets and Income |   | Valuation of Assets at close of reporting period  |                    | Income: type and amount. If "None (or less than \$20)" is checked, no other entry is needed in Block C for that item. |                      |                         |                  |           |                    |          |               |    |    |                          |                |                 |                      |                          |                 |                   |                   |                    |                     |                      |                         |                  |               |                           |                      |                 |  |  |  |  |  |  |
| 1                 | 2 | BLOCK B   |                    |   |                      |                         | BLOCK C          |           |                    |          |               | 11 | 12 |                          |                |                 |                      |                          |                 |                   |                   |                    |                     |                      |                         |                  |               |                           |                      |                 |  |  |  |  |  |  |
|                   |   | None (or less than \$1,001)   | \$1,001 - \$15,000 | \$15,001 - \$50,000   | \$50,001 - \$250,000 | \$250,001 - \$1,000,000 | Over \$1,000,000 | Dividends | Part and Royalties | Interest | Capital Gains |    |    | Excepted Investment Fund | Excepted Trust | Qualified Trust | Other (Specify Type) | None (or less than \$20) | \$201 - \$1,000 | \$1,001 - \$2,500 | \$2,501 - \$5,000 | \$5,001 - \$10,000 | \$10,001 - \$50,000 | \$50,001 - \$100,000 | \$100,001 - \$1,000,000 | Over \$1,000,000 | Actual Amount | Only if "Other" specified | Date (Mo., Day, Yr.) | Only if Honoree |  |  |  |  |  |  |
|                   |   | None <input type="checkbox"/>   |                    |   |                      |                         |                  |           |                    |          |               |    |    |                          |                |                 |                      |                          |                 |                   |                   |                    |                     |                      |                         |                  |               |                           |                      |                 |  |  |  |  |  |  |
|                   |   | Identify each asset held for the production of income which had a fair market value exceeding \$1,000 at the close of the reporting period. |                    |   |                      |                         |                  |           |                    |          |               |    |    |                          |                |                 |                      |                          |                 |                   |                   |                    |                     |                      |                         |                  |               |                           |                      |                 |  |  |  |  |  |  |
|                   |   | Identify each asset or source of income which generated over \$200 in income during the reporting period.                                   |                    |   |                      |                         |                  |           |                    |          |               |    |    |                          |                |                 |                      |                          |                 |                   |                   |                    |                     |                      |                         |                  |               |                           |                      |                 |  |  |  |  |  |  |
| 6                 |   |   |                    |   |                      |                         |                  |           |                    |          |               |    |    |                          |                |                 |                      |                          |                 |                   |                   |                    |                     |                      |                         |                  |               |                           |                      |                 |  |  |  |  |  |  |
| 7                 |   |   |                    |   |                      |                         |                  |           |                    |          |               |    |    |                          |                |                 |                      |                          |                 |                   |                   |                    |                     |                      |                         |                  |               |                           |                      |                 |  |  |  |  |  |  |
| 8                 |   |   |                    |   |                      |                         |                  |           |                    |          |               |    |    |                          |                |                 |                      |                          |                 |                   |                   |                    |                     |                      |                         |                  |               |                           |                      |                 |  |  |  |  |  |  |
| 9                 |   |   |                    |   |                      |                         |                  |           |                    |          |               |    |    |                          |                |                 |                      |                          |                 |                   |                   |                    |                     |                      |                         |                  |               |                           |                      |                 |  |  |  |  |  |  |
| 10                |   |   |                    |   |                      |                         |                  |           |                    |          |               |    |    |                          |                |                 |                      |                          |                 |                   |                   |                    |                     |                      |                         |                  |               |                           |                      |                 |  |  |  |  |  |  |
| 11                |   |   |                    |   |                      |                         |                  |           |                    |          |               |    |    |                          |                |                 |                      |                          |                 |                   |                   |                    |                     |                      |                         |                  |               |                           |                      |                 |  |  |  |  |  |  |
| 12                |   |   |                    |   |                      |                         |                  |           |                    |          |               |    |    |                          |                |                 |                      |                          |                 |                   |                   |                    |                     |                      |                         |                  |               |                           |                      |                 |  |  |  |  |  |  |
| 13                |   |   |                    |   |                      |                         |                  |           |                    |          |               |    |    |                          |                |                 |                      |                          |                 |                   |                   |                    |                     |                      |                         |                  |               |                           |                      |                 |  |  |  |  |  |  |

For the components of my wife's IRA with Paine Webber, I have worked from The statement dated December 1992 → have added 7/12 of the 1992 dividends to the 1992 dividend.

| BROMWICH   |                                    | SCHEDULE A                                       |                         |                       |                      |                     |                  |  |                 |                   |                   |                    |                     | Page Number<br><b>4</b>                  |                      |                         |
|--|------------------------------------|--|-------------------------|-----------------------|----------------------|---------------------|------------------|--|-----------------|-------------------|-------------------|--------------------|---------------------|--|----------------------|-------------------------|
| BLOCK A  |                                    | BLOCK B  |                         |                       |                      |                     |                  | BLOCK C  |                 |                   |                   |                    |                     |  |                      |                         |
| Assets and Income  |                                    | Valuation of Assets at close of reporting period |                         |                       |                      |                     |                  | Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item. |                 |                   |                   |                    |                     |  |                      |                         |
| Identify each asset held for the production of income which had a fair market value exceeding \$1,000 at the close of the reporting period.<br><br>Identify each asset or source of income which generated over \$200 in income during the reporting period. |                                    | None (or less than \$1,001)                      |                         |                       |                      |                     |                  | None (or less than \$201)  |                 |                   |                   |                    |                     | Date (Mo., Day, Yr.)<br>Only if Honorary |                      |                         |
|  |                                    | Over \$1,000,000                                 | \$500,001 - \$1,000,000 | \$250,001 - \$500,000 | \$50,001 - \$100,000 | \$15,001 - \$50,000 | Over \$1,000,000 | None (or less than \$201)  | \$201 - \$1,000 | \$1,001 - \$2,500 | \$2,501 - \$5,000 | \$5,001 - \$15,000 | \$15,001 - \$50,000 |  | \$50,001 - \$100,000 | \$100,001 - \$1,000,000 |
|  |                                    | Type   |                         |                       |                      |                     |                  | Amount   |                 |                   |                   |                    |                     |  |                      |                         |
|  |                                    | Dividends  |                         |                       |                      |                     |                  | Type   |                 |                   |                   |                    |                     |  |                      |                         |
|  |                                    | Interest   |                         |                       |                      |                     |                  | Capital Gains  |                 |                   |                   |                    |                     |  |                      |                         |
|  |                                    | Rents and Royalties                              |                         |                       |                      |                     |                  | Excepted Investment Fund   |                 |                   |                   |                    |                     |  |                      |                         |
|  |                                    | Other (Specify Type)                             |                         |                       |                      |                     |                  | Qualified Trust  |                 |                   |                   |                    |                     |  |                      |                         |
| None <input type="checkbox"/>  |                                    |  |                         |                       |                      |                     |                  |  |                 |                   |                   |                    |                     |  |                      |                         |
| S.   | General Aviation Common            |  |                         |                       |                      |                     |                  |  |                 |                   |                   |                    |                     |  |                      |                         |
| DC   | Doc Jones & Smith, Houston, USA    |  |                         |                       |                      |                     |                  |  |                 |                   |                   |                    |                     |  |                      |                         |
| or   | Kempston Equity Fund               |  |                         |                       |                      |                     |                  |  |                 |                   |                   |                    |                     |  |                      |                         |
| J  | Doc Jones & Smith pension plan     |  |                         |                       |                      |                     |                  |  |                 |                   |                   |                    |                     |  |                      |                         |
| 1  | Paine Webber IEA                   |  |                         |                       |                      |                     | X                |  |                 |                   |                   |                    |                     |  |                      |                         |
| 2  | Paine Webber Retirement Money Fund |  |                         |                       |                      |                     | X                |  |                 |                   |                   |                    |                     |  |                      |                         |
| 3  | Fidelity Investments               |  |                         |                       |                      |                     | X                |  |                 |                   |                   |                    |                     |  |                      |                         |
| 4  | Fidelity Aggressive Fund           |  |                         |                       |                      |                     | X                |  |                 |                   |                   |                    |                     |  |                      |                         |
| 5  | Avemco Common                      |  |                         |                       |                      |                     | X                |  |                 |                   |                   |                    |                     |  |                      |                         |
| 6  | Bell South Common                  |  |                         |                       |                      |                     | X                |  |                 |                   |                   |                    |                     |  |                      |                         |
| 7  | Consolidated Natural               |  |                         |                       |                      |                     | X                |  |                 |                   |                   |                    |                     |  |                      |                         |
| 8  | Gas Common                         |  |                         |                       |                      |                     | X                |  |                 |                   |                   |                    |                     |  |                      |                         |
| 9  | Federal Paper Board                |  |                         |                       |                      |                     | X                |  |                 |                   |                   |                    |                     |  |                      |                         |
| 10   | Preferred                          |  |                         |                       |                      |                     | X                |  |                 |                   |                   |                    |                     |  |                      |                         |

OMB No. 1545-0047  
 U.S. Office of Government Ethics

Reporting Individual's Name

**BROMWICH**

**SCHEDULE A**

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| Assets and Income |   | BLOCK B<br>Valuation of Assets at close of reporting period |                    |                     |                      |                       |                       |                         | BLOCK C<br>Income, type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item. |           |                    |          |               |                          |                | Date (Mo., Day, Yr.)<br>Only if Honorary |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
|-------------------|---|---|--------------------|---------------------|----------------------|-----------------------|-----------------------|-------------------------|---|-----------|--------------------|----------|---------------|--------------------------|----------------|--|----------------------|---------------------------|-----------------|-------------------|-------------------|--------------------|---------------------|----------------------|-------------------------|------------------|--|
|                   |   | None (or less than \$1,001)                                 | \$1,001 - \$15,000 | \$15,001 - \$50,000 | \$50,001 - \$100,000 | \$100,001 - \$250,000 | \$250,001 - \$500,000 | \$500,001 - \$1,000,000 | Over \$1,000,000  | Dividends | Rent and Royalties | Interest | Capital Gains | Excepted Investment Fund | Excepted Trust |  | Other (Specify Type) | None (or less than \$201) | \$201 - \$1,000 | \$1,001 - \$2,500 | \$2,501 - \$5,000 | \$5,001 - \$15,000 | \$15,001 - \$50,000 | \$50,001 - \$100,000 | \$100,001 - \$1,000,000 | Over \$1,000,000 | Actual Amount<br>Only if "Other" specified |
| 1                 | None <input type="checkbox"/>   |   |                    |                     |                      |                       |                       |                         |   |           |                    |          |               |                          |                |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| 2                 | Identify each asset held for the production of income which had a fair market value exceeding \$1,000 at the close of the reporting period. |   |                    |                     |                      |                       |                       |                         |   |           |                    |          |               |                          |                |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| 3                 | Identify each asset or source of income which generated over \$200 in income during the reporting period.                                   |   |                    |                     |                      |                       |                       |                         |   |           |                    |          |               |                          |                |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| 4                 | General AirPhone Common   |   |                    |                     |                      |                       |                       |                         |   |           |                    |          |               |                          |                |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| 5                 | General AirPhone Common   |   |                    |                     |                      |                       |                       |                         |   |           |                    |          |               |                          |                |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| 6                 | General AirPhone Common   |   |                    |                     |                      |                       |                       |                         |   |           |                    |          |               |                          |                |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| 7                 | General AirPhone Common   |   |                    |                     |                      |                       |                       |                         |   |           |                    |          |               |                          |                |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| 8                 | General AirPhone Common   |   |                    |                     |                      |                       |                       |                         |   |           |                    |          |               |                          |                |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| 9                 | General AirPhone Common   |   |                    |                     |                      |                       |                       |                         |   |           |                    |          |               |                          |                |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| 10                | General AirPhone Common   |   |                    |                     |                      |                       |                       |                         |   |           |                    |          |               |                          |                |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| 11                | General AirPhone Common   |   |                    |                     |                      |                       |                       |                         |   |           |                    |          |               |                          |                |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| 12                | General AirPhone Common   |   |                    |                     |                      |                       |                       |                         |   |           |                    |          |               |                          |                |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| 13                | General AirPhone Common   |   |                    |                     |                      |                       |                       |                         |   |           |                    |          |               |                          |                |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| 14                | General AirPhone Common   |   |                    |                     |                      |                       |                       |                         |   |           |                    |          |               |                          |                |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| 15                | General AirPhone Common   |   |                    |                     |                      |                       |                       |                         |   |           |                    |          |               |                          |                |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| 16                | General AirPhone Common   |   |                    |                     |                      |                       |                       |                         |   |           |                    |          |               |                          |                |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| 17                | General AirPhone Common   |   |                    |                     |                      |                       |                       |                         |   |           |                    |          |               |                          |                |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| 18                | General AirPhone Common   |   |                    |                     |                      |                       |                       |                         |   |           |                    |          |               |                          |                |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| 19                | General AirPhone Common   |   |                    |                     |                      |                       |                       |                         |   |           |                    |          |               |                          |                |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| 20                | General AirPhone Common   |   |                    |                     |                      |                       |                       |                         |   |           |                    |          |               |                          |                |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| 21                | General AirPhone Common   |   |                    |                     |                      |                       |                       |                         |   |           |                    |          |               |                          |                |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| 22                | General AirPhone Common   |   |                    |                     |                      |                       |                       |                         |   |           |                    |          |               |                          |                |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| 23                | General AirPhone Common   |   |                    |                     |                      |                       |                       |                         |   |           |                    |          |               |                          |                |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| 24                | General AirPhone Common   |   |                    |                     |                      |                       |                       |                         |   |           |                    |          |               |                          |                |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| 25                | General AirPhone Common   |   |                    |                     |                      |                       |                       |                         |   |           |                    |          |               |                          |                |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| 26                | General AirPhone Common   |   |                    |                     |                      |                       |                       |                         |   |           |                    |          |               |                          |                |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| 27                | General AirPhone Common   |   |                    |                     |                      |                       |                       |                         |   |           |                    |          |               |                          |                |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| 28                | General AirPhone Common   |   |                    |                     |                      |                       |                       |                         |   |           |                    |          |               |                          |                |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| 29                | General AirPhone Common   |   |                    |                     |                      |                       |                       |                         |   |           |                    |          |               |                          |                |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| 30                | General AirPhone Common   |   |                    |                     |                      |                       |                       |                         |   |           |                    |          |               |                          |                |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| 31                | General AirPhone Common   |   |                    |                     |                      |                       |                       |                         |   |           |                    |          |               |                          |                |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| 32                | General AirPhone Common   |   |                    |                     |                      |                       |                       |                         |   |           |                    |          |               |                          |                |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| 33                | General AirPhone Common   |   |                    |                     |                      |                       |                       |                         |   |           |                    |          |               |                          |                |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| 34                | General AirPhone Common   |   |                    |                     |                      |                       |                       |                         |   |           |                    |          |               |                          |                |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| 35                | General AirPhone Common   |   |                    |                     |                      |                       |                       |                         |   |           |                    |          |               |                          |                |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |

Reporting Individual's Name

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**SCHEDULE A**

Page Number

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**Assets and Income**

Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.

**BLOCK A**

**Valuation of Assets at close of reporting period**

**BLOCK B**

**BLOCK C**

Identify each asset held for the production of income which had a fair market value exceeding \$1,000 at the close of the reporting period.  
  
Identify each asset or source of income which generated over \$200 in income during the reporting period.

None

General Airline Common  
Eg. Delta  
Doe Jones & Smith - Homeowner, USA  
Kempstone Equity Fund  
Doe Jones & Smith pension plan

Telephone Mexicano Common  
  
Arizona State University  
Certificates of Participation  
Washington DC  
General Obligation Bonds  
Nassau County, New York  
Bonds  
New York State Health +  
Hospital Bonds  
Federal Farm Credit  
Bank Bonds

| Type                     | Amount                    |                 |                   |                   |                    |                     |                      |                         |                  |   | Date (Mo., Day, Yr.)<br>Only if<br>Honorary |          |
|--------------------------|---------------------------|-----------------|-------------------|-------------------|--------------------|---------------------|----------------------|-------------------------|------------------|---|---|----------|
|                          | None (or less than \$201) | \$201 - \$1,000 | \$1,001 - \$2,500 | \$2,501 - \$5,000 | \$5,001 - \$15,000 | \$15,001 - \$50,000 | \$50,001 - \$100,000 | \$100,001 - \$1,000,000 | Over \$1,000,000 | Actual Amount Only if "Other" specified |   |          |
| Dividends                |                           | X               |                   |                   |                    |                     |                      |                         |                  |   |   |          |
| Rent and Royalties       |                           |                 |                   |                   |                    |                     |                      |                         |                  |   |   |          |
| Interest                 |                           |                 |                   | X                 |                    |                     |                      |                         |                  |   |   |          |
| Capital Gains            |                           |                 |                   |                   |                    |                     |                      |                         |                  |   |   |          |
| Excepted Investment Fund |                           |                 |                   |                   |                    |                     |                      |                         |                  |   |   |          |
| Excepted Trust           |                           |                 |                   |                   |                    |                     |                      |                         |                  |   |   |          |
| Qualified Trust          |                           |                 |                   |                   |                    |                     |                      |                         |                  |   |   |          |
| Other (Specify Type)     |                           |                 |                   |                   |                    |                     |                      |                         |                  |   |   |          |
|                          |                           |                 |                   |                   |                    |                     |                      |                         |                  |   |   | \$10,000 |

Reporting Individual's Name

**BROMWICH**

**SCHEDULE A**

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|    | Assets and Income<br>BLOCK A   | Valuation of Assets at close of reporting period<br>BLOCK B |                    |                     |                      |                       |                       |                         |                  |           |                    |          | Type<br>BLOCK C |                          |                |                 |                      |                           |                 | Actual Amount<br>Only if Other specified | Date (Mo., Day, Yr.)<br>Only if Honorary |                   |                   |                    |                     |                      |                         |                  |  |
|----|--|---|--------------------|---------------------|----------------------|-----------------------|-----------------------|-------------------------|------------------|-----------|--------------------|----------|-----------------|--------------------------|----------------|-----------------|----------------------|---------------------------|-----------------|--|--|-------------------|-------------------|--------------------|---------------------|----------------------|-------------------------|------------------|--|
|    |  | None (or less than \$1,001)                                 | \$1,001 - \$15,000 | \$15,001 - \$50,000 | \$50,001 - \$100,000 | \$100,001 - \$250,000 | \$250,001 - \$500,000 | \$500,001 - \$1,000,000 | Over \$1,000,000 | Dividends | Rent and Royalties | Interest | Capital Gains   | Excepted Investment Fund | Excepted Trust | Qualified Trust | Other (Specify Type) | None (or less than \$201) | \$201 - \$1,000 |  |  | \$1,001 - \$2,500 | \$2,501 - \$5,000 | \$5,001 - \$15,000 | \$15,001 - \$50,000 | \$50,001 - \$100,000 | \$100,001 - \$1,000,000 | Over \$1,000,000 |  |
|    | Identify each asset held for the production of income which had a fair market value exceeding \$1,000 at the close of the reporting period.<br><br>Identify each asset source of income which generated over \$200 in income during the reporting period.<br><br>None <input type="checkbox"/> |   |                    |                     |                      |                       |                       |                         |                  |           |                    |          |                 |                          |                |                 |                      |                           |                 |  |  |                   |                   |                    |                     |                      |                         |                  |  |
| 1  |  |   |                    |                     |                      |                       |                       |                         |                  |           |                    |          |                 |                          |                |                 |                      |                           |                 |  |  |                   |                   |                    |                     |                      |                         |                  |  |
| 2C | General AirLines Common  |   |                    |                     |                      |                       |                       |                         |                  |           |                    |          |                 |                          |                |                 |                      |                           |                 |  |  |                   |                   |                    |                     |                      |                         |                  |  |
| 3  | Exxon  |   |                    |                     |                      |                       |                       |                         |                  |           |                    |          |                 |                          |                |                 |                      |                           |                 |  |  |                   |                   |                    |                     |                      |                         |                  |  |
| 4  | Domestic South American Oil  |   |                    |                     |                      |                       |                       |                         |                  |           |                    |          |                 |                          |                |                 |                      |                           |                 |  |  |                   |                   |                    |                     |                      |                         |                  |  |
| 5  | Responsive Equity Fund   |   |                    |                     |                      |                       |                       |                         |                  |           |                    |          |                 |                          |                |                 |                      |                           |                 |  |  |                   |                   |                    |                     |                      |                         |                  |  |
| 6  | Dow Jones & Smith pension plan   |   |                    |                     |                      |                       |                       |                         |                  |           |                    |          |                 |                          |                |                 |                      |                           |                 |  |  |                   |                   |                    |                     |                      |                         |                  |  |
| 7  | Catellus Corp. Common  | X   |                    |                     |                      |                       |                       |                         |                  |           |                    |          |                 |                          |                |                 |                      |                           |                 |  |  |                   |                   |                    |                     |                      |                         |                  |  |
| 8  | Pacific Corp. Common   |   |                    | X                   |                      |                       |                       |                         |                  |           |                    |          |                 |                          |                |                 |                      |                           |                 |  |  |                   |                   |                    |                     |                      |                         |                  |  |
| 9  | Santa Fe Energy Common   |   |                    | X                   |                      |                       |                       |                         |                  |           |                    |          |                 |                          |                |                 |                      |                           |                 |  |  |                   |                   |                    |                     |                      |                         |                  |  |
| 10 | Sierra Pacific Common  |   |                    | X                   |                      |                       |                       |                         |                  |           |                    |          |                 |                          |                |                 |                      |                           |                 |  |  |                   |                   |                    |                     |                      |                         |                  |  |
| 11 | Unit Sec. Trust Series One   |   |                    | X                   |                      |                       |                       |                         |                  |           |                    |          |                 |                          |                |                 |                      |                           |                 |  |  |                   |                   |                    |                     |                      |                         |                  |  |
| 12 | Kemper Money Market Fund   |   |                    | X                   |                      |                       |                       |                         |                  |           |                    |          |                 |                          |                |                 |                      |                           |                 |  |  |                   |                   |                    |                     |                      |                         |                  |  |
| 13 |  |   |                    |                     |                      |                       |                       |                         |                  |           |                    |          |                 |                          |                |                 |                      |                           |                 |  |  |                   |                   |                    |                     |                      |                         |                  |  |
| 14 |  |   |                    |                     |                      |                       |                       |                         |                  |           |                    |          |                 |                          |                |                 |                      |                           |                 |  |  |                   |                   |                    |                     |                      |                         |                  |  |
| 15 |  |   |                    |                     |                      |                       |                       |                         |                  |           |                    |          |                 |                          |                |                 |                      |                           |                 |  |  |                   |                   |                    |                     |                      |                         |                  |  |
| 16 |  |   |                    |                     |                      |                       |                       |                         |                  |           |                    |          |                 |                          |                |                 |                      |                           |                 |  |  |                   |                   |                    |                     |                      |                         |                  |  |
| 17 |  |   |                    |                     |                      |                       |                       |                         |                  |           |                    |          |                 |                          |                |                 |                      |                           |                 |  |  |                   |                   |                    |                     |                      |                         |                  |  |
| 18 |  |   |                    |                     |                      |                       |                       |                         |                  |           |                    |          |                 |                          |                |                 |                      |                           |                 |  |  |                   |                   |                    |                     |                      |                         |                  |  |
| 19 |  |   |                    |                     |                      |                       |                       |                         |                  |           |                    |          |                 |                          |                |                 |                      |                           |                 |  |  |                   |                   |                    |                     |                      |                         |                  |  |
| 20 |  |   |                    |                     |                      |                       |                       |                         |                  |           |                    |          |                 |                          |                |                 |                      |                           |                 |  |  |                   |                   |                    |                     |                      |                         |                  |  |
| 21 |  |   |                    |                     |                      |                       |                       |                         |                  |           |                    |          |                 |                          |                |                 |                      |                           |                 |  |  |                   |                   |                    |                     |                      |                         |                  |  |

For those assets held in trust for our minor children, I have used the following abbreviations: DC 1 = Daniel R. Bromwich (7 yrs. old); DC 2 = Jonah E. Bromwich (4); and DC 3 = Kirk A. Bromwich (5 mos).

**BROMWICH**

**SCHEDULE A**

**Assets and Income**

**Valuation of Assets at close of reporting period**

Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.

**BLOCK A**

**BLOCK C**

| E<br>DC<br>or<br>J | Identify each asset held for the production of income which had a fair market value exceeding \$1,000 at the close of the reporting period.<br><br>Identify each asset or source of income which generated over \$200 in income during the reporting period. | Valuation of Assets at close of reporting period |                    |                     |                      |                       |                       |                         |                  |           |                    | Income: type and amount |               |                          |                |                 |                      |                           | Date (Mo., Day, Yr.)<br>Only if "Other" specified<br>Honorary |                 |                   |                   |                    |                     |                      |                         |                  |   |
|--------------------|--|--|--------------------|---------------------|----------------------|-----------------------|-----------------------|-------------------------|------------------|-----------|--------------------|-------------------------|---------------|--------------------------|----------------|-----------------|----------------------|---------------------------|---|-----------------|-------------------|-------------------|--------------------|---------------------|----------------------|-------------------------|------------------|---|
|                    |  | None (or less than \$1,001)                      | \$1,001 - \$15,000 | \$15,001 - \$50,000 | \$50,001 - \$100,000 | \$100,001 - \$250,000 | \$250,001 - \$500,000 | \$500,001 - \$1,000,000 | Over \$1,000,000 | Dividends | Rent and Royalties | Interest                | Capital Gains | Excepted Investment Fund | Excepted Trust | Qualified Trust | Other (Specify Type) | None (or less than \$201) |   | \$201 - \$1,000 | \$1,001 - \$2,500 | \$2,501 - \$5,000 | \$5,001 - \$15,000 | \$15,001 - \$50,000 | \$50,001 - \$100,000 | \$100,001 - \$1,000,000 | Over \$1,000,000 | Actual Amount Only if "Other" specified |
|                    | None <input type="checkbox"/>  |  |                    |                     |                      |                       |                       |                         |                  |           |                    |                         |               |                          |                |                 |                      |                           |   |                 |                   |                   |                    |                     |                      |                         |                  |   |
|                    | Chenett Mathews Common   |  |                    |                     |                      |                       |                       |                         |                  |           |                    |                         |               |                          |                |                 |                      |                           |   |                 |                   |                   |                    |                     |                      |                         |                  |   |
|                    | Doe Jones & Smith, Homestead, USA  |  |                    |                     |                      |                       |                       |                         |                  |           |                    |                         |               |                          |                |                 |                      |                           |   |                 |                   |                   |                    |                     |                      |                         |                  |   |
|                    | Kempston Equity Fund   |  |                    |                     |                      |                       |                       |                         |                  |           |                    |                         |               |                          |                |                 |                      |                           |   |                 |                   |                   |                    |                     |                      |                         |                  |   |
|                    | Doe Jones & Smith pension plan   |  |                    |                     |                      |                       |                       |                         |                  |           |                    |                         |               |                          |                |                 |                      |                           |   |                 |                   |                   |                    |                     |                      |                         |                  |   |
| 31                 | 20th Century Funds Growth Fund   | X  |                    |                     |                      |                       |                       |                         |                  |           |                    |                         |               |                          |                |                 |                      |                           |   |                 |                   |                   |                    |                     |                      |                         |                  |   |
| 38                 | 20th Century Funds Select Fund   | X  |                    |                     |                      |                       |                       |                         |                  |           |                    |                         |               |                          |                |                 |                      |                           |   |                 |                   |                   |                    |                     |                      |                         |                  |   |
| 39                 | 20th Century Funds Vista Fund  | X  |                    |                     |                      |                       |                       |                         |                  |           |                    |                         |               |                          |                |                 |                      |                           |   |                 |                   |                   |                    |                     |                      |                         |                  |   |
| 40                 | Consolidated Natural Gas Common  | X  |                    |                     |                      |                       |                       |                         |                  |           |                    |                         |               |                          |                |                 |                      |                           |   |                 |                   |                   |                    |                     |                      |                         |                  |   |
| 41                 | Questar Common   | X  |                    |                     |                      |                       |                       |                         |                  |           |                    |                         |               |                          |                |                 |                      |                           |   |                 |                   |                   |                    |                     |                      |                         |                  |   |
| 42                 | New York State Urban Development Zero Coupon Bonds   | X  |                    |                     |                      |                       |                       |                         |                  |           |                    |                         |               |                          |                |                 |                      |                           |   |                 |                   |                   |                    |                     |                      |                         |                  |   |

OMB No. 1545-0047  
U.S. Office of Government Ethics

Reporting Individual's Name

**BROMWICH**

**SCHEDULE A**

Page Number

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Income; type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.

Valuation of Assets at close of reporting period

Assets and Income

| BLOCK A  |                                 | BLOCK B  |                    |                     |                      |                       |                       |                         | BLOCK C          |           |                    |          |               |                          |                | Date (Mo., Day, Yr.)<br>Only if Honorary |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
|--|---------------------------------|--|--------------------|---------------------|----------------------|-----------------------|-----------------------|-------------------------|------------------|-----------|--------------------|----------|---------------|--------------------------|----------------|--|--|----------------------|---------------------------|-----------------|-------------------|-------------------|--------------------|---------------------|----------------------|-------------------------|------------------|--|
| Identify each asset held for the production of income which had a fair market value exceeding \$1,000 at the close of the reporting period.<br><br>Identify each asset or source of income which generated over \$200 in income during the reporting period. |                                 | Valuation of Assets at close of reporting period |                    |                     |                      |                       |                       |                         | Type             |           |                    |          |               |                          |                |  | Actual Amount<br>Only if "Other" specified |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
|  |                                 | None (or less than \$1,001)                      | \$1,001 - \$15,000 | \$15,001 - \$50,000 | \$50,001 - \$100,000 | \$100,001 - \$250,000 | \$250,001 - \$500,000 | \$500,001 - \$1,000,000 | Over \$1,000,000 | Dividends | Fees and Royalties | Interest | Capital Gains | Excepted Investment Fund | Excepted Trust | Qualified Trust                          |  | Other (Specify Type) | None (or less than \$201) | \$201 - \$1,000 | \$1,001 - \$2,500 | \$2,501 - \$5,000 | \$5,001 - \$15,000 | \$15,001 - \$50,000 | \$50,001 - \$100,000 | \$100,001 - \$1,000,000 | Over \$1,000,000 |  |
|  | None <input type="checkbox"/>   |  |                    |                     |                      |                       |                       |                         |                  |           |                    |          |               |                          |                |  |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| S  | General Activities Common       |  |                    |                     |                      |                       |                       |                         |                  |           |                    |          |               |                          |                |  |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| DC   | Doe Jones & Smith, Husband, USA |  |                    |                     |                      |                       |                       |                         |                  |           |                    |          |               |                          |                |  |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| DC   | Doe Jones & Smith, Husband, USA |  |                    |                     |                      |                       |                       |                         |                  |           |                    |          |               |                          |                |  |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| J  | Kempstone Equity Fund           |  |                    |                     |                      |                       |                       |                         |                  |           |                    |          |               |                          |                |  |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| J  | Doe Jones & Smith pension plan  |  |                    |                     |                      |                       |                       |                         |                  |           |                    |          |               |                          |                |  |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| 44   | Ford Capital Notes              |  | X                  |                     |                      |                       |                       |                         |                  |           |                    |          |               |                          |                |  |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| 45   | Kemper Money Market Fund        |  | X                  |                     |                      |                       |                       |                         |                  | X         |                    |          |               |                          |                |  |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| 45   | Consolidated Natural Gas Common |  | X                  |                     |                      |                       |                       |                         |                  | X         |                    |          |               |                          |                |  |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| 46   | GTE Common                      |  | X                  |                     |                      |                       |                       |                         |                  | X         |                    |          |               |                          |                |  |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| 47   | Questar Common                  |  | X                  |                     |                      |                       |                       |                         |                  | X         |                    |          |               |                          |                |  |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |
| 48   | Schlumberger Common             |  | X                  |                     |                      |                       |                       |                         |                  | X         |                    |          |               |                          |                |  |  |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |  |

Form 278e (March 2004)



| SCHEDULE A  |         | Page Number<br>10                                 |                    |                     |                      |                       |                       |  |                  |                           |      |        |   |  |   |  |
|---|---------|---|--------------------|---------------------|----------------------|-----------------------|-----------------------|--|------------------|---------------------------|------|--------|---|--|---|--|
| BROMWICH  |         | Reporting Individual's Name                       |                    |                     |                      |                       |                       |  |                  |                           |      |        |   |  |   |  |
| Assets and Income   | BLOCK A | BLOCK B   |                    |                     |                      |                       |                       | BLOCK C  |                  |                           |      |        |   |  |   |  |
|   |         | Valuation of Assets at close of reporting period  |                    |                     |                      |                       |                       | Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item. |                  |                           |      |        |   |  |   |  |
|   |         | None (or less than \$1,001)                       | \$1,001 - \$15,000 | \$15,001 - \$50,000 | \$50,001 - \$100,000 | \$100,001 - \$250,000 | \$250,001 - \$500,000 | \$500,001 - \$1,000,000  | Over \$1,000,000 | None (or less than \$201) | Type | Amount | Date (Mo., Day, Yr.)<br>Only if "Other" specified |  |   |  |
| Identify each asset held for the production of income which had a fair market value exceeding \$1,000 at the close of the reporting period.<br><br>Identify each asset or source of income which generated over \$200 in income during the reporting period.<br><br>None <input type="checkbox"/> |         |   |                    |                     |                      |                       |                       |  |                  |                           |      |        |   |  |   |  |
| S   |         | General Annuity Contract                          |                    |                     |                      |                       |                       |  |                  |                           |      |        |   |  |   |  |
| DC  |         | Doe Jones & Smith, Hometown, USA                  |                    |                     |                      |                       |                       |  |                  |                           |      |        |   |  |   |  |
| T   |         | Trust for Doe Jones & Smith                       |                    |                     |                      |                       |                       |  |                  |                           |      |        |   |  |   |  |
| J   |         | Doe Jones & Smith pension plan                    |                    |                     |                      |                       |                       |  |                  |                           |      |        |   |  |   |  |
| 49  |         | N.Y. State Dorm. Auth.<br>Zero Coupon Bonds       |                    | X                   |                      |                       |                       |  |                  |                           |      |        |   |  |   |  |
| 50  |         | Kemper Money Market Fund                          |                    |                     |                      |                       |                       |  | X                |                           |      |        |   |  |   |  |
| 51  |         | Time Warner 8.75% of 4/1/17 Bonds                 |                    |                     | X                    |                       |                       |  |                  |                           |      |        |   |  |   |  |
| 52  |         | Kidder, Peabody Money Fund (401(k))               |                    |                     |                      |                       |                       |  |                  | X                         |      |        |   |  |   |  |
| 53  |         | Kidder, Peabody Aggressive Equity Fund (401(k))   |                    | X                   |                      |                       |                       |  |                  |                           |      |        |   |  |   |  |
| 54  |         | Kidder, Peabody Conservative Equity Fund (401(k)) |                    | X                   |                      |                       |                       |  |                  |                           |      |        |   |  | X |  |

U.S. Form 1041  
 U.S. Office of Governmental Ethics  
 Reporting Individuals Name

**BROMWICH**

**SCHEDULE A**

Page Number  
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Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.

Valuation of Assets at close of reporting period

| BLOCK A   | BLOCK B                     |                    |                     |                      |                       |                       |                         |                  |           |                    | BLOCK C  |               |                          |                |                 |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |   |  |  |
|---|-----------------------------|--------------------|---------------------|----------------------|-----------------------|-----------------------|-------------------------|------------------|-----------|--------------------|----------|---------------|--------------------------|----------------|-----------------|----------------------|---------------------------|-----------------|-------------------|-------------------|--------------------|---------------------|----------------------|-------------------------|------------------|---|--|--|
|   | None (or less than \$1,001) | \$1,001 - \$15,000 | \$15,001 - \$50,000 | \$50,001 - \$100,000 | \$100,001 - \$250,000 | \$250,001 - \$500,000 | \$500,001 - \$1,000,000 | Over \$1,000,000 | Dividends | Rent and Royalties | Interest | Capital Gains | Excepted Investment Fund | Excepted Trust | Qualified Trust | Other (Specify Type) | None (or less than \$201) | \$201 - \$1,000 | \$1,001 - \$2,500 | \$2,501 - \$5,000 | \$5,001 - \$15,000 | \$15,001 - \$50,000 | \$50,001 - \$100,000 | \$100,001 - \$1,000,000 | Over \$1,000,000 | Actual Amount Only if "Other" specified | Date (Mo., Day, Yr.) Only if Honoraria |  |
| Identify each asset held for the production of income which has a fair market value exceeding \$1,000 at the close of the reporting period.<br><br>Identify each asset or source of income which generated over \$200 in income during the reporting period.<br><br>None <input type="checkbox"/> |                             |                    |                     |                      |                       |                       |                         |                  |           |                    |          |               |                          |                |                 |                      |                           |                 |                   |                   |                    |                     |                      |                         |                  |   |  |  |
| General Arden Common<br>Ex. Doe Jones & Smith, Hamilton, USA.<br>Kemptone Equity Fund<br>Doe Jones & Smith personal plan  |                             |                    |                     |                      |                       |                       |                         |                  |           |                    |          |               |                          |                |                 | Let Termally Income  |                           |                 |                   |                   |                    |                     |                      |                         |                  | \$100,000                               |  |  |
| Kidder, Peabody<br>Balanced Fund (401(k))   |                             | X                  |                     |                      |                       |                       |                         |                  | X         |                    |          | X             |                          |                |                 |                      |                           | X               |                   |                   |                    |                     |                      |                         |                  |   |  |  |
| US Trust Short-Term Fund  |                             | X                  |                     |                      |                       |                       |                         |                  | X         |                    |          | X             |                          |                |                 |                      |                           | X               |                   |                   |                    |                     |                      |                         |                  |   |  |  |
| Felice B. Friedman (401(k))   |                             |                    |                     |                      |                       |                       |                         |                  |           |                    |          | X             |                          |                |                 |                      |                           | X               |                   |                   |                    |                     |                      |                         |                  |   |  |  |
| Fidelity Puritan Fund   |                             |                    |                     |                      |                       |                       |                         |                  |           |                    |          | X             |                          |                |                 |                      |                           | X               |                   |                   |                    |                     |                      |                         |                  |   |  |  |
| Felice B. Friedman (401(k))   |                             |                    |                     |                      |                       |                       |                         |                  |           |                    |          | X             |                          |                |                 |                      |                           | X               |                   |                   |                    |                     |                      |                         |                  |   |  |  |
| Fidelity Magellan Fund  |                             |                    |                     |                      |                       |                       |                         |                  |           |                    |          | X             |                          |                |                 |                      |                           | X               |                   |                   |                    |                     |                      |                         |                  |   |  |  |
| Felice B. Friedman (401(k))   |                             |                    |                     |                      |                       |                       |                         |                  |           |                    |          | X             |                          |                |                 |                      |                           | X               |                   |                   |                    |                     |                      |                         |                  |   |  |  |
| Fidelity Overseas Fund  |                             |                    |                     |                      |                       |                       |                         |                  |           |                    |          | X             |                          |                |                 |                      |                           | X               |                   |                   |                    |                     |                      |                         |                  |   |  |  |
| Felice B. Friedman (401(k))   |                             |                    |                     |                      |                       |                       |                         |                  |           |                    |          | X             |                          |                |                 |                      |                           | X               |                   |                   |                    |                     |                      |                         |                  |   |  |  |

Reporting Individual's Name

**BROMWICH**

**SCHEDULE B** New Entrant/Nominee/Candidate  
Schedule Not Applicable

Page Number

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**Part I: Transactions**

Report any purchase, sale, or exchange by you, your spouse, or dependent child during the reporting period of any real property, stocks, bonds, commodity futures, and other investments when the amount of the transaction exceeded \$1,000. Include transactions that resulted in a loss. Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

| S, DC, or JT | Description                       | Date (Mo., Day, Yr.) | Type of Transaction |      | Amount of Transaction (S) |
|--------------|-----------------------------------|----------------------|---------------------|------|---------------------------|
|              |                                   |                      | Purchase            | Sale |                           |
| 1            | Example: General Airfare Classion | 2/1/01               | *                   |      | \$15,000                  |
| 2            |                                   |                      |                     |      | \$15,000                  |
| 3            |                                   |                      |                     |      | \$100,000                 |
| 4            |                                   |                      |                     |      | \$100,000                 |
| 5            |                                   |                      |                     |      | \$100,000                 |

**Part II: Gifts, Reimbursements, and Travel Expenses**

Report the source, a brief description (including travel dates, and the nature of expenses provided), and the value of: (1) transportation, lodging, food, or entertainment received from one source totaling \$250 or more (unless received as personal hospitality at the donor's personal or family residence); (2) other gifts from one source totaling \$100 or more in value; and (3) cash reimbursements of \$250 or more from one source. Exclude gifts, reimbursements and travel expenses from the U.S. Government. Also exclude gifts from relatives, gifts of \$75 or less when aggregating gifts for the total from one source, and gifts and reimbursements received by your spouse or dependent child that were given totally independent of the relationship to you. See instructions for further exclusions

| S, DC, or JT | Source (Name and Address)   | Brief Description  | Value | None                     |
|--------------|---|--|-------|--------------------------|
|              |   |  |       |                          |
| 1            | Example: Next Aves. of Rock Collectors, NY, NY<br>Next Aves. of Rock Collectors, NY, NY | Airfare ticket, hotel room & meals incident to official conference 07/16/00<br>Lodger benefits for returning president | \$600 | <input type="checkbox"/> |
| 2            |   |  | \$125 | <input type="checkbox"/> |
| 3            |   |  |       | <input type="checkbox"/> |
| 4            |   |  |       | <input type="checkbox"/> |
| 5            |   |  |       | <input type="checkbox"/> |

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U.S. Office of Government Ethics

|  |                          |
|--|--------------------------|
| Reporting Individual's Name<br><b>BROWNICH</b> | Page Number<br><b>13</b> |
|--|--------------------------|

| Part I: Liabilities   |   | Type of Liability                    | Date Incurred | Interest Rate | Term of applicable debt | Category of Amount or Value (I) |
|---|---|--------------------------------------|---------------|---------------|-------------------------|---------------------------------|
| Report liabilities over \$10,000 owed to any one creditor at any time during the reporting period by you, your spouse, or dependent child. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence unless it is required to be secured by automatic payments (check and address) |   |                                      |               |               |                         |                                 |
| DC  | Example: First District Bank, Washington, DC      | Mortgage secured property (Business) | 1981          | 12%           | 25 yrs.                 | \$10,001 - \$15,000             |
| 1   | Example: John Jones, 123 45th St., Washington, DC | Promissory note                      | 1988          | 10%           | on demand               | \$15,001 - \$50,000             |
| 2   |   |                                      |               |               |                         | \$50,001 - \$100,000            |
| 3   |   |                                      |               |               |                         | \$100,001 - \$250,000           |
| 4   |   |                                      |               |               |                         | \$250,001 - \$500,000           |
| 5   |   |                                      |               |               |                         | \$500,001 - \$1,000,000         |
|   |   |                                      |               |               |                         | \$1,000,001 - \$5,000,000       |
|   |   |                                      |               |               |                         | \$5,000,001 - \$10,000,000      |
|   |   |                                      |               |               |                         | \$10,000,001 - \$50,000,000     |
|   |   |                                      |               |               |                         | \$50,000,001 - \$100,000,000    |
|   |   |                                      |               |               |                         | \$100,000,001 - \$500,000,000   |
|   |   |                                      |               |               |                         | \$500,000,001 - \$1,000,000,000 |

**Part II: Agreements or Arrangements**

Report your agreements or arrangements for future employment, leaves of absence, continuation of payment by a former employer (including severance payments), or continuing participation in an employee benefit plan. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None

| Status and Terms of any Agreement or Arrangement   |                                  | Date |
|--|----------------------------------|------|
| Example: Nonmember in membership agreement with former employer through 1991 and retained pension benefit (independently managed fully vested after termination pay) | Doer Jones & Sauch, Houston, USA | 1988 |
|  |                                  |      |
|  |                                  |      |
|  |                                  |      |
|  |                                  |      |
|  |                                  |      |
|  |                                  |      |

**SCHEDULE D**

**Part I: Positions Held Outside U.S. Government**

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or franchisee, or political affiliate and those solely of an honorary nature.

| Examples | Organization (Name and Address)  |                                   | Type of Organization | Position Held | From (Mo, Yr.)<br>To (Mo, Yr.) | None <input type="checkbox"/><br>Present <input type="checkbox"/><br>1981 |
|----------|--|-----------------------------------|----------------------|---------------|--------------------------------|---|
|          | Next Area, of Bank, College, NY, NY,<br>Doe Jones & Smith, Washington, USA | Non-profit, education<br>Law firm |                      |               |                                |   |
| 1        | Mayer, Brown + Platt   | Law Firm                          | Partner              | 10/89         | Present                        |   |
| 2        |  |                                   |                      |               |                                |   |
| 3        |  |                                   |                      |               |                                |   |
| 4        |  |                                   |                      |               |                                |   |
| 5        |  |                                   |                      |               |                                |   |
| 6        |  |                                   |                      |               |                                |   |

**Part II: Compensation In Excess Of \$5,000 Paid by One Source**

Report sources of more than \$5,000 compensation received by you or your business affiliation for services provided directly by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any non-profit organization when you directly provided the services generating a fee or payment of more than \$5,000. You need not report the U.S. Government as a source.

| Examples | Source (Name and Address)   |   | Brief Description of Duties | Incumbent/<br>Termination/ Filer/<br>Continuation <input type="checkbox"/><br>Not Applicable <input type="checkbox"/><br>None <input type="checkbox"/> |
|----------|---|---|-----------------------------|--|
|          | Doe Jones & Smith, Washington, USA<br>Micro University (firm of Doe Jones & Smith), Maryland, USA | Legal services<br>Legal services in connection with university construction |                             |  |
| 1        | Grant Thornton (client of law firm)   | Legal services in connection with civil suit                                |                             |  |
| 2        | The Almi Group ( " " ) *  | Legal services in connection with SBA problem                               |                             |  |
| 3        | Chrysler Credit Corporation   | Legal services in connection with forfeiture matter                         |                             |  |
| 4        | Robert F. Collins   | Legal services in connection with criminal investigation                    |                             |  |
| 5        | Mohammed Z. Jafar   | " " " " " " " " " " " "   |                             |  |
| 6        | La Salle Partners   | " " " " " " " " " " " "   |                             |  |

\* All of the sources identified on this page + following pages are either clients of Mayer, Brown + Platt or payed for legal services rendered to individual clients of the firm.

1-14-78 (Rev. 7/76)  
U.S. Office of Government Ethics

Reporting Individual's Name **BROMWICH** SCHEDULE D Page Number **15**

**Part I: Positions Held Outside U.S. Government**

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political titles and those solely of an honorary nature.

| Line | Next Name of Job/Office, NY, NJ, DC, VA, & San Francisco, CA | Organization (Name and Address) | Type of Organization            |       | Position Held | Pay (Rs. Yr.) |              |
|------|--|---------------------------------|---------------------------------|-------|---------------|---------------|--------------|
|      |  |                                 | Non-profit, education, Law firm | Other |               | (Rs. Yr.)     | To (Rs. Yr.) |
| 1    |  |                                 |                                 |       | President     |               |              |
| 2    |  |                                 |                                 |       |               |               |              |
| 3    |  |                                 |                                 |       |               |               |              |
| 4    |  |                                 |                                 |       |               |               |              |
| 5    |  |                                 |                                 |       |               |               |              |
| 6    |  |                                 |                                 |       |               |               |              |

(see previous page)

**Part II: Compensation In Excess Of \$5,000 Paid by One Source**

Report source of more than \$5,000 compensation received by you or your business affiliation for services provided directly by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any non-profit organization when you directly provided the services generating a fee or payment of more than \$5,000. You need not report the U.S. Government as a source.

| Line | Source (Name and Address)  | Type of Source | Brief Description of Duties                              | Incumbent/Termination Filer/ Candidate |      |
|------|--|----------------|--|--|------|
|      |  |                |  | Not Applicable                         | None |
| 7    | McCrorry Corporation<br>1000 University (client of Dow Jones & Smith), Maryland, USA | Legal services | Legal services in connection with university composition |  |      |
| 8    | Medifacts, Ltd.  | "              | "  |  |      |
| 9    | The Merchants Bank   | "              | "  |  |      |
| 10   | Citicorp Diners Club, Inc  | "              | "  |  |      |
| 11   | Paul W. Mozer  | "              | "  |  |      |
| 12   | Melvyn R. Paisley  | "              | "  |  |      |

Legal services in connection with OSHA matter  
" " " " " miscellaneous legal services  
" " " " " bank regulatory matter  
" " " " " representing individuals in GSA investigation  
" " " " " representing client in criminal investigation  
" " " " " representing client in criminal matter

Reporting Individual's Name  
**BROMWICH**  
 Page Number  
**16**  
**SCHEDULE D**

**Part I: Positions Held Outside U.S. Government**  
 Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those of an honorary nature.

| Examples | Next Name of Most Commonly Held Position (Last, First, Middle Initial)<br>Doi Jones & Smith, Newtown, USA | Organization (Name and Address)<br>Doi Jones & Smith, Newtown, USA | Type of Organization<br>Non-profit, religious, fraternal, political, L-1, L-2, L-3, L-4, L-5, L-6, L-7, L-8, L-9, L-10, L-11, L-12, L-13, L-14, L-15, L-16, L-17, L-18, L-19, L-20, L-21, L-22, L-23, L-24, L-25, L-26, L-27, L-28, L-29, L-30, L-31, L-32, L-33, L-34, L-35, L-36, L-37, L-38, L-39, L-40, L-41, L-42, L-43, L-44, L-45, L-46, L-47, L-48, L-49, L-50, L-51, L-52, L-53, L-54, L-55, L-56, L-57, L-58, L-59, L-60, L-61, L-62, L-63, L-64, L-65, L-66, L-67, L-68, L-69, L-70, L-71, L-72, L-73, L-74, L-75, L-76, L-77, L-78, L-79, L-80, L-81, L-82, L-83, L-84, L-85, L-86, L-87, L-88, L-89, L-90, L-91, L-92, L-93, L-94, L-95, L-96, L-97, L-98, L-99, L-100 | Position Held<br>President | From (Mo., Yr.)<br>1968 | To (Mo., Yr.)<br>1969 | None <input type="checkbox"/> |
|----------|---|--|---|----------------------------|-------------------------|-----------------------|-------------------------------|
| 1        |   | (See page 14)  |   |                            |                         |                       |                               |
| 2        |   |  |   |                            |                         |                       |                               |
| 3        |   |  |   |                            |                         |                       |                               |
| 4        |   |  |   |                            |                         |                       |                               |
| 5        |   |  |   |                            |                         |                       |                               |
| 6        |   |  |   |                            |                         |                       |                               |

**Part II: Compensation In Excess Of \$5,000 Paid by One Source**  
 Report sources of more than \$5,000 compensation received by you or your business affiliation for services provided directly by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any non-profit organization when you directly provided the services generating a fee or payment of more than \$5,000. You need not report the U.S. Government as a source.

| Examples | Source (Name and Address)<br>Doi Jones & Smith, Newtown, USA<br>Viggo University (client of Doi Jones & Smith), Newtown, USA | Legal services<br>Legal services in connection with university construction | Brief Description of Duties                 | Incumbent/<br>Termination Filer/<br>Candidate:<br>None Applicable <input type="checkbox"/> |
|----------|--|---|---|--|
| 13       | KMPG Peat Marwick  | Legal services in connection with university construction                   |   | <input type="checkbox"/>   |
| 14       | Barry + Bonnie Rivkin  | Legal services in connection with university construction                   | criminal investigation + regulatory investy | <input type="checkbox"/>   |
| 15       | Stuart J. Robinson   | Legal services in connection with university construction                   | criminal investigation (witness)            | <input type="checkbox"/>   |
| 16       | Timothy S. Sherman   | Legal services in connection with university construction                   | criminal investigation (witness)            | <input type="checkbox"/>   |
| 17       | U.S.A. Petroleum   | Legal services in connection with university construction                   | criminal matter                             | <input type="checkbox"/>   |
| 18       | Ronald D. Ryan   | Legal services in connection with university construction                   | criminal matter (witness)                   | <input type="checkbox"/>   |
|          |  |   | representation of son in criminal case      | <input type="checkbox"/>   |

101-10712  
 U.S. Form 278a  
 U.S. Office of Government Ethics  
 Reporting Individual's Fees

|                          |                   |
|--------------------------|-------------------|
| <b>BROMWICH</b>          | <b>SCHEDULE D</b> |
| Page Number<br><b>17</b> |                   |

**Part I: Positions Held Outside U.S. Government**

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

| Line    | Organization (Name and Address)                                       | Type of Organization              | Position Held        | From (Mo, Yr.) |              | None <input type="checkbox"/> |
|---------|---|-----------------------------------|----------------------|----------------|--------------|-------------------------------|
|         |   |                                   |                      | From (Mo, Yr.) | To (Mo, Yr.) |                               |
| Example | Not a Reportable Position, NY, NY<br>Doe Jones & Smith, Newstown, USA | Non-profit, education<br>Law firm | President<br>Partner | 04/03          | 10/01        | Present<br>(1.0)              |
| 2       | (See page 14)   |                                   |                      |                |              |                               |
| 3       |   |                                   |                      |                |              |                               |
| 4       |   |                                   |                      |                |              |                               |
| 5       |   |                                   |                      |                |              |                               |
| 6       |   |                                   |                      |                |              |                               |

**Part II: Compensation In Excess Of \$5,000 Paid by One Source**

Report sources of more than \$5,000 compensation received by you or your business affiliation for services provided directly by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any non-profit organization when you directly provided the services generating a fee or payment of more than \$5,000. You need not report the U.S. Government as a source.

| Line    | Source (Name and Address)   | Type of Service   | Brief Description of Duties                                     | Incumbent/<br>Termination Filer/<br>Candidate |   | None <input type="checkbox"/> |
|---------|---|---|---|---|---|-------------------------------|
|         |   |   |   | Incumbent                                     | Not Applicable <input type="checkbox"/> |                               |
| Example | Doe Jones & Smith, Newstown, USA<br>Alice University (parent of Doe Jones & Smith), Newstown, USA | Legal services<br>Legal services in connection with university construction |   |   |   |                               |
| 19      | Barry R. Benjamin   | Legal services  | Legal services in connection with civil suits, reg. enforcement |   |   |                               |
| 20      | Steve Zuboff  | " " " "   | " " " "   |   |   |                               |
| 21      | D. Bruce Garrett  | " " " "   | " " " "   |   |   |                               |
| 22      | Warner Lambert  | " " " "   | Medical malpractice trial<br>representation of employee         |   |   |                               |



**FINANCIAL STATEMENT**  
**NET WORTH**

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

| ASSETS                                  |    |                  |           | LIABILITIES         |   |     |                  |           |           |
|---|----|------------------|-----------|---------------------|---|-----|------------------|-----------|-----------|
| Cash on hand and in banks               | *1 | 87,370           | 74        | --                  | Notes payable to banks—secured                                    | 10/ | 0                | 00        | --        |
| U.S. Government securities—add schedule | *2 | 10,187           | 50        | --                  | Notes payable to banks—unsecured                                  |     | 0                | 00        | --        |
| Listed securities—add schedule          | *3 | 339,315          | 20        | --                  | Notes payable to relatives  |     | 0                | 00        | --        |
| Unlisted securities—add schedule        |    | 0                | 00        | --                  | Notes payable to others   |     | 0                | 00        | --        |
| Accounts and notes receivable:          |    |                  |           |                     | Accounts and bills due (excluding items on current billing cycle) |     | 0                | 00        | --        |
| Due from relatives and friends          |    | 0                | 00        | --                  | Unpaid income tax (excluding estimated taxes due) 1/1/94          |     | 0                | 00        | --        |
| Due from others                         |    | 0                | 00        | --                  | Other unpaid tax and interest                                     |     | 0                | 00        | --        |
| Doubtful                                |    | 0                | 00        | --                  | Real estate mortgages payable—add schedule (schedule H)           |     | 240,810          | 98        | --        |
| Real estate owned—add schedule          | *4 | 372,793          | 00        | --                  | Chattel mortgages and other liens payable                         |     | 0                | 00        | --        |
| Real estate mortgages receivable        |    | 0                | 00        | --                  | Other debts—itemize:  |     | 0                | 00        | --        |
| Autos and other personal property       | *5 | 37,075           | 00        | --                  |   |     |                  |           |           |
| Cash value—life insurance               |    | 0                | 00        | --                  |   |     |                  |           |           |
| Other assets—itemize:                   |    |                  |           |                     |   |     |                  |           |           |
| Retirement Accounts                     | *6 | 122,534          | 80        | --                  |   |     |                  |           |           |
| Capital Account                         | *7 | 53,500           | 00        | --                  |   |     |                  |           |           |
|   |    |                  |           |                     |   |     |                  |           |           |
|   |    |                  |           |                     |   |     |                  |           |           |
| <b>Total assets</b>                     |    | <b>1,024,793</b> | <b>85</b> | <b>--</b>           | <b>Total liabilities</b>  |     | <b>240,810</b>   | <b>98</b> | <b>--</b> |
|   |    |                  |           |                     | <b>Net worth</b>  |     | <b>783,982</b>   | <b>87</b> | <b>--</b> |
|   |    |                  |           |                     | <b>Total liabilities and net worth</b>                            |     | <b>1,024,793</b> | <b>85</b> | <b>--</b> |
|   |    |                  |           |                     |   |     |                  |           |           |
|   |    |                  |           |                     |   |     |                  |           |           |
| CONTINGENT LIABILITIES                  |    |                  |           | GENERAL INFORMATION |   |     |                  |           |           |
| As endorser, comaker or guarantor       |    | 0                | 00        | --                  | Are any assets pledged? (Add schedule.)                           |     | No               |           |           |
| On leases or contracts                  |    | 0                | 00        | --                  | Are you defendant in any suits or legal actions?                  |     | No               |           |           |
| Legal Claims                            |    | 0                | 00        | --                  | Have you ever taken bankruptcy?                                   |     | No               |           |           |
| Provision for Federal Income Tax        |    | 0                | 00        | --                  |   |     |                  |           |           |
| Other special debt                      |    | 0                | 00        | --                  |   |     |                  |           |           |

\*1 See Schedule A

\*2 See Schedule B

\*3 See Schedule C

\*4 See Schedule D

\*5 See Schedule E

\*6 See Schedule F

\*7 See Schedule G

10/ See Schedule H, footnote 4.

SCHEDULE A  
CASH ON HAND AND IN BANKS

| <u>OWNERSHIP</u> | <u>ACCT./FUND</u>                  | <u>MARKET VALUE</u> |
|------------------|------------------------------------|---------------------|
| JT               | Kemper Money Market Fund           | \$ 23,850.00        |
| DRB              | Kemper Money Market Fund           | \$ 7,291.00         |
| JEB              | Kemper Money Market Fund           | \$ 7,291.00         |
| KAB              | Kemper Money Market Fund           | \$ 301.00           |
| FBF              | Paine Webber Money Fund            | \$ 33,505.30        |
| DRB              | Paine Webber Money Fund            | \$ 3,278.00         |
| JEB              | Paine Webber Money Fund            | \$ 3,185.00         |
| KAB              | Paine Webber Money Fund            | \$ 5,469.44         |
| MRB              | Riggs National Bank Checking Acct. | \$ 2,000.00         |
| FBF              | Riggs National Bank Checking Acct. | \$ 500.00           |
| FBF              | Riggs National Bank Savings Acct.  | \$ 700.00           |
| <b>TOTAL:</b>    |                                    | <b>\$ 87,370.74</b> |

MRB = Michael R. Bromwich

FBF = Felice B. Friedman (wife)

JT = Jointly held by Michael R. Bromwich and Felice B. Friedman

DRB = Held in Trust for Daniel R. Bromwich, Age 7

JEB = Held in Trust for Jonah E. Bromwich, Age 4

KAB = Held in Trust for Kira Anne Bromwich, Age 10 months

## SCHEDULE B

## U.S. GOVERNMENT SECURITIES

| <u>OWNERSHIP</u> | <u>SECURITY</u>                            | <u>MATURITY</u> | <u>MARKET VALUE</u> |
|------------------|--|-----------------|---------------------|
| BF               | 10,000 FFCB MTN<br>Callable rate:<br>8.65% | 5/15/01         | \$ 10,187.50        |
| <hr/>            |  |                 |                     |
| TOTAL:           |  |                 | \$ 10,187.50        |

RB = Michael R. Bromwich

BF = Felice B. Friedman (wife)

T = Jointly held by Michael R. Bromwich and Felice B. Friedman

RB = Held in Trust for Daniel R. Bromwich, Age 7

EB = Held in Trust for Jonah E. Bromwich, Age 4

AB = Held in Trust for Kira Anne Bromwich, Age 10 months

## SCHEDULE C

## LISTED SECURITIES

| <u>OWNERSHIP</u>       | <u>SECURITY</u>         | <u>NO./TYPE</u>          | <u>MARKET VALUE</u> |
|------------------------|-------------------------|--------------------------|---------------------|
| I. INDIVIDUAL EQUITIES |                         |                          |                     |
| FBF                    | Avecmco Corp.           | 500 Common               | \$ 9,437.50         |
| FBF                    | Amoco                   | 200 Common               | \$ 10,600.00        |
| FBF                    | Bellsouth Corp.         | 150 Common               | \$ 8,700.00         |
| FBF                    | Catellus Dev.<br>Corp.  | 200 Common               | \$ 1,550.00         |
| FBF                    | Consol. Nat.<br>Gas Co. | 200 Common               | \$ 9,400.00         |
| DRB                    | Consol. Nat.<br>Gas Co. | 100 Common               | \$ 4,700.00         |
| JEB                    | Consol. Nat.<br>Gas Co. | 100 Common               | \$ 4,700.00         |
| FBF                    | Dow Chemical            | 200 Common               | \$ 11,350.00        |
| FBF                    | Fed. Paper Bd.          | 400 Conv. Pref.<br>2.875 | \$ 19,800.00        |
| FBF                    | General Motors          | 300 Common               | \$ 16,462.50        |

## SCHEDULE C (CONT'D.)

PAGE 2

| <u>OWNERSHIP</u> | <u>SECURITY</u>              | <u>NO. /TYPE</u> | <u>MARKET VALUE</u> |
|------------------|------------------------------|------------------|---------------------|
| FBF              | GTE Corp.                    | 200 Common       | \$ 7,000.00         |
| JEB              | GTE Corp.                    | 100 Common       | \$ 3,500.00         |
| FBF              | NYS Elec. & Gas              | 78 Common        | \$ 2,369.25         |
| FBF              | Nynex Corp.                  | 200 Common       | \$ 8,025.00         |
| DRB              | Nynex Corp.                  | 200 Common       | \$ 8,025.00         |
| FBF              | Pacificorp.                  | 200 Common       | \$ 3,850.00         |
| DRB              | RJR Nabisco<br>Hldgs. Corp.  | 200 Cum Pref.    | \$ 5,000.00         |
| JEB              | RJR Nabisco<br>Hldgs. Corp.  | 100 Cum. Pref.   | \$ 2,500.00         |
| FBF              | Santa Fe Pacific<br>Corp.    | 300 Common       | \$ 6,675.00         |
| FBF              | Santa Fe Energy<br>Res. Inc. | 100 Common       | \$ 925.00           |
| FBF              | Schlumberger<br>Ltd.         | 200 Common       | \$ 11,825.00        |
| JEB              | Schlumberger<br>Ltd.         | 200 Common       | \$ 11,825.00        |

## SCHEDULE C (CONT'D.)

PAGE 3

| <u>OWNERSHIP</u> | <u>SECURITY</u>          | <u>NO./TYPE</u> | <u>MARKET VALUE</u>  |
|------------------|--------------------------|-----------------|----------------------|
| FBF              | Sierra Pacific Resources | 100 Common      | \$ 2,050.00          |
| JEB              | Signet Banking Corp.     | 100 Common      | \$ 3,475.00          |
| FBF              | Telef. de Mex.           | 200 Common      | \$ 13,500.00         |
| FBF              | Texaco Inc.              | 100 Common      | \$ 6,475.00          |
| FBF              | Time Warner Inc.         | 320 Common      | \$ 14,160.00         |
| <b>SUBTOTAL:</b> |                          |                 | <b>\$ 207,879.25</b> |

MRB = Michael R. Bromwich

FBF = Felice B. Friedman (wife)

JT = Jointly held by Michael R. Bromwich and Felice B. Friedman

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## SCHEDULE C (CONT'D.)

PAGE 4

## II. MUNICIPAL BONDS &amp; NOTES

| <u>OWNERSHIP</u> | <u>SECURITY</u>             | <u>MATURITY</u> | <u>MARKET VALUE</u>  |
|------------------|-----------------------------|-----------------|----------------------|
| FBF              | Arizona Cert.<br>of Partic. | 3/1/03          | \$ 22,196.60         |
| FBF              | N.Y. State Hlth.            | 11/4/04         | \$ 5,741.00          |
| FBF              | Wash. D.C. G.O.             | 6/1/09          | \$ 10,336.50         |
| DRB              | N.Y. St. Urb.<br>Corp.      | 1/1/05          | \$ 15,366.00         |
| DRB              | Ford Capital<br>BV Notes    | 5/1/98          | \$ 11,362.50         |
| JEB              | NY State Dorm.<br>Univ. Ed. | 5/15/05         | \$ 16,345.80         |
| KAB              | Time Warner Inc.            | 4/1/17          | \$ 21,050.00         |
| <b>SUBTOTAL:</b> |                             |                 | <b>\$ 102,398.40</b> |

MRB = Michael R. Bromwich  
 FBF = Felice B. Friedman (wife)  
 JT = Jointly held by Michael R. Bromwich and Felice B. Friedman  
 DRB = Held in Trust for Daniel R. Bromwich, Age 7  
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 KAB = Held in Trust for Kira Anne Bromwich, Age 10 months

## III. UNIT INVESTMENT TRUSTS

| <u>OWNERSHIP</u> | <u>SECURITY</u>          | <u>UNITS</u> | <u>MARKET VALUE</u> |
|------------------|--------------------------|--------------|---------------------|
| FBF              | Unit Tax Ex.<br>Sec. Tr. | 10           | \$ 3,980.30         |
| <hr/>            |                          |              |                     |
| SUBTOTAL:        |                          |              | \$ 3,980.30         |

MRB = Michael R. Bromwich

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## SCHEDULE C (CONT'D.)

PAGE 6

## IV. MUTUAL FUNDS

| <u>OWNERSHIP</u>                | <u>FUND</u>          | <u>SHARES</u> | <u>MARKET VALUE</u>  |
|---------------------------------|----------------------|---------------|----------------------|
| FBF                             | Fidelity             | 794.901       | \$ 9,880.62          |
| MRB                             | 20th Cent.<br>Ultra  | 69.814        | \$ 1,466.79          |
| MRB                             | 20th Cent.<br>Select | 32.729        | \$ 1,286.58          |
| MRB                             | 20th Cent.<br>Vista  | 147.863       | \$ 1,475.67          |
| MRB                             | Value Line<br>Fund   |               | \$ 1,474.91          |
| DRB                             | 20th Cent.<br>Growth | 108.573       | \$ 2,426.61          |
| DRB                             | 20th Cent.<br>Select | 87.317        | \$ 3,432.43          |
| DRB                             | 20th Cent.<br>Vista  | 362.088       | \$ 3,613.64          |
| <b>SUBTOTAL:</b>                |                      |               | <b>\$ 25,057.25</b>  |
| <b>LISTED SECURITIES TOTAL:</b> |                      |               | <b>\$ 339,315.20</b> |

MRB = Michael R. Bromwich  
 FBF = Felice B. Friedman (wife)  
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## SCHEDULE D

## REAL ESTATE OWNED

| <u>OWNERSHIP</u>    | <u>LOCATION</u>   | <u>ASSESSED VALUE</u> |
|---------------------|---|-----------------------|
| JT                  | 3806 Military Road, N.W.<br>Washington D.C,<br>(Personal Residence) | \$ 372,793.00         |
| <hr/> <b>TOTAL:</b> |   | <b>\$ 372,793.00</b>  |

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## SCHEDULE E

## AUTOS AND OTHER PERSONAL PROPERTY

| <u>OWNERSHIP</u> | <u>PERSONAL PROPERTY</u>                                  | <u>BOOK OR MARKET VALUE</u> |
|------------------|---|-----------------------------|
| JT               | 1981 Honda Civic GL                                       | \$ 1,100.00                 |
| JT               | 1990 Honda Accord   | \$ 10,975.00                |
| JT               | Furniture, Appliances, Books, Other<br>Household Contents | \$ 11,000.00                |
| FBF              | Fine Arts, Silverware, China,<br>Crystal, Jewelry, etc.   | \$ 14,000.00                |
| <hr/> SUBTOTAL:  |   | \$ 37,075.00                |

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## SCHEDULE F

## RETIREMENT ACCOUNTS

| <u>OWNERSHIP</u> | <u>RETIREMENT INSTRUMENT/VEHICLE</u>                    | <u>MARKET VALUE</u> |
|------------------|---|---------------------|
| FBF              | Paine Webber Retirement Money Fund                      | \$ 174.79           |
| FBF              | Paine Webber IRA:<br>Nynex Corp.: 100 shares            | \$ 4,012.50         |
| FBF              | Paine Webber IRA:<br>Upjohn Co.: 100 shares             | \$ 2,900.00         |
| FBF              | Paine Webber IRA:<br>Global Health Sciences: 100 shares | \$ 1,087.50         |
| FBF              | Paine Webber IRA:<br>Signet Bank: 100 shares            | \$ 3,475.00         |
| FBF              | 401(k): U.S. Trust Short-Term Fund                      | \$ 8,045.08         |
| FBF              | 401(k): Fidelity Puritan Fund                           | \$ 7,487.90         |
| FBF              | 401(k): Fidelity Magellan Fund                          | \$ 9,644.22         |
| FBF              | 401(k): Fidelity Overseas Fund                          | \$ 4,204.36         |
| MRB              | 20th Century IRA<br>U.S. Govt. Securities               | \$ 9,872.38         |

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| <u>OWNERSHIP</u> | <u>RETIREMENT INSTRUMENT/VEHICLE</u>                 | <u>MARKET VALUE</u>              |
|------------------|--|----------------------------------|
| MRB              | Mayer, Brown & Platt <sup>11</sup> /<br>Savings Plan | \$ 42,484.95 <sup>12</sup> /<br> |
| MRB              | 401(k): Kidder, Peabody Funds                        | \$ 31,163.73                     |
| <b>SUBTOTAL:</b> |  | <b>\$ 124,552.41</b>             |

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JEB = Held in Trust for Jonah E. Bromwich, Age 4

KAB = Held in Trust for Kira Anne Bromwich, Age 10 months

<sup>11</sup>/ This savings plan is mandatory for all Mayer, Brown & Platt partners and is separate from the discretionary 401(k) plan listed below. For both the savings plan and the 401(k) plan, each partner has the choice of four investment plans, all of which are managed by Kidder, Peabody: 1) a money market fund; 2) an aggressive equity fund; 3) a conservative equity fund; and 4) a balanced fund. For approximately the last six months, I have divided both the mandatory savings and 401(k) portions of my retirement plan as follows: 10% money market fund; 30% aggressive equity fund; 30% conservative equity fund; and 30% balanced fund. To my knowledge, I have never received a Kidder, Peabody statement for either account that itemizes the individual securities holdings of any of the four funds.

<sup>12</sup>/ Because I was a member of the Mayer, Brown partnership on November 30, 1993, I was subject to the mandatory features of the firm's savings plan as well as eligible to make a voluntary contribution to my 401(k) account. In order for the amounts contributed to the mandatory portion of the firm's savings plan to vest, I would need to have been with the firm as a partner for five years. Since I will resign from the firm after slightly more than four years as a partner, I will receive back as a "forfeiture" the amounts I contributed to the savings plan. These amounts will be taxable to me as ordinary income in 1994.

## SCHEDULE G

## CAPITAL BALANCE -- MAYER, BROWN &amp; PLATT

|  |                     |
|--|---------------------|
| Permanent Capital Balance with firm<br>(January 1, 1993 requirement) | \$ 100,944.00       |
| Loan balance due to The Northern Trust Company <sup>13/</sup>        | (\$ 47,444.00)      |
| <hr/>  |                     |
| <b>NET CAPITAL BALANCE:</b>  | <b>\$ 53,500.00</b> |

---

<sup>13/</sup> Approximately two years ago, Mayer, Brown & Platt required all partners who had not yet fulfilled their capital contribution requirements to do so within a few months. As an accommodation, the firm established a loan program with The Northern Trust Company to extend loans to all partners who required financial assistance to satisfy the balance of their capital contributions. Mayer, Brown & Platt has reimbursed its partners for the interest incurred in obtaining such loans.

## SCHEDULE H

## REAL ESTATE MORTGAGES PAYABLE

| <u>OWNERSHIP</u> | <u>LOCATION OF PROPERTY</u>  | <u>PRINCIPAL BALANCE</u>        |
|------------------|--|---------------------------------|
| JT               | 3806 Military Road, N.W.<br>Washington D.C. (residence)  | \$ 240,810.98<br>(as of 1/1/94) |
|                  | Mortgage holder:<br><br>Citicorp Mortgage, Inc.<br>P.O. Box 790001<br>St. Louis, Missouri 63179<br>Loan # 0002347705 |                                 |
| <hr/>            |  |                                 |
|                  | <b>SUBTOTAL:</b>   | <b>\$ 240,810.98</b>            |

## LETTERS IN SUPPORT OF MICHAEL R. BROMWICH

## CONTENTS

## 1. LAW ENFORCEMENT: UNITED STATES ATTORNEY'S OFFICE FOR THE SOUTHERN DISTRICT OF NEW YORK

## \* A. RUDOLPH W. GIULIANI

- United States Attorney for the Southern District of New York (1983-89)
- Associate Attorney General United States Department of Justice (1981-83)
- Mayor New York City, New York

## B. STUART E. ABRAMS

- Chief, Major Crimes Unit (1986-88)  
Chief, Appeals Unit (1985-86)  
Assistant United States Attorney for the Southern District of New York (1982-89)
- Law Offices of Stuart E. Abrams  
New York, New York

## C. BRUCE A. BAIRD

- Chief, Securities and Commodities Fraud Unit (1987-89)  
Deputy Chief, Criminal Division (1986-87)  
Assistant United States Attorney for the Southern District of New York (1980-89)
- Special Assistant to Deputy Attorney General Harold Tyler (1975-76)
- Partner  
Covington & Burling  
Washington, D.C.

\* This letter was not included in the packet of letters sent to the Judiciary Committee on February 25, 1994



## \* D. CHARLES M. CARBERRY

- Chief, Securities and Commodities Fraud Unit (1986-87)  
Deputy Chief, Criminal Division (1985-86)  
Assistant United States Attorney for the Southern District of New York (1979-87)
- Partner  
Jones, Day, Reavis & Pogue  
New York, New York

## E. JOHN K. CARROLL

- Chief, Securities and Commodities Fraud Task Force (1991-92)  
Co-lead Counsel: U.S. v. Drexel Burnham Lambert; U.S. v. Michael R. Milken  
Assistant United States Attorney for the Southern District of New York (1983-92)
- Partner  
Rogers & Wells  
New York, New York

## \* F. ALAN M. COHEN

- Chief, Securities and Commodities Fraud Task Force (1989-91)  
Chief, Organized Crime Unit (1989)  
Assistant United States Attorney for the Southern District of New York (1982-91)
- Partner  
O'Melveny & Myers  
New York, New York

## G. DENISE L. COTE

- Chief, Criminal Division (1991-94)  
Deputy Chief, Criminal Division (1984-85)  
Assistant United States Attorney for the Southern District of New York (1977-85, 1991-94)

\* This letter was not included in the packet of letters sent to the Judiciary Committee on February 25, 1994

## H. RHEA KEMBLE DIGNAM

- Chief, Public Corruption Unit  
Chief, Narcotics Unit (1981-86)  
Assistant United States Attorney for the  
Southern District of New York (1976-88)
- Deputy General Counsel -- Litigation  
New York Life Insurance Company  
New York, New York

## I. JESS T. FARDELLA

- Chief, Special Narcotics Unit (1991-92)  
Co-lead Counsel: U.S. v. Drexel Burnham  
Lambert; U.S. v. Michael R. Milken  
Assistant United States Attorney for the  
Southern District of New York (1983-92)
- Partner  
Brobeck, Hale & Dorr, International  
New York, New York

## \* J. MARIA T. GALENO

- Assistant United States Attorney for the  
Southern District of New York (1985-90)
- Partner  
Christy & Veiner  
New York, New York

## \* K. HELEN GREDD

- First Deputy Chief, Criminal Division  
(1992-93)  
Chief Appellate Attorney (1991)  
Assistant United States Attorney for the  
Southern District of New York (1985-93)
- Partner  
Lanklert, Siffert & Wohl  
New York, New York

\* This letter was not included in the packet of letters sent to the Judiciary Committee on February 25, 1994

## \* L. HOWARD E. HEISS

- Chief, Securities and Commodities Fraud Task Force (1992-present)  
Chief, Organized Crime Unit (1989-92)  
Deputy Chief, Criminal Division (1988-89)  
Chief, General Crimes Unit (1987-88)  
Assistant United States Attorney for the Southern District of New York (1983-present)

## M. MARK HELLERER

- Chief, Major Crimes Unit (1989-92) -  
Assistant United States Attorney for the Southern District of New York (1983-92)
- Counsel  
Winthrop & Stimson  
New York, New York

## \* N. ANNMARIE LEVINS

- Chief, Special Narcotics Unit (1992)  
Assistant United States Attorney for the Southern District of New York (1985-92)
- Assistant Professor of Law  
University of Washington School of Law

## O. EDWARD J.M. LITTLE

- Deputy Chief, Criminal Division (1988-89)  
Assistant United States Attorney for the Southern District of New York (1982-89)
- Partner  
Zuckerman, Spaeder, Goldstein, Taylor & Kolker  
New York, New York

\* This letter was not included in the packet of letters sent to the Judiciary Committee on February 25, 1994

## P. ROANNE L. MANN

- Deputy Chief, Criminal Division (1986)  
Chief, Appeals Unit (1983-84)  
Assistant United States Attorney for the  
Southern District of New York (1978-86)
- Partner  
Stein, Zauderer, Ellenhorn, Frischer & Sharp  
New York, New York

## Q. AARON R. MARCU

- Associate U.S. Attorney (1989)  
Chief, Major Crimes Unit (1988-89)  
Chief, Appeals Unit (1984-85)  
Assistant United States Attorney for the  
Southern District of New York (1983-89)
- Partner  
Howard, Darby & Levin  
New York, New York

## \* R. SHIRAH NIEMAN

- Deputy United States Attorney (1993-present)  
Senior Litigation Counsel  
Chief, Major Crimes Unit  
Assistant United States Attorney for the  
Southern District of New York (1970-93)
- Associate Counsel  
Watergate Special Prosecution Force (1973-74)  
(on detail from the Southern District of New  
York)

## S. BENITO ROMANO

- United States Attorney for the  
Southern District of New York (1989)
- Associate U.S. Attorney (1987)

\* This letter was not included in the packet of letters sent to the Judiciary Committee on February 25, 1994

- Chief, Public Corruption Unit (1985-87)  
Chief, Appellate Unit (1984-85)  
Assistant United States Attorney for the  
Southern District of New York (1980-87)
- Partner  
Wilkie, Farr & Gallagher  
New York, New York

## T. PETER ROMATOWSKI

- Chief, Securities and Commodities Fraud Unit  
(1984-86)  
Assistant United States Attorney for the  
Southern District of New York (1979-86)
- Partner  
Crowell & Moring  
Washington, D.C.

## U. BART M. SCHWARTZ

- Chief, Criminal Division  
Assistant United States Attorney for the  
Southern District of New York (1984-85)
- Chairman  
Decision Strategies, Inc.  
New York, New York

## \* V. LINDA C. SEVERIN

- Assistant United States Attorney for the  
Southern District of New York (1984-92)
- Bogle & Gates  
Seattle, Washington

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## W. PAUL L. SHECHTMAN

- Chief, Criminal Division (1994-present)  
Chief, Appeals Unit (1984-85)  
Chief, General Crimes Unit (1985-86)  
Assistant United States Attorney for the  
Southern District of New York (1981-86,  
1994-present)
- Counsel to the District Attorney (1987-94)  
Manhattan District Attorney's Office  
New York, New York

## 2. IRAN-CONTRA COUNSEL

## A. RICHARD W. BECKLER

- Fulbright & Jaworski  
Washington, D.C.
- Counsel for Admiral John Poindexter

## \* B. DAVID P. DOHERTY

- Senior Vice-President for Enforcement  
New York Stock Exchange (1988-present)
- General Counsel  
Central Intelligence Agency (1986-88)

## \* C. EARL C. DUDLEY, JR.

- Professor of Law  
University of Virginia School of Law
- Counsel for Richard R. Miller

\* This letter was not included in the packet of letters sent to the Judiciary Committee on February 25, 1994

## D. LEONARD GARMENT

- Special Consultant, Assistant and Counsel to President Nixon (1969-74)
- Partner  
Mudge, Rose, Guthrie, Alexander & Ferdon  
Washington D.C.
- Counsel for Robert C. McFarlane

## E. THOMAS C. GREEN

- Sidley & Austin  
Washington, D.C.
- Counsel for Richard Secord

## F. N. RICHARD JANIS

- Janis, Schuelke and Wechsler  
Washington, D.C.
- Counsel for Albert Hakim

## 3. FEDERAL JUDGES

## A. HONORABLE ROBERT L. CARTER

- General Counsel (1956-68)  
Counsel (1944-56)  
NAACP  
New York, New York
- United States District Judge for the  
Southern District of New York (1972-present)  
Appointed by President Nixon

\* This letter was not included in the packet of letters sent to the Judiciary Committee on February 25, 1994

## B. HONORABLE MORRIS E. LASKER

- United States District Judge for the Southern District of New York (1968-present)  
Appointed by President Johnson

## C. HONORABLE STANLEY J. SPORKIN

- Chief, Enforcement Division (1972-81)  
Securities and Exchange Commission
- General Counsel (1981-85)  
Central Intelligence Agency  
Appointed by President Reagan
- United States District Judge for the District of Columbia (1985-present)  
Appointed by President Reagan

## 4. OTHER FORMER GOVERNMENT OFFICIALS

## A. KENNETH I. JUSTER

- Counsel to Acting Secretary of State  
Lawrence Eagleburger (1992-93)  
  
Counsel to Deputy Secretary of State  
Eagleburger (1989-92)
- Partner  
Arnold & Porter  
Washington, D.C.

## B. TERRY F. LENZNER

- Assistant United States Attorney for the Southern District of New York (1966-69)

\* This letter was not included in the packet of letters sent to the Judiciary Committee on February 25, 1994



- Director, Office of Legal Services, Office of Economic Opportunity (1969-70)
- Assistant Chief Counsel, Senate Select Committee on Presidential Campaign Activities (1973-74)
- Chairman, The Investigative Group, Inc. Washington, D.C.

## C. HERBERT J. STERN

- United States Attorney for the District of New Jersey (1970-74)  
Appointed by President Nixon
- United States District Judge District of New Jersey (1974-87)  
Appointed by President Nixon
- Partner  
Stern & Greenberg  
Roseland, New Jersey

## \* D. GEOFFREY S. STEWART

- Deputy Assistant Attorney General (1983)  
Office of Legal Policy  
U.S. Department of Justice
- Partner  
Hale and Dorr  
Washington, D.C.

## E. DAN K. WEBB

- United States Attorney Northern District of Illinois (1981-85)  
Appointed by President Reagan
- Chairman, Litigation Department  
Winston & Strawn  
Chicago, Illinois

\* This letter was not included in the packet of letters sent to the Judiciary Committee on February 25, 1994

## RUDOLPH W. GIULIANI

March 10, 1994

To Whom It May Concern:

I write this letter of recommendation on behalf of Michael Bromwich, who I understand has been nominated by President Clinton to be Inspector General of the Department of Justice.

I have known Michael since 1983 when I became United States Attorney for the Southern District of New York and Michael was serving as an Assistant United States Attorney in that office. Having served as Associate Attorney General, I know how important the Department's Inspector General can be to the operations of the Department. Having worked closely with Michael, I know what a superb job he would do in that position.

Michael is a consummate professional: fair, objective and reasonable. He is apolitical. Indeed, I could not tell you what his politics are because they were never made evident in any of his actions in my office. I consider him to be a professional prosecutor of impeccable reputation and the highest ethical standards.

Since I am not of the same political party as President Clinton, I hope that my attesting to the professionalism and independence of Michael Bromwich will remove any suggestion of partisanship which may have been raised in connection with this nomination. I commend the President for making a selection of merit and I urge you to confirm Michael's nomination. I know he will serve with distinction.

Sincerely,



Rudolph W. Giuliani  
Mayor of New York City

## STUART E. ABRAMS

ATTORNEY AT LAW

230 PARK AVENUE  
NEW YORK, N. Y. 10169OF COUNSEL  
SANDOR FRANKEL, P. C(212) 661-5000  
TELEFAX (212) 661-5007

February 10, 1994

To whom it may concern:

I am writing in reference to my good friend and colleague, Mike Bromwich. Mike is a lawyer of the highest integrity and ability, and I have no hesitancy whatsoever in urging his confirmation as Inspector General of the Department of Justice.

I first became acquainted with Mike when we were both serving as Assistant United States Attorneys in the Southern District of New York. Mike and I served together in the Narcotics Unit in the United States Attorney's office, and my memories of Mike are of a hard-working prosecutor who was universally admired and respected by fellow prosecutors, the defense bar, and the Bench. Mike directed the prosecution of several difficult and complex prosecutions, involving large-scale drug trafficking, money laundering, and tax evasion. Since I also served as Chief Appellate Attorney in the United States Attorney's office, I had the opportunity to review some of the appeals from convictions that Mike had secured, and it was clear that the cases were prosecuted in a manner that evidenced both a zeal for justice and concern for fairness.

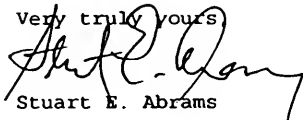
Later during our tenures at the United States Attorney's office, Mike served as Chief of the Narcotics Unit at the same time that I served as Chief of the Major Crimes Unit. As such, Mike and I were both members of the executive staff of United States Attorney Rudolph Giuliani, and we attended many meetings together at which policy decisions for the Office were discussed. Everyone who attended those meetings looked to Mike as someone who had sound judgment, who could be counted on to analyze issues on the merits, without considerations of extraneous factors such as politics or public relations.

When Mike left the United States Attorney's office to join the Office of Independent Counsel, I felt confident that he would conduct himself in the same even-handed, yet thorough and effective manner, in which he had always acted as a prosecutor. My knowledge of Mike's work at the Office of Independent Counsel confirms that assessment. I briefly overlapped with Mike at the Office of Independent Counsel, where I served as trial counsel in the prosecution of Thomas Clines. In that respect, I have first-hand knowledge of the kind of person Mike is.

While every lawyer likes to talk about his or her successes, I think that perhaps the best illustration of Mike's character lies in the actions he took after the cases of Oliver North and John Poindexter were remanded by the D.C. Circuit. Mike is one of the only lawyers I know who has the courage and integrity always to do what the law requires, even if that means that a conviction will not stand. Mike was willing to come to the forefront and represent the Government when the tough decision had to be made not to pursue the cases further. Mike had already started in private practice at this time, and he did not have to take on the assignment. However, Mike's dedication to public service is such that he does not shirk from doing what needs to be done, no matter how difficult or politically unpopular it may be.

I am delighted that Mike is willing to leave private practice and return to Government to take on the difficult and important assignment of Inspector General. The country is well-served to have the dedication and talent of this honorable attorney. Please do not hesitate to contact me if you would like to discuss Mike Bromwich any further.

Very truly yours,



Stuart E. Abrams

SEA/aad

1201 PENNSYLVANIA AVENUE, N. W.  
P. O. BOX 7566  
WASHINGTON, D. C. 20044

February 23, 1994

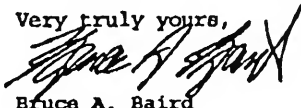
TO WHOM IT MAY CONCERN:

I am writing with respect to the nomination of Michael R. Bromwich to be Inspector General of the United States Department of Justice. I served with Mr. Bromwich in the United States Attorney's Office for the Southern District of New York during the Reagan administration. He was known to me as a fine, able and balanced prosecutor and lawyer, and I believe that this was his reputation generally in the Office. He rose to become head of the Narcotics Unit before he left. He was known to me not only as a lawyer of ability, but also one of high professional ethics. Moreover, I know of no instance in which political considerations or any other considerations beyond those appropriate to law enforcement entered into his decisionmaking.

When I served there, the Manhattan United States Attorney's Office had a wealth of capable lawyers and Mike distinguished himself in that company. I believe he is exceptionally well-equipped to oversee investigations of prosecutors and other lawyers for alleged breaches of professional ethics.

I should add that I am a registered Republican and have served in the United States Department of Justice as Special Assistant to the Deputy Attorney General under President Ford and as an Assistant United States Attorney, Deputy Chief of the Criminal Division, Chief of the Narcotics Unit, and Chief of the Securities and Commodities Frauds Unit in the Manhattan U.S. Attorney's Office from 1980 to 1989 under Presidents Reagan and Bush. There has been no shortage in this administration of appointments made for political purposes rather than on the merits, but Mr. Bromwich is a distinguished lawyer who would do a distinguished job.

Very truly yours,



Bruce A. Baird

CHARLES M. CARBERRY  
599 LEXINGTON AVENUE  
NEW YORK, NEW YORK 10022

February 24, 1994

TO WHOM IT MAY CONCERN:

This letter is written to state my knowledge of Michael Bromwich's character and legal ability. Currently, I am a member of the law firm of Jones, Day, Reavis & Pogue. For eight and a half years I was a federal prosecutor in New York City, where I was Deputy Chief of the Criminal Division and Chief of the Southern District of New York's Securities Fraud Unit. I have known Mr. Bromwich professionally for over ten years. We were colleagues in the United States Attorney's Office and for some period I had supervisory responsibilities with respect to him. We have had some professional contact since he went into private practice.

Throughout our acquaintance I have found him to be an ethical, thoughtful and capable lawyer. As a prosecutor, I found him fair, reasoned and responsible. His decisions were based on the evidence collected and not on any extraneous considerations. He tried his cases in court and not in the newspapers.

When he was a supervisor in the United States Attorney's Office in Manhattan, Mr. Bromwich impressed me with his diligence and leadership. His commitment to public service is evident from his professional service. Throughout his career he has displayed a maturity of judgment that has allowed him to correctly balance his duties as a prosecutor with his constitutional obligations to the accused.

Very truly yours,

*Charles M. Carberry*  
Charles M. Carberry

*Rogers & Wells*  
*Two Hundred Park Avenue*  
*New York, N.Y. 10166-0158*

107 FOURTEENTH STREET, N.W.  
 WASHINGTON, D.C. 20005-2011  
 TELEPHONE (202) 434-0700  
 FACSIMILE (202) 434-0800

444 SOUTH FLOWER STREET  
 LOS ANGELES, CA 90071-2001  
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 FACSIMILE (213) 588-4800

86 COLEMAN STREET  
 LONDON EC2R 5BE, ENGLAND  
 TELEPHONE 44-71-825-0201  
 FACSIMILE 44-71-834-8008  
 TELEX 884884 UGLAW B

TELEPHONE (212) 878-8000  
 FACSIMILE (212) 878-8378  
 TELEX 234483 RIKWUR

47 AVENUE MOCHÉ  
 75008 PARIS, FRANCE  
 TELEPHONE 33-1-47-83-11-00  
 FACSIMILE 33-1-48-87-80-81  
 TELEX 68187 EURLAW

88 AVENUE MONTAIGNE  
 75008 PARIS, FRANCE  
 TELEPHONE 33-1-42-88-84-88  
 FACSIMILE 33-1-42-88-82-03

UMDENSTRASSE 37  
 60325 FRANKFURT/H I  
 FEDERAL REPUBLIC OF GERMANY  
 TELEPHONE 49-69-87-87-11-0  
 FACSIMILE 49-69-87-87-12-33

February 22, 1994

To Whom It May Concern:


I have been informed that Michael Brownich has been proposed to lead the Inspector General's Office at the United States Department of Justice. I write to strongly urge his confirmation.

I have known Michael since September, 1983 when we were both serving as junior Assistant United States Attorneys in the Office of the United States Attorney for the Southern District of New York. Michael and I worked closely together there for approximately four years.

Michael was then and is now one of the finest prosecutors and lawyers I have ever known. He is enormously industrious and uncompromising in his integrity. During Michael's last year in the Southern District of New York, he supervised other prosecutors. From my observation of his performance of that job, I have complete confidence that he is well equipped to oversee investigations of prosecutors and other lawyers. I am fully confident that he will fairly and honestly perform his duties without regard to any improper external influences. I have never seen Michael distracted by external forces from the duties he has sworn on oath to uphold.

In sum, I wholeheartedly recommend Michael to you. I believe that the Department of Justice would benefit greatly by his appointment.

Very truly yours,

  
 John K. Carroll

Fifty-fourth floor  
Citicorp Center  
153 East 53rd Street  
New York, N. Y. 10022-4611

March 7, 1994

**CONFIDENTIAL**

TO WHOM IT MAY CONCERN

Re: Michael Bromwich, Esq.

Dear Sirs or Madam:

I am writing this letter in support of Michael Bromwich, Esq., who has been nominated by President Clinton to be the Inspector General of the Department of Justice. I have known Michael Bromwich for over ten years. Although I am now in private practice with the law firm of O'Melveny & Myers, for nine of the last eleven and a half years, I worked for the Department of Justice as an Assistant United States Attorney for the Southern District of New York, serving at various times as the Chief of the Organized Crime Unit and as the Chief of the Securities and Commodities Frauds Task Force. During that period, I worked with Mike Bromwich and came to know him quite well.

Michael Bromwich stands out as one of the finest lawyers to serve as an Assistant United States Attorney in the Southern District of New York. In that job, he distinguished himself in investigations and trials of numerous complex narcotics and other criminal cases. Throughout his tenure in the United States Attorney's Office, Michael Bromwich was known for his intellectual flair, his tenacity in pursuing every aspect of a case and his grace under pressure. Not surprisingly, these attributes earned him the respect and admiration of his colleagues and the agents with whom he worked. He quickly became the friend, confidant, and trusted advisor to many prosecutors and agents. Ever sensitive to the legal and ethical problems confronting a prosecutor, Michael Bromwich was someone who was widely regarded as having "good judgment," a phrase that is high praise among



March 7, 1994

Page 2

prosecutors. Even his adversaries shared the view that Michael Bromwich is a superb lawyer who exercised his prosecutorial discretion with a sense of fairness and intellectual honesty.

In sum, Michael Bromwich is one of those rare lawyers who combines intellectual and ethical qualities necessary to perform this most sensitive job. He will distinguish himself and the Department of Justice in the role of Inspector General.

Very truly yours,

A handwritten signature in black ink that reads "Alan M. Cohen" followed by a stylized flourish.

Alan M. Cohen

Denise Cote  
315 Riverside Drive  
New York, New York 10025

February 16, 1994

To Whom It May Concern:

I have known Michael Bromwich from 1983, the year he became an Assistant United States Attorney for the Southern District of New York, and write to support his confirmation as the Inspector General for the Department of Justice. Michael is a person of absolute integrity, enormous energy, and superb judgment. I believe he will make an outstanding Inspector General.

Soon after Michael joined the United States Attorney's Office, I supervised one of his first trials. It was immediately apparent that Michael was going to be an exceptional Assistant. As I got to know him better over the next few years, this view was confirmed. He is intelligent, hard working, organized, analytical, responsible, and ethical. He also uses extremely good judgment to resolve difficult problems. And not least of all, he is a thoroughly decent human being.

Since leaving the United States Attorney's Office in 1985, I have stayed in touch with Michael. I know that he became one of the most respected and well liked Assistants in an office of extraordinarily talented lawyers. As the years passed, he handled increasingly complex matters and was entrusted with great responsibility.

It did not surprise me that Michael joined the Iran-Contra investigation or that he aspires to be Inspector General for the Justice Department. As was apparent from his days in the United States Attorney's Office, Michael's first love as a lawyer is public service. I believe that, as a nation, we are extremely fortunate that a person as talented as Michael wishes to serve in the Government.

I realize that the position of Inspector General requires a person of absolute independence and integrity. Michael is such a person. All of his colleagues from over the years share the same view of him. He is an honest, ethical, decent human being. He

always understood that the only obligation of a prosecutor is to do justice--to do the right thing. I am confident that he would bring the same high standards to bear on his job as an IG.

Very truly yours,

Denise Cote  
(202) 514-5746

RHEA KEMBLE DIGNAM  
61 East 86th Street, Apt. 62  
New York, New York 10028  
(O) 212-576-6446  
(H) 212-348-0416

February 14, 1994

To Whom It May Concern:

I write in enthusiastic support of the nomination of Michael Bromwich to be Inspector General of the Department of Justice. Having been an Assistant United States Attorney in the Southern District of New York for 12 years (from August 1976 to July 1988), I write as someone who cares very much about the Department of Justice and who understands the importance of the position of Inspector General. With that perspective, and having known Michael Bromwich well for more than ten years, I give him my highest recommendation for this position. I believe Michael's service will meet the highest standards of fairness and justice and be entirely non-partisan.

Michael Bromwich joined the United States Attorney's Office for the Southern District of New York in May 1983 and was assigned to the General Crimes Unit, which was the entry level unit in the Criminal Division. Michael quickly distinguished himself as someone who prepared his cases particularly carefully and thoroughly, wrote beautifully, and had tremendous potential as a trial lawyer.

I was Chief of that Office's Narcotics Unit at the time, and Michael was one of the new members of the Office whose skills came quickly to my attention. I was therefore delighted when in approximately January 1984 Michael was promoted earlier than usual from the General Crimes Unit and assigned to the Narcotics Unit.

In the Narcotics Unit, Michael oversaw a number of complex investigations and trials. He was entirely reliable, and his word was always good. For that reason, he was trusted not only by federal agents and police officers, witnesses, his colleagues and federal judges, but also by defense lawyers. He honored his commitments and dealt with people in an entirely ethical fashion. He also continued to develop as an exceptionally able investigator, trial lawyer and appellate advocate. Michael was also a pleasure to work with. This was a view shared not only by the managers in the office, but by his colleagues and the support staff.

For all of these reasons, in September 1985 I selected Michael to be Deputy Chief of the Narcotics Unit. In that capacity, he continued to handle significant investigations, trials and appeals, and demonstrated a flair for innovative prosecutions. He also took on administrative responsibilities and proved himself an able manager. Even as his

Rhea Kemble Dignam  
February 14, 1994  
Page 2

responsibilities grew and the demands on his time expanded, his commitment to fairness and justice was unflagging.

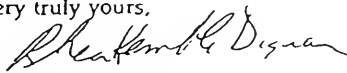
When the time came after nearly five years as Chief of the Narcotics Unit for me to assume new responsibilities as Chief of the Public Corruption Unit, I strongly recommended Michael to succeed me as Chief of Narcotics. From having worked closely with him on a daily basis for nearly three years, I had complete confidence in his skills as a lawyer and prosecutor, and in his decency and moral uprightness as a person. I was delighted when he was chosen, in late December 1986, to be Chief of the Narcotics Unit.

I am confident that Michael would serve as Inspector General of the Department of Justice in an entirely non-partisan fashion. He was appointed as an Assistant United States Attorney by United States Attorney John S. Martin, Jr. (now a federal judge) who was appointed by a Democratic President. Later, Michael also served under a Republican United States Attorney, Rudolph W. Giuliani, now Mayor of New York City. Michael served with distinction in both Administrations. I am a Republican; I suspect Michael is a Democrat. The happenstance of our political party affiliations has never affected either of us in how we approach a case or the administration of justice.

While Michael and I have not worked together since 1987, we have stayed in frequent contact with each other. I respect his judgment, and have sought his opinion on matters affecting my own career development. Our friendship has also continued. Michael has a fine sense of humor, and is a warm, caring friend. My husband and I have been guests in Michael's home when we visit Washington. From personal observation, I can say that Michael is a devoted husband and father. He clearly enjoys his family, and—just as clearly—they love and appreciate him.

Please feel free to contact me if I can answer any questions about Michael. I hope that his confirmation will occur quickly, as I am confident Michael can make a significant contribution to the country. We are lucky that a person of his talents and character has been nominated for this important position.

Very truly yours,



Rhea Kemble Dignam

JESS FARDELLA  
1301 Avenue of the Americas  
New York, New York 10019  
(212) 581-1600

February 11, 1994

Mayer Brown & Platt  
2000 Pennsylvania Avenue  
Suite 6500  
Washington, D.C. 20006  
202-778-0620  
202-861-0473 (by facsimile)

Attention: Mark Gitenstein, Esq.

To Whom It May Concern:

I write to voice my support for the nomination of Michael Bromwich as Inspector General for the United States Department of Justice.

Mike is both a former colleague and a good friend. I have known him since 1983, when we both began serving as Assistant United States Attorneys in the Southern District of New York. We served together in that office -- much of the time in the same units -- until Mike left the office in approximately 1987 to join the Iran-Contra Special Prosecutor's office. (I left the U.S. Attorney's Office in 1992 to go into private practice).

I have the highest regard for Mike both as a lawyer and as a person. He is a thoroughly decent individual, affable and open, and is a wonderful father and husband. He has been extremely effective as both a prosecutor and a defense attorney, and he is an outstanding and intrepid trial lawyer. He possesses an unsurpassed dedication to his work, incisive intelligence, the highest ethical standards and an unswerving sense of fairness.

Indeed, it is hard to imagine a better candidate for Inspector General. One of Mike's earliest successes as a prosecutor and trial lawyer came in a case in which prison guards at the Metropolitan Correctional Center here in Manhattan were convicted on corruption charges. Mike's respect for maintaining

February 11, 1994

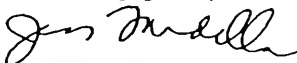
Page 2

the integrity and credibility of law enforcement ensures that the tough but fair approach characteristic of his prior tenure as a prosecutor will equally exemplify his command of the sensitive task of policing prosecutors and other governmental officials and agents.

And I have no doubt that Mike will fulfill the Inspector General's function without fear or favor, or political considerations. Mike is first and foremost a lawyer and a prosecutor. He is not "political" in any sense of the word -- he does not wear his political views on his sleeve, nor does he subordinate his ethics and values to career advancement. He is blunt and plain-spoken, no matter who the audience or who might take offense. He has decided to return to government service because he truly loves to serve and to see that the right thing is done.

Accordingly, I ask that this letter be considered in connection with deliberations on Mike Bromwich's nomination as Inspector General, and urge that he be swiftly confirmed in this position.

Very truly yours,



Jess Fardella

RICHARD A. ANDERMAN  
 ROBERT S. APPEL  
 STEVEN R. BERGER  
 JAMES S. BOYNTON  
 JOHN F. CAMBRIA  
 ANTHONY J. CARROLL  
 ARTHUR N. CHRISTY  
 L. DAVID CLARK, JR.  
 RUSSELL J. DaSILVA  
 RICHARD M. ESTES  
 MARIA T. GALERO  
 WILLIAM F. GRAY, JR.  
 R. GREGORY HESS  
 L. ANTHONY JOSEPH, JR.  
 DAVID G. LEVERE  
 JEROME N. LEWINE  
 LAURENCE S. MARKOWITZ  
 JON J. MASTERS  
 WAYNE C. MATUS  
 RICHARD SALOMON  
 SALVATORE A. SANTORO  
 DANIEL J. SULLIVAN  
 KENNETH W. TABER  
 FRANKLIN B. VELIE  
 JOHN D. VIENER  
 KARON WALKER

## CHRISTY & VIENER

620 FIFTH AVENUE  
 NEW YORK, NEW YORK 10020-2402

(212) 632-5500

FACSIMILE  
 (212) 632-5555  
 DIRECT DIAL NUMBER  
 (212) 632- 5587

February 23, 1994

To Whom It May Concern:

I write regarding Michael R. Bromwich, who I understand is being considered for the position of the Justice Department's Inspector General. Having worked with Michael in the United States Attorney's Office for the Southern District of New York and come to value him as a friend, I wish to provide my unqualified endorsement of him.

I have known Michael since approximately 1985, and served under him while he was Deputy Chief of the Narcotics Unit. I observed Michael to be a highly capable, careful and meticulous lawyer. He always provided thoughtful and insightful advice to unit members who sought his counsel. I would be hard pressed to think of another attorney in the office who was better organized or more adept at managing large cases.

I also observed Michael to be a talented trial lawyer. I had the pleasure of watching Michael deliver an opening statement to the jury in one of his cases. I was so impressed with his style, that I incorporated some of his techniques into opening statements which I later delivered.

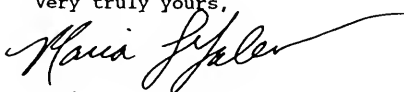
I know Michael to be a decent human being of the highest integrity. He is someone who can be trusted with the most delicate and sensitive matters. Indeed, Michael satisfies the highest professional and ethical standards of the practice of law.



February 23, 1994

I hope the foregoing is useful and would be happy to provide further information if called upon to do so.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Maria T. Galeno". The signature is written in black ink and is positioned above the printed name.

Maria T. Galeno

LANKLER SIFFERT & WOHL  
ATTORNEYS AT LAW

33<sup>RD</sup> FLOOR  
500 FIFTH AVENUE  
NEW YORK, N. Y. 10110-3398

TELEPHONE (212) 921-6399  
TELEFAX (212) 764-3701

HELEN GREDD  
RODERICK C. LANGLER  
STACEY J. MORITZ  
JOHN S. SIFFERT  
SUSAN L. SOMMER  
FRANK H. WOHL

MARTHA J. OLSON  
OF COUNSEL

RICHARD F. ALBERT  
KARL D. COOPER  
DAVID C. ESSEKS  
KATHRYN J. JANKOWSKI  
DAVID S. JONES  
SHARON L. MCCARTHY  
PATRICIA MCDONAGH  
CHARLES T. SPADA  
RICHARD H. STRASSBERG  
MARGARET L. WATSON

March 28, 1994

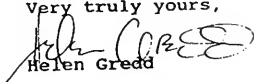
To Whom It May Concern:

I am writing in support of the nomination of Michael Bromwich as Inspector General of the United States Department of Justice.

I first met Mr. Bromwich not long after I was sworn in as an Assistant United States Attorney in the Southern District of New York in December 1985. Mr. Bromwich was among the senior prosecutors to whom I was referred for advice and guidance in fulfilling my duties as a prosecutor. Like those who suggested I consult with him, I consistently found Mr. Bromwich's counsel wise and his ethical standards above reproach.

I regard Mr. Bromwich to be a superb choice as Inspector General and urge his speedy confirmation.

Very truly yours,

  
Helen Gredd

HOWARD E. HEISS  
27 Barnes Road  
Ossining, New York 10562

February 18, 1994

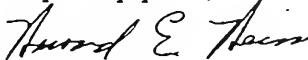
To Whom It May Concern:

I am writing in behalf of Michael Bromwich's nomination for the position of Inspector General in the Department of Justice. I have been employed as an Assistant United States Attorney in the Southern District of New York since January 1984. I met Mr. Bromwich when I joined the United States Attorney's Office and worked with him on a major narcotics prosecution, which we tried together in 1986. I worked closely with Mr. Bromwich on that case for more than six months. Based on that experience, I can say that Mr. Bromwich is an exceptional lawyer and person. I think he will make a superb Inspector General.

Mr. Bromwich is an outstanding lawyer. As an Assistant United States Attorney, he combined a powerful intellect and formidable analytic skills with common sense. Mr. Bromwich excels in all areas of practice: his written work is brilliant, he is an extraordinarily talented courtroom advocate, and a determined and creative investigator.

Mr. Bromwich is particularly suited to be the Department's Inspector General. His tenacity as an investigator is accompanied by his consistent exercise of sound judgment and a sense of fairness. His honesty and integrity are beyond reproach. In carrying out the sensitive responsibilities of Inspector General, Mr. Bromwich will command the confidence of both the Department and the public, which will have in Mr. Bromwich an Inspector General whose decisions will be respected as well-founded and fair.

Very truly yours,



Howard E. Heiss

## WINTHROP, STIMSON, PUTNAM &amp; ROBERTS

1133 CONNECTICUT AVENUE, N.W.  
WASHINGTON, DC 20036  
TELEPHONE: 202-775-9800  
TELEFAX: 202-633-6491

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STAMFORD, CT 06904-6760  
TELEPHONE: 203-348-2300  
TELEFAX: 203-965-0226

125 WORTH AVENUE  
PALM BEACH, FL 33460  
TELEPHONE: 407-655-7297  
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MARK R. HELLERER  
COUNSEL  
212-650-1707

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NEW YORK, NY 10004-1490

TELEPHONE: 212-858-1000  
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TELEX: 62854 WINSTIM

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RUE DU TACTURNE 42  
B-1040 BRUSSELS, BELGIUM  
TELEPHONE: OH-322-230-1392  
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17-2, NISHI-SHINBASHI 2-CHOME  
HIMATO-KU, TOKYO 105, JAPAN  
TELEPHONE: OH-813-3437-9746  
TELEFAX: OH-813-3437-9261

2505 ASIA PACIFIC FINANCE TOWER  
CITIBANK PLAZA  
3 GARDEN ROAD, CENTRAL, HONG KONG  
TELEPHONE: OH-652-530-3400  
TELEFAX: OH-652-530-3355

February 14, 1994

TO WHOM IT MAY CONCERN:

I am writing in support of the appointment of Michael Bromwich as head of the Office of Professional Responsibility of the Department of Justice.

I have known Michael for nearly eleven years both as a prosecutor and as a private attorney. I worked directly with Michael in the United States Attorney's Office for the Southern District of New York for several years from 1983 until he left the office to join the independent counsel investigation. During that time I was able to observe Michael's performance in a number of criminal cases, including several trials. I was also able to observe him in his position as deputy chief of the Narcotics Unit of the U.S. Attorney's office. Since that time I have had the opportunity to discuss legal matters with him on a number of occasions.

I have found Michael to be a truly outstanding lawyer, possessing a keen intellect and a facility for legal analysis. He has also demonstrated great trial skills and an ability to argue persuasively both to the court and to jurors. Moreover, he has consistently displayed a tremendous sense of judgment and fairness in dealing with defendants, lawyers and witnesses.

Michael is extremely well qualified to handle a supervisory role at the Department. He has the capacity to work extremely well under the most difficult and strenuous situations. In addition, he has a tremendous talent for working well with other people and for supervising their work.

Further, I believe Michael to possess an extremely high sense of legal and personal ethics. In my experience, he has demonstrated a true commitment to "doing the right thing" in every situation, regardless of outside pressures and considerations.

February 14, 1994

In short, I have no doubt that Michael will make a truly outstanding contribution to maintaining the integrity of the Department of Justice as Chief of the Office of Professional Responsibility. Indeed, I cannot imagine a person better qualified to hold that position.

I will be pleased to elaborate further on my opinions, if called upon to do so.

Very truly yours,



Mark R. Hellerer

UNIVERSITY OF WASHINGTON  
SEATTLE, WASHINGTON 98105

School of Law  
Condon Hall, JB-20

February 24, 1994

To Whom It May Concern:

I write to support in the strongest possible terms the nomination of Michael R. Bromwich for Inspector General for the United States Department of Justice. I have known Mike Bromwich since 1985, when we both were Assistant United States Attorneys in the Southern District of New York. He is an outstanding lawyer with an impeccable sense of legal ethics and professional responsibility. I can think of no one better qualified to serve in the position for which he has been nominated.

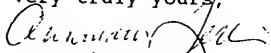
I worked closely with Mr. Bromwich for almost a year, when I was assigned to the Narcotics Unit. He was the Deputy Chief of that Unit, and so I had daily contact with him. He was an excellent supervisor in all respects: careful, thoughtful, decisive, and open to considering all points of view. He always had very good advice and exercised sound legal judgment. He had the reputation of being a tireless and thorough investigator. He was universally respected by the Assistant United States Attorneys and law enforcement agents with whom he worked.

I also had the very good fortune of trying a six week narcotics trial with Mr. Bromwich. The case, United States v. Vasta et al., SSS 86 Cr. 60, involved eight defendants, numerous witnesses, and hundreds of exhibits. His skills as a courtroom lawyer were simply outstanding. He was thoroughly prepared and well-organized, and conducted himself in a most professional manner.

Mr. Bromwich would bring to the position of Inspector General his considerable skills as a lawyer, investigator, and supervisor. Given these skills and his utmost professionalism, he is particularly well-suited to the task of overseeing investigations of other lawyers for professional misconduct. Finally, I have never seen Mr. Bromwich's conduct as a prosecutor affected in any manner by political or other improper considerations.

In sum, I give my unqualified support to Michael Bromwich's nomination as Inspector General. Please feel free to contact me if I can provide any further information.

Very truly yours,



Annmarie Levins  
Assistant Professor of Law  
Telephone: (206) 685-8985

## ZUCKERMAN, SPADEK, GOLDSTEIN, TAYLOR &amp; KOLKER

1114 AVENUE OF THE AMERICAS  
NEW YORK, NEW YORK 10036  
(212) 479-6600WASHINGTON  
MIAMI  
BALTIMORE  
TAMPATELECOPIER  
(212) 479-6512  
WRITER'S NO.

(212) 479-6501

February 22, 1994

To Whom It May Concern:

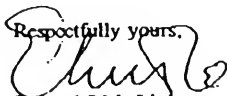
This letter is being written on behalf of Michael R. Bromwich, whom I have known as a colleague and friend for over ten years. I understand that Mr. Bromwich has been nominated for the position of Inspector General of the United States Department of Justice. Based upon my extensive professional dealings with Mr. Bromwich, I am able to give him my enthusiastic recommendation and state that I believe it would be difficult to find a more able candidate for Inspector General.

Mr. Bromwich and I first became acquainted when we served together as Federal prosecutors in the United States Attorney's Office for the Southern District of New York under Rudolph W. Giuliani. Mr. Bromwich initially worked under my supervision, when I was Deputy Chief of the Narcotics Unit in the United States Attorney's Office and quickly showed himself to be one of the most dedicated and conscientious lawyers in the Office. I also had ample opportunity to observe Mr. Bromwich's performance during the following years as we both rotated through different units in the Office, and I ultimately became Deputy Chief of the Criminal Division. Mr. Bromwich became one of the stellar lawyers in the Office, known not only for his intelligence and trial abilities but also for his judgment and highly developed sense of ethics. I have not known any lawyer in my twenty years' experience who surpasses Mike in his ethical sense. I have never known him to be affected by any extraneous consideration in making decisions on how to proceed. He never showed himself to be the sort of prosecutor who would be swayed by political considerations or self interest. Mike called the shots exactly as he saw them with absolutely no regard for anything but justice.

There is likewise no doubt that Mr. Bromwich has the organizational and leadership abilities for a position such as Inspector General. He is a highly organized person who never hesitated to assume responsibility over complex and time-consuming tasks and to supervise others in a well-structured team approach. He is definitely a "can do" sort of person who can function in extremely complicated situations to obtain the best results.

Oftentimes one is asked to write recommendations for associates, and one complies out of courtesy or obligation. This is not such a case. When I learned of his nomination, I could not have been more encouraged by the fact that the political process can, in fact, result in the nomination of someone who is not especially "political" but who just happens to be an outstanding candidate for the position. I would be more than happy to answer any questions about Mr. Bromwich based upon my extensive experience with him. I look forward to his confirmation and appointment.

Respectfully yours,



Edward J.M. Little



## STEIN, ZAUDERER, ELLENHORN, FRISCHER &amp; SHARP

RICHARD T. SHARP  
 HARRY FRISCHER  
 DAVID H. ELLENHORN  
 MARK C. ZAUDERER  
 SIDNEY H. STEIN  
 BERTRAND C. SELLNER  
 ROANNE L. MANN  
 LOUIS H. SOLOMON  
 DAVID E. NACHMAN  
 EDWIN H. BAUM

45 ROCKEFELLER PLAZA  
 NEW YORK, NEW YORK 10111  
 (212) 956-3700  
 FACSIMILE (212) 956-4066

JOHN J. O'CONNELL  
 RICHARD D. MARSHALL  
 OF COUNSEL  
 ———  
 FELICE J. BATLAN  
 JOSEPH H. FERNANDEZ  
 BETH E. GOLDMAN  
 STEVEN J. LEVINE  
 JAMES ROBERT PROFF, JR.  
 CAROLINE S. PRESS  
 NAL S. SHAFTEL

February 15, 1994

Re: Michael Bromwich

To Whom It May Concern:

It is with great enthusiasm that I write in support of the nomination of Michael R. Bromwich for Inspector General of the United States Department of Justice.

I first met Michael more than ten years ago, when he joined the United States Attorney's Office for the Southern District of New York. Over the years, I got to know Michael on both a personal and a professional level. When we first met, I was Chief of Appeals and, in that capacity, supervised Michael's appellate work and also served as a sounding-board when he sought to talk through difficult legal issues that he encountered as a prosecutor.

Michael quickly distinguished himself as one of the young "stars" of the U.S. Attorney's Office. My own contact with Michael confirmed that that reputation was amply deserved. Even at a very early stage of his career, he took on complex and otherwise difficult investigations and trials, and handled them with the ability and self-confidence of a seasoned lawyer.

More importantly, Michael's thoroughness and intelligence were matched by his fair-mindedness and decency. As a prosecutor, Michael consistently sought to achieve the just result, without regard to any political or personal considerations. Simply put, Michael was surely a formidable prosecutor, but never an overzealous one.

I am aware that in connection with the Oliver North case, the defense complained of misconduct on Michael's part; I am also aware that Judge Gesell rebuffed that challenge. As both a prosecutor and then a defense

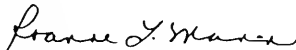
STEIN, ZAUDERER, ELLENHORN, FRISCHER & SHARP

February 15, 1994

Page 2

lawyer, I have seen various criminal cases in which charges of prosecutorial misconduct - like charges of ineffective assistance of counsel - were used as strategic tools by the defense. Absent substantiation of a charge of that nature, the mere fact that it was lodged (and here rejected) should not be permitted to destroy or blemish the reputation of an individual like Michael Bromwich, whose integrity is of the highest order.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Roanne L. Mann".

Roanne L. Mann

RLM/aw

## HOWARD, DARBY &amp; LEVIN

WARREN G. CAYWOOD, JR.    STEPHEN B. LAND  
 WILLIAM R. COLLINS        JACK P. LEVIN  
 LAWRENCE A. DARBY III    AARON R. MARCU  
 JOHN P. GOURARY          SARA E. MOSS  
 HARRY C. HIVES            C. WILLIAM PHILLIPS  
 MICHAEL B. HOPKINS       SCOTT F. SMITH  
 PHILIP K. HOWARD         KELLY VANCE

1330 AVENUE OF THE AMERICAS    TELEPHONE 212 841 1000  
 NEW YORK, N.Y. 10019            FAX 212 841 1010

February 22, 1994

Re: Nomination of Michael R. Bromwich, Esq.

To Whom It May Concern:

It is my privilege to write in support of the nomination of Michael Bromwich to be Inspector General of the Department of Justice. I have known Mike since May 16, 1983, the day on which we were sworn in together as Assistant United States Attorneys for the Southern District of New York, and I can think of no lawyer in the United States who could serve better, more effectively, or with as much integrity as Inspector General than Mike.

I had the honor of serving for four years with Mike in the Southern District of New York. I saw first-hand his development as a lawyer, as a public servant, and as a leader of others. He was a model of integrity, judgment, determination, and professionalism. He attacked difficult investigations with creativity and vigor, but with the sense of fairness that all prosecutors should, but do not always, keep uppermost in their minds in serving the cause of justice. To be sure, Mike's work resulted in an overwhelming percentage of convictions; but the defendants always were convicted fair and square.

In the years that I have known and worked with Mike Bromwich, he has scrupulously observed the law, the constitutional rights of the accused, and the codes of ethics that govern our profession and the work of the federal prosecutor. I have never seen any sign that he

To Whom It May Concern

-2-

would permit politics or any other inappropriate consideration to influence him in the discharge of his duties. I have complete confidence in his integrity, and I firmly believe that he would be an outstanding leader of the Justice Department's internal investigative unit.

I would be pleased to answer any reader's specific questions or to amplify these expressions of my respect and admiration for Mike.

Very truly yours,

A handwritten signature in cursive script that reads "Aaron R. Marcu".

Aaron R. Marcu

U.S. Department of Justice

United States Attorney  
Southern District of New York

---

*The Silvio J. Mollo Building  
One Saint Andrew's Plaza  
New York, New York 10007*

March 1, 1994

To Whom It May Concern:

Re: Michael Bromwich

I write to supply you with information regarding Michael Bromwich, who has been nominated to the position of Inspector General for the Department of Justice. My career has been with the United States Attorney's Office for the Southern District of New York where I have been an Assistant for almost twenty-four years, during which time I also served on the Watergate Special Prosecution Force. During these years I have seen many Assistant United States Attorneys pass through the office, and I can say without question that Michael, with whom it was my honor to serve from 1983-1987, was among the best and the brightest.

Michael became an experienced trial lawyer during his time in our office, and was promoted to a supervisory position because of the universally held view that he had excellent judgment. The qualities of experience and sound judgment are, in my view, precisely what are necessary to be an effective Inspector General. Michael will have the experience to review the actions of prosecutors and others in context, and the mature judgment to evaluate their conduct fairly and in light of all applicable ethical standards.

In sum, I have no doubt that Michael would perform the duties of Inspector General in an outstanding manner, and that the Department of Justice would be honored by his presence in that position.

Very truly yours,

By: 

SHIRAH NEIMAN  
Deputy United States Attorney  
Telephone: (212) 791-0045

WILLKIE FARR &amp; GALLAGHER

Benito Romano

New York  
Washington, DC  
London  
Paris

February 23, 1994

To Whom It May Concern

This is submitted in support of the nomination of Michael Bromwich to serve as Inspector General of the Department of Justice. Michael and I served together as Assistant United States Attorneys in the Southern District of New York in the Narcotics Unit of the Criminal Division. I continued to work with Michael when I moved on to the Appeals Unit of the Criminal Division and later when I served in several supervisory positions under the then United States Attorney, Rudolph W. Giuliani. Thus, I was able to observe firsthand Michael's development as a lawyer and his outstanding skills as a prosecutor.

Michael handled some of the office's most significant and complex narcotics prosecutions and was frequently called upon to advise colleagues on investigative strategies and trial tactics. One case I recall in which Michael was the principal Assistant involved significant corruption among guards at the Metropolitan Correctional Center in New York.

In all of his cases, Michael demonstrated both courage and extremely sound judgment. He was an outstanding Assistant United States Attorney and I have no doubt will serve with great distinction if the public is fortunate enough to have his services again.

Sincerely,


  
Benito Romano

One Citicorp Center  
153 East 57th Street  
New York, NY 10022-6669  
212 915 8000

Telex: BCA 233780  
BCA 238806  
WU 12 7679  
Fax: 212 752 2991

SUITE 1100  
1001 PENNSYLVANIA AVENUE, N.W.  
WASHINGTON, D.C. 20004-2505

February 11, 1994

To whom it may concern:

Re: Michael Bromwich

I served from 1979 to 1986 as an Assistant United States Attorney for the Southern District of New York, and as Chief of the Securities and Commodities Fraud Unit from 1984 to 1986. Since 1986 I have been a partner in a large Washington law firm. I have known Mike Bromwich since our overlapping tours in the U.S. Attorney's Office, and we have maintained our acquaintance here in Washington. I regard Mike Bromwich as among my best professional friends, although we are not close personal friends.

Mike Bromwich would rank high on my list for any sensitive job in public service, for reasons that can only be explained by describing the most difficult experience of our tenure in the U.S. Attorney's Office.

About ten years ago a fellow prosecutor developed a drug habit, and stole hundreds of thousands of dollars in cash and large quantities of narcotics held as evidence in the U.S. Attorney's Office safe. At the time this was discovered, this prosecutor had actually selected a jury in order to commence the trial of a heroin importation case, for which he himself had stolen and disposed of the narcotics evidence.

It exaggerates only a little to say that the reaction to this discovery in the U.S. Attorney's Office was a collective nervous breakdown. There were those who were preoccupied with sympathy for their colleague, and others who were determined to see that he be made a special example. There was no one who was not profoundly and personally affected by this shocking breach of trust.

It was Mike Bromwich, however, who was first to ask "what about the case?" That is, the heroin importation prosecution that had been left in a shambles because the prosecutor had stolen the drugs. As matters stood, unless the U.S. Attorney's Office pursued the case immediately, the charges against two narcotics importers would have to be dismissed for good. It was Mike Bromwich who stepped forward and, literally over night,

To whom it may concern  
February 11, 1994  
Page 2

picked up the pieces and tried the case.

The fact that both defendants were convicted says a lot about Mike Bromwich's lawyering skills. More important, though, is what that experience teaches about Mike's dedication to the mission, and his sense of obligation to the public service he has sworn to render. At a time when others were preoccupied by a tremendous personal shock, Mike Bromwich demonstrated a unique strength of character and ability to put aside outside pressures to see that the job got done.

Mike Bromwich will bring to any public service this same resistance to outside influences and close focus on the obligations of the job at hand. Years down the road, those responsible for his appointment and confirmation as Justice Department Inspector General will take great satisfaction in having selected him.

If you have any questions, I can be reached at  
(202) 624-2745.

Very truly yours,



Peter J. Romatowski



BART M. SCHWARTZ  
219 EAST 49TH STREET  
NEW YORK, NEW YORK 10017

February 14, 1994

To Whom It May Concern:

I am a Republican who has supported Republican candidates for national office. I am also proud of having supported others, when I knew the candidate and believed in his or her ability to govern fairly and honestly.

I am an attorney who served as chief of the Criminal Division under United States Attorney Rudolph W. Giuliani and served as Mayor Giuliani's volunteer Coordinator of the Economic Development Screening and Search Committee.

When I was Chief of the Criminal Division Michael Bromwich was an Assistant United States Attorney who worked under my supervision. I had the opportunity to work with Mr. Bromwich and make judgments about him based upon my personal experience.

I always found Mr. Bromwich to be a fair, ethical and conscientious public servant. No doubt he was a tough prosecutor who worked to put criminals in jail. But he always worked within the constitutional and ethical rules which govern a prosecutor's conduct. Mr. Bromwich never allowed political considerations to enter into his decisions. Indeed, politics were never an issue when reviewing or discussing cases with Mr. Bromwich. He always dealt with matters on the merits.

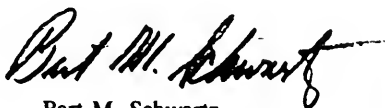
Mr. Bromwich displayed a keen sense of fairness and ability to judge the conduct of others fairly and based on the facts. I am confident that he has the ability to judge the conduct of other prosecutors and individuals in the criminal justice system. He understands his ethical obligations, as well as the obligations of others. He has the strength of

February 14, 1994  
Page 2

character to resist reaching the "popular" result and to ensure that the right and correct result is achieved. Finally, I believe that he has the ability to train others, and influence others who will work with him, so that they will aspire to the same high standards Mr. Bromwich sets for himself.

Without any reservation whatsoever, I endorse Mr. Bromwich's nomination to be Inspector General of the Department of Justice.

Very truly yours,

A handwritten signature in black ink, appearing to read "Bart M. Schwartz". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Bart M. Schwartz

BMS/cg

# BOGLE & GATES

---

LAW OFFICES

LINDA C. SEVERIN

Two Union Square  
601 Union Street  
Seattle, Washington 98101-2346

Main Office: (206) 682-5151  
Facsimile: (206) 621-2660  
Direct Dial: (206) 621-2690

Anchorage  
Bellevue  
Olympia  
Portland  
Tacoma  
Vancouver, B.C.  
Washington, D.C.

March 7, 1994

To Whom It May Concern:

I write in support of the nomination of Michael R. Bromwich for Inspector General for the United States Department of Justice. I have known Mr. Bromwich since 1984, when I became an Assistant United States Attorney in the Southern District of New York. I worked as a federal prosecutor in that Office until 1992, when I entered private practice in Seattle. Based on my experience working with him, I believe that Mr. Bromwich is extremely well qualified to serve in the position for which he has been nominated. He combines outstanding legal abilities with a deep commitment to fairness and justice.

Mr. Bromwich enjoyed an excellent reputation as a prosecutor. After I joined the United States Attorney's Office, I quickly learned that he was someone to whom I could turn for sound advice. He carefully considered the facts and the law before recommending any strategy, and he was considerate of all points of view. He was highly respected by everyone in the Office as an investigator, as a legal thinker and writer, and as a trial lawyer. Moreover, he enjoyed excellent relations with his colleagues and with law enforcement agents. In sum, he conducted himself in a thoroughly professional manner in every facet of his work as a federal prosecutor. Never was his conduct as a prosecutor affected in any manner by political or other improper considerations. His character and integrity are above reproach.

Mr. Bromwich's many talents would enable him to serve this country well in the position of Inspector General. His prodigious legal abilities and his professionalism make him

March 7, 1994  
Page 2

particularly well-suited to the task of overseeing investigations of other lawyers for professional misconduct.

Mr. Bromwich's nomination for Inspector General has my unqualified support. Please contact me if I can provide any further information.

Very truly yours,

BOGLE & GATES



Linda C. Severin

## U.S. Department of Justice

United States Attorney  
Southern District of New York

---

*The Silvio J. Mollo Building  
One Saint Andrew's Place  
New York, New York 10007*

February 15, 1994

To Whom It May Concern:

I write to support the nomination of Michael Bromwich to the position of Inspector General for the Department of Justice. Michael is a superb lawyer and ethical practitioner, and is the right person for such an important job.

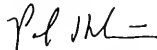
Michael and I served together at the United States Attorney's Office from 1982 to 1985, and have remained friends ever since. In an Office that prides itself on selecting bright young lawyers to serve the public interest, Michael was among the very best and brightest. He was a tireless investigator who pursued the truth wherever it led. More importantly, he was as "straight a shooter" as one could ever wish to know. If I had a difficult call in a case, I sought out Michael's judgment. I was not alone in that regard. All of us knew that Michael would give sound advice -- that he was not "pro-prosecution" but "pro-justice" -- and that he brought no preconceived biases to the task.

These qualities will serve the Department of Justice well if Michael is its Inspector General. Michael knows the enormous power that our system confers on prosecutors and knows that that power, in the wrong hands, can be abused. Of two things I am certain: Michael will not tolerate ethical lapses, but at the same time he will not criticize before carefully determining the pertinent facts. His touchstone will always be fairness. In short, in Michael, the Department will have an experienced hand -- a prosecutor tested in some of the most significant courtroom battles of our day -- and a judicious mind, who will seek to do justice in his every decision.

February 15, 1994  
page 2

As a federal prosecutor and as a citizen, I applaud and enthusiastically support Michael Bromwich's nomination. The Department and the country will be fortunate to have him as Inspector General.

Sincerely,

A handwritten signature in dark ink, appearing to read "Paul Shechtman". The signature is written in a cursive style with a horizontal line at the end.

Paul Shechtman  
Chief, Criminal Division

FULBRIGHT & JAWORSKI  
LLP.

A REGISTERED LIMITED LIABILITY PARTNERSHIP  
801 PENNSYLVANIA AVENUE, N.W.  
WASHINGTON, D.C. 20004-2604

HOUSTON  
WASHINGTON, D.C.  
AUSTIN  
SAN ANTONIO  
DALLAS  
NEW YORK  
LOS ANGELES  
LONDON  
ZURICH  
HONG KONG

TELEPHONE: 202/662-0200  
TELEK: 197471  
FACSIMILE: 202/662-4643  
WRITER'S DIRECT DIAL NUMBER  
202/662-4505

February 17, 1994

CONFIDENTIAL

Mark Gitenstein, Esq.  
Mayer, Brown & Platt  
2000 Pennsylvania Avenue, NW  
Suite 6500  
Wash, D.C. 20006

Re: Michael Bromwich

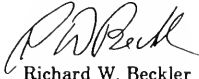
Dear Mark:

As counsel for John Poindexter, from time to time I had occasion to deal with Mike Bromwich while he was a member of the Special Prosecutor's office investigating the Iran-Contra matter.

In my opinion, Mr. Bromwich always acted in a highly professional manner. I have also had to meet and deal with Mr. Bromwich since he left the Special Prosecutor's office, and I have found him to be an extremely principled person whose integrity is beyond question.

If you need any further elaboration, I shall be pleased to provide additional information.

Very truly yours,



Richard W. Beckler

RWB/ecf

David P. Doherty, Esq.  
295 Greenwich Street, Apt. #3A  
New York, New York 10007  
March 14, 1994

To whom it may concern:

Michael Bromwich headed-up the independent counsel's investigative team which focussed on the Central Intelligence Agency during the 1987 timeframe while I was General Counsel of the Agency. As a consequence, I had extensive dealings with Mr. Bromwich involving various investigative requests and related matters. Needless to say, much of the information sought involved very sensitive and highly classified information.

I found Mr. Bromwich to be thoroughly professional in carrying out his assigned responsibilities. He proved to be an experienced, conscientious and very able lawyer. While he was aggressive in carrying out his responsibilities, he brought a sense of balance to his work that permitted a reasoned discussion of important issues and demonstrated a concern for the unnecessary disclosure of classified information. Most importantly, in my view, Mr. Bromwich possessed the two most important qualities of a good prosecutor, that is, good judgement and a respect for fairness.

All of these qualities, I believe, would make Mr. Bromwich an outstanding Inspector General of the Department of Justice.

Sincerely,





UNIVERSITY OF VIRGINIA  
SCHOOL OF LAW  
580 Massie Road  
Charlottesville, VA 22903-1789  
Fax 804 / 924-7536

Earl C. Dudley, Jr.  
Associate Professor of Law  
804 / 924-8813

March 2, 1994

To Whom it May Concern:

I am writing with respect to the nomination of Michael R. Bromwich to serve as Inspector General of the Department of Justice. My contact with Mr. Bromwich grew out of his service as a Deputy Independent Counsel in the Iran/Contra investigation. I represented Richard Miller in that investigation. Mr. Miller pled guilty to a single count of conspiracy to defraud the United States and testified as a government witness at the trial of Lt. Col. Oliver North.

I worked closely over a period of approximately one year with Mr. Bromwich and others involved in the Iran/Contra investigation. I have the highest respect for his ability as a lawyer, his ethical standards, and his judgment. I think he would make an outstanding Inspector General.

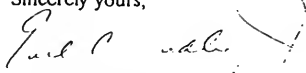
While Mr. Bromwich and I were adversaries throughout much of our professional intercourse, I found him to be trustworthy, reasonable, and competent. His judgments, as I observed them, were those of a consummate professional prosecutor acting in light of the evidence available to him. At no time did politics, personalities, or other extraneous or improper considerations appear to impinge upon his course of action. My colleagues and I negotiated a complex plea agreement with Mr. Bromwich and his colleagues. Throughout that process I felt that he was fair with me and with my client, and that he displayed a true professional's concern for the rights of my client. I feel the same way in hindsight.

I also worked with Mr. Bromwich in preparing my client to testify at the North trial. That process confirmed my view of his professionalism and ethical standards. He never sought to expand my client's testimony beyond what the existing record showed or what my client was comfortable in stating as the truth. Because of my client's prior personal and professional relationship with Col. North, I made it clear that Mr. Miller intended to meet with Col. North's counsel in advance of the trial. Mr. Bromwich never sought either to impede or to intrude upon our dealings with the Mr. North and his counsel.

The job of Inspector General in the Department of Justice seems to me an extremely important one in light of growing complaints of abuse of office by federal prosecuting attorneys. There are many lawyers for whom I have great respect but whom I would nonetheless

hesitate to endorse for a job of this magnitude calling for such great delicacy of judgment. I have no hesitation endorsing Mr. Bromwich. I feel confident in light of our dealings in the Iran/Contra investigation that he possesses the skills, the integrity, and the judgment for this demanding position.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Earl C. Dudley, Jr.", with a large flourish at the end.

Earl C. Dudley, Jr.

## MUDGE ROSE GUTHRIE ALEXANDER &amp; FERDON

180 HAIDEN LANE  
NEW YORK, NEW YORK 10038 #996  
212 510-7000

2121 K STREET, N. W.  
WASHINGTON, D. C. 20037-1898

21<sup>ST</sup> FLOOR  
333 SOUTH GRAND AVENUE  
LOS ANGELES CALIF 90071-1525  
213 613 1112

830 FIFTH AVENUE  
SUITE 1850  
NEW YORK, N. Y. 10111-0144  
212-332-1800

202-429-9355

SUITE 900 NORTHBRIDGE CENTRE  
515 NORTH FLAGLER DRIVE  
WEST PALM BEACH FL 33401-4334  
407-550-8100

MORRIS CORPORATE CENTER TWO  
ONE UPPER POWAY ROAD BLDG. D  
PARLIPPANT, NEW JERSEY 07054-1075  
201-335-0004

CABLE ADDRESS  
BALUCHINS-WASHINGTON  
ITT TELE: 440264  
FACSIMILE: 202-429-9367

12 RUE DE LA PAIX  
75002 PARIS, FRANCE  
33 1 42 81 57 71

LEONARD GARMENT  
PARTNER

INFINI AKASAKA  
6-1-15 AKASAKA, MINATO KU  
TOKYO 107, JAPAN  
+03-3423-3970

February 14, 1994

To Whom It May Concern:

This brief evaluation of Michael Bromwich is based entirely on my dealings with him in the retrial of Oliver North. I was counsel for a principal prosecution witness, Robert C. McFarlane, and took part in the preparatory sessions; an associate, Peter Morgan, was present during the trial testimony.

In my dealings with Mr. Bromwich, he was consistently professional, friendly, courteous, and thorough. He was careful to observe the fine line between obtaining a clear idea of Mr. McFarlane's testimony without undertaking to "coach" or "push" him. I would characterize him as an able and vigorous prosecutor who felt professionally and conscientiously attached to the observance of ethical limits in his preparatory work and, as I understood it, in his trial conduct. (It helped that he occasionally displayed a decent sense of humor.)

In this limited context, I am confident that he is equipped to supervise investigations of prosecutors for alleged breaches of professional ethics. I never saw any evidence that his behavior as a prosecutor was affected by political considerations or other attitudes extraneous to the legal issues.

I discussed this letter with my client, who authorizes me to say he agrees with my general opinion of Mr. Bromwich.

I am a registered Independent; I was a registered Democrat before that, but with age, my political interests have become more eclectic than electoral.

Sincerely,



Leonard Garment

SIDLEY & AUSTIN  
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATION

CHICAGO  
 —  
 LOS ANGELES  
 —  
 NEW YORK

1722 EYE STREET, N.W.  
 WASHINGTON, D.C. 20006  
 TELEPHONE 202: 736-8000  
 TELEX 89-463  
 FACSIMILE 202: 736-8711

LONDON  
 —  
 SINGAPORE  
 —  
 TOKYO

125<sup>th</sup>  
 Avenue  
 1866-1991

WRITERS' DIRECT NUMBER

(202) 736-8069

February 22, 1994

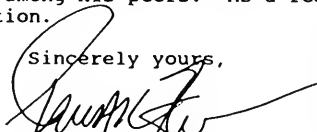
To Whom It May Concern:

I am writing to endorse enthusiastically the nomination of Michael R. Bromwich to be Inspector General of the U.S. Department of Justice.

I met Mr. Bromwich while representing Retired Major General Richard V. Secord in connection with the Iran/Contra investigation conducted by Independent Counsel Lawrence Walsh.

Based on my contact with Mr. Bromwich, which has continued to date, I am convinced that he is extremely well qualified to assume the position of Inspector General. Mr. Bromwich possesses a keen intellect and is very experienced in the conduct of sensitive investigations. More importantly, he is a fair minded individual who will unquestionably act responsibly and without partisanship in the execution of his duties. He is an extremely well respected member of our legal community, and he enjoys an outstanding reputation among his peers. As a result, he is most deserving of confirmation.

Sincerely yours,



Thomas C. Green

TCG/jmf

LAW OFFICES  
JANIS, SCHUELKE & WECHSLER  
1728 MASSACHUSETTS AVENUE, N W  
WASHINGTON DC 20036

RICHARD JANIS

TELEPHONE  
120218610600

February 15, 1994

To Whom It May Concern:

I am writing on behalf of the nomination of Michael R. Bromwich to be Inspector General of the Department of Justice.

I first met Mr. Bromwich in early 1987, when he was a Special Counsel in the Office of Independent Counsel Lawrence E. Walsh. I represented Albert Hakim, one of the principal targets of the Iran/Contra Independent Counsel investigation. Mr. Hakim ultimately was indicted in the central Iran/Contra case, along with Admiral John Poindexter, Lt. Col. Oliver North and Major General (Retired) Richard Secord.

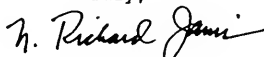
During the course of these proceedings, in which Mr. Bromwich and I were adversaries, I had occasion to deal with him on a regular basis, both before and after Mr. Hakim's indictment. Those contacts ranged from discussions regarding scheduling and procedural matters to meetings and arguments regarding substantive matters, as well as active litigation over disputed legal issues.

Throughout my dealings with Mr. Bromwich, I found him to be extraordinarily capable and professional at all times. While I have been publicly quite vocal in my criticism of the Independent Counsel scheme in general, and the performance of Lawrence E. Walsh in particular, I have nothing but the highest personal and professional regard for Mr. Bromwich. I consider him to be a man of significant experience, exceptional temperament and unquestioned integrity and professionalism. As an adversary, I found him to be tough, but reasonable, open-minded, ethical and fair. I trusted him and felt that when he made a commitment or representation, I could take it to the bank. I might add that my personal experience in dealing with Mr. Bromwich turned out to be completely consistent with what I had been told in advance about Mr. Bromwich by mutual acquaintances with whom I had made inquiries.

I think it speaks volumes that, notwithstanding the stakes involved in the Iran/Contra case, the contentious nature of the litigation and my own strongly-held negative views about the manner in which Mr. Walsh conducted his office, I came to have the highest regard and respect for Mike Bromwich and now consider him to be a

friend. I was delighted when I heard that he had been selected to be the Inspector General at the Department of Justice. His wealth of experience, unquestioned integrity, fairness and professionalism make him an exceptional choice. He is precisely the type of person that the public needs to have serving in such an important and responsible position.

Yours truly,

A handwritten signature in cursive script that reads "N. Richard Janis". The signature is written in dark ink and is positioned above the typed name.

N. Richard Janis

NRJ: jkb

CONFIDENTIAL

UNITED STATES DISTRICT COURT  
CHAMBERS OF  
JUDGE ROBERT L. CARTER  
UNITED STATES COURTHOUSE  
FOLEY SQUARE  
NEW YORK, N. Y. 10007

February 18, 1994

Mark Gitenstein, Esq.  
Mayer, Brown & Platt  
2000 Pennsylvania Avenue  
Suite 6500  
Washington, D.C. 20006

Dear Mr. Gitenstein:

My acquaintance with Michael Bromwich dates from 1983 when, as an Assistant United States Attorney in the Southern District of New York, he prosecuted a case before me involving bank robbery, with a customer being held hostage. The trial lasted about a week. Mr. Bromwich was then a young prosecutor in terms of time on the job, and this could have been his first prosecution. He exhibited first rate lawyering skills and the ability to vigorously seek a conviction without untoward prosecutorial zeal. I was impressed with the way he skillfully and efficiently prosecuted the case.

Several years later, Mr. Bromwich was before me again in a highly charged case involving a widespread conspiracy to distribute heroin. The government seized \$5.6 million in cash, the proceeds of the trafficking. Mr. Bromwich was now an experienced prosecutor and handled this case with great skill. He brought home the case in a month, although a less efficient prosecutor could have extended the trial for a week or so longer. One of the defendants in that proceeding who was acquitted had been defended by court appointed counsel. Mr. Bromwich prosecuted him before me to require him to reimburse the government for the costs of his defense since his financial status did not warrant his having court appointed counsel.

I have had no further professional involvement with Mr. Bromwich, although I have maintained contact since then.

CONFIDENTIAL

Mark Gitenstein, Esq.

-2-

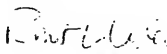
Feb. 18, 1994

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Mr. Bromwich was a first rate prosecutor. He is an intellectually gifted and highly skilled litigator. I cannot make a judgment as to his administrative capabilities, but as insightful and intelligent as he is, and as organized as he was in his case presentation before me, I would think him fully capable of handling the oversight of the investigation of lawyers for alleged breaches of professional ethics.

Mr. Bromwich never acted, in the cases before me, out of political consideration. Indeed, I have no idea what his politics are. My sense of him is of a fair minded individual, who is governed by the highest ethical consideration. I cannot imagine him doing any unethical act or taking unfair advantage of an individual for political or unworthy reasons when in a position of power.

Sincerely,

  
ROBERT L. CARTER



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
UNITED STATES COURTHOUSE  
NEW YORK, NY 10007

CHAMBERS OF  
JUDGE MORRIS E. LASKER

February 16, 1994

To Whom It May Concern:

I am writing in support of the nomination of Michael R. Bromwich, Esq. as Inspector General of the United States Department of Justice.

I have known Mr. Bromwich since 1984 when he first appeared before me as an Assistant United States Attorney prosecuting a multi-defendant narcotics conspiracy case known as United States v. Harold Barr, et al. The case was a particularly complicated one which required many meetings with Mr. Bromwich as prosecutor, and counsel. Moreover, the trial of the case lasted, as I recall, approximately one month and post-trial hearings were held upon remand as to one question by the United States Court of Appeals for the Second Circuit.

In sum, my contact with Mr. Bromwich on a professional basis were carried on over a period of several years. Many of the meetings with him and other counsel took place in my Chambers in an informal setting. The proceedings required Mr. Bromwich as prosecutor to make representations to the court, submit affidavits and, in the instance of the post-trial hearing to testify as a witness.

On the basis of this long and intimate exposure to Mr. Bromwich and, as a United States District Judge who has served since 1968, and is aware of the importance of the position to which Mr. Bromwich has been nominated, I declare without qualification that I consider Mr. Bromwich to be a lawyer and prosecutor at the highest professional level and that he is a man and lawyer of highest ethical standards.

In my opinion, Mr. Bromwich is intellectually and professionally well equipped to carry out the responsibilities of the Inspector General as I understand them, including the oversight of investigations of attorneys, whether prosecutors or not, for alleged breaches of professional ethics.

In discharging his responsibilities in the litigation before me, Mr. Bromwich was never influenced by any consideration extrinsic to law enforcement. I am confident that he would discharge his duties as Inspector General with the same circumspection.

I would be glad to answer any specific questions that a reader of this letter might wish to put to me relating to Mr. Bromwich's qualifications to fill the position of Inspector General of the Justice Department.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Kenneth S. Ecker".

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF COLUMBIA  
WASHINGTON 20001

CHAMBERS OF  
STANLEY SPORKIN  
UNITED STATES DISTRICT JUDGE

February 14, 1994

Subject: Nomination of Michael R. Bromwich  
to be Inspector General of the  
Department of Justice

To Whom It May Concern:

I am writing on behalf of Mr. Michael R. Bromwich, Esq., who was recently nominated by President Clinton to be Inspector General of the Department of Justice. I have known Mr. Bromwich for the past eight years. I have found him to be an extraordinarily bright and capable attorney who possesses the highest legal skills. Above all, he is a person of integrity and would make an outstanding Inspector General.

I first met Mr. Bromwich during his assignment as a member of the Office of Special Counsel looking into the Iran-Contra affair. While I found Mr. Bromwich to be a vigorous investigator and trial attorney, at all times he discharged his duties in a fair and responsible manner.

I thought so much of Mr. Bromwich's abilities that when he completed his Special Counsel responsibilities I appointed him on four occasions to represent indigent defendants on a Pro Bono basis. He accepted each of these assignments in the highest traditions of the legal profession. In each of the four appointments, he handled his assignments as he would a retained client. On these assignments, he contributed over 400 hours of outstanding legal services. Mr. Bromwich never submitted a voucher with respect to his criminal justice appointments even though he was entitled to compensation under the Criminal Justice Act.

According to the hours he spent on these four cases, Mr. Bromwich would have been entitled to some \$30,000 in legal fees.

I always found Mr. Bromwich to be a lawyer possessing outstanding legal skills. While he is tenacious, he has always been fair minded.

If I can be of any further assistance, please let me know.

Sincerely,



Stanley Sporkin

KENNETH I. JUSTER  
1200 NEW HAMPSHIRE AVENUE, N.W.  
WASHINGTON, D.C. 20036-6885

February 14, 1994

Re: Michael R. Bromwich

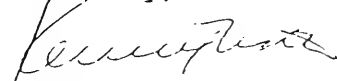
To Whom It May Concern:

I am writing to express my views with regard to Michael R. Bromwich, who has been nominated to be the Inspector General of the Department of Justice. I have known Mike since the early 1970s, when we were undergraduates together at Harvard College. We subsequently attended Harvard Law School and the Kennedy School of Government together, and have been good friends ever since that time.

I regard Mike as an excellent lawyer who has the highest ethical standards. He is fair and impartial, and a person of great integrity and outstanding intellect. I think he is well-equipped to oversee investigations of prosecutors and other lawyers for alleged breaches of professional ethics. In short, I admire Mike as an individual and value his personal friendship.

I should note for the record that I am currently a partner at the law firm of Arnold & Porter. I previously served in the State Department during the Bush Administration, first as the Deputy and Senior Adviser to Deputy Secretary of State Lawrence S. Eagleburger, and later as the Acting Counselor of the Department.

Sincerely,



Kenneth I. Juster

TERRY F. LENZNER

February 21, 1994

To Whom It May Concern:

I have worked for both Republican and Democratic administrations as follows; Trial Attorney, Civil Rights Division, 1964-66; Assistant U.S. Attorney's Office, Southern District of New York, 1966-69; Director, Office of Legal Services, Office of Economic Opportunity, 1969-1970; Assistant Chief Counsel, Senate Select Committee on Presidential Campaign Activities, 1973-74.

I have known Mike Bromwich as a professional colleague for the last several years, having worked with him and his law firm on a number of cases. I can state without hesitation that Mike is an even-handed extremely competent attorney. My judgment of him is that his legal brilliance alone would dictate actions of only the highest integrity. Beyond his skills, I know Mike to be a person of total professionalism and I cannot imagine any situation where his judgment would be affected by anything except the merits of the matter at issue.

Indeed, as a government employee for over ten years, I can imagine how intimidating it might be to have an Inspector General's investigation of ones career possibly leading to criminal prosecution. I can only say that anyone -- including myself -- would be fortunate to have Mike Bromwich conducting such an inquiry because it would guarantee an absolute fair impartial review protected by all appropriate safeguards of due process. Mike's whole career and character guarantees that he would never succumb to the greatest public or political pressure.

I cannot imagine finding another attorney better qualified to serve as Inspector General of the Department of Justice.

Very truly,

  
Terry F. Lenzner

STERN & GREENBERG  
COUNSELORS AT LAWHERBERT J. STERN  
STEPHEN M. GREENBERG  
JEFFREY SPEISER  
DAVID S. STONE  
JOEL M. SILVERSTEIN  
HOWARD D. COHEN75 LIVINGSTON AVENUE  
ROSELAND, NEW JERSEY 07068  
201-535-1900  
FAX 201-535-9664

February 14, 1994

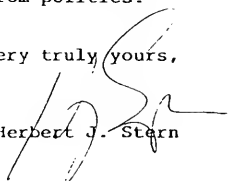
TO WHOM IT MAY CONCERN:

To introduce myself, I am a former United States Attorney for the District of New Jersey, serving from 1970 to 1974, and a former United States District Judge for the same district having served from 1974 to 1987.

I have known Michael R. Bromwich for approximately seven years. I came to know him when I was asked by Judge Walsh to be special outside counsel for him in order to handle the pretrial Kastigar motions in In the Matter of the United States vs. Oliver North, etals. During my service with Judge Walsh's office, I came to know Mr. Bromwich quite well. Mr. Bromwich is an outstanding lawyer and a truly fine and dedicated prosecutor. He not only has exceptional legal ability but is a very fine and very ethical person as well. I haven't the slightest doubt that he has both the moral and intellectual capacity to lead other attorneys in investigating alleged breaches of ethics in the legal or other professions.

I not only have not ever seen any evidence of Mr. Bromwich having been influenced by political considerations, but I know full well through my many contacts with him that he conducts himself as a professional prosecutor wholly separate and separated from politics.

Very truly yours,

  
Herbert J. Stern

HJS/jp

## HALE AND DORR

COUNSELLORS AT LAW

THE WILLARD OFFICE BUILDING  
1455 PENNSYLVANIA AVENUE, N.W., WASHINGTON, DC 20004  
202-942-8400 • FAX 202-942-8484

February 25, 1994

To Whom It May Concern:

I write this letter in support of Michael Bromwich's candidacy as Inspector General for the Department of Justice. Mr. Bromwich is one of the outstanding lawyers of my generation, and the country is fortunate that men of his caliber are prepared to make personal sacrifices to enter public service.

I am a Republican of long standing. I have been a registered Republican for many years, consistently voted for Republican candidates, contributed money and resources to Republican causes, and served in the Justice Department's Office of Legal Policy during the Reagan Administration. I am sensitive to issues of partisanship in the Executive branch and, in particular, in the Justice Department.

I know of no fairer or decent person than Michael Bromwich, and can say with confidence that he would discharge the duties of Inspector General aggressively and impartially. I can say this from personal experience. From 1987 to 1989, I was a member of the staff of Independent Counsel Lawrence Walsh and, for a time, reported to Mr. Bromwich. The assignment of the Independent Counsel, of course, was to investigate and, if called for, prosecute persons who violated the law in connection with the sales of arms to Iran and the provision of support to the anti-Sandinista forces in Nicaragua. Many judgments of the political branches of the government were called into question in that investigation, and there was the real danger that partisan biases could come into play.

In those years working with Mr. Bromwich, I found him to be completely ethical and fair in approaching such issues. He expressed no political views on the prosecution and refused to entertain partisan dialogue. He was painstaking in his regard for individual rights and, in fact, was the Office's leading exponent that the defendants should have the broadest possible access to the evidence we had collected. Although a zealous advocate for the government, he took equal pride in the fairness with which he treated his adversaries. By the end of the investigation, Mr. Bromwich was the lawyer in the Office who had won the broadest and unqualified respect of all who came into contact with him, colleagues and adversaries alike.

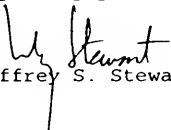


February 25, 1994

From my own years in the Justice Department, I understand -- and fully agree with -- the principle that those charged with policing the Department's conduct must be above partisanship and beyond reproach. I can say from personal experience that I have known no lawyer that better meets these standards than Michael Bromwich. I would urge that his candidacy be given every favorable, and prompt, consideration.

Please do not hesitate to contact me with any questions you might have.

Very truly yours,

  
Geoffrey S. Stewart

## WINSTON &amp; STRAWN

FREDERICK H. WINSTON (1853-1886)  
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DAN K. WEBB  
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February 17, 1994

To Whom it May Concern:

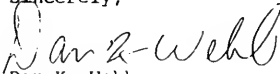
Michael Bromwich is among the most talented attorneys I have worked with in my more than 20 years as a practicing lawyer. He is an individual of impeccable integrity. For these reasons, I enthusiastically support his nomination for the position of Inspector General of the United States Department of Justice.

I met Michael in 1989 when I was selected to lead the Government's trial team in United States v. John Poindexter. Michael was near the end of his tenure at the Office of Independent Counsel when I first became associated with that office. Shortly thereafter, I worked with him extensively in connection with the pre-trial proceedings in the Poindexter case. Michael's role in those proceedings was of critical importance in our obtaining a favorable result in the trial of the case.

Michael's conduct throughout those proceedings demonstrated his considerable legal talents, wisdom and experience. His approach to this prosecution was consistently guided by his strong sense of ethics and a professionalism that reflected the highest traditions of the Department of Justice. I was also impressed with Michael's ability to handle the very sensitive matters involved in that case with the utmost discretion.

In 1981, President Reagan appointed me as the United States Attorney for the Northern District of Illinois, a position in which I served until 1985. On the basis of my experiences as the United States Attorney and as a colleague of Michael's, I am confident that Michael is particularly well suited to oversee sensitive investigations of prosecutors, other lawyers and professionals for breaches of their ethical duties. Michael's talents as a lawyer, guided by his uncompromising ethical sense and unflinching discretion make him a perfect candidate for the position of Inspector General.

Sincerely,



Dan K. Webb

DKW/med

**NOMINATIONS OF ROBERT HENRY, TO BE  
U.S. CIRCUIT JUDGE; DEBORAH BATTS, RAY-  
MOND FINCH, AND SOLOMON OLIVER, TO  
BE U.S. DISTRICT JUDGES**

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**FRIDAY, APRIL 29, 1994**

**U.S. SENATE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.***

The committee met, pursuant to notice, at 10:19 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Howard M. Metzenbaum presiding.

**OPENING STATEMENT OF SENATOR METZENBAUM**

Senator METZENBAUM. I open this hearing with an apology to all of you. I apologize for being late. It is my understanding that the various Senators who are with us this morning have all agreed that, because Senator John Glenn has another commitment, we are going to let him proceed first.

Senator Glenn.

**STATEMENT OF HON. JOHN GLENN, A U.S. SENATOR FROM  
THE STATE OF OHIO**

Senator GLENN. Thank you, Mr. Chairman. I appreciate it very much. I am very happy today to introduce a man who I believe is going to be a real superstar in the Federal courts: Dean Solomon Oliver. I am also pleased that his wife, Louisa, and his sons, Solomon and Jonathan, could be here today, along with Mr. and Mrs. Solomon Oliver, Sr. I would like for them to stand, if they would, please.

Now, Mr. Chairman, there are also 16 brothers, sisters, in-laws, and other family members here today. I am not going to read all their names. Stand up, please, all of you. I think it is just great for you to all be here on this occasion.

Dean Oliver's inspiration to go into law did not come from reading books or watching Perry Mason on TV. His inspiration came from being beaten up as a young 16-year-old boy while driving through the Deep South on the way to a church function in Florida. The car young Oliver was riding in stopped at a gas station, and when the 16-year-old boy tried to use the only men's room there, a white gas station attendant assaulted him, hitting him repeatedly and shouting that Bobby Kennedy had sent young Oliver there to cause trouble.

All Solomon Oliver knew at that time was that Bobby Kennedy was the Attorney General, and if a lawyer could instill such fear in a man so filled with hatred and racism, he wanted to be a lawyer, too.

He did become a lawyer, and a good one. After graduating from New York Law School, Dean Oliver clerked for Judge William Hastie, the first African-American appointed to the Federal bench. Thankfully, Dean Oliver then came to Ohio. He joined the U.S. attorney's office, serving as chief of the civil section, where he supervised more than 4,000 cases, and later was the founding chief of appellate litigation.

Dean Oliver currently serves as associate dean of the Cleveland-Marshall College of Law. He has been very active in community activities in the Cleveland area, including service for his church, for the College of Wooster, and the Cleveland chapter of the NAACP.

Mr. Chairman and members of the committee, I could go on all morning about Solomon Oliver, but I am not the one you want to hear from today. I know Dean Oliver will serve with great distinction on the Federal bench. And, Mr. Chairman, I know that you join me in this because we went together in suggesting this nomination to the President. So I am sure you will join me in expressing the very highest of recommendations for Dean Oliver, and I am glad to be here to have a chance to introduce him this morning.

Thank you very much for changing the order of the hearing.

Senator METZENBAUM. Thank you very much, Senator Glenn. I want to tell you, you have convinced me. [Laughter.]

Senator Moynihan, we are delighted to have you with us.

**STATEMENT OF HON. DANIEL PATRICK MOYNIHAN, A U.S.  
SENATOR FROM THE STATE OF NEW YORK**

Senator MOYNIHAN. Thank you. May I ask Prof. Deborah Batts to come up here at this point?

Mr. Chairman, Professor Batts has her mother with her today and some family. Perhaps you would like to introduce them.

Senator METZENBAUM. We would love to meet them.

Ms. BATTs. My mother, Ruth Batts; my sister, Denise Batts; my sister, Mercedes Ellington; my daughter, Alix McCown; my son Jamie McCown. And I also have some friends with me: Sandy Farber and her son, Ben; Howard Clyman and his wife, Kathie Roberts.

Senator METZENBAUM. It has got to be a very proud day for the entire family and friends.

Senator MOYNIHAN. Thank you, Mr. Chairman. And it is a very proud day for New Yorkers. I appear here for Senator D'Amato as well. We have here one of our exemplary teachers and practitioners of the law in New York. She is a graduate of Radcliffe College and of the Harvard Law School. She went directly back to New York where she served with some distinguished firms that would be familiar to you—Cravath, Swaine & Moore—and then in 1979 joined the criminal division of the U.S. attorney's office for the Southern District of New York. This is the court to which we respectfully recommend her.

After service, distinguished service, in the U.S. attorney's office, she became a professor of law at Fordham University, where she

teaches regularly, teaches courses in property and domestic relations law, and is also simultaneously, and has been for the last 5 years, 4 years, a member of the Law Revision Commission of the State of New York, a very dense and, to my mind, inassessable subject which engages them over the years.

We are proud to recommend her, sir. She has the highest academic credentials. Her experience in the criminal division has involved her in many things of great consequence and with great success, and it is our honor to present her to this honorable committee.

Senator METZENBAUM. Your recommendation is very meaningful to this committee, Senator Moynihan, and we appreciate it very much. We will be very pleased to go forward with the hearing in connection with Ms. Batts a little bit later. Thank you very much.

Senator MOYNIHAN. Thank you, Mr. Chairman.

[The prepared statement of Senator D'Amato follows:]

PREPARED STATEMENT OF HON. ALFONSE M. D'AMATO, A U.S. SENATOR FROM THE  
STATE OF NEW YORK

Mr. Chairman, I am honored today to present to this committee Ms. Deborah A. Batts, whom the President has nominated for appointment to the U.S. District Court, Southern District of New York. I would also like to recognize Ms. Batts' mother, Ruth, her children, Alix and Jamie, her sisters, Denise and Mercedes Ellington, and her friend Sandy Farber, and her son Ben.

Ms. Batts comes before this committee with a comprehensive legal background. After graduating from Harvard Law School in 1972, she began her legal career as a law clerk to Judge Lawrence W. Pierce who was appointed to the U.S. District Court for the Southern District of New York by President Nixon, and later appointed to the Court of Appeals by President Reagan.

After clerking for Judge Pierce, Ms. Batts went on to an associate position with the firm of Cravath, Swaine and Moore in New York City, where she worked until 1979.

After leaving this firm, Ms. Batts became an Assistant U.S. Attorney with the U.S. Attorney General's Office in the Criminal Division. While working in the Major Crimes Unit of the Criminal Division, Ms. Batts tried 9 cases and served as sole or chief counsel on all but one during her 5 years with the office.

Ms. Batts currently teaches law at Fordham University in New York City, where she has taught for the past 10 years. During her summers, Ms. Batts works with the city of New York Corporation Counsel Trial Advocacy Program at Fordham University.

Ms. Batts is an active member of many worthwhile organizations in her community and has served on such important committees as the nominating committee of the New York City Bar Association.

As Ms. Batts advances in her distinguished legal career, she continues to set an example for all those around her. Mr. Chairman, I am confident that Deborah Batts will prove worthy of this committee's support. She has the experience necessary to undertake the tough job of a U.S. District Court Judge with the highest degree of competence.

Senator METZENBAUM. Our next witness is a man who has told the world within the last few days that he is going back to the world of academia, going to leave the U.S. Senate, a long-time good friend of mine. We are happy to have you with us, Senator Boren.

STATEMENT OF HON. DAVID L. BOREN, A U.S. SENATOR FROM  
THE STATE OF OKLAHOMA

Senator BOREN. Thank you very much, Mr. Chairman. It is a real pleasure for me to be here this morning to present to you and to the members of the committee Robert Harlan Henry, who has been nominated by the President to be a judge of the U.S. Court of Appeals for the Tenth Circuit.

Before I make further remarks, I would like to ask Robert to introduce the many members of his family and friends who are with him today.

Senator METZENBAUM. Please do.

Mr. HENRY. Thank you, Mr. Chairman. I would like to introduce my wife, Jan Ralls Henry, and my daughter, Rachel, and my son, Joshua; my stepsons, Scott and Daniel. My father, the late Judge Lloyd Harlan Henry, could not be here, but my mother, brother, and sister are here, if they would stand, and my niece, Meghan; friends, Larry and Jean Lucas, Brooks Richardson, Miles Tolbert, Pete and Stacia Glavas, and Jack and Lorene Akins.

Thank you, Mr. Chairman.

Senator METZENBAUM. Rachel, do you think your Daddy will make a good judge?

[Ms. Henry nods affirmatively.] [Laughter.]

Senator METZENBAUM. OK.

Senator BOREN. Let me say, Mr. Chairman, I do not think I could add anything after the very convincing and credible testimony that you have just heard. I would say to my friends from Oklahoma who are here today: you have just seen why Chairman Metzenbaum is one of the most beloved figures to all the family members in the U.S. Senate, including my two children to whom he has shown so much kindness over the years.

Senator METZENBAUM. Thank you.

Senator BOREN. It is a real privilege and a special pleasure for me to be able to present Robert Henry to you. The friendship between our two families goes back all the way to our grandparents who were very close friends, living in a small community together, where Robert's grandparents were teachers. Of course, I also knew his late father, Judge Henry, who was an outstanding member of the bench in Oklahoma, and I had the opportunity to observe Robert beginning in his elementary school days. And when he was in high school and I was a college professor at a nearby school in the town where he grew up, I had the privilege of coaching him in the youth legislature in which he participated. So our friendship has been a very strong one and a very special one.

He is one of the most able young people to come from our State in many, many years. He is currently serving as the dean of the Oklahoma City University School of Law. He began serving as dean in 1991. Before that, he was attorney general of the State of Oklahoma from 1986 to 1991, where he established a wonderful record and was one of the most respected public officials we have ever had. His service was recognized by very many different organizations, including the American Indian Bar Association, which gave him their special recognition award for fostering positive dialog between Native Americans and other Oklahomans during the time that he was State attorney general.

Before that, he served in the Oklahoma State House of Representatives for five terms. The last four times he was reelected in the best way that you can be reelected—completely without opposition. His being elected four times to the State legislature without opposition indicates to you the respect with which the people of his home community held him.

During all of this time, he served as an adjunct professor at Oklahoma City University and at the University of Tulsa, and from time to time at Oklahoma Baptist University in his hometown. He graduated from the University of Oklahoma School of Law and the University of Oklahoma as an undergraduate with high honors in political science in 1974.

He was very active nationally when he was attorney general of the State of Oklahoma. He chaired the Agriculture and Rural Affairs Committee of the National Association of Attorneys General, he chaired the Constitutional Law Advisory Committee, and he was vice chair of the Committee on Civil Rights. He has been a commissioner of the National Conference of Commissioners on Uniform State Laws. He was chairman of a special study commission that considered revision of the Oklahoma State Constitution.

He has been a very ecumenical person. I mentioned that he has been an adjunct professor at Oklahoma Baptist University. He has also been past chairman of the board of St. Gregory's College, a Catholic institution in our State. And he currently serves as president of the Oklahoma City Chapter of the National Conference of Christians and Jews.

He is a person that, through his leadership and through his personal integrity, has really brought people together and helped to create a spirit of community in our State. So he brings to this assignment and to the bench, a brilliant mind, and a good heart as well. I think that we are all blessed as a Nation when we have people willing to take on this kind of public service who bring with them that combination of qualities.

So, Mr. Chairman, it is a real privilege for me to be able to present Robert Henry to you for his testimony later this morning.

Senator METZENBAUM. That is a very strong recommendation, Senator Boren, and you may be certain the entire committee will take your recommendation into account as we consider the confirmation process.

Senator BOREN. Thank you very much, Mr. Chairman. I might also mention that Senator Nickles had to be away today, but he asked that I also convey to you and to the committee his very strong recommendation for the confirmation of this nominee.

Senator METZENBAUM. Thank you very much.

Senator BOREN. Thank you.

Senator METZENBAUM. Now we have Representative Ron de Lugo, Congressman Ron de Lugo, Lt. Gov. Derek Hodge, and Justice Verne Hodge, presiding judge of the Virgin Islands Territorial Court.

Now, I want to say to all of you that I have discussed this entire matter with the Judiciary Committee, and no matter how great the nominee is, I think the Judiciary Committee would like to take a week down in the Virgin Islands and continue the hearings down there. [Laughter.]

Please proceed.

#### **STATEMENT OF HON. RON de LUGO, A REPRESENTATIVE IN CONGRESS FROM THE U.S. VIRGIN ISLANDS**

Representative DE LUGO. Mr. Chairman, thank you very much for this warm welcome to the committee, and I want to say that

it is a great pleasure to present our nominee to you. I think that we have a first here. Judge Raymond Finch has been nominated by three Presidents, and we checked on that, and that has never happened before. You have had nominees who were nominated by two Presidents, but this is the first one nominated by three. He is an outstanding judge and member of our community, and before we get into the recommendations, may I ask Judge Finch to recognize some members of his family who are here with him today. We have quite a number of people up here from the Virgin Islands.

Judge Finch, I think you have some cousins with you.

Judge FINCH. Thank you, Congressman de Lugo, Mr. Chairman. I would like to introduce my cousin from the Virgin Islands, Mrs. Norman Armstrong, and her daughter, Kyra Armstrong, who is an attorney with the firm of Howrey & Simon. There are so many people here from the Virgin Islands. All I would do at this time is to say to everyone from the Virgin Islands in the audience to please stand.

Senator METZENBAUM. I was wondering why we had such great attendance this morning. Now I know. We are delighted to have you all here, and I think it is a great testimonial to you, Judge, that so many came from so far to be with us this morning.

Judge FINCH. Thank you, sir.

Representative DE LUGO. It certainly is, Mr. Chairman, because right now is the biggest day of Carnival in the Virgin Islands, so they are giving up—

Senator METZENBAUM. I am telling you, we ought to adjourn this hearing and hold it there. [Laughter.]

Representative DE LUGO. Judge Finch has been nominated by President Carter. It came too late in his administration for the Senate to act. The same thing happened with the Bush administration, and now we have the nomination of Judge Finch again because we want to see him on that bench and so does the President.

Senator METZENBAUM. How many years ago did President Carter nominate him?

Representative DE LUGO. How many years ago was that?

Judge FINCH. I think that was in 1980. Either 1980 or 1982. His last year in office.

Senator METZENBAUM. That is when there was an aircraft shot down?

Judge FINCH. That is correct. My nomination came immediately after that aircraft was shot down in the Mideast desert.

Senator METZENBAUM. And then President Reagan also nominated you?

Judge FINCH. President Bush.

Senator METZENBAUM. And what happened to that?

Judge FINCH. That nomination came late in his term, and it died in the committee.

Senator METZENBAUM. You have been to the mountain many times. [Laughter.]

Representative DE LUGO. There was a little more to it during the Bush administration, but we will not go into that today. We will let things ride. There were two nominees put forward, and one nominee, you know, the Bush administration pushed it quickly, and our Democratic nominee they did not quite—



Senator METZENBAUM. Got lost in the shuffle.

Representative DE LUGO. Yes, got lost in the shuffle. You know how those things are.

So the Clinton administration has taken care of that and gotten it up here, and I want to say to this committee because the nomination just got up here a month ago that we greatly appreciate your moving Judge Finch forward.

Judge Finch is an outstanding candidate, and from 1966 to 1969, he served with distinction in the U.S. military. He was a first lieutenant when he entered. He attained the rank of captain, and he was awarded the Army Commendation Medal and the Bronze Star.

In 1976, Judge Finch, a graduate of Howard, was appointed to the bench of the Virgin Islands municipal court, the same court with which he had clerked a decade earlier. As a Virgin Islands territorial court judge for the past 17 years, Judge Raymond Finch has garnered a well-deserved reputation as a man who possesses excellent credentials and a wonderful judicial temperament.

Since 1980, he has served as the administrative representative of the presiding judge in the St. Croix division, and the presiding judge is with us here today, Judge Hodge, who has come here to support this candidacy, as is the lieutenant governor. He supervised all court personnel, and he coordinated all of the fiscal matters of that division.

Judge Finch's confirmation would stabilize a court which has endured a prolonged period of transition. Most importantly, as a native Virgin Islander, Judge Finch is thoroughly knowledgeable in local customs and conventions and is a highly qualified, highly respected member of our judicial and social communities.

I urge this committee to give Judge Raymond Finch's candidacy favorable consideration, and I would like to ask that my entire prepared statement be put in the record.

Senator METZENBAUM. Without objection, the entire statement will be included in the record.

[The prepared statement of Mr. de Lugo follows:]

PREPARED STATEMENT OF HON. RON DE LUGO, VIRGIN ISLANDS, CHAIRMAN,  
SUBCOMMITTEE ON INSULAR AND INTERNATIONAL AFFAIRS

Mr. Chairman, members of the Senate Committee on the Judiciary. First, I want to personally thank Chairman Biden for responding to my handwritten note on March 28 and moving so expeditiously on the nomination of Judge Raymond Finch to the District Court of the Virgin Islands.

It is with great pleasure that I introduce Judge Finch to the committee today.

With me are the Lieutenant Governor of the Virgin Islands, the Honorable Derek M. Hodge, and the Presiding Judge of the Territorial Court of the Virgin Islands, the Honorable Verne A. Hodge.

Both gentlemen know Judge Finch personally and will speak to his career and his qualifications, and they, too, will recommend this fine nominee to the committee.

As I wrote Chairman Biden last March, the Virgin Islands has had at least one vacancy on the bench of the District Court since 1987, almost seven years now, and had two vacancies for nearly three years. The seat for which you are considering Judge Finch has been unfilled since 1989.

During this entire time, visiting judges from the Third Circuit Court filled in.

I want to express my appreciation to those jurists, and particularly Chief Judge Stanley Brotman, for their hard work and their good work in keeping the system functioning during those long vacancies.

But visiting judges cannot operate the system properly for such a long period of time.

Inequities must inevitably occur, as they did when, in cases for example, when one judge would hear a case and another judge would do the sentencing.

The result was a community left confused and with some diminished faith in the federal court.

The previous administration had real problems filling these two seats on the Virgin Islands federal bench because there simply were not enough qualified Republican jurists to assume both positions.

After months of work, we reached a compromise with the last administration so that two candidates acceptable to both political parties would be moved in tandem.

But the administration did not adhere to the agreement.

One candidate was moved quickly, but the other was delayed until it was too late for this committee to act.

As a result, the St. Croix community had to wait another year and a half for the new administration to make the second nomination.

I sincerely hope we will never have these long vacancies on the bench again.

Today, the nominee first proposed by President Carter in 1980 appears before the committee.

It is indeed my honor to have the opportunity to familiarize this committee with a man who is well known to all Virgin Islanders for his judicial accomplishments and his contributions to our community.

Judge Finch has dedicated nearly thirty years of his career to public service and a better way of life for the citizens of the Virgin Islands.

Three decades ago, after completing his undergraduate studies at Howard University, Raymond Finch served as a temporary duty marshal for the United States Justice Department. Upon graduation from Howard University Law School, he spent two years as a legal assistant to the Judges of the Municipal Court of the Virgin Islands.

From 1966 to 1969, Judge Finch served with distinction in the United States Army—entering as a First Lieutenant and later attaining the rank of Captain. For his service, Judge Finch was awarded the Army Commendation Medal and the Bronze Star Medal.

In 1976 Judge Finch was appointed to the bench of the Virgin Islands Municipal Court—the same court for which he had clerked a decade earlier.

As a Virgin Islands Territorial Court Judge for the past seventeen years, Raymond Finch has garnered a well deserved reputation as a man who possesses excellent credentials and judicial temperament.

Since 1980, he has served as the Administrative Representative of the Presiding Judge in the St. Croix Division, supervising all court personnel and coordinating all fiscal matters of the division.

Judge Finch's confirmation would stabilize a court which has endured a prolonged period of transition.

Most importantly, as a native Virgin Islander, Judge Finch is thoroughly knowledgeable in local customs and conventions and is a highly-qualified, highly-respected member of our judicial and social communities.

I urge this committee to give Judge Raymond Finch's candidacy its favorable consideration.

Mr. Chairman, it is my privilege to introduce to your committee the Honorable Raymond L. Finch, Judge of the Territorial Court of the Virgin Islands and a nominee for the District Court of the Virgin Islands.

Mr. DE LUGO. And at this time, may I ask that the Chair recognize the Lieutenant Governor who has journeyed up from the Virgin Islands to support this nomination.

Senator METZENBAUM. Happy to have you with us, Governor. If you have a short statement, go ahead and proceed.

#### **STATEMENT OF DEREK M. HODGE, LIEUTENANT GOVERNOR, U.S. VIRGIN ISLANDS**

Mr. HODGE. Thank you, Mr. Chairman. Good morning.

Mr. Chairman, thank you for this opportunity to attest to this committee my support of President Clinton's appointment of Judge Raymond Finch to the U.S. District Court of the Virgin Islands. Today's hearing ends a long struggle to advance Judge Finch to the Federal bench—a struggle that has spanned two decades and the administrations of more than one U.S. President.

I endorse Judge Raymond Finch and heartily urge this committee to confirm him with dispatch.

I hope that your confidence in him will match mine, because I know Raymond Finch from three perspectives: I know him for his brilliant career as a lawyer and his distinguished record as a judge in our local court. I know him as a fellow Virgin Islander. And I know him as a lifelong friend with whom I grew up.

The modern political history of the Virgin Islands began at the end of the 1960's as the territory prepared for the popular election of its first Governor in November 1970. It was in those years also that our first native-born Federal judge, Almeric Leander Christian, was appointed by President Nixon. This brilliant Crucian jurist served his people and his country with historic distinction for two decades as chief judge, and his presence on the bench served as an enduring symbol of justice, self-governance, and equality to all Virgin Islanders—and so it will be with Judge Finch.

After Judge Christian's appointment, the next three appointments to the second seat on our Federal bench were of individuals who, although undeniably part of our community, were not natives. These three men—Judge Warren Young, Judge David O'Brien, and our current Chief Judge Thomas Moore—each earned their appointments because they were remarkable practitioners and scholars, because they understood the Virgin Islands and our diverse population, and because they chose to make our islands their home.

They were Virgin Islanders—not by accident of birth but by choice.

But for nearly 5 years, since the death of Judge O'Brien, the territory has been without its second permanent local judge. Many visiting Federal judges have filled this void at great cost to the U.S. Government, and for a few years—between Judge O'Brien's death and Judge Moore's appointment—even the position of chief judge was held by a visiting Federal jurist, U.S. District Court Judge Stanley S. Brotman.

Judge Brotman made a great contribution to the Virgin Islands during that period, especially in the chaotic months after Hurricane Hugo devastated our homeland, and he continues to serve to this day. We will be forever grateful to Judge Brotman for his commitment and for his understanding in those years of transition and hardship. And the people of the Virgin Islands are equally appreciative of the scores of Judge Brotman's colleagues who have filled temporary positions on our district court.

The list of these dedicated men and women is long, and my time, Mr. Chairman, is short. But with your permission, I would like to enter their names in the record of this proceeding with the commendation and appreciation of the people of the U.S. Virgin Islands.

[The list follows:]

VISITING U.S. DISTRICT COURT JUDGES TO THE U.S. VIRGIN ISLANDS, 1989-94

STANLEY S. BROTMAN—VISITING CHIEF JUDGE

Daniel H. Huyett, Jr., Edward N. Cahn, Joseph J. Farnan, Ann E. Thompson, Clifford S. Green, Joseph L. McGlynn, Alfred M. Wolin, Lawrence W. Pierce, Benjamin F. Gibson, James L. Watson, Barbara Hackett, Leland Nielsen, Mark Constantino, Robert L. Carter, Wendell A. Miles, Frank Kaufman, James T. Giles,

John P. Fullam, Richard P. Conaboy, Aubrey E. Robinson, Robert F. Peckham, Raymond Broderick, William P. Gray, Morton I. Greenburg, Robert J. Kelleher, and Constance B. Motley.

Mr. HODGE. Now comes the nomination of Judge Finch—and none too soon.

Mr. Chairman, it is painful for me to acknowledge that our beautiful American paradise has not been immune to the same problems of crime that afflict every U.S. locality. Although the frequency of this activity is no greater than any other American town with its share of unemployment, illicit drugs, recessionary economy, idle youth, and shrinking public resources, every citizen feels personally the impact of every criminal incident because we are so small—three tiny islands, 140 square miles, 100,000 residents.

But we are resolved to eliminate this scourge, and we have taken measures in the public and private sectors to win the battle.

The criminal justice system is at the vanguard of this struggle, and as an integral part of that structure, Judge Finch's experiences as a deputy U.S. marshal, as an attorney, as a member of our Law Enforcement Planning Commission, as director of our Boys Club, as a judge of the territorial court, and as an occasional judge of the U.S. district court by special designation all speak eloquently to his fitness, his temperament, and his place in the Virgin Islands community.

Mr. Chairman, each of the Virgin Islands celebrates a cultural festival each year. On St. John, it is celebrated on the days leading to July 3 and 4, our local Emancipation Day and the U.S. Independence Day, respectively. On St. Croix, it is celebrated between Christmas and Three Kings' Day. And as Congressman de Lugo, who revived the tradition 40 years ago, can tell you and has just said, on St. Thomas, Carnival is being celebrated literally as we speak.

In our rich culture, these celebrations recall the past, celebrate the present, and give us all hope for the future. From all walks of life, from all backgrounds, from many places of origin, our multiracial, multicultural population celebrates at once our diversity and our commonality; our "Caribbean-ness" and our "American-ness"; our lifestyle and life itself. Most of all, these unique celebrations are the quintessential expressions of freedom—individual emancipation and the institutional freedoms and human rights only a country like ours can offer.

And it is freedom I speak of when I ask you, Mr. Chairman, to give us this able jurist; give us this native son of our soil; give us Raymond Finch for our district court.

Such a favorable decision will reaffirm our pride as Americans and our participation in the greatest democracy in history, and it will reaffirm our pride and identity as self-governing, self-judging Virgin Islanders.

Thank you very much, Mr. Chairman.

Senator METZENBAUM. Thank you very much, Governor.

Justice Hodge, do you care to make a statement?

**STATEMENT OF HON. VERNE HODGE, PRESIDING JUDGE,  
VIRGIN ISLANDS TERRITORIAL COURT**

Judge HODGE. Mr. Chairman, I can assure you mine will be much briefer than that.

Mr. Chairman, on behalf of the judges and staff of the territorial court, I am pleased to take this opportunity to recommend that your committee approve the nomination of one of our colleagues, Judge Raymond Finch, to the position of judge of the district court of the U.S. Virgin Islands.

Judge Finch and I have served together on the territorial court bench since 1977, and I can, therefore, attest to his excellent performance during those 17 years. As a presiding judge of the court, I know that we will all regret losing his services if he is confirmed. But the appointment of native Virgin Islanders to Federal service in the Virgin Islands is such an imperative at this time that we strongly support his selection by President Clinton.

While Judge Finch's qualifications by training, experience, and character are well documented in his file, I think you should know that he is a quiet, observant individual whose calm demeanor is complemented by his firm and decisive decisionmaking, thereby justifying my reference to him as one who wields an iron fist in a velvet glove.

Accordingly, we recommend his confirmation, and, Mr. Chairman, I have an even briefer statement that Governor Farrelly asked me to read briefly to you, and I have a copy of his statement. I would like to submit it to the committee for the record. He briefly states as follows:

I wish to join many Virgin Islanders in my support of the nomination of Territorial Court Judge Raymond Finch to become the Federal District Court Judge for the District of the Virgin Islands. Because this position has been vacant since 1989, I am particularly pleased by your prompt scheduling of committee hearings on his nomination. I have had the privilege of nominating Judge Finch as a judge of our Territorial Court, and I am pleased to report that he has served in that position with distinction.

It is beyond doubt, therefore, that he will continue to render outstanding service to the people of the Virgin Islands as a judge of the district court. Accordingly, I recommend that Judge Finch's nomination be given speedy confirmation by your committee.

And this is signed by Alexander A. Farrelly, Governor of the U.S. Virgin Islands.

Thank you very much, Mr. Chairman.

Senator METZENBAUM. Thank you very much, Judge Hodge.

We will proceed in order. Judge Finch, if you would be good enough, we will call you back at a little bit later time. And I think we will now proceed to the nomination of Robert Henry, nominee to be U.S. Circuit Judge for the Tenth Circuit.

This is a very difficult job for me, and so I thought that maybe Rachel and Josh might like to come up here and help me in this confirmation process. Rachel and Josh, would you like to come up here and sit while your Daddy is sitting over there?

If they do not want to, don't embarrass them. [Laughter.]

Mr. HENRY. We think, Mr. Chairman, that my daughter will. She left momentarily.

Senator METZENBAUM. OK.

Mr. HENRY. One hesitates to give her another chance to say anything, but she might want to do that.

Senator METZENBAUM. Mr. Finch, do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. FINCH. I do.

Senator METZENBAUM. Thank you.

Do you care to make an opening statement?

Mr. HENRY. No, Mr. Chairman, I do not.

Senator METZENBAUM. Dean Henry, if you are confirmed as an appellate judge, it is not at all unlikely that at some point you may be faced with applying a Supreme Court precedent with which you do not personally agree? Would you consider yourself bound by such a precedent?

### TESTIMONY OF ROBERT HENRY, OKLAHOMA CITY, OK, TO BE U.S. CIRCUIT JUDGE FOR THE TENTH CIRCUIT

Mr. HENRY. I believe, upon taking the oath, I am bound to follow precedent of the Supreme Court of the United States.

Senator METZENBAUM. Your questionnaire indicates that you have served as a State representative with the Oklahoma House of Representatives, as a litigator in private practice, as the Attorney General of Oklahoma, and as the dean and professor of law at the Oklahoma City University School of Law. In what way do you believe that your legislative, litigation, and academic experiences have prepared you for a position on the tenth circuit.

Mr. HENRY. Mr. Chairman, there are a variety of and great different numbers and kinds of cases that come before the circuit court. My experience in the legal profession has been broad. I have been privileged to serve in the State legislature as an executive. Service in those branches has taught me and helped me understand the separation of powers, and I believe that my broad background with the constraint I would feel from understanding how the other branches operate, I believe that would help me very much should I be privileged to be confirmed.

Senator METZENBAUM. Rachel, would you like to come up here and help me in this hearing, or would you rather sit where you are, dear?

[Pause.]

Senator METZENBAUM. If you have any questions for your Dad, you can ask those, too.

### QUESTIONING BY SENATOR METZENBAUM

Since their inception, the Federal Sentencing Guidelines developed by the Sentencing Commission have been the subject of debate, largely by reason of concerns about mandatory minimum sentences. What do you see as the pros and cons of mandatory sentencing?

Mr. HENRY. Well, as a judge, I would be obligated to follow the sentencing guidelines, and the debate has been a lengthy one. On the one hand, we have sought as a society to promote certainty, equality of sentencing. On the other hand, judges sometimes feel the need to look at particular circumstances where they might

want to make an adjustment based on one thing or another. That debate continues to rage.

I am happy that this committee, Mr. Chairman, has had interaction with the Federal judiciary to continue to discuss and monitor these developments, and I would have no problem following the guidelines.

Senator METZENBAUM. What would you do if you were faced with a situation where you felt that the sentencing guidelines were just too harsh?

Mr. HENRY. Senator, I would be obligated to follow those guidelines.

Senator METZENBAUM. Your questionnaire states that as Attorney General of Oklahoma, you served as Chair of the Oklahoma Constitution Revision Study Commission. I understand that after 2 years of review, the panel proposed a complete redrafting of the State Constitution.

Would you care to discuss some of the significant changes in the Oklahoma Constitution that the commission proposed and the reasons behind those suggestions?

Mr. HENRY. Well, Mr. Chairman, Oklahoma's Constitution was a product of the progressive era around the turn of the century, and at the time it was written, it was the longest constitution ever penned by the hand of man. It included such wonderful things as the flash point of kerosene, and—

Senator METZENBAUM. The what?

Mr. HENRY [continuing]. The flash point of kerosene, and regulations for railroad passenger fares were set by constitution. Public officials were required by constitution to swear numerous oaths that they would not accept free rides on the railroads.

Not meaning to besmirch William Jennings Bryan, who was a great man, he praised that constitution as being the greatest constitution ever struck off by the hand of man, greater than the Constitution of the United States.

Well, Mr. Chairman, it was not. It was too long. It was too inflexible. And we sought to vastly shorten it and mirror the majesty and flexibility of the U.S. Constitution.

Senator METZENBAUM. I understand you were recently named to a new uniform committee to review the uniform evidence code to conform with Federal changes and to address new technologies not adequately handled by either the current Federal or uniform act.

Would you be good enough to explain what new technologies this committee addressed and whether your experience has provided you with any insights concerning the challenges that Federal judges face?

Mr. HENRY. Mr. Chairman, the committee has not met yet. It will meet in Chicago at the Uniform Law Conference in July. The committee is concerned with several things that this committee has dealt with: videotaped depositions of witnesses, television, those sorts of things. And it seeks to suggest to the States that the States work together with the Federal Rules of Evidence so that we can, where uniformity is desirable, try to mirror the good work of the Federal Rules of Evidence.

Senator METZENBAUM. Is there anything else that you would like to add, Dean Henry?

Mr. HENRY. No, Mr. Chairman.

Senator METZENBAUM. Do you solemnly swear that if you are confirmed as a circuit court of appeals judge that no matter how difficult a day is on the bench that you will be kind, considerate, and loving to Joshua and Rachel? [Laughter.]

Mr. HENRY. I will do everything in my power to do that.

Senator METZENBAUM. Do you have any questions that you want to ask?

She does not. OK. Thank you for coming and helping me.

Mr. HENRY. Thank you, Mr. Chairman.

Senator METZENBAUM. Professor Batts, would you be good enough to come to the witness table?

Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Ms. BATTS. I do.

Senator METZENBAUM. Do you have any little ones with you that you want—

Ms. BATTS. Mr. Chairman, I am afraid to ask them to join you up there. [Laughter.]

Senator METZENBAUM. Whatever your pleasure. We would be happy to have them if you wanted them.

Do you have an opening statement, Professor?

**TESTIMONY OF DEBORAH BATTS, NEW YORK, NY, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK**

Ms. BATTS. Mr. Chairman, the only opening statement that I would like to make is that my twin sister, Diane Batts Morrow, and her husband, John Howard Morrow, and their children, Kieran and Evan Batts Morrow, were not able to be here today, but they are here with me in spirit. Thank you.

**QUESTIONING BY SENATOR METZENBAUM**

Senator METZENBAUM. We miss them, and we are glad to know that they are here with you in spirit. I am sure that had they been able to, they would have been pleased to be here on this very momentous occasion.

You have been a law school professor at Fordham University since 1984. Why do you want to switch gears at this time? Wouldn't the life of being a professor be more relaxing and comfortable?

Ms. BATTS. Without question, Mr. Chairman, the life of a professor, I think, has been a delightful one. I have had many wonderful experiences and have taught literally thousands of students throughout the years.

I do feel, however, that the honor and the challenge of being a Federal district court judge would make leaving the life of ease of a professor definitely worthwhile.

Senator METZENBAUM. Professor Batts, tell us something of your background. I notice you went to Radcliffe. How were you able to go to Radcliffe? Was it a scholarship? Was your family able to provide?

Ms. BATTS. I was extremely lucky. My father, who unfortunately passed away in 1992 and, therefore, obviously is not able to be with



me today except also in spirit, was a wonderful man and a good provider for his family. He was a doctor, and, in fact, at the time I started college, he became a professor of obstetrics and gynecology, so that I was extremely lucky to have had the benefits of a loving father and mother, and my sisters as well.

Senator METZENBAUM. Your Dad passed away in 1992?

Ms. BATTS. Yes.

Senator METZENBAUM. It is a sad commentary that he could not be with you on such a momentous occasion.

You also served as an assistant U.S. attorney for the Southern District of New York for years, and I think you took that position after you had been with Cravath, Swaine & Moore for 6 years.

How did you happen to make the change from the private sector to the public sector, and I would guess with some financial sacrifice as well?

Ms. BATTS. Mr. Chairman, I think that I have had an extremely fortunate and lucky professional career. Every time that I have made a switch in career, it has always been at a point when I have truly enjoyed what I was doing before I made the switch. I think, though, that you have wisely caught on that as my job satisfaction increased, my financial remuneration kept going down, so that I have a downwardly mobile financial spiral. This is true.

Senator METZENBAUM. When you were in the U.S. district attorney's office, what kind of work did you do?

Ms. BATTS. I was in the criminal division, Mr. Chairman, and I had a variety of cases. I dealt with some international art theft cases, armed bank robbery, bank embezzlement, tax evasion, immigration cases, a wide variety. I did not, however, have much experience, if any, in narcotics or in major crimes, that is, organized crime.

Senator METZENBAUM. You say you have not had experience?

Ms. BATTS. I have not.

Senator METZENBAUM. You have written a number of public publications and served on a number of committees that address developing areas of family law such as family leave. Would you give us some idea of the thrust of those articles, please?

Ms. BATTS. Mr. Chairman, the work that I did involving family leave particularly was work that I did as a member of the Sex and Law Committee of the Bar Association of the City of New York. And New York State at that time had proposed some legislation dealing with family leave, and our committee—and I was one of the members of the subcommittee—worked on trying to make comments and helpful points and amendments to the suggested legislation by New York State.

I have written in the area as well. I wrote an article dealing with whether or not we should have a right to inheritance for children. I believe also that I still mean what I said in the first footnote of that article, which is that my parents should take that article very seriously because I did recommend that children should have a right to inheritance. And I also said that my children should not take it very seriously. [Laughter.]

Senator METZENBAUM. If you are confirmed as a Federal district court judge, which I assume you will be, at some point you may be faced with applying a second circuit court precedent with which

you do not personally agree. Would you consider yourself bound by such a precedent?

Ms. BATTIS. Absolutely, Mr. Chairman. As a Federal district court judge in the Southern District of New York, I would be absolutely bound by second circuit precedent.

Senator METZENBAUM. Of course, you may also be faced with cases involving issues on which the second circuit has not ruled. Can you give us any idea of the perspective that you would bring to a case in which there was no precedent, no Supreme Court decision, a matter of original issue, and how you might approach it as a jurist?

Ms. BATTIS. Mr. Chairman, what I would attempt to do is to find the nearest analogous situation where there is precedent and to be guided by that to see if that could help me in terms of figuring out where to go on that new issue. But I would certainly use precedent as a basis for attempting to see where that precedent would lead.

Senator METZENBAUM. Rule 11 of the Federal Rules of Civil Procedure allows judges to impose sanctions against lawyers or parties who file frivolous lawsuits. Recently, there has been much debate over the courts' increased willingness to punish litigants under rule 11. Some lawyers argue that the rule is being applied to chill pursuit of creative arguments in developing areas of the law such as civil rights.

Given your experience as a litigator whose practice has become more defense-oriented over the past 2 years, what do you think of these concerns, and how might you respond to them in the courtroom?

Ms. BATTIS. Mr. Chairman, I think that the debate is well represented on both sides. I can see, indeed, the need initially which created rule 11, where people felt that the courts were being inundated with frivolous lawsuits, and I believe that there are cases where, indeed, the application of rule 11 sanctions are appropriate. But in each instance, I think that the best way of dealing with it would be looking at the particular facts before me. I think that, indeed, yes, there could be times when there was abuse of rule 11 and other times when application of rule 11 is totally appropriate. But each case would be the basis upon which to make that determination.

Senator METZENBAUM. I have become disturbed about the application of rule 11 because I could see where, in years past, and maybe even now, some civil rights cases, human rights cases, rights of minorities of all kinds, might have been looked upon askance by the court, and that the lawyers practicing in those areas might very well have felt constrained as far as going forward if they were going to suffer a penalty.

Do you have any thoughts on that subject?

Ms. BATTIS. Mr. Chairman, I think that there is a distinction between novel and frivolous, and I believe that if rule 11 is appropriately applied, it would restrict or inhibit frivolous lawsuits as opposed to individuals seeking redress for wrongs through the court which may not have been brought before. So hopefully, jurists are able to make that distinction, and I would hope that I would be able to do so as well.

Senator METZENBAUM. I noticed as I glanced through the cases in which you were involved, it appears that you were on the defense side in the main. Is that the case?

Ms. BATTIS. No, Mr. Chairman. In active cases, I was the assistant U.S. attorney who was prosecuting the case on behalf of the U.S. Government.

Senator METZENBAUM. I see. OK. Thank you very much, and I wish you well in your new endeavor.

Ms. BATTIS. Thank you very much, Mr. Chairman.

Senator METZENBAUM. Our next witness is Judge Raymond Finch.

Judge, do you solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Judge FINCH. I swear.

Senator METZENBAUM. Do you have any young members of the family that you would like to have help me up here?

Judge FINCH. No, I do not, Senator.

Senator METZENBAUM. Judge Finch, do you have an opening statement that you care to make?

**TESTIMONY OF RAYMOND FINCH, KINGSHILL, ST. CROIX, VI,  
TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF THE VIRGIN ISLANDS**

Judge FINCH. Not per se, Mr. Chairman, except to express my deep appreciation for the honor of being here today.

**QUESTIONING BY SENATOR METZENBAUM**

Senator METZENBAUM. Let me ask you a question. Is the former Senator from Massachusetts with whom I served, is he in the Virgin Islands these days or is he in the States? I am speaking of—

Judge FINCH. Is that Edward Brooke?

Senator METZENBAUM. Ed Brooke, yes.

Judge FINCH. No; he is not in the Virgin Islands these days, Senator.

Senator METZENBAUM. I see.

Judge FINCH. I think he might be on the island of St. Maarten.

Senator METZENBAUM. There has been a great deal of attention paid to the increased caseloads of Federal courts and the resulting problem of docket backlogs. Newspaper accounts state that 17.6 percent of the civil cases in the Virgin Islands pend for 3 or more years and that few jurisdictions have a higher backlog.

Now, a backlog, as you well know, has an adverse effect on the litigants before the court who have been forced to suffer at least some delay in the resolution of their claims.

Can you tell us what you know about the reason for the backlog which is so high in the Virgin Islands?

Judge FINCH. The primary reason for that backlog, Mr. Chairman, is because of the fact that we do not have a permanent U.S. district court judge assigned to the Virgin Islands, and a result of that, only criminal cases are heard in the U.S. district court. Civil cases have not been processed since 1989.

Senator METZENBAUM. That is a real travesty. If confirmed, what steps will you take to ensure that the docket is caught up as quickly as possible, being both fair and reasonable?

Judge FINCH. Mr. Chairman, I believe firmly that a hands-on approach by the judge, who works very closely with the clerk of the court and is deeply involved in the processing of the cases, helps to a large extent to move cases along. I do not believe that a judge should sit back in his chambers and await for cases to flow to him. I believe that he should be actively involved in the processing of those cases. I have done that in the past, and it has worked.

Senator METZENBAUM. Would you make a special effort to bring that backlog of cases up to a current period?

Judge FINCH. If I am confirmed, Mr. Chairman, I shall make that special effort.

Senator METZENBAUM. If confirmed, at some point you could be faced with applying a decision of the court of appeals for the third circuit with which you disagree. Would you have any difficulty applying and enforcing precedents with which you did not agree?

Judge FINCH. No, Mr. Chairman. I have absolutely no problems in applying precedent.

Senator METZENBAUM. Is there any special area of the law, Judge Finch, which has been of particular interest to you, whether it is a Federal law or a Virgin Island law? Is there any particular area of concern or interest for you?

Judge FINCH. Yes, Mr. Chairman. I am very concerned with juvenile laws, the structure of the domestic relations court, and the process of juvenile cases in that court. In our time, we are now experiencing an influx of minors in the courtroom for serious and not-so-serious offenses. And I believe that it is time that the juvenile courts be properly staffed, and not only with support personnel but with judges so as to give minors the proper guidance and direction which they need from the judiciary.

Senator METZENBAUM. Do the district courts of the Virgin Islands have different kinds of cases than you might find in the States?

Judge FINCH. That is so. It was more so up until January of this year. The U.S. District Court of the Virgin Islands hears criminal cases to a larger extent than the U.S. district courts in the U.S. mainland. As of January of this year, a large part of the local criminal caseload was shifted to the territorial court. So now that is not such a big problem in the U.S. district, but still, nonetheless, there are those cases, those criminal cases which the district court may still hear.

Senator METZENBAUM. The committee has heard from many individuals who support the appointment of a native Virgin Islander to this judicial vacancy. I understand from your questionnaire that you were born in the Virgin Islands, and after completing law school in the United States at Howard University, you returned to clerk for the Virgin Islands Municipal Court and then went on to practice with the law firm of Hodge, Sheen, Finch & Ross.

How do you feel that your background and experiences in private practice and on the bench in the Virgin Islands have prepared you for this position?

Judge FINCH. Well, my experience in private practice was very general, and I did that general practice for a number of years. And in the municipal court and the territorial court, my experience has been broad-based. I have done all kinds of cases, from traffic court

through the domestic relations type cases, divorces, probates. I have done criminal cases, admiralty cases. So with that broad-based experience, I think I can bring a wealth of experience to the U.S. court.

Senator METZENBAUM. In evaluating candidates for the bench, this committee has traditionally looked not only at the nominee's credentials and professional background, but also at the question of temperament. I have to say that good temperament and demeanor are characteristics which, I think everyone would agree, are some of the most important qualities needed in a judge.

I understand that since 1979 you have served on the Judicial Ethics Committee of the American Judges Association. Your questionnaire states that this committee reviews cases involving allegations of past judicial misconduct. Given your background and prior experience on this committee, would you tell us about the role and significance of judicial temperament and indicate what elements of this temperament you consider most important?

Judge FINCH. One of the factors in temperament that I consider to be most important is patience, and courtesy. Particularly in the Virgin Islands where the tradition has been to allow litigants, notwithstanding the fact that they are represented by counsel, to address the court. And I think that I have exhibited that degree of patience over the years that has stood me well.

I pride myself in not being result-oriented, and that comes, of course, from years on the bench, and it comes from being patient and listening to all of the evidence that flows from the litigants.

Senator METZENBAUM. Thank you very much, Judge Finch, and I wish you well. I feel certain that the committee will look favorably on your nomination.

Judge FINCH. Thank you, Mr. Chairman.

Senator METZENBAUM. Our last witness is of particular interest and concern to me since I was one of those two Senators who nominated Dean Solomon Oliver for this position. So I am very happy to see you here now.

I see some young members of your family here. Dean Oliver, would you care to introduce me to them and let me invite them to join me up here if they would like to.

Mr. OLIVER. Yes, Mr. Chairman, I would like to introduce my family. Senator Glenn did introduce certain members of my family, and he had the others stand. But because my family is so important to me and has been over the years, if you do not mind, I would like to take a little bit of time to introduce those who are here.

Senator METZENBAUM. Take as much time as you would like.

Mr. OLIVER. You already met my wife, Louisa, but I would like them to stand, and they can sit down immediately, if they would like, after I call their names: My wife, Louisa; my son, Solomon Michael Oliver, who is a freshman at Amherst College; my son, Jonathan Douglas Oliver, who is in his last year of high school and is trying to make up his mind from some good choices right now. My father, Rev. Solomon Oliver, Sr., and my stepmother, Queen Oliver; my sister, Mary O. White; my sister, Eunice O. Boswell; my brother-in-law, Alexander Boswell; my sister, Barbara O. Richards, and her son, Timothy; my sister, Diane O. Gibson, and her sons, John Gibson and Phillip Gibson, and her daughter, Sallee Nicole; my

brother, Daniel Oliver; my brother, Nathan Oliver, Sr., and his sons, Nathan Oliver, Jr., and William Leigh Oliver; my niece, Anita Winfield, and her children, Nia Winfield and Cameron Winfield.

I would like to say that I am sorry that my other three brothers could not be here. They wanted to be, but they had obligations which kept them from being here: my brother, Leroy, my oldest brother; my brother, Paul, who is a lawyer and an excellent one in his own right; and my brother, David.

I am also sad that my mother, Willie Lee Oliver, could not be here. She was so instrumental in raising all of us and giving us, along with my father, obviously, Reverend Oliver, their most sterling examples to us all.

I have two CSU Cleveland-Marshall College of Law—that is where I teach—colleagues here. They surprised me this morning: Assistant Dean Louise Dempsey and Administrative Assistant Louise Mooney. They flew down early this morning about 6 o'clock, and I just wanted to recognize them.

Thank you very much for giving me the opportunity to introduce them.

Senator METZENBAUM. Thank you. Now, I am going to say to all of the young people that you introduced—that goes up to about 21, I guess, including your 2 sons—you are all welcome to come up here and sit and listen during this hearing. If any of you wants to come up, just come right on up.

There is kind of a symbolism, Mr. Oliver, in bringing the children up, because in the last analysis, so much of what we do relates to the future of their lives, and so much of what you would be doing on the court relates to children and the kind of life we all live. Some of us will pass on, but they have a whole future ahead of them, and I am very glad that you are here.

Do you understand what this is? We are deciding, the seven of us, we are going to have to decide if that man, who is related to you, Mr. Solomon Oliver, whether or not he should be a judge. So when he gets done speaking, I am going to have a vote. So you pay close attention to what is said. OK? All right. And no speaking out during the questioning. I will do the questioning, and you will do the voting when we get done.

Mr. Oliver, do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. OLIVER. I do.

Senator METZENBAUM. Do you have an opening statement?

Mr. OLIVER. No; I do not, Mr. Chairman.

#### QUESTIONING BY SENATOR METZENBAUM

Senator METZENBAUM. You have served as a law clerk to a man who is unquestionably one of the most distinguished Federal appellate judges this Nation has ever had and, in the opinion of this Senator, should have been on the Supreme Court. You have also served as an assistant U.S. attorney and as a law professor.

How have these experiences prepared you to be a Federal district court judge?

**TESTIMONY OF SOLOMON OLIVER, JR., CLEVELAND HEIGHTS, OH, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OHIO**

Mr. OLIVER. Each one of those experiences you mentioned, Mr. Chairman, I think has prepared me to be a Federal judge, has contributed to my preparation. I think clerking for Judge William H. Hastie, who, as you say, was a great judge—he was the first African-American judge to sit on the Federal court—was a wonderful experience.

Senator METZENBAUM. He was the first African-American to sit as a Federal judge in this country's history?

Mr. OLIVER. That is correct.

Senator METZENBAUM. I did not know that.

Mr. OLIVER. Initially, he sat in the Virgin Islands in the territorial court, but he was the first article III judge as well. He was appointed by President Truman in 1949 to the third circuit court of appeals. He was a man who was well trained in the law, who had a distinguished background when he came to the court, a wonderful temperament, and working under him, I not only learned what clerks learn about the full range of the kinds of legal issues that come before the court, but I think I learned how one ought to behave and how one ought to conduct oneself from one of the top people who served as a Federal judge. So that was a wonderful experience.

I worked in the U.S. attorney's office, and, of course, as you know, the United States is the litigant that comes before the Federal court more often than any other. And so I got to work on a large range of cases there. I also was—

Senator METZENBAUM. Under who?

Mr. OLIVER. In the U.S. attorney's office in Cleveland when President Carter was the President of the United States, Jim Williams was the U.S. attorney in our district. I was chief of the civil division for almost 4 years. I was chief of appellate litigation. And being chief of appellate litigation, I was in charge of both civil and criminal appeals that went before the sixth circuit. So I think that experience has contributed to my knowledge of Federal cases, and I think that has been a wonderful experience.

I also have been teaching for the last 12 years at Cleveland-Marshall College of Law, and I teach courses that involve litigation in the Federal courts. I teach a course on Federal jurisdiction. I teach a course on Federal civil procedure and a course on child advocacy. These are all courses, I think, which have made me very aware of the Federal court system, the kinds of issues raised and the complexities that are involved in the cases that come before the court.

Senator METZENBAUM. You indicated you have given legal advice to disadvantaged clients on a pro bono basis and that you have served on the board of a fair housing organization and the board of FHC Housing Corp. which backs loans made by banks for home repairs to persons who have poor credit.

What role, if any, do you think a judge has in ensuring that the poor and disadvantaged have access to the legal system?

Mr. OLIVER. I think the judge and the legal profession itself has an obligation, both have an obligation to ensure the disadvantaged have representation. But as a judge, I think that especially in the

criminal context, there are certain laws which require that criminal defendants be afforded counsel. And I would try to make sure in choosing counsel, for example, for indigents that they have competent counsel. I think, though, that in our profession a judge can set the tone by serving with other members of the bar to create a culture where lawyers feel that it is their obligation to give to those who cannot afford. I think we have got to do that in our profession if the profession is to work properly.

Not all persons can afford a lawyer, and yet our legal system operates on the basis of having lawyers. And so I would make it very clear in any capacity that I would have, as a judge and otherwise, that lawyers ought to give something back, that they ought to feel some duty to help those who are disadvantaged.

Senator METZENBAUM. Mr. Oliver, I, just as a member of the public and not necessarily as a Senator, have had a great concern about the number of cases where I hear some individual commits a heinous crime or maybe a crime of securities fraud, bank fraud, something of the kind, well represented by counsel, winds up being found guilty or pleads guilty, gets 1 year or 3 years or 5 years, the sentence is suspended, and then is given 200 hours of community service, winds up really doing very little of that. If he did, it really did not make that much difference.

I have concluded that it is a terrible kind of justice. You only get this kind of arrangement if you are represented by high-priced lawyers, normally. And I am just wondering about your own reaction. You will be dealing with some criminal cases as well as civil cases. What do you think of this idea of so many suspended sentences? Sometimes I read articles in the paper about some of the judges suspending sentences, and it is revolting to me. It is repulsive.

You are going to be a judge. Give me your reaction to this treatment of defendants who have either pled guilty or been found guilty.

Mr. OLIVER. Senator, I could only say that if I am appointed to be a Federal judge, I will try to be equal in my treatment of the defendants who come before the court, that I will try to be even-handed in the way that I participate and rule on sentencing issues and other issues. That is really I think all I could say, is that you could trust that I would be fair across the board with all kinds of defendants from all kinds of backgrounds and all kinds of cases. That would be my aim.

Senator METZENBAUM. Would you have any difficulty applying or enforcing precedents set by the sixth circuit even in those cases which you disagree with the conclusion of the sixth circuit?

Mr. OLIVER. I would have no difficulty. As a district judge, it would be my duty and responsibility to apply the law as it exists, and that law would include the laws interpreted by the sixth circuit, and so I would have no difficulty doing that, even in the face of some disagreement personally.

Senator METZENBAUM. Congress is contemplating legislation aimed at reducing pervasive overcrowding in Federal courts by allowing Federal judges to assign some of their smaller cases to court-appointed arbitrators. Some suggest that settling appropriate cases early would relieve some of the docket backlog. While that



may be true, some litigants would prefer their day in court even more than a favorable settlement.

I know you have served on the Civil Justice Reform Act Advisory Group for the Northern District of Ohio since 1991, and you have also served as a member of a panel of Federal court mediators and arbitrators appointed by the judges of the Northern District of Ohio.

Given your experience, what role do you think arbitration should have in Federal court, and what role, if any, do you intend to play in the settlement process?

Mr. OLIVER. As you pointed out, Senator, I have been on the Civil Justice Reform Act Advisory Group in the Northern District of Ohio, and that group recommended arbitration, mediation, and early neutral evaluation as ways to help reduce the backlog of cases in that district. We also suggested some other things.

I think arbitration and mediation and other alternate dispute resolution devices can be very helpful in alleviating backlog and delay in the Federal system. I do not think it in any way could be or should be mandatory. I think if a party decides they really want their day in court, they should have it.

However, I think a lot of parties now are coming to realize the benefits, with some explanation, the benefits of having these devices available. If I were confirmed, appointed as a judge, I would try to make use of those devices. As you say, I have been already involved by volunteering my time in our district court hearing some of those cases as a mediator, as an early neutral evaluator, to help move along some of those cases, and they have settled. So as a judge, I will be trying to use the lawyers who do work for free in the Northern District of Ohio to help evaluate some of those cases and move them along.

In terms of my role in settlement as a judge, I would try to facilitate it. Again, I would not strong-arm the parties, but I would meet with them early, and I would meet with them often, and I would try to encourage them to—try to help them do a realistic evaluation of their case and to see if we can get a meeting of the minds. Between 90 and 95 percent of the cases in the Federal courts do settle. They are settling too late in some instances. They should settle much earlier. And I would be involved in trying to facilitate that.

Senator METZENBAUM. Thank you very much, Mr. Oliver.

Do you think that secrecy orders are sometimes overused in sealing cases, particularly those involving public health and safety?

Mr. OLIVER. I cannot really say whether they are overused or not, Senator, but I would say that it is important to balance kind of the right of citizens to know. If we are going to live in a democratic society and people are going to make informed judgments, we are going to have to be as open as we can.

However, I do realize, based on then representing parties myself before the court in very delicate situations, that there are some circumstances under which there is a need to seal. So I could not say without the facts and circumstances whether a particular situation would be appropriate, but I would be mindful of the need to balance the interests of the litigants in not revealing certain proprietary information with that of the public and their interest in knowing and their right to know what is going on.

Senator METZENBAUM. Thank you very much, Mr. Oliver. Now the final decision is about to be made.

Do you think that he should become a judge?

NATHAN OLIVER, JR. Yes.

Senator METZENBAUM. Yes. How do you feel?

WILLIAM LEIGH OLIVER. I think he should be a judge.

Senator METZENBAUM. Do you think he would be a good judge?  
OK.

JOHN OLIVER GIBSON. Yes.

Senator METZENBAUM. Yes? OK. How is your vote?

PHILIP GIBSON. Yes.

Senator METZENBAUM. Can't hear you.

PHILIP GIBSON. Yes.

Senator METZENBAUM. Yes? OK. All right. [Laughter.]

Mr. OLIVER. I was worried there for a moment.

Senator METZENBAUM. Now we have two more. Do you think he will be a good judge?

TIMOTHY RICHARDS. Yes.

Senator METZENBAUM. OK. All right. And how about you, young lady? Yes?

NIA ELIZABETH WINFIELD. Yes.

Senator METZENBAUM. Well, Mr. Oliver, on the basis of these six, you are a judge.

Mr. OLIVER. I would hope that the committee would be as favorable, Mr. Chairman.

Senator METZENBAUM. I will report this to the other members of the committee and to the U.S. Senate. I think it will make a big difference in their deliberations.

Thank you very much, Mr. Oliver.

Mr. OLIVER. Thank you, Mr. Chairman.

Senator METZENBAUM. With that, this committee stands adjourned.

[Whereupon, at 11:33 a.m., the committee was adjourned.]

[Submissions for the record follow:]

## SUBMISSIONS FOR THE RECORD

UNITED STATES SENATE  
Committee on the Judiciary  
Washington, DC 20510-6275

QUESTIONNAIRE FOR JUDICIAL NOMINEES

## I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)  
Robert Harlan Henry
2. Address: List current place of residence and office address(es).  
Home: 322 Northwest 15th Street  
Oklahoma City, Oklahoma 73103  
Office: Oklahoma City University School of Law  
Office of the Dean  
2501 North Blackwelder  
Oklahoma City, Oklahoma 73106
3. Date and place of birth.  
April 3, 1953; Shawnee, Oklahoma
4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).  
Married  
Dr. Janice Loraine Ralls Henry (Maiden name: Baker)  
Dentist and Instructor  
University of Oklahoma College of Dentistry  
Division of Community Dentistry  
Native American Center of Excellence Consortium  
1001 Stanton L. Young Boulevard  
Oklahoma City, Oklahoma 73104
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.  
University of Oklahoma  
Norman, Oklahoma  
1971-1974  
Bachelor of Arts (with High Honors)  
May 1974  
  
University of Oklahoma  
College of Law  
Norman, Oklahoma  
1974-1976  
Juris Doctor  
December 1976

6. Employment Record. List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

June 1991 - Present

Dean and Professor of Law  
Oklahoma City University School of Law  
2501 North Blackwelder  
Oklahoma City, Oklahoma 73106

January 1987 - June 1991

Attorney General of Oklahoma  
Office of Attorney General  
State Capitol  
Oklahoma City, Oklahoma 73105

October 1983 - January 1987

Partner  
Henry, Henry & Henry  
4419 North Bryan  
Shawnee, Oklahoma 74801

May 1977 - October 1983

Associate (later Partner)  
Henry, West, Sill & Combs  
231 North Broadway  
Shawnee, Oklahoma 74801

November 1976 - November 1986

State Representative  
Oklahoma House of Representatives  
State Capitol Building  
Oklahoma City, Oklahoma 73105

May 1976 - May 1977

Legal Intern  
Henry, West & Sill  
231 North Broadway  
Shawnee, Oklahoma 74801

Partnerships:

June 93 - Present

Henry's Antiques  
322 Northwest 15  
Oklahoma City, Oklahoma 73103

Organizations:

Boy Scouts of America, Last Frontier Council, Board of Directors,  
1989 - 1991  
Jasmine Moran Foundation Children's Museum, Advisory Board, 1990 -  
Present

KCSC Radio, Board of Directors, 1986-88  
 League of Women Voters of Oklahoma, Member, Financial Advisory Committee, 1991 - Present  
 National Conference of Christians and Jews, Oklahoma City Region, Board of Directors, 1991 - Present; currently President  
 Oklahoma Nature Conservancy, Board of Directors, 1991 - Present  
 Oklahoma Federation of Parents, Board of Directors, 1989  
 Oklahoma Academy for State Goals, Executive Committee, 1989 - Present  
 Oklahoma University Press, Board of Visitors, 1989 - Present  
 Oklahoma Independent Colleges Foundation, Board of Directors, 1990 - Present  
 Oklahoma Alliance against Drugs, Board Member, 1988 - 1989  
 REST (Project of Downtown Outreach Committee, Inc.), Board of Directors, 1989 - 1990  
 Southwest Regional Center for Drug Free Schools and Communities, Board Member, 1989 - 1990  
 St. Gregory's College (Catholic-Benedictine), Board of Directors, 1983 - Present; formerly Chair of the Board, 1986 - 1990  
 Western History Collection of the University of Oklahoma, Board of Trustees, 1991 - Present

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

University Scholar - University of Oklahoma, 1971  
 United States Senate Youth Program, William Randolph Hearst Foundation Scholar, 1971  
 National Winner of Elk's Leadership Award (Named by United States Senators Ernest Hollings and Barry Goldwater), 1971  
 Legislator of the Year - Oklahoma Trial Lawyers Association, 1979  
 Distinguished Service Citation - Oklahoma Baptist University Alumni Association, 1982  
 Appreciation of Sincere Efforts for Promotion of Pakistan-American Friendship - Pakistan Student Association, University of Oklahoma, 1983  
 National Black Caucus of State Legislators and Oklahoma Legislative Black Caucus A. C. Hamlin Award, 1984  
 Outstanding Young Men of America, 1986  
 Annual Human Rights Award - Oklahoma Human Rights Commission, 1988  
 Outstanding Assistance - Oklahoma Chapter of International Association of Arson Investigators, 1988  
 Outstanding Communication and Leadership - Toastmasters, International, 1988  
 Certificate of Appreciation - Oklahoma Crime Victims Compensation Board, 1988  
 Three Outstanding Young Oklahomans - Oklahoma Jaycees, 1988  
 Outstanding Young Men of America, 1989

Recognition and Appreciation for Service - Asian-American Leadership Conference/Asia Society of Oklahoma, 1990  
 Certificate of Appreciation - Association of Oklahoma Narcotics Enforcers, 1990  
 Conservationist of the Year - Oklahoma Wildlife Federation, 1990  
 Oklahoma Indian Bar Association Award ("For Outstanding Service to the Profession and for Improving Relations Among the Tribes and the State"), 1991  
 Participant, United States Department of Justice, Federal Bureau of Investigation, "Addressing Violent Crime Through Community Involvement," October 15-18, 1991  
 Farmers Union Award, 1991  
 Phi Beta Kappa - Alumni membership for leadership in the study of the constitution of the state, 1993  
 Oklahoma City Chapter of Hadassah - Myrtle Wreath Award: Contribution Towards the Betterment of the World in Humanitarianism, 1993

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Oklahoma Bar Association, 1977 - Present  
 Uniform Laws Committee, 1988 - Present  
 American Bar Association, 1991 - Present  
 National Conference of Commissioners on Uniform State Laws Commissioner for Oklahoma, 1982 - Present  
 "Victims of Crime" Drafting Committee, 1989 - Present  
 "Civil Forfeitures" Drafting Committee, 1991 - Present  
 Study Committee on the Uniform Rules of Evidence, 1993 - Present  
 Oklahoma County Bar Association, 1992 - Present  
 Oklahoma Fellow of the American Bar Foundation, June 1992 - Present  
 American Inns of Court, William J. Holloway, Jr. Inn, Master, Appointed by Federal District Judge Layne Phillips, 1989 - Present  
 Oklahoma Trial Lawyers Association, 1993 - Present  
 National Association of Attorneys General, 1987 - 1991  
 Supreme Court Committee: Member, 1988-1991; Chair, 1991  
 State Supreme Court Project Advisory Committee: Member, 1988 - 1989  
 State Constitutional Law Advisory Committee: Member, 1989-1991; Chair, 1990-1991  
 Agriculture and Rural Legal Affairs Committee: Chair, 1988 - 1990  
 Civil Rights Committee: Vice Chair, 1990-1991  
 Phi Delta Phi, 1977  
 Civil Justice Reform Act Advisory Group, United States District Court, Western District of Oklahoma, appointed by Chief Judge Ralph Thompson, 1993 to Present  
 American Bar Association: United States Office of Personnel Management Administrative Law Judge (ALJ) Interview Panel, 1993  
 Oklahoma Criminal Justice Center Board, 1981 - 1983  
 Supreme Court of Oklahoma Appellate Judicial Conference; Presentation, 1988  
 Chairman, Oklahoma Constitution Revision Study Commission, appointed by Governor Henry Bellmon, 1988-1992

Sovereignty Symposium (Native American Legal Symposium sponsored by the Supreme Court of Oklahoma); Presentations, 1988, 1989, and 1990; Moderator, 1991

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

The following organizations to which I belong occasionally make legislative recommendations:

Oklahoma Academy for State Goals  
League of Women Voters (Advisory Member)  
American Bar Association  
Oklahoma Bar Association

For other organizations, please see question #6:

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

United States Supreme Court  
January 12, 1987

United States Court of Appeals for the Tenth Circuit  
December 22, 1986

United States District Court for the Eastern District of Oklahoma  
March 20, 1987

United States District Court for the Western District of Oklahoma  
October 27, 1993

Oklahoma Supreme Court and all Courts in Oklahoma  
April 22, 1977

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

PUBLICATIONS:

"The Oklahoma Powers of Appointment Act of 1977." Rarick, J., Henry, R., Oklahoma Law Review, Vol. 32, pp. 787-811. (See Attachment 12 I.)

"The Oklahoma Constitutional Revision Commission: A Call to Arms or the Sounding of Retreat?" Henry, R., Oklahoma City University Law Review, Vol. 17(1), Spring 1992, pp. 177-199. (See Attachment 12 II.)

"The Constitution of the State of Oklahoma: Recommendation for Revision" (Report of the Oklahoma Constitution Revision Study Commission, Robert H. Henry, Chairman), Oklahoma City University Law Review, Fall 1991, Volume 16(3).

"Nations Within A Nation," Oklahoma Today, May-June, 1992, p. 35. (See Attachment 12 III.)

The Office of Attorney General: Powers and Duties. Ross, Lynne, Editor. National Association of Attorneys General, 1988. Henry, Robert H., et al., Editorial Board.

Life and Times of Henry Bellmon. Bellmon, Henry, Council Oak Publishing Co., Inc., 1992. Preface by Robert H. Henry.

Oklahoma Business Organizations: Formation and Representation. Faught, Irving L., Aspen Publishers, 1990. Preface by Robert H. Henry. (See Attachment 12 IV.)

Oklahoma Government: Politics, and Policies. Morgan, David, et al., University of Nebraska Press, 1990. Foreword by Robert H. Henry. (See Attachment 12 V.)

"A Black Hat for the Lone Ranger? The Attorney General as Defender of Tort Claims," The Journal of State Government, May-June, 1988, p. 112. (See Attachment 12 VI.)

"Constitutional Convention Gains Support as One Answer to Economic Stagnation," Oklahoma Business, January, 1987, p. 27.

"Little Giant: A Tale of Quiet Nobility," Book Review in The Chronicles of Oklahoma, Volume LXIX, Number One, Spring 1991.

Then to the Rock Let Me Fly: Luther Bohanon and Judicial Activism, Weaver, Jace, University of Oklahoma Press, 1993. Foreword by Robert H. Henry.

SPEECHES:

Most of my speeches were delivered from notes which I did not retain. Those that I have texts for are attached.

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent  
October 1993

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Not applicable



15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of these opinions.

Not applicable

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

State Representative, State of Oklahoma, 1976-1986 (5 terms, last four reelected without opposition)

Attorney General of Oklahoma, 1987-1991 (reelected without opposition, resigned to become Dean and Professor of Law, Oklahoma City University School of Law)

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

Not applicable

2. whether you practiced alone, and if so, the addresses and dates;

Not applicable

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

May 1976 - May 1977

Legal Intern  
Henry, West & Sill  
231 North Broadway  
Shawnee, Oklahoma 74801

November 1976 - November 1986

State Representative  
 Oklahoma House of Representatives  
 State Capitol Building  
 Oklahoma City, Oklahoma 73105

May 1977 - October 1983

Associate (later Partner)  
 Henry, West, Sill & Combs  
 231 North Broadway  
 Shawnee, Oklahoma 74801

October 1983 - January 1987

Partner  
 Henry, Henry & Henry  
 4409 North Bryan  
 Shawnee, Oklahoma 74801

January 1987 - June 1991

Attorney General of Oklahoma  
 Office of Attorney General  
 State Capitol  
 Oklahoma City, Oklahoma 73105

June 1991 - Present

Dean and Professor of Law  
 Oklahoma City University School of Law  
 2501 North Blackwelder  
 Oklahoma City, Oklahoma 73106

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

1976 - 1986

In the summer of 1976 I was elected to serve in the state legislature. I entered the Oklahoma House of Representatives in January of 1977. In May of 1977, I began law practice with Henry, West & Sill, a small-town general practice law firm where I had interned. (Legislative service is "part-time" in Oklahoma; the legislature usually convenes in January and adjourns in May.)

My law practice was very general and varied, ranging from probate practice to family law to criminal law. I handled juvenile matters, corporate organization, real estate and title opinions. I represented victims and defendants in criminal

matters and, in general, engaged in a very broad legal practice customary in small towns. My representation of clients included numerous appearances in courts in trials mostly non-jury.

1987 - 1991

As Attorney General of Oklahoma, a state constitutional officer, I represented the State of Oklahoma in both civil and criminal matters. In addition to involvement in and responsibility for administration of 50 attorneys and 40 support personnel, I was directly involved in the management and oversight of some 5,500 criminal cases and 5,500 civil cases. I issued some 209 formal opinions of the Office of Attorney General. I proposed and drafted legislation. I worked closely with numerous state district attorneys, United States Attorneys, and other state, federal and local enforcement agencies. I argued before federal and state administrative agencies, testified twice before a United States Senate Sub-committee, reviewed and drafted appellate briefs filed in federal and state courts, and appeared as co-counsel in cases before the United States Supreme Court and the United States Court of Appeals for the Tenth Circuit.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

In private practice my clients included farmers, teachers, business persons, and firms. I worked for several charitable concerns, several banks, and several small businesses. I specialized in probate and family law.

As Attorney General my clients included ratepayers (in utility regulation cases), citizens of the State of Oklahoma and state agencies. I concentrated on reorganizing the state's law firm and expanding the Attorney General's statutory powers into utility and insurance rate cases (in order that the Attorney General could appear as an intervenor for the ratepayers); in collection of student loans; in Medicaid fraud; and in drug abuse. I specialized to some extent in Indian law. I also initiated the first state-federal white collar felony trial in recent years. My office handled numerous other cases in the federal courts.

As Dean of the School of Law at Oklahoma City University my primary tasks have been administration and teaching. However, I have on a pro bono basis consulted with the Oklahoma County Public Defender and several not-for-profit entities. I have also lectured or spoken at continuing legal education seminars specifically in the areas of openness in government ("Sunshine" Laws) and ethics. I have taught or lectured in Legislation, Administrative Law, and Jurisprudence.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearance in court varied, describe each such variance, giving dates.

I appeared in court fairly frequently from 1977 until 1985. As legislative duties (including serving as Chair of the House Judiciary Committee and as Commissioner for Oklahoma to the National Conference of Commissioners on Uniform State Laws) increased, my court appearances became less frequent.

As Attorney General I have appeared before several courts and numerous state regulatory agencies. I monitored court proceedings in numerous other criminal and civil cases in which the Office of Attorney General was involved. In federal court my office handled hundreds of cases including 42 U.S.C. § 1983 cases, federal Habeas Corpus matters, and capital litigation.

While Dean of the Oklahoma City University School of Law I have made only a few court appearances.

2. What percentage of these appearances was in:

- (a) federal courts;  
15 percent
- (b) state courts of record;  
75 percent
- (c) other courts.  
10 percent

3. What percentage of your litigation was:

- (a) civil;  
90 percent
- (b) criminal.  
10 percent

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

|                                   |          |
|-----------------------------------|----------|
| Total Private Practice (estimate) | 80 cases |
| Sole counsel                      | 50 cases |
| Chief counsel                     | 15 cases |
| Associate counsel                 | 15 cases |

As Attorney General I have been directly involved in the oversight and management of thousands of cases. I have personally been involved with making prosecutorial decisions in many of the criminal matters, as well as litigative decisions in many civil cases. (See Attachment 17 c 4.)

5. What percentage of these trials was:

- (a) jury;  
10 percent
- (b) non-jury.  
90 percent

18. Litigation: Describe the ten most significant litigated matters you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

- (1) United States of America v. Elvin Leon Hibbs, Jefferson B. Kinney, Jr.  
CR 89-8

Substance of Case:

On January 11, 1989, a federal grand jury in the Western District of Oklahoma returned a forty-two count indictment against defendant Elvin Leon Hibbs. Jefferson B. Kinney, Jr. was named as a codefendant and was charged in Count 42. The initial forty-one counts in the indictment charged mail fraud, in violation of Title 18 U.S.C. 1341. The forty-second count alleged that the defendant and Kinney conspired to commit mail fraud in violation of 18 U.S.C. 371.

The defendant entered pleas of not guilty to each count of the indictment on January 17, 1989. On a motion by the government, the court dismissed Counts 16, 35 and 37 of the indictment, with prejudice, on June 12, 1989.

This was the first cooperative federal/state white collar prosecution in Oklahoma in modern times. Defendants, one of whom was a state college president, were charged with defrauding the state of Oklahoma, through

a scheme to convert public money to personal use. The case began with a state investigation which involved evidence of violations of both state and federal law. In order to invoke the investigative power of the FBI and the federal grand jury process, the United States Attorney and I determined to proceed on the federal charges. With the permission of the United States Attorney, I cross-designated two of my lawyers as Assistant U. S. Attorneys, who cooperated fully with the federal government and participated in all aspects of the case. Under the Oklahoma Constitution's prohibition against "dual office holding" I, as Attorney General, could not be cross-designated. The resulting case allowed the state and federal government to proceed in trying a most difficult matter and laying the foundation for future joint effort.

**Party Represented:**

My staff represented the state of Oklahoma's interest as well as that of the United States. Chief co-counsel was Ms. Arlene Joplin, Esq., Assistant United States Attorney.

**Nature of Participation:**

Evaluated investigation by the State Auditor and Inspector, arranged for cross-designation of senior staff, evaluated evidence presented before federal grand jury, devised strategy, participated in all prosecutorial decisions, and attended portions of trial.

**Disposition of case:**

Jury trial began on June 12, 1989, and continued through July 7, 1989, when the jury found the defendant Elvin Leon Hibbs guilty on each of the remaining counts in the indictment. On July 21, 1989, defendant Jefferson B. Kinney, Jr., entered a plea of guilty to a superseding information which charged misprision of a felony.

**Date of Trial:**

June 12-July 7, 1989

**Court:**

United States District Court, Western District of Oklahoma

**Judge:**

Honorable Ralph G. Thompson, Chief Judge  
United States District Court  
200 Northwest 4th  
Oklahoma City, Oklahoma 73102  
(405) 231-5153

## Co-counsel:

Chief Trial Counsel: Arlene Joplin  
 United States Attorneys Office  
 200 Northwest 4th, Room 4434  
 Oklahoma City, Oklahoma 73102  
 (405) 231-5281

Susan Stewart Dickerson, Cross-designated  
 Special Assistant United States Attorney  
 (Also Oklahoma Assistant Attorney General)  
 United States Attorneys Office  
 200 Northwest 4th, Room 4434  
 Oklahoma City, Oklahoma 73102  
 (405) 231-5281

Charles M. McLoughlin, Cross-designated  
 Special Assistant United States Attorney  
 (Also Oklahoma Assistant Attorney General)  
 United States Attorneys Office  
 333 West 4th Street  
 3900 U. S. Courthouse  
 Tulsa, Oklahoma 74103  
 (918) 581-7463

## Counsel for Other Parties:

D. C. Thomas  
 201 Robert S. Kerr Avenue, Suite 504  
 Oklahoma City, Oklahoma 73102  
 (405) 235-4300

- (2) In the Matter of the Workers' Compensation Rate Filing by the National Council on Compensation Insurance  
 Filing No. 87-2318

## Substance of Case:

Workers' compensation carriers sought an increase of 33.8% in rates charged to Oklahoma businesses in an application filed before the State Board for Property and Casualty Rates. I, as Attorney General, intervened on behalf of ratepayers pursuant to gubernatorial request, necessary under Oklahoma law to authorize the Attorney General to protect the collective interests of insurance consumers of the state in rate proceedings before the Board.

## Party Represented:

Citizens and ratepayers of Oklahoma pursuant to request by the Governor

## Nature of Participation:

Supervised case, researched law, planned strategy, and reviewed pleadings.

## Disposition of Case:

I contested a number of adjustments sought by the industry, and recommended an increase of only 14.4%. The Board issued an order limiting the average increase in approved rates to 23.8%. Because most insurance carriers were already charging 25.9% above the most recently approved rates by means of "consent-to-rate" forms, the Board's order actually resulted in an average decrease in rates paid by Oklahoma businesses.

## Date of Trial:

April 13-14, 1988

## Court:

Oklahoma State Board for Property and Casualty Rates

Proceeding before Oklahoma State Board for Property and Casualty Rates,  
Order issued May 12, 1988

Gerald Grimes  
(Former Chair of State Board)  
Executive Director, Oklahoma Asphalt Pavement Association  
Post Office Box 75817  
Oklahoma City, Oklahoma 73147  
(405)947-7675

Jack Emerson (Former board member)  
10405 Paisley Road  
Yukon, Oklahoma 73099  
(405) 324-5230

James Duty (Former board member)  
325 Wheeler  
Ardmore, Oklahoma 73401  
(405)223-3809

## Co-counsel:

Assistant Attorney General Robert Butkin  
Office of the Attorney General  
State Capitol Building  
Oklahoma City, Oklahoma 73105  
(405) 521-3921  
Other office: (405) 252-4311



## Counsel for Other Parties:

National Council for Compensation Insurance  
 Larry Derryberry  
 Stephen G. Solomon  
 Derryberry, Quigley, Parrish & Gooding  
 4800 North Lincoln Boulevard  
 Oklahoma City, Oklahoma 73105  
 (405) 528-6569

Oklahoma State Chamber of Commerce and Industry  
 Julius Kubier  
 4020 Lincoln Boulevard  
 Oklahoma City, Oklahoma 73105  
 (405) 424-4003

- (3) In the Matter of the Workers' Compensation Rate Filing by the National Council on Compensation Insurance  
 Filing No. 88-2791

## Substance of Case:

The National Council for Compensation Insurers again sought rate increases of 14.0%. My office intervened and sought a rate decrease of 13.4%. This case was different from the first in that it was brought under a new power of the Attorney General, based on a statute I drafted giving the Attorney General direct power to intervene in insurance rate cases. This removed the Attorney General from the constraint of having to coordinate gubernatorial involvement in these cases, creating more efficient protection for the ratepayers.

## Party Represented:

Citizens and ratepayers of Oklahoma pursuant to statutory authority

## Nature of Participation:

Supervised case, researched law, reviewed pleadings, and appeared at hearing.

## Disposition of Case:

The Board denied any rate increase and issued an order keeping rates level.

## Date of Trial:

May 23-25, 1989

## Court:

Oklahoma State Board for Property and Casualty Rates

Proceeding before Oklahoma State Board for Property and Casualty Rates,  
Order issued June 22, 1989

Gerald Grimes  
(Former Chair of State Board)  
Executive Director, Oklahoma Asphalt Pavement Association  
Post Office Box 75617  
Oklahoma City, Oklahoma 73147  
(405) 947-7675

Jack Emerson (Former board member)  
10405 Paisley Road  
Yukon, Oklahoma 73099  
(405) 324-5230

R. Don Coyer (Former board member)  
3116 Eton  
Oklahoma City, Oklahoma 73122  
(405) 942-3673

## Co-counsel:

Assistant Attorney General Robert Butkin  
Office of the Attorney General  
State Capitol Building  
Oklahoma City, Oklahoma 73105  
(405) 521-3921  
Other Office: (405) 252-4311

## Counsel for Other Parties:

National Council for Compensation Insurance  
Larry Derryberry  
Stephen G. Solomon  
Derryberry, Quigley, Parrish & Gooding  
4800 North Lincoln Boulevard  
Oklahoma City, Oklahoma 73105  
(405) 528-6569

Oklahoma State Chamber of Commerce and Industry  
Julius Kubier  
4020 Lincoln Boulevard  
Oklahoma City, Oklahoma 73105  
(405) 424-4003

- (4) Henry v. Corporation Commission  
825 P. 2d 1262 (1990)  
Oklahoma Supreme Court  
Appeal Nos. 68776, 68793, 68795

Substance of Case:

During the pendency of a general review of applicant Arkansas-Oklahoma Gas Corporation's request for a rate increase, the Oklahoma Corporation Commission permitted an upward adjustment in certain elements of the rates without required publication notice to the ratepayers.

Parties Represented:

State of Oklahoma  
Utility Consumers of State of Oklahoma

Nature of Participation:

As the representative of utility consumers pursuant to request by the Governor, I challenged the decision of the Oklahoma Corporation Commission which permitted the utility to increase certain elements of its rates without proper notice to its ratepayers. I also provided legal advice to the Eastern Oklahoma Legislative Delegation, which challenged the agency's action on related grounds.

Disposition of Case:

The Oklahoma Supreme Court ruled that the Commission's failure to follow its own rules requiring publication notice of rate hearings violated the due process rights of the ratepayers. The court ruled that an administrative agency must follow its own rules even where the notice required by those rules was more generous than that otherwise required by statute or constitution. This was an important new "right" for ratepayers, established by this case.

The court reversed the agency order which had permitted the rate increase. Following the court's decision, the Corporation Commission approved a stipulation which directed the utility to refund approximately \$500,000 to AOG's Oklahoma customers.

Date of Trial:

April 1986 - June 1987

Court:

Original Administrative Proceeding Approving Rate Increase  
Docket PUD 000158, Order 297572  
Docket PUD 000079, Order 310988

## Oklahoma Corporation Commission

## Commissioners:

James B. Townsend  
 16506 Highway 102  
 Shawnee, Oklahoma 74801  
 (405) 273-3725

Bob Hopkins  
 Jim Thorpe Building  
 2101 Lincoln Boulevard  
 Oklahoma City, Oklahoma 73105  
 (405) 521-2307

Norma Eagleton  
 2727 East 21st, Suite 305  
 Tulsa, Oklahoma 74114  
 (918) 665-1411

## Supreme Court Appeal

Henry v. Corporation Commission, 825 P. 2d 1262 (1990)

Decision issued October 2, 1990

Justice Lavender wrote for the court. Justice Kauger and Justice Opala filed separate concurring opinions.

Supreme Court of Oklahoma  
 The Honorable Robert Lavender  
 The Honorable Yvonne Kauger  
 The Honorable Marian Opala

## Corporation Commission's Decision on Remand

Order 365758 (May 28, 1992)

Docket Nos. PUD 00079, PUD 000158, PUD 000313, PUD 000373, PUD 01294

## Oklahoma Corporation Commission

Bob Anthony  
 J. C. Watts  
 Cody Graves

## Co-counsel:

Assistant Attorney General Robert Butkin  
 Office of Attorney General  
 State Capitol  
 Oklahoma City, Oklahoma 73105  
 (405) 521-3921  
 Other Office: (405) 252-4311

## Counsel for Other Parties:

Maribeth Snapp  
 Jose J. Hernandez  
 Office of Legal Counsel  
 Oklahoma Corporation Commission  
 Jim Thorpe Building  
 2101 Lincoln Boulevard  
 Oklahoma City, Oklahoma 73105  
 (405) 521-2255

Jim Hamilton  
 Oklahoma State Representative  
 (Eastern Oklahoma Legislative Delegation)  
 Post Office Box 660  
 Poteau, Oklahoma 74953-0660  
 (918) 647-9171

William L. Anderson  
 Cody Waddell  
 (Arkansas-Oklahoma Gas Company)  
 2212 Northwest 50  
 Oklahoma City, Oklahoma 73112  
 (405) 840-4408

- (5) The Application of Arkansas-Oklahoma Gas Corporation for an Adjustment of Its Rates and Charges for Utility Service  
 Cause PUD 00079, filed December 26, 1985 (Proceeding before Oklahoma Corporation Commission)

## Substance of Case:

This matter gave rise to the case previously described. A gas utility serving approximately 14,000 customers in southeastern Oklahoma sought a rate increase in excess of \$1,000,000 per year.

## Parties Represented:

State of Oklahoma  
 Utility Consumers of State of Oklahoma

## Nature of Participation:

I supervised the case, coordinated legal strategy, appeared and argued on behalf of the ratepaying public. The requested rate increase was challenged by the Attorney General's office, which was assisted by expert consultants. I also coordinated legal strategy with Eastern Oklahoma Legislative Delegation.

## Disposition of Case:

Order 317854, issued October 14, 1987, approving rate increase of \$470,000 per year.

## Date of Trial:

August 18-20, 1987

## Court:

Oklahoma Corporation Commission

## Commissioners:

James B. Townsend  
16506 Highway 102  
Shawnee, Oklahoma 74801  
(405) 273-3725

Bob Hopkins  
Jim Thorpe Building  
2101 Lincoln Boulevard  
Oklahoma City, Oklahoma 73105  
(405) 521-2307

Norma Eagleton  
2727 East 21st, Suite 305  
Tulsa, Oklahoma 74114  
(918) 665-1411

## Co-counsel:

Assistant Attorney General Robert Butkin  
Office of Attorney General  
State Capitol  
Oklahoma City, Oklahoma 73105  
(405) 521-3921  
Other Office: (405) 252-4311

## Counsel for Other Parties:

Maribeth Snapp  
Jose J. Hernandez  
Office of Legal Counsel  
Oklahoma Corporation Commission  
Jim Thorpe Building  
2101 Lincoln Boulevard  
Oklahoma City, Oklahoma 73105  
(405) 521-2255

Jim Hamilton  
 Oklahoma State Representative  
 (Eastern Oklahoma Legislative Delegation)  
 Post Office Box 660  
 Poteau, Oklahoma 74953-0660  
 (918) 647-9171

William L. Anderson  
 Cody Waddell  
 (Arkansas-Oklahoma Gas Company)  
 2212 Northwest 50  
 Oklahoma City, Oklahoma 73112  
 (405) 840-4408

- (6) The Application of Howard W. Motley, Jr. for an Inquiry Into the Rates and Charges of Southwestern Bell Telephone Company Cause PUD 000662, filed January 25, 1989 (Proceeding before Oklahoma Corporation Commission)

Substance of Case:

This was a rate investigation of a major telephone utility initiated by the staff of the Oklahoma Corporation Commission. When we experienced inordinate delays in the discovery process and our preliminary investigation indicated that significant rate reductions should be forthcoming, we asked the Commission to place Bell's rates subject to refund pending disposition. This was a completely new remedy, and derived from the need to protect ratepayers from delay in the hearing process.

Parties Represented:

State of Oklahoma  
 American Association of Retired Persons

Nature of Participation:

I intervened pursuant to statutory authority to represent ratepayers. My office's involvement included review and discovery of the utility's financial information; presentation of direct testimony by expert witnesses; cross-examination of witnesses of the utility, commission staff, and other parties; extensive briefing of legal issues, including a successful effort to obtain an interim commission order placing utility rates subject to refund. I reviewed pleadings and discovery, conferred with opposing parties, and planned trial strategy.

Disposition of Case:

Our new theory was accepted; interim order placed rates subject to refund, Corporation Commission Order 367368, August 26, 1992, quantified the refund and directed the utility to make prospective rate reductions.

Appeal now pending before Oklahoma Supreme Court in Southwestern Bell Telephone Co. v. Oklahoma Corporation Commission, Appeal No. 80,333

Court:

Oklahoma Corporation Commission

Judges:

Commissioners:

Bob Anthony  
J. C. Watts  
Cody Graves

Co-counsel:

Assistant Attorney General Robert Butkin  
Office of Attorney General  
State Capitol  
Oklahoma City, Oklahoma 73105  
(405) 521-3921  
Other Office: (405) 252-4311

Eric King  
American Association of Retired Persons  
3330 French Park Suite  
Edmond, Oklahoma 73034  
(405) 340-7988

Principal Counsel for Other Parties:

Glenn Glass (Counsel for Southwestern Bell during rate case)  
7116 Nicki Court  
Dallas, Texas 75252  
(214) 732-6655

George Makohin  
Southwestern Bell Telephone Company  
800 North Harvey, Room 310  
Oklahoma City, Oklahoma 73102

Lindil Fowler  
Maribeth D. Snapp  
Donna D. McLain  
Oklahoma Corporation Commission  
400 Jim Thorpe Building  
2101 North Lincoln Boulevard  
Oklahoma City, Oklahoma 73105  
(405) 521-2255



Ronald E. Stakem  
MCI Telecommunications Corporation  
Clark, Stakem, Pherigo & Douglas  
101 Park Avenue, Suite 1000  
Oklahoma City, Oklahoma 73102  
(405) 232-4271

Ron Comingdeer  
Oklahoma Rural Telephone Coalition  
5534 North Western, Suite 102  
Oklahoma City, Oklahoma 73118  
(405) 848-5534

Cody B. Waddell  
Alltel Oklahoma, Inc.  
2212 Northwest 50th, Suite 163  
Oklahoma City, Oklahoma 73112  
(405) 840-4408

William J. Bullard  
Oklahoma Rural Telephone Coalition  
522 Colcord Drive  
Oklahoma City, Oklahoma 73102-2202  
(405) 232-0080

William M. Franz  
Communications Workers of America  
Franz & Franz  
720 Olive Street, Suite 2100  
St. Louis, Missouri 63101  
(314) 231-2200

- (7) State of Oklahoma, ex rel. Robert H. Henry, Attorney General of Oklahoma; Gerald Grimes, Insurance Commissioner of Oklahoma; Dean Calhoun, Labor Commissioner of Oklahoma v. Southwestern Temporary Services, Inc. et al.  
CJ-90-3131

Substance of Case:

Cooperating with the Oklahoma Department of Labor, the Oklahoma Department of Insurance, and the Texas Attorney General's Office, I obtained a temporary restraining order, asset freeze, and appointment of special master against an employee leasing firm which we alleged did not have authorized workers' compensation insurance coverage, a violation of state law in both Texas and Oklahoma. This enforcement action was based on alleged violations of the Oklahoma Consumer Protection Act, and was the largest and most important case filed under the act. It was also the first cooperative effort between Oklahoma and another state on interstate violations of consumer protection acts.

Three weeks after the case was filed, the defendant's company filed for bankruptcy protection under Chapter 11. Following a motion by the Attorneys General of Texas and Oklahoma, the bankruptcy judge appointed a trustee in the case.

The States of Oklahoma and Texas were active in the bankruptcy case while continuing the action in state court.

In the state court action, the defendants sought to depose me, Gerald Grimes, and the trial judge. We sought an order to prevent my being deposed. After Judge Mathews agreed to a protective order, the defendants sought a writ of mandamus from the Oklahoma Supreme Court. The Court declined to assume original jurisdiction.

In August 1993, two of the defendants, Gary Newsom and Jerome Wolf, received felony convictions in Texas for insurance fraud.

**Parties Represented:**

The State of Oklahoma

**Nature of Participation:**

Co-counsel with the assistant attorneys general who handled the case. I participated in numerous conferences during the investigation, discussed various aspects of the litigation of the case, and appeared at District Court.

**Disposition of Case:**

The obtaining of temporary orders stopped the illegal operation of the corporation. A plan has been confirmed in the bankruptcy case although Gary Newsom has appealed the confirmation.

Later, a consent temporary injunction was negotiated in the state case; however, other portions of the case are still active. No trial date has been set.

**Date of Trial:**

1990 - Present  
(Some litigation continues)

**Court:**

Oklahoma County District Court  
United States Bankruptcy Court

## Judge:

District Court  
The Honorable Eugene H. Mathews

Bankruptcy Court  
The Honorable Richard L. Bohanon  
Chief Judge, U. S. Bankruptcy Court

## Co-Counsel:

Jane Wheeler  
Sue Wycoff  
Assistant Attorney General  
4545 North Lincoln, Suite 260  
Oklahoma City, Oklahoma 73105  
(405) 521-4274

## Counsel for the Other Parties:

Edward Reed  
2200 North Classen Boulevard  
Oklahoma City, Oklahoma 73106  
(405) 524-6500

Danny K. Shadid  
211 North Robinson  
Oklahoma City, Oklahoma 73102  
(405) 232-3400

Trent Pipes  
211 North Robinson  
Oklahoma City, Oklahoma 73102  
(405) 232-3400

C. Craig Cole  
2200 North Classen Boulevard  
Oklahoma City, Oklahoma 73106  
(405) 524-6500

- (8) Burlington Northern Railroad Co. v. Oklahoma Tax Commission et al.  
481 U.S. 454 (1987)

## Substance of Case:

This case involved a dispute regarding Oklahoma's valuation of petitioner Railroad's property. Section 306(b)(1) of the Railroad Revitalization and Regulatory Reform Act of 1976 provided that states could not assess rail property at a value determined by a higher ratio to market value

than the ratio to market value used to assess other commercial and industrial property. Petitioner Railroad alleged that respondent had discriminated against it in its 1982 tax assessment through and overvaluation of rail property, even though the assessment ratio was the same as that used for all other commercial and industrial property in Oklahoma. Petitioner claimed simply that the State had overvalued the true market value of petitioner's Railroad system.

The District Court held that the Act required, for federal jurisdictional purposes, a showing of purposeful overvaluation with discriminatory intent, that there was no such showing here, and accordingly dismissed the action for lack of subject matter jurisdiction. The United States Court of Appeals for the Tenth Circuit affirmed.

**Parties Represented:**

State Board of Equalization of the State of Oklahoma  
Oklahoma Tax Commission

**Nature of Participation:**

Directed Tax Commission that my office would handle both primary briefing and oral argument, supervised case, reviewed briefs, discussed and planned strategy, appeared as co-counsel at oral argument before the United States Supreme Court.

**Disposition of Case:**

The Supreme Court held that the Act does permit district court review of claims of discriminatory taxation based on overvaluation of railroad property; that a showing of intentional discrimination is not a necessary predicate to district court review of claims of discriminatory taxation based on overvaluation of railroad property; and that arguments regarding comity, as it relates to injunctive relief against state taxation, and regarding the gains in judicial economy and state tax collection efficiency attendant to restricting valuation actions constitute matters of policy that the Court is not free to re-visit.

**Date of Trial:**

Argued, March 25, 1987; Decided, April 28, 1987

**Court:**

Supreme Court of the United States

**Justices:**

Opinion by Justice Marshall

## Co-counsel:

David Lee  
818 Northwest 63rd  
Oklahoma City, Oklahoma 73116  
(405) 848-1983

Neal Leader  
Office of the Attorney General  
State Capitol Building  
2300 North Lincoln  
Oklahoma City, Oklahoma 73105  
(405) 521-3921

Counsel for Other Parties:  
Burlington Northern Railroad Co.  
Betty Jo Christian  
Steptoe & Johnson  
1330 Connecticut Avenue, N.W.  
Washington, DC 20036-1795  
(202) 429-3000

Apart from these cases and many others, which as Attorney General it was my duty to closely supervise and for which I was accountable, there are several cases from my private law career that are useful to discuss. These cases are representative of the general practice of law in which I am proud to have engaged. While their legal significance may be exceeded by the cases listed above, this is not true of their importance to the parties and to my development and service as a lawyer.

- (9) State of Oklahoma v. Jim Earl West  
Case No. CRF-84-41

## Substance of Case:

Defendant Jim Earl West was charged with the felony of arson in the first degree, related to the burning of his residence in Shawnee, Oklahoma. Defendant pleaded not guilty, and I undertook the task of representing him. This felony case was quite complex, involving a lengthy preliminary hearing, depositions, and examination of expert witnesses.

## Party Represented:

Defendant, Jim Earl West

## Nature of Participation:

Co-counsel. I conducted initial interviews and depositions, researched law, prepared pleadings, examined witnesses at trial, and delivered closing argument to jury.

## Disposition of Case:

After an "Allen" charge, the jury found defendant guilty. The verdict was overturned on appeal.

## Date of Trial:

November 29, 1984 to December 1, 1984

## Court:

The District Court of the Twenty-third Judicial District Sitting Within and For Pottawatomie County, State of Oklahoma

## Judge:

The Honorable Gary Brown

## Co-counsel:

Donald M. Bingham  
Riggs, Abney, Neal & Turpen  
502 West 6th Street  
Tulsa, Oklahoma 74119  
(918) 587-3161

## Counsel for Other Party:

Charles McLoughlin  
Assistant U. S. Attorney for the Northern District  
333 West 4th Street  
3900 U. S. Courthouse  
Tulsa, Oklahoma 74103  
(918) 581-7463

S. Paul Richards  
Department of the Public Defender  
Child Advocacy Division  
Dependency Section  
8525 Gibbs Drive, Suite 208  
San Diego, California 92123  
(619) 974-5757

(10) Jorene Annette Robbins v. Gerald Randall Robbins  
Case No. JFD-80-587

Substance of Case:

Plaintiff and defendant had been married. Prior to their divorce, defendant had adopted plaintiff's natural daughter and the parties had one child together. During the defendant father's visitation, he obtained an emergency order for custody of both children, alleging that plaintiff mother's boyfriend had sexually molested the children. Plaintiff sued to retain custody. I had to determine in my own mind what the facts were in light of the seriousness of the charge. Both parties had "live-in" paramours, and psychologists on both sides were inconclusive.

Party Represented:

Plaintiff, Jorene Annette Robbins

Nature of Participation:

As sole counsel I handled all aspects of the case from discovery to trial.

Disposition of Case:

The court split custody, giving my client custody of her natural child and the defendant custody of the parties' child. This was, as between the parties, the most acrimonious private law case I have ever handled.

Date of Trial:

October 5 and October 13, 1981

Court:

The District Court of the Twenty-third Judicial District Sitting Within and For Pottawatomie County, State of Oklahoma

Judge:

The Honorable Glenn Dale Carter

Counsel for Other Party:

Floyd Henson

(Mr. Henson is deceased; his law firm continues; (405) 273-2910.)

19. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

As a first-term legislator I passed a major reform package in the area of real property concerning powers of appointment. In my second term, my interest and work in legal areas caused me to be named vice-chairman of the Judiciary Committee. By my third term I was appointed chairman of the Judiciary Committee, and named as a board member of the Oklahoma Criminal Justice Board.

In these capacities I oversaw almost all legislation affecting the judicial system in Oklahoma. In 1982 I began service as chairman of the Appropriations Subcommittee which made all judicial appropriations.

During my legislative career I authored several major pieces of legislation. Of special note is the Oklahoma Pleading Code, a major change in Oklahoma's law described by a former Chief Justice of our Supreme Court as "an act which brought Oklahoma into the twentieth century in pleading." The act is modeled after, and closely resembles, the federal pleading code and greatly modernized and simplified our pleading code. A copy of this bill is attached. (See Attachment 19 I.)

I also authored the Oklahoma Discovery Code, likewise borrowing extensively from the federal rules. A copy is attached. (See Attachment 19 II.)

My last major codification effort was a substantial revision of Oklahoma's unique corporation law. In 1947 Oklahoma had adopted a reform corporation act which sought to promote uniformity, but the act was not embraced by other jurisdictions. Consequently, Oklahoma found itself--first, dangerously out of step, and later, behind the times--in the area of business organizations. After much debate and work the act, which borrowed extensively from Delaware's code, finally passed. A copy is attached, along with a general preface explaining the broad policy issues behind the act which I was asked to write for the principal work describing the code Oklahoma Business Organizations: Formation and Representation, by Irving L. Faught (Aspen Publishers, Inc., Rocksville, Maryland, 1990; preface by Robert Henry). These and other public service efforts have led to several commendations from various entities of the Bar in Oklahoma.



I left the legislature when I was elected Attorney General of Oklahoma in 1986. As the chief legal officer of the state, I directed and supervised thousands of cases. I reformed the office structure, streamlining filing and document production and borrowing administrative reorganization techniques from large firms. I was directly involved in numerous matters of complex litigation, especially in utility, insurance, and environmental matters, as well as federal and state criminal law matters.

Again I modeled improvements in the law after federal statutes and drafted legislation creating, for the first time in our history, a multi-county grand jury system. I not only drafted and obtained legislative passage of the statute, I arranged for funding of the grand jury, and conducted the first voir dire empaneling the first grand jury. Numerous positive results occurred: a copy of the first and second grand jury reports are attached. (See Attachments 19 IV and 19 V.)

The Attorney General also has a quasi-judicial role both as a member of the constitutionally created Board of Equalization (which decides disputes on evaluation of property for state tax purposes) and more significantly through the issuance of Opinions of the Attorney General. During my term as Attorney General I developed a new kind of informal opinion process that allowed these opinions to be released quickly, often in a few days, thereby producing quicker access to our counsel, reducing the number of published opinions on unimportant topics, and expending office resources more efficiently. I continued to use the formal process for important opinions. I also created the Attorney General's Medicare Fraud Unit, which has had great success in prosecuting criminal fraud in this area. I created a student loan collection division which has resulted in thousands of dollars being returned to the pool of monies available to make new student loans for needy and deserving students.

Although numerous other issues confronted me as Attorney General, one of the most important was chairing a blue-ribbon panel to suggest extensive revisions to Oklahoma's cumbersome state constitution. The panel met for over two years under my direction and proposed a complete redrafting of the state constitution. A copy is attached. (See Attachment 19 VI.)

I have served for ten years as a Commissioner for Oklahoma to the National Conference of Commissioners on Uniform State Laws. I was recently named to the new Uniform Law Commission Study Committee to review the Uniform Evidence Code to conform with federal changes and to address new technologies not adequately handled by either the current federal or uniform act. The American Bar Association will also have a representative on this important committee. The Honorable Ralph Thompson, Chief United States District Court Judge for the Western District, recently appointed me to the Civil Justice Reform Act Advisory Group.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Oklahoma Public Employee's Retirement, Plan 001 -- vested retirement, due from service in State Legislature and as Attorney General. I will be eligible to receive a monthly sum of income from the retirement system anytime after the age of 55.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I am aware of no financial arrangements that are likely to present a potential conflict of interest. Of course, I will recuse myself from any cases in which I was involved as Attorney General of Oklahoma, and I will follow the Code of Judicial Conduct as it applies to recusal to avoid any actual or perceived conflict.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

Copy of Financial Disclosure Report attached. (See Attachment II 4.)

5. Please complete the attached financial net worth statement in detail (Add schedule as called for).

See Attachment II 5.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

State Representative, State of Oklahoma, 1976-1986 (5 terms, last four reelected without opposition).

Attorney General of Oklahoma, 1987-1991 (reelected without opposition; resigned to become Dean and Professor of Law, Oklahoma City University School of Law).

Other than being a candidate, I have served as honorary co-chairman of the David Boren for Unites States Senate and Al Gore for President in Oklahoma campaigns.

I was also elected by colleagues in the legislature as chairman of the Democratic Caucus in 1983-1984.

## Attachment II 4

## FINANCIAL DISCLOSURE REPORT

AD-10  
Rev. 1/91Report Required by the Ethics  
Reform Act of 1989, Pub. L. No.  
101-134, November 30, 1989  
(5 U.S.C.A. App. 6, 101-112)

|  |   |   |
|--|---|---|
| 1. Person Reporting (Last name, first, middle initial)<br>HENRY, ROBERT H.   | 2. Court or Organization<br>10TH CIRCUIT COURT OF APPEALS   | 3. Date of Report<br>02/10/94                 |
| 4. Title (Article III Judges indicate active or senior status; Magistrate judges indicate full- or part-time)<br>JUDGE (NOMINEE)   | 5. Report Type (check appropriate type)<br><input checked="" type="checkbox"/> Nomination, Date 02/09/94<br><input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final | 6. Reporting Period<br>01/01/93 -<br>01/31/94 |
| 7. Chambers or Office Address<br>OCU SCHOOL OF LAW<br>2501 NORTH BLACKWELDER<br>OKLAHOMA CITY, OK 73106  | 8. On the basis of the information contained in this Report, it is, in my opinion, in compliance with applicable laws and regulations <input type="checkbox"/><br>Reviewing Officer Signature _____         |   |
| IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on last page. |   |   |

## I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

## POSITION

## NAME OF ORGANIZATION/ENTITY

NONE (No reportable positions)

Dean and Professor of Law Oklahoma City University School of Law

Director St. Gregory's College

President (Oklahoma City Region) National Conference of Christians and Jews

## II. AGREEMENTS. (Reporting individual only; see pp. 8-9 of Instructions.)

## DATE

## PARTIES AND TERMS

NONE (No reportable agreements)

1976-91 State of Oklahoma Public Employees Retirement System

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

DATE  
(Month/Day/Year only)

## SOURCE AND TYPE

GROSS INCOME  
(Yours, Not Spouse's)

NONE (No reportable non-investment income)

|   |          |  |              |
|---|----------|--|--------------|
| 1 | 12/31/93 | Dean of Oklahoma City University School of Law, salary | \$ 103978.00 |
| 2 | 12/31/93 | Estoril Producing Oil & Gas Royalty, Net               | \$ 1481.00   |
| 3 | 12/31/93 | Harlan, Inc. (family corporation), director's fees     | \$ 1000.00   |
| 4 | 12/31/93 | Oklahoma Gazette, writing fees (donated)               | \$ 280.00    |
| 5 | 12/31/93 | Northridge Energy Corp. Oil & Gas Royalty, net         | \$ 997.00    |

## FINANCIAL DISCLOSURE REPORT

|  |                            |
|--|----------------------------|
| Name of Person Reporting<br>HENRY, ROBERT H. | Date of Report<br>02/10/94 |
|--|----------------------------|

## IV. REIMBURSEMENTS and GIFTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp. 12-14 of Instructions.)

SOURCE

DESCRIPTION

 NONE (No such reportable reimbursements or gifts)

|   |        |  |
|---|--------|--|
| 1 | Exempt |  |
| 2 |        |  |
| 3 |        |  |
| 4 |        |  |
| 5 |        |  |
| 6 |        |  |
| 7 |        |  |

## V. OTHER GIFTS. (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp. 15-16 of Instructions.)

SOURCE

DESCRIPTION

VALUE

 NONE (No such reportable gifts)

|   |        |  |         |
|---|--------|--|---------|
| 1 | Exempt |  | \$ 0.00 |
| 2 |        |  | \$      |
| 3 |        |  | \$      |
| 4 |        |  | \$      |

## VI. LIABILITIES. (Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 16-17 of Instructions.)

CREDITOR

DESCRIPTION

VALUE CODE\*

 NONE (No reportable liabilities)

|   |                                |                                     |   |
|---|--------------------------------|-------------------------------------|---|
| 1 | Nation's Bank                  | First mortgage, real estate         | M |
| 2 | First Oklahoma Bank            | Second mortgage, real estate        | K |
| 3 | First Oklahoma Bank            | Loan, funding retirement plan       | K |
| 4 | VISA                           | Revolving loan                      | J |
| 5 | MasterCard                     | Revolving loan                      | J |
| 6 | (S) Pomona First Federal S & L | Home mortgage (California property) | K |
| 7 | (S) Glendale Federal Bank      | Home mortgage (California property) | K |

\* VALUE CODES: J = \$15,000 - \$250,000; K = \$15,001 - \$50,000; L = \$50,001 - \$100,000; M = \$100,001 to \$250,000; N = \$250,001 - \$500,000; O = \$500,001 - \$1,000,000; P = More than \$1,000,000

## FINANCIAL DISCLOSURE REPORT

|  |                            |
|--|----------------------------|
| Name of Person Reporting<br>HENRY, ROBERT H. | Date of Report<br>02/10/94 |
|--|----------------------------|

**VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions** (Includes those of spouse and dependent children; See pp. 18-26 of Instructions.)

|                          | A.<br>Description of Assets<br>(Including trust assets)<br><small>(Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.<br/>Place "(X)" after each asset exempt from prior disclosure.</small> | B.<br>Income during reporting period          |                                     | C.<br>Gross value at end of reporting period         |                                | D.<br>Transactions during reporting period         |                               |   |                             |  |  |
|--------------------------|---|---|-------------------------------------|--|--------------------------------|--|-------------------------------|---|-----------------------------|--|--|
|                          |   | (1)<br>Amt. Code (A-N)                        | (2)<br>Type (e.g., Div, rent, Int.) | (1)<br>Value Code (J-P)                              | (2)<br>Value Method Code (Q-U) | (1)<br>Type (e.g., buy, sell, merger, redemption)  | If not exempt from disclosure |   |                             |  | (5)<br>Identity of buyer/seller (if private transaction) |
|                          |   |   |                                     |  |                                |  | (2)<br>Date: Month/Day        | (3)<br>Value Code (J-P)                       | (4)<br>Gain/Loss Code (A-N) | (5)<br>Identity of buyer/seller (if private transaction) |  |
| <input type="checkbox"/> | NONE (No reportable income, assets, or transactions)  |   |                                     |  |                                |  |                               |   |                             |  |  |
| 1                        | Lloyd Henry Trust   | A   | Int                                 | J  | W                              | Exempt   |                               |   |                             |  |  |
| 2                        | American Disposal Svcs., Inc.   | A   | None                                | J  | W                              | Exempt   |                               |   |                             |  |  |
| 3                        | (S) Fidelity Advisors Fund  | D   | Div                                 | L  | T                              | Exempt   |                               |   |                             |  |  |
| 4                        | (S) Rental property, OK   | A   | Rent                                | L  | R                              | Exempt   |                               |   |                             |  |  |
| 5                        | (S) Rental property, CA   | A   | Rent                                | M  | R                              | Exempt   |                               |   |                             |  |  |
| 6                        | (S) Flag Investors Fund   | A   | Div                                 | J  | T                              | Exempt   |                               |   |                             |  |  |
| 7                        | (S) Oklahoma Bank   | A   | Int                                 | J  | T                              | Exempt   |                               |   |                             |  |  |
| 8                        | (S) Henry's Antiques  | A   | None                                | J  | W                              | Exempt   |                               |   |                             |  |  |
| 9                        |   |   |                                     |  |                                |  |                               |   |                             |  |  |
| 10                       |   |   |                                     |  |                                |  |                               |   |                             |  |  |
| 11                       |   |   |                                     |  |                                |  |                               |   |                             |  |  |
| 12                       |   |   |                                     |  |                                |  |                               |   |                             |  |  |
| 13                       |   |   |                                     |  |                                |  |                               |   |                             |  |  |
| 14                       |   |   |                                     |  |                                |  |                               |   |                             |  |  |
| 15                       |   |   |                                     |  |                                |  |                               |   |                             |  |  |
| 16                       |   |   |                                     |  |                                |  |                               |   |                             |  |  |
| 17                       |   |   |                                     |  |                                |  |                               |   |                             |  |  |
| 18                       |   |   |                                     |  |                                |  |                               |   |                             |  |  |
| 1                        | Income/Gain Codes:<br>(See Col. B1 & D4)  | A=\$1,000 or less<br>E=\$15,001 to \$50,000   |                                     | F=\$1,001 to \$2,000<br>I=\$50,001 to \$100,000      |                                | C=\$501 to \$5,000<br>G=\$100,001 to \$1,000,000   |                               | D=\$5,001 to \$15,000<br>H=More than \$15,000 |                             |  |  |
| 2                        | Value Codes:<br>(See Col. C1 & D3)  | J=\$15,000 or less<br>K=\$50,001 to \$100,000 |                                     | L=\$15,001 to \$50,000<br>O=\$100,001 to \$1,000,000 |                                | M=\$50,001 to \$100,000<br>P=More than \$1,000,000 |                               |   |                             |  |  |
| 3                        | Value Method Codes:<br>(See Col. C2)  | D=Appraisal<br>U=Book Value                   |                                     | R=Cost (real estate only)<br>V=Other                 |                                | S=Assessment<br>W=Estimated                        |                               |   |                             |  | T=Cash/Market  |

## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

HENRY, ROBERT H.

Date of Report

02/10/94

## VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

## II. AGREEMENTS

State of Oklahoma Public Employees Retirement System(Vested retirement paid into state system during my publicservice as State Representative and Attorney General ofOklahoma, 1976-1991; may be withdrawn beginning at age 55.)

## I. POSITIONS (Cont'd.)

## POSITION

## NAME OF ORGANIZATION/ENTITY

|   |   |
|---|---|
| <u>Partner (now inactive)</u>           | <u>Henry's Antiques (spouse's business)</u>         |
| <u>Director (advisory)</u>              | <u>Jasmine Moran Children's Museum</u>              |
| <u>Director</u>                         | <u>The Nature Conservancy (Oklahoma chapter)</u>    |
| <u>Director</u>                         | <u>Oklahoma Academy for State Goals</u>             |
| <u>Member, Financial Adv. Committee</u> | <u>OK League of Women Voters (submitted resign.</u> |
| <u>Stockholder (small interest)</u>     | <u>American Disposal Service</u>                    |
| <u>Member (advisory)</u>                | <u>Board of Visitors, Oklahoma University Press</u> |
| <u>Director</u>                         | <u>OK Independent Colleges Foundation, 1990-93</u>  |
| <u>Member, board of trustees</u>        | <u>Western History Collection of Univ. of OK</u>    |
| <u>Contributing writer</u>              | <u>The Oklahoma Gazette</u>                         |
| <u>Director</u>                         | <u>Harlan, Inc. (family corporation)</u>            |

## III. NON-INVESTMENT INCOME (Cont'd.)

| DATE                             | SOURCE AND TYPE  | GROSS INCOME        |
|----------------------------------|--|---------------------|
| <sup>6</sup><br><u>12/31/92</u>  | <u>Dean of Oklahoma City University School of Law, salary</u>  | <u>\$ 108839.00</u> |
| <sup>7</sup><br><u>12/31/93</u>  | <u>Dept. of Voc. &amp; Tech. Educ., honorarium (donated)</u>   | <u>\$ 400.00</u>    |
| <sup>8</sup><br><u>12/31/93</u>  | <u>Univ. of OK Health Science Center, honorarium (donated)</u> | <u>\$ 200.00</u>    |
| <sup>9</sup><br><u>12/31/93</u>  | <u>Shawnee Lions Club, honorarium (donated)</u>                | <u>\$ 500.00</u>    |
| <sup>10</sup><br><u>12/31/93</u> | <u>OK Health &amp; Welfare, honorarium (donated)</u>           | <u>\$ 200.00</u>    |

## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting  
HENRY, ROBERT H.Date of Report  
02/10/94

## III. NON-INVESTMENT INCOME (Cont'd.)

| DATE               | SOURCE AND TYPE  | GROSS INCOME |
|--------------------|--|--------------|
| 11<br>12/31/93     | Poteau Fndtn. for Excellence, honorarium (donated)         | \$ 100.00    |
| 12<br>12/31/93     | OK Assn. of Coll. & Univ. Bus. Mgrs., honorarium (donated) | \$ 600.00    |
| 13<br>12/31/93     | Vintage Petroleum, oil & gas royalty, net                  | \$ 92.00     |
| 14<br>01/31/94     | Dean of Oklahoma City University School of Law, salary     | \$ 5167.00   |
| 15<br>12/31/92 (S) | University of OK Health Science Center, salary             | \$ 35446.00  |
| 16<br>12/31/92 (S) | Janice L. Ralls, DDS, dental practice, net                 | \$ 283.00    |
| 17<br>12/31/93 (S) | University of OK Health Science Center, salary             | \$ 37480.00  |
| 18<br>01/31/94 (S) | University of OK Health Science Center, salary             | \$ 3608.00   |

## VI. LIABILITIES (Cont'd.)

| CREDITOR                      | DESCRIPTION                         | VALUE CODE |
|-------------------------------|-------------------------------------|------------|
| 8<br>(S) Bank United of Texas | Home mortgage (Edmond, OK property) | L          |
| 9<br>(S) MasterCard           | Revolving loan                      | J          |
| 10<br>(S) VISA                | Revolving loan                      | J          |
| 11<br>(S) Sallie Mae          | Student loan                        | J          |
| 12<br>(S) Tinker Credit Union | Student loan                        | J          |



## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting  
HENRY, ROBERT H.Date of Report  
02/10/94

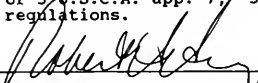
## IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature



Date

Feb 10, 1994

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, 104, AND 18 U.S.C. 1001.)

## FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure  
Administrative Office of the  
United States Courts  
Washington, D.C. 20544

ROBERT H. HENRY  
 AND JANICE L. RALLS HENRY (SPOUSE)

Attachment II 5

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

| ASSETS                                  |             | LIABILITIES                                      |         |
|---|-------------|--|---------|
| Cash on hand and in banks               | 8,300       | Notes payable to banks—secured                   | 0       |
| U.S. Government securities—add schedule | 1,000       | Notes payable to banks—unsecured                 | 0       |
| Listed securities—add schedule          | 75,072      | Notes payable to relatives                       | 0       |
| Unlisted securities—add schedule        | 25          | Notes payable to others                          | 0       |
| Accounts and notes receivable:          |             | Accounts and bills due                           | 8,100   |
| Due from relatives and friends          | 30,000      | Unpaid income tax                                | 0       |
| Due from others                         | 0           | Other unpaid tax and interest                    | 0       |
| Doubtful                                | 0           | Real estate mortgages payable—add schedule       | 320,095 |
| Real estate owned—add schedule          | 560,000     | Chattel mortgages and other liens payable        | 19,000  |
| Real estate mortgages receivable        | 0           | Other debts—itemize:                             |         |
| Autos and other personal property       | 154,000     | Sallie Mae Guaranteed                            | 8,700   |
| Cash value—life insurance               | 4,895       | Student Loan                                     |         |
| Other assets—itemize:                   |             |  |         |
| St. of OK Vested Retirement             | 35,000      |  |         |
| Univ. of OK Retirement                  | 6,650       |  |         |
| Oil Interests                           | 5,000       |  |         |
|   |             | Total liabilities                                | 355,895 |
|   |             | Net worth  | 524,047 |
| Total assets                            | 879,942     | Total liabilities and net worth                  | 879,942 |
| CONTINGENT LIABILITIES                  |             | GENERAL INFORMATION                              |         |
| As endorser, comaker or guarantor       | 2,000       | Are any assets pledged? (Add schedule.)          | * No    |
| On leases or contracts plus loan        | 0           | Are you defendant in any suits or legal actions? | No      |
| Legal Claims                            | 0           | Have you ever taken bankruptcy?                  | No      |
| Provision for Federal Income Tax        | Withholding |  |         |
| Other special debt                      | 0           |  |         |

\* Only those listed above.

SCHEDULE FOR ROBERT H. HENRY  
AND JANICE L. RALLS HENRY (SPOUSE)

## LISTED SECURITIES

|    |                          |                  |        |
|----|--------------------------|------------------|--------|
| 1. | U. S. Savings Bonds      |                  | 1,000  |
| 2. | Fidelity High Yield Fund | 6,362.006 shares | 75,072 |

## UNLISTED SECURITIES

|    |                   |                           |    |
|----|-------------------|---------------------------|----|
| 1. | American Disposal | 5,000 shares @ .005/share | 25 |
|----|-------------------|---------------------------|----|

## REAL ESTATE OWNED

|    |   |  |         |
|----|---|--|---------|
| 1. | Home  | 322 Northwest 15th<br>Oklahoma City, Oklahoma 73103    | 230,000 |
| 2. | Undeveloped land  | Pennington Creek (8 acres in<br>Johnston County, OK)   | 35,000  |
| 3. | An undivided 1/3 interest in 20 acres (including 3 1/3 mineral acres) in Section 21, T-10-N; R-3-E of the Indian Meridian |  | 15,000  |
| 4. | Rental property   | 5880 Ave. Juan Bautista<br>Riverside, California 92509 | 185,000 |
| 5. | Rental property   | 1301 Salem Avenue<br>Edmond, Oklahoma 73034            | 95,000  |

## AUTOS AND OTHER PROPERTY

|    |                        |  |         |
|----|------------------------|--|---------|
| 1. | 1990 Ford Aerostar Van |  | 9,000   |
| 2. | 1981 Toyota Corolla    |  | 1,000   |
| 3. | Collection of Antiques |  | 101,000 |
| 4. | Art                    |  | 29,000  |
| 5. | Coins                  |  | 8,000   |
| 6. | Stamps                 |  | 2,000   |
| 7. | Piano                  |  | 4,000   |

## CASH VALUE LIFE INSURANCE

|    |                                |  |       |
|----|--------------------------------|--|-------|
| 1. | American General Life          |  | 1,000 |
| 1. | American Mutual Life Insurance |  | 3,895 |

SCHEDULE FOR ROBERT H. HENRY  
AND JANICE L. RALLS HENRY (SPOUSE)  
PAGE 2

## OTHER ASSETS

- |    |  |        |
|----|--|--------|
| 1. | An undivided 1/3 interest of a 1/16 overriding royalty interest in the Clyde-Call #1 Well in the SE/4 of the SE/4 of Section 20, T-10-N; R-3-E of the Indian Meridian (containing an undivided 5.25 mineral acres) | 5,000  |
| 2. | Vested retirement, State of Oklahoma   | 35,000 |
| 3. | Retirement, University of Oklahoma   | 6,650  |

## ACCOUNTS AND BILLS DUE

- |    |                 |       |
|----|-----------------|-------|
| 1. | MasterCard/VISA | 8,100 |
|----|-----------------|-------|

## REAL ESTATE MORTGAGE PAYABLE

- |    |                      |   |         |
|----|----------------------|---|---------|
| 1. | Nations Bank         | First mortgage on<br>322 Northwest 15th<br>Oklahoma City, Oklahoma 73103    | 135,495 |
| 2. | First Oklahoma Bank  | Second mortgage on<br>322 Northwest 15th<br>Oklahoma City, OK 73103         | 24,000  |
| 3. | Pomona First Federal | First mortgage on<br>5880 Ave. Juan Bautista<br>Riverside, California 92509 | 19,000  |
| 4. | Glendale Bank        | Third mortgage on<br>5880 Ave. Juan Bautista<br>Riverside, California 92509 | 42,000  |
| 5. | Bank United of Texas | First mortgage on<br>1301 Salem Avenue<br>Edmond, Oklahoma 73034            | 99,600  |

## CHATTEL MORTGAGE AND OTHER LIENS

- |    |                     |           |        |
|----|---------------------|-----------|--------|
| 1. | First Oklahoma Bank | Van/Piano | 19,000 |
|----|---------------------|-----------|--------|

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

While in private practice, I performed many legal services and offered consultation on numerous occasions to persons who were unable to pay for legal services. In a small town where my practice was located, there was no legal aid or other source for those poor people to turn to (approximately 20 hours per month). Also I served on the Oklahoma Criminal Justice Center Board for four years, which supervised legal assistance for the indigent. I have assisted Legal Aid of Western Oklahoma in fund raising. Since becoming Dean of Oklahoma City University School of Law, I have consulted with the Oklahoma County Public Defender.

I have made numerous pro bono educational presentations covering legal ethics, state government law, and jurisprudence. I have served on two panels of ABA committees that complete final interviews for federal administrative law judges.

This year my law school was awarded the "1993 Humanitarian Award" at the annual convention of the Oklahoma Bar Association by the Pro Bono Section of our Bar. The award was given to our Native American Legal Assistance Clinic.

In addition, I am beginning a new intern program to help the Oklahoma County District Attorney with misdemeanor cases. I have proposed to the faculty a pro bono service requirement for students before graduation. I have served on the boards of over a dozen charitable and philanthropic organizations in the last fifteen years.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

No

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial

selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

The Office of the Counsel to the President called me and told me that I was being considered and invited me to complete the necessary forms. Subsequently I was interviewed by the Office of Policy Development of the Department of Justice and was investigated by the Federal Bureau of Investigation and the American Bar Association.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner than could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary with the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

My legal career has allowed me to serve for a decade in the legislative branch and for over four years in the executive branch of my state. I have an appreciation of these branches and their responsibilities. I have also had the opportunity to work closely with the judicial branch, both as chair of the House of Representatives Committee on the Judiciary and as chair of the Appropriations Subcommittee that made all judicial appropriations.

The judicial branch also has a separate and unique role that I respect.

Judges should not be influenced by personal or political views. Judges should avoid both legislation and administration. Because of my familiarity with the other branches and their roles I am well-prepared to constrain myself to follow the judicial role.

As a judge I would be mindful of the nature of judicial powers and duties described in Article III, and would take special notice of judicial restraints ("case or controversy," standing, jurisdiction, political questions, etc.), as well as the responsibilities of stare decisis. Within these constraints judges must keep the process open to preserve the rights guaranteed to individual citizens by the Constitution, the Bill of Rights, the other amendments, as well as the mandates of Congress.

## QUESTIONNAIRE FOR JUDICIAL NOMINEES

## I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full Name (include any former names used)

Deborah A. Batts  
Deborah Anne Batts

2. Address: List current place of residence and office address(es)

Residence: 315 West 106th Street Apt. 7A  
New York, New York 10025

Office: Fordham University School of Law  
140 West 62nd Street Room 427  
New York, New York 10023

3. Date and Place of Birth

April 13, 1947  
Philadelphia, Pennsylvania

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Divorced



5. **Education:** List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Radcliffe College  
Cambridge, Massachusetts 02138  
1965-1969  
A.B. June, 1969

Harvard Law School  
Cambridge, Massachusetts 02138  
1969-1972  
J.D. June, 1972

6. **Employment Record:** List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

**CURRENT EMPLOYMENT EXPERIENCE**

September, 1984 to present: Associate Professor of Law  
Fordham University School of  
Law, New York, New York

**PRIOR EMPLOYMENT EXPERIENCE**

March, 1990 to January, 1991: Special Associate Counsel of  
the Department of  
Investigation of the City of  
New York

September 1979 to June 1984: Assistant United States  
Attorney, Criminal Division  
Southern District of New York

October, 1973 to July, 1979: Associate Attorney,  
Cravath, Swaine & Moore  
New York, New York

1972-1973 Law Clerk to the Honorable  
Lawrence W. Pierce, (then)  
United States District Judge,  
Southern District of New York

**SUMMER/ OCCASIONAL EMPLOYMENT**

1988 to present Faculty, Law Department, City  
of New York, Corporation  
Counsel Trial Advocacy Program  
at Fordham University School  
of Law

Summer 1971 Summer Attorney  
Kaye, Scholer, Fierman, Hays &  
Handler  
New York, New York

Summer 1970 Summer Attorney  
Foley, Hoag & Eliot  
Boston, Massachusetts

Summer 1969 Secretary  
Foley, Hoag & Eliot  
Boston, Massachusetts

7. **Military Service:** Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

Not Applicable

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee

Recipient of Radcliffe College Jonathan Fay Award at graduation, June, 1969.

9. **Bar Associations:** List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

The Association of the Bar of the City of New York  
May, 1983 to present

Second Circuit Federal Bar Council  
May 1984 to present

Metropolitan Black Bar Association  
1986 to present

Lesbian and Gay Law Association of Greater New York  
April, 1993 to present

Except for the Association of the Bar of the City of New York, where I serve actively on committees (see below), my other memberships listed above are dues-paying, nonattendance status. This does not reflect disinterest on my part for these worthy organizations, but merely lack of time.

CURRENT COMMITTEE MEMBERSHIP

Lesbians & Gay Men in the  
Profession, Association of the  
Bar of the City of New York  
1991 to present

Committee on Matrimonial Law,  
Association of the Bar of the  
City of New York  
September, 1993 to present

## PAST COMMITTEE MEMBERSHIP

Ad Hoc Committee on AIDS,  
Association of the Bar of the  
City of New York  
September, 1992 to February,  
1993

Committee on Sex and Law,  
Association of the Bar of the  
City of New York  
1989 to 1992

Nominating Committee,  
Association of the Bar of the  
City of New York  
1991-1992 term

Family Law and Family Court,  
Association of the Bar of the  
City of New York  
1983 - 1986

Central Screening Committee  
for the 18-B Panel, Appellate  
Division, First Department  
1984 - 1987

Search Committee for Attorney-  
in-Charge of the Criminal  
Appeals Bureau, Legal Aid  
Society  
1985

10. **Other Memberships:** List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

I am currently an inactive member of the National Association of Securities Dealers (NASD) Board of Arbitrators, which may or may not lobby before public bodies. I myself have done no lobbying.

## CURRENT BOARD MEMBERSHIP

Member, NASD Board of  
Arbitrators  
1986 to present

Member, Board of Trustees,  
The Spence School  
New York, New York  
1987 to present

Member, School Committee,  
The Cathedral School  
New York, New York  
May, 1990 to present

11. **Court Admission:** List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

BAR ADMISSIONS

New York State Bar  
March 19, 1973

Second Circuit Court of  
Appeals  
July 1, 1974

United States District Court  
Southern District of New York  
December 12, 1974

United States District Court  
Eastern District of New York  
December 24, 1974

Supreme Court of the United  
States  
May 1986

12. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Batts, Remedy Refocus: In Search of Equity in "Enhanced Spouse/Other Spouse" Divorces, 63 NYU L. Rev. 751 (1988)

Batts, I Didn't Ask to Be Born: The American Law of Disinheritance and a Proposal for Change to a System of Protected Inheritance, 41 Hastings L.J. 1197 (1990)

Committee Report, Sex and Law Committee, Association of the Bar of the City of New York: Testimony and Legislative Draft Revisions and Commentary Regarding New York Family Leave Bill (1990).

Committee Report, Sex and Law Committee, Association of the Bar of the City of New York: Second Parent Adoption in New York State: Furthering The Best Interests of Our Children (1992).

13. Health: What is the present state of your health? List the date of your last physical examination.

I am in very good health. My last physical was in May, 1993.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Not Applicable

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Not Applicable

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

April, 1990 to present:

Commissioner, Law  
Revision Commission,  
State of New York

March, 1990 to January, 1991:

Special Associate Counsel  
of the Department of  
Investigation of the City  
of New York

September 1979 to June 1984: Assistant United States  
Attorney, Criminal  
Division Southern  
District of New York

All of the above positions were appointed.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

1972-1973 Law Clerk to the Honorable Lawrence W. Pierce,  
(then) United States District Judge, Southern  
District of New York

2. whether you practiced alone, and if so, the addresses and dates;

Not applicable

3. the dates, names and addresses of law firms, offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

See below

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

See below

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

October, 1973 to July, 1979: Associate Attorney,  
Cravath, Swaine & Moore  
New York, New York

I was an associate in the litigation department, concentrating on cases in antitrust, securities, administrative agency and libel law. The firm's clients whose to cases I was assigned came from a variety of industries, including entertainment, publication, accounting, computer and government regulation.

September 1979 to June 1984:                   Assistant United States  
Attorney, Criminal Division  
Southern District of New York

As an Assistant United States Attorney in the Major Crimes Unit of the Criminal Division, I was responsible for the investigation, prosecution at trial, and appellate briefing and argument of cases involving international bank fraud, international art theft, tax evasion cases, immigration cases, armed bank robberies and bank embezzlements, and obstruction of justice.

September, 1984 to present:                   Associate Professor of Law  
Fordham University School of  
Law, New York, New York

I currently teach courses in Property and Domestic Relations Law.

#### SUMMER/ OCCASIONAL EMPLOYMENT

March, 1990 to January, 1991:               Special Associate Counsel of  
the Department of  
Investigation of the City of  
New York

1988 to present                               Faculty, Law Department, City  
of New York, Corporation  
Counsel Trial Advocacy Program  
at Fordham University School  
of Law

I have taught in this Program for one week each summer as indicated. In 1989, I was the Director of the Program.

Summer 1971                                   Summer Attorney  
Kaye, Scholer, Fierman, Hays &  
Handler  
New York, New York



Summer 1970

Summer Attorney  
Foley, Hoag & Eliot  
Boston, Massachusetts

Summer 1969

Secretary  
Foley, Hoag & Eliot  
Boston, Massachusetts

- c.
1. Did you appear in court frequently, occasionally or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.
  2. What percentage of these appearances was in:
    - (a) federal courts;
    - (b) state courts of record;
    - (c) other courts.
  3. What percentage of your litigation was:
    - (a) civil;
    - (b) criminal.
  4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.
  5. What percentage of these trials was:
    - (a) jury
    - (b) non-jury.

The only time I appeared in court on a frequent basis was during my tenure as an AUSA in the SDNY from September, 1979 through June, 1984. All of these appearances were in federal court; all of these appearances were on criminal matters. I appeared on all aspects of the cases assigned to me, including pre-trial conferences, hearings, motion argument, guilty pleas, briefing and arguments before the Second Circuit, where applicable.

Eight trials were jury trials; one was nonjury. I was sole or chief counsel on all but one. All of the trials but one went to verdict.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you

represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;

(b) the name of the court and the name of the judge or judges before whom the case was litigated; and

(c) The individual name, addresses and telephone numbers of co-counsel and of principal counsel for each of the other parties.

During my tenure as an AUSA in the SDNY I tried 9 cases. All of them were in the SDNY and in each instance I represented the United States. I was sole or chief counsel on all but one. All of the trials but one went to verdict. All were jury trials except United States v Mendel, 83 Cr. 63 (WK).

I was not able to get current addresses and telephone numbers for all defense counsel. Addresses and telephone numbers, where supplied, are, to my knowledge and resources, the best available information.

United States v Grovell, 79 Cr. 635 (HFW). This trial took place before the Hon. Henry W. Werker October 9, 11-12, 1979. The defendant Jessie Grovell was charged with bank larceny and aiding and abetting the robbery of a bank where she was a teller. The chief witness against her was the actual robber. The trial ended in a hung jury.

Defense Counsel: Larry Kessler, Esq.  
Hofstra Law School  
Hempstead, New York 11550  
(516) 560-5894

United States v Krasnoff et al, S79 Cr 498 (KTD) This large seven defendant trial of the owner and employees of a drug treatment center in the Bronx for selling prescriptions illegally for controlled substances valium, tuinal and elavil was tried before the Hon. Kevin T. Duffy from January 28, 1980 to February 25, 1980. The case ended in a guilty plea by all defendants during the course of the trial. I was the third "seat" of three AUSA's prosecuting the case; I examined one witness and defended the cross examinations of that witness.

Co-Counsel: Dominic F. Amorosa, Esq.  
233 Broadway Suite 3008  
New York, New York  
(212) 406-7000

Peter M. Bloch, Esq.  
New York City Regional Director  
Deputy Attorney General  
Medical Fraud Control  
270 Broadway, 21st Floor  
New York, New York 10007  
(212) 587-5389

Defense Attorneys: Jeffrey Hoffman, Esq. (Krasnoff)  
Hoffman & Pollok  
260 Madison Avenue  
New York, New York 10022  
(212) 679-2900

Lawrence Herrmann, Esq.  
233 Broadway  
New York, New York 10007  
(212) 964-5333

David Bernheim, Esq. (Hermon)  
299 Broadway  
New York, New York 10007

Bert H. Nisonoff, Esq. (Yeu)  
118-21 Queens Blvd.  
Forest Hills, New York  
(718) 261-3000

John L. Kase, Esq. (Caioli)  
1501 Franklin Avenue  
Mineola, New York 11501

United States v Aronson, S80 Cr 22 (CES). This case was tried before the Hon. Charles E. Stewart on September 22 - 29, 1980. The defendant Renee Aronson was charged with obstructing justice and threatening witnesses in the criminal investigation and trial of United States v Krasnoff et al, supra. The defendant was acquitted.

Defense Attorney: John Ciampa, Esq.  
785 West End Avenue  
New York, New York 10025  
(212) 663-6429

United States v Demyan, 80 Cr. 745 (LPG). This case was tried before the Hon. Lee P. Gagliardi on January 5-7, 1981. The defendant John Demyan, part owner of Demyan's Hofbrau restaurant in Staten Island, was charged with SBA fraud for filing false claims for losses allegedly suffered during the blackout of 1977. The defendant was convicted.

Defense Attorney: John J. Quinn, Esq.  
43 New Dorp Plaza  
Staten Island, New York  
(718) 351-0499

United States v Copeland, Pendergrass, 81 Cr. 693 (CLB). The two defendants were charged and convicted of armed bank robbery before the Hon. Charles L. Briant on December 14-18, 1981.

Defense Attorneys: Norman Arnoff, Esq. (Copeland)  
Arnoff & Siskind P.C.  
342 Madison Avenue  
New York, New York  
(212) 697-2380

Steven Wise, Esq. (Pendergrass)  
260 Madison Avenue  
New York, New York  
(212) 684-2213

United States v Maye, S82 Cr. 24 (JMC). The defendant Sidney Maye was charged and convicted of armed bank robbery before the Hon. John M. Cannella on April 5-6, 12-14, 1982.

Defense Attorney: Herbert Olan Brown, Esq.  
53 Seawane Road  
East Rockaway, New York 11518  
(516) 887-2711

United States v Rodrigue, Henry, 82 Cr.209 (HFW). This was a multi-defendant conspiracy, embezzlement, perjury case involving many employees of the Federal Reserve Bank of New York who embezzled thousands of dollars in Susan B. Anthony dollars and quarters. By the time of trial, all but two of the defendants had pleaded guilty. The case was tried before the Hon. Henry F. Werker on July 6-12, 1982; defendant Henry was acquitted of the two counts in which he was charged; defendant Rodrigue was acquitted on two of the counts of the charging indictment and convicted on six counts.

Defense Attorneys: Leonard Levenson, Esq. (Rodrigue)  
11 Park Place  
New York, New York 10007  
(212) 732-0522

Howard Mulholland, Esq. (Henry)

ADDRESS NOT AVAILABLE

United States v Boulanger, 82 Cr. 469 (ADS): Warren Boulanger, an attorney and justice of the peace, was charged and convicted of tax evasion for 1975-77 for not reporting as income moneys he had embezzled from a client. The trial was before the Hon. Abraham D. Sofaer, September 20-29, 1982.

Defense Attorneys: Raymond M. Pezzo, Esq.  
19 Davis Avenue  
Poughkeepsie, New York 12603  
(914) 452-1040

Gerald A. Vergilis, Esq.  
266 Main Street  
Fishkill, New York 12524

United States v Mendel, 83 Cr. 63 (WK). This was a nonjury trial before the Hon. Whitman Knapp which was tried periodically between June 27 and July 18, 1983. Defendant Mendel and his corporation were charged and convicted of making and filing false statements with the Department of Agriculture alleging cows shipped in interstate and foreign commerce had been tested for the disease brucellosis and TB, when in fact blood from two bulls had been substituted for testing.

Defense Attorney: Robert G. Morvillo, Esq.  
Morvillo, Abramowitz, Grand, Iason &  
Silberberg, P.C.  
565 Fifth Avenue  
New York, New York 10017  
(212) 856-9600

For the convenience of the Committee, I am enclosing a list of attorneys that I have worked with professionally more recently than those listed above.

**Law Revision Commission:**

Carolyn Gentile, Esq. Chair, (1990-93)  
451 Park Avenue South 6th Floor  
New York, New York 10016  
(212) 686-6112

Professor Robert M. Pitler, Chair (1993 to present)  
Brooklyn Law School  
250 Joralemon Street  
Brooklyn, New York 11201  
(718) 780-7952

**Association of the Bar of the City of New York**

John D. Feerick, President (1992-94)  
Fordham University School of Law  
140 West 62nd Street  
New York, New York 10023  
(212) 636-6875

Jane E. Booth, Chair (1991-93)  
Committee on Sex and Law  
The Legal Aid Society  
Civil Appeals and Law Reform Unit  
11 Park Place, Room 1805  
New York, New York 10007  
(212) 406-0745

Professor Arthur Leonard, Co-Chair  
Special Committee on Lesbians and Gay Men in the Profession  
New York Law School  
57 Worth Street  
New York, New York 10013-2960  
(212) 431-2156

Hon. Joan B. Lobis. Co-Chair  
Special Committee on Lesbians and Gay Men in the Profession  
60 Centre Street  
New York, New York 10007  
(212) 374-8383

Professor John De Witt Gregory, Chair  
Committee on Matrimonial Law  
Hofstra University School of Law  
121 Hofstra University  
Hempstead, New York 11550-1090  
(516) 463-5051

**Law Department City of New York**

Linda Howard, Esq.  
Admin. Asst. Corporation Counsel  
100 Church Street  
New York, New York 10007  
(212) 788-1100

Larry Levy, Esq.  
Senior Litigator  
Corporation Counsel  
100 Church Street  
New York, New York 10007  
(212) 788-0400

**Special Counsel, Department of Investigation**

Elkan Abramowitz, Esq.  
Morvillo, Abramowitz, Grand, Iason & Silberberg, P.C.  
565 Fifth Avenue  
New York, New York 10017  
(212) 856-9600

19. **Legal Activities:** Describe the most significant legal activities you have pursued, including the most significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

**Associate Professor of Law**

I currently am a full-time associate professor of law, and have been so since 1984. While I currently teach courses in the areas of Property and Domestic Relations, in 1987, I developed and taught for several years here at Fordham a course in Federal Criminal Pre-Trial Procedure.

I have been on the faculty of the Northeast Regional National Institute of Trial Advocacy (NITA) training program for attorneys and for students at Hofstra Law School on Long Island and was invited to participate for several years in the mandatory intensive trial program for students at Emory Law School in Atlanta, Georgia. I was an Assistant Team Leader in the National NITA program for lawyers in Boulder, Colorado in July, 1991.

**Law Revision Commission**

April, 1990 to present, I have been one of five Commissioners on the Law Revision Commission for the State of New York. The Law Revision Commission was created in the 1930's in the Executive Branch, to study the laws of the State, and to propose additions, revisions, deletions, amendments to the State Legislature. The Commission meets regularly on a monthly basis throughout the year and has a small staff of attorneys in Albany, New York who do much of the research and drafting for the Commissioners.

**Department of Investigations, City of New York**

March, 1990 to January, 1991, I was one of three Special Associate Counsel of the Department of Investigation of the City of New York, working with Elkan Abramowitz, Esq. who was the Special Investigator of the DOI hired to investigate and recommend action on allegations that Mayor David N. Dinkins of New York had neglected to file appropriate tax returns regarding an alleged gift he made to his son during his mayoral campaign. The investigation concluded that sufficient evidence to meet the criminal standard of proof could not be obtained and the matter was referred to the Internal Revenue Service.

**Nontrial Litigation**

As an AUSA, there were several major grand jury investigations that I was in charge of, including international bank fraud, international art theft, tax evasion and immigration fraud and conspiracy cases. As the AUSA, I was responsible for directing the investigation by the various federal agents, preparing grand jury witnesses and exhibits, determining what charges to present, drafting the indictments. Many cases ended in guilty pleas after indictment; some ended in guilty pleas prior to indictment, by information.



## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

### Future Benefits

As a fulltime professor of law, I have participated in the TIAA-CREF pension/retirement plan since October, 1984. I believe that this can be paid out without penalty beginning approximately at age 60.

I am a fulltime salaried employee of Fordham University. I do not have other sources of income, deferred income arrangements, stock or options or uncompleted contracts.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts of interest during your initial service in the position to which you have been nominated.

### Conflicts of Interest

I have savings, checking and money market accounts at various financial institutions. In the event that those particular institutions are parties in litigation, and that fact alone would present a conflict of interest, I would follow the appropriate procedure, including recusal, as set out by the Guidelines for the Code of Judicial Conduct.

3. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

### Outside Employment

I would like to teach on an adjunct basis, for which I would be compensated.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends,

interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

**Sources and Amounts of Income 1993-94**

See Financial Disclosure Report

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See attached

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Not Applicable

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

| ASSETS                                  |     |         | LIABILITIES                                      |     |          |
|---|-----|---------|--|-----|----------|
| Cash on hand and in banks               | 38  | 457 13  | Notes payable to banks—secured                   |     |          |
| U.S. Government securities—add schedule | 22  | 000 00  | Notes payable to banks—unsecured                 |     |          |
| Listed securities—add schedule          |     |         | Notes payable to relatives                       | 10  | 000 c    |
| Unlisted securities—add schedule        |     |         | Notes payable to others                          |     |          |
| Accounts and notes receivable:          |     |         | Accounts and bills due                           | 7   | 500 c    |
| Due from relatives and friends          |     |         | Unpaid income tax                                |     |          |
| Due from others                         |     |         | Other unpaid tax and interest                    |     |          |
| Doubtful                                | 26  | 000 00  | Real estate mortgages payable—add schedule       | 226 | 000 c    |
| Real estate owned—add schedule          | 365 | 000 00  | Chattel mortgages and other liens payable        |     |          |
| Real estate mortgages receivable        |     |         | Other debts—itemize:                             |     |          |
| Autos and other personal property       | 4   | 300 00  | VISA   | 3   | 000 c    |
| Cash value—life insurance               |     |         | American Express                                 | 2   | 500 c    |
| Other assets—itemize:                   |     |         |  |     |          |
| TIRA-CREF                               | 223 | 776 58  |  |     |          |
|   |     |         | Total liabilities                                | 309 | 000 c    |
|   |     |         | Net Worth  | 370 | 533 c    |
| Total Assets                            | 679 | 533 91  | Total liabilities and net worth                  |     |          |
| CONTINGENT LIABILITIES                  |     |         | GENERAL INFORMATION                              |     |          |
| As endorser, comaker or guarantor       |     |         | Are any assets pledged? (Add schedule.)          | NO  |          |
| On leases or contracts                  |     |         | Are you defendant in any suits or legal actions? | YES | 60 000 c |
| Legal Claims                            | 60  | 000 00+ | Have you ever taken bankruptcy?                  | NO  |          |
| Provision for Federal Income Tax        |     |         |  |     |          |
| Other special debt                      |     |         |  |     |          |

FINANCIAL STATEMENTNET WORTH SCHEDULECash on Hand

Included in this amount is \$28,431.29, which is the remainder of the gross proceeds from the sale of two cooperative apartments on April 15 and June 2, 1993. These apartments were sold pursuant to the Property Settlement Agreement between me and my ex-husband, signed in April, 1988. The proceeds of the sale of these apartments are to be used to make child support payments; my ex-husband has not made his payments since June, 1992. The proceeds are to be applied to pay back the funds used in lieu of his child support payments, since June, 1992 and to make monthly child support payments until exhausted.

U.S. Government Securities

The children's paternal grandmother in 1991 bought U.S. zero coupon bonds in the amount of approximately \$10,000.00 for each of the children. The accounts are in their social security numbers but she is in control of the bonds; I do not have them, nor have access to them.

Additionally, my daughter has \$2,000.00 in Treasury Bonds, which pay interest.

I do not have any government securities.

Real Estate Owned

The children and I currently live in a 3 bedroom cooperative apartment which was purchased in September, 1984, for \$365,000.00. There is a substantial mortgage on this property (approximately \$226,000.00)

February 17, 1994

## III GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

**Public Service**

I have been in the public sector fulltime since 1979, when I became an AUSA in the SDNY. I have been teaching fulltime, and not practicing law since 1984, when I joined the law faculty at Fordham University.

As indicated earlier, I am and have been on committees and boards of various nonprofit educational and legal organizations. In addition to serving currently on the Board of Trustees of the schools which my children currently attend, I was parent trustee of Early Steps, an organization formed to increase minority enrollment in the primary grades of New York independent schools. Two boards that I have been involved in, but no longer am, are organizations that deal directly with troubled youth (Berkshire Farm Center and Services for Youth) or abused women with children (Sanctuary for Families).

**CURRENT BOARD MEMBERSHIP**

Member, National Association of Securities Dealers (NASD) Board of Arbitrators  
1986 to present

Member, Board of Trustees,  
The Spence School  
New York, New York  
1987 to present

Member, School Committee,  
The Cathedral School  
New York, New York  
May, 1990 to present

**CURRENT COMMITTEE MEMBERSHIP**

Lesbians & Gay Men in the Profession, Association of the Bar of the City of New York  
1991 to present

Matrimonial Law Committee,  
 Association of the Bar of the City  
 of New York  
 July, 1993 to present

**PAST BOARD MEMBERSHIP**

Member, Board of Directors,  
 Sanctuary For Families  
 New York, New York  
 December, 1991 to February,  
 1993

Parent Member,  
 Board of Trustees,  
 EARLY STEPS  
 1986 to May, 1990

Member, Board of Directors  
 Berkshire Farm Center and Services  
 for Youth  
 1985 - 1987

Member, Board of Trustees,  
 The West Side Montessori School  
 New York, New York  
 1982 - 1985

Member, Board of Trustees  
 Radcliffe College  
 Cambridge, Massachusetts  
 1970 - 1981

**PAST COMMITTEE MEMBERSHIP**

Ad Hoc Committee on AIDS,  
 Association of the Bar of the City  
 of New York  
 September, 1992 to February, 1993

Committee on Sex and Law,  
 Association of the Bar of the  
 City of New York  
 1989 to 1992

Nominating Committee, Association  
 of the Bar of the City of New York  
 1991-1992 term

Family Law and Family Court,  
 Association of the Bar of the City  
 of New York  
 1983 - 1986

Central Screening Committee for the  
18-B Panel, Appellate Division,  
First Department  
1984 - 1987

Search Committee for Attorney-in-  
Charge of the Criminal Appeals  
Bureau, Legal Aid Society  
1985

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates - through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

I was a member of Jack and Jill of America, Inc, a national organization of black mothers, from 1986-1991. I do not feel that the membership qualifications resulted in invidious discrimination, but served what I saw as the main purpose of the organization, which was to instill a sense of identity and support in black children.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Initial Interview and Nomination; Committee on the  
Judiciary, Bar Association of the City of New York

In December, 1990, I was contacted by a representative of Senator Moynihan's Judicial Screening Panel and asked if I would be interested in submitting an application for consideration for a district court judgeship. I did. I subsequently met with that committee in January, 1991, which forwarded my name to Senator Moynihan. I met with Senator Moynihan in February, 1991, and in early March, 1991, he forwarded my name to then President Bush for a district court judgeship on the Southern District of New York.

Between April and October, 1991, I was interviewed on three separate occasions by several members of the Department of Justice. After Senator Moynihan submitted my name to President Clinton in January, 1993, I was sent forms by the Office of White House Counsel in March, 1993, and interviewed by representatives of the Department of Justice, the Office of White House Counsel, and the Attorney General's Office in July, 1993. There was subsequent correspondence and submissions by me to both the DOJ and Senator Moynihan's staff.

When Senator Moynihan had initially submitted my name for consideration to then President Bush in March, 1991, I was interviewed and approved by the Committee on the Judiciary, Association of the Bar of the City of New York, in April, 1991.

When Senator Moynihan submitted my name to President Clinton in January, 1993, I was again contacted by the Committee on the Judiciary. I appeared before them again in November, 1993, and was again approved by them at that time.

Also in November, 1993, I was interviewed and had telephone conversations with Special Agents of the Federal Bureau of Investigation. I was also interviewed in November, 1993, by a representative of the Standing Committee on Federal Judiciary, American Bar Association.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

Not applicable.

5. Please discuss your views on the following criticism involving "judicial activism".

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:



- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

It is clear to me that abrogation of power or abuse of any responsibility by any member of the judicial, executive or legislative branch of government is, of course, wrong, and not to be condoned in a democratic society that was founded and is still dependent on the concept of separation of powers. Separation of powers is the foundation which justifies the trust and authority given to our government by our society.

However, appropriate judicial action in cases where the facts, as presented by the parties, require judicial resolution, either by following or interpreting precedent, or interpreting or enforcing the laws as passed by Congress, is the proper role of the judiciary.

It is most unlikely that, during one's judicial career, a judge will be confronted with a case which requires judicial innovation. When a matter is ripe and properly before a court, and precedent and/or existing laws may not have been previously considered in that context, the judge might well consider whether interpretation and application of precedent or existing law could provide for the resolution of the matter. For any parties genuinely aggrieved by the court's action, our judicial system provides appropriate appellate review. For any nonparties who feel aggrieved by the resultant precedent, there is always recourse through Congress and its lawmaking role.

**AFFIDAVIT**

I, Deborah A. Batts, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

February 18, 1994  
(DATE)

Deborah A. Batts  
(NAME)

Donna Wilensky  
(NOTARY)

NOTARY PUBLIC  
STATE OF CALIFORNIA  
COMMISSION EXPIRES 02/03/1995

ANSWERS TO  
QUESTIONNAIRE FOR JUDICIAL NOMINEES

## I. BIOGRAPHICAL INFORMATION (PUBLIC)

## 1. Full name (include any former names used.)

Raymond Lawrence Finch

## 2. Address: List current place of residence and office address(es).

Home: 4B Estate Solitude  
Christiansted, St. Croix  
Virgin Islands 00820

Office: RFD-2, Box 9000  
Kingshill, St. Croix  
Virgin Islands 00851

## 3. Date and place of birth.

October 4, 1940  
Christiansted, St. Croix, Virgin Islands

## 4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Divorced.

## 5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Howard University: September 1958 - June 1962,  
B.A. degree, June 1962; Howard University School of Law:  
August 1962 - June 1965, LL.B., June, 1965.

Judicial Conferences attended:

American Academy of Judicial Education Seminar:  
"Trial Judges Academy" August 8-20, 1976 in  
Charlottesville, Virginia.

National Judicial College, University of Nevada, Reno  
 October 1976 Criminal-Evidence Seminar  
 October 1977 Criminal-Evidence Seminar  
 October 1978 Criminal-Evidence Seminar  
 October 1978 Criminal-Evidence Seminar

American Academy of Judicial Education Seminar:  
 "The Practicalities of Judging; Jurisprudence  
 and the Humanities". Harvard University - June  
 1978.

6. **Employment Record:** List (by year) all business or professional corporations, companies, firms or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

|                |   |
|----------------|---|
| 1976 - Present | Judge, Territorial Court of the Virgin Islands; Judge, Appellate Division, U.S. District Court of the Virgin Islands; served by Special Designation as Judge of the U.S. District Court of the Virgin Islands several times 1976-1977; October 1988 to July 1989; Acting Presiding Judge, Territorial Court of the Virgin Islands, July 26 - August 17, 1978; Judge, Municipal Court of the Virgin Islands. |
| 1975 - 1971    | Partner in law firm of Hodge, Sheen, Finch and Ross.  |
| 1970 - 1969    | Law clerk in firm of Hodge & Sheen.   |
| 1969 - 1966    | United States Army; entered as First Lieutenant, attained rank of Captain.  |
| 1966 - 1965    | Law clerk, Municipal Court of the Virgin Islands.   |
| 1965 - 1963    | Summer positions during law school included such jobs as temporary deputy marshal with U.S. Justice Department and stock clerk with the Virgin Islands Corporation.   |

7. **Military Service:** Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge.

Yes. September 25, 1966 - October 15, 1969  
 Armor; detailed; JAGC; Captain; 580096953;  
 Inactive Reserve.  
 Discharged honorably October 15, 1969.

8. **Honors and Award:** List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Marquis WHO'S WHO IN AMERICA (1978 to present)  
 PERSONALITIES OF THE SOUTH (1978-79)  
 ARMY COMMENDATION MEDAL December 1968  
 NATIONAL DEFENSE SERVICE MEDAL  
 VIETNAM SERVICE MEDAL  
 VIETNAM CAMPAIGN MEDAL, W/60 DEVICE  
 BRONZE STAR MEDAL  
 TWO OVERSEAS BARS

9. **Bar Associations:** List all bar associations, legal or judicial-related committee or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Bar membership - United States Court of Appeals for  
 the Third Circuit  
 - District Court of the Virgin  
 Islands

Professional  
 Association - American Bar Association  
 - American Judges Association  
 - American Judicature Society  
 - National Bar Association

10. **Other Memberships:** List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Lobbying: None.  
 Other: St. Croix Radio Club

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

United States District Court of the Virgin Islands:  
December 1970; Third Circuit Court of Appeals:  
January 1976.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

None.

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent. February 1991.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Judge, Appellate Division, United States District Court of the Virgin Islands.

Judge by Special Designation, United States District Court of the Virgin Islands. Judges of the Territorial Court were designated to sit as judges of the U.S. District Court of the Virgin Islands by the Chief Judge of the Third Circuit Court. This was required due to the vacancy which occurred when Judge Warren H. Young died. I sat by special designation during the following periods: April, July and October 1976; December 10, 13, 15, 22 and 29, 1976; February, May, August and November 1977; October, November and December 1980; and August 26 through September 30, 1982, October 7, 1985 through

October 11, 1985.

Judge, Territorial Court of the Virgin Islands, Division of St. Croix, Kingshill, St. Croix, Virgin Islands.

I was appointed to the Municipal Court of the Virgin Islands in February, 1976 for a term of four years and served as a judge therein for a period of one year. Since the name of the court was changed to the Territorial Court of the Virgin Islands, my judicial appointment was by the then Governor, Cyril E. King, now deceased. I have had subsequent appointments since then, to-wit, in 1980 I was appointed by Governor Juan Luis for six-year term; in 1986 I was reappointed by Governor Luis for another six-year term; in 1992 I was reappointed by Governor Alexander A. Farrelly for a six-year term.

The Municipal Court had jurisdiction over juvenile matters, traffic, small claims wherein the claim involved did not exceed \$500.00, criminal cases wherein the maximum sentence that might be imposed did not exceed imprisonment for one year, and civil cases wherein the amount in controversy did not exceed \$10,000.00.

On January 1, 1977, the Municipal Court of the Virgin Islands became the Territorial Court of the Virgin Islands. All judges of the Municipal Court became judges of the Territorial Court pursuant to legislation. I have served as a judge of the Territorial Court since 1977. I am presently serving my fourth term.

The Territorial Court has jurisdiction over juvenile matters, traffic, small claims wherein the claim involved does not exceed \$5,000.00, divorce, annulment and separation procedures, support cases, adoptions, guardianship matters, probate matters, criminal cases wherein the maximum period of confinement does not exceed fifteen years, and civil cases wherein the amount in controversy does not exceed \$ 200,000.00.

Effective January 1, 1994, the Territorial Court has unlimited civil jurisdiction in civil cases and full jurisdiction in criminal cases.

From February 1980 to the present, I have been the administrative representative on St. Croix for the Presiding Judge. As such, my duties have included the administration of all court matters on St. Croix

inclusive of but not limited to, overseeing of all personnel and the contracting for service jobs and equipment required by the court. In the interest of judicial expediency and fiscal responsibility, I have completely revamped the court schedules since assuming my administrative responsibilities.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially, please provide copies of the opinions.

Bolling v. Commissioner of Education and The Board of Education, 14 V.I. 111 (Terr. Ct. St.C. 1977).

Andrew v. Carvalho, 14 V.I. 513 (Terr. Ct. St.C. 1978).

Virgin Islands Urban Renewal Board v. George, 13 V.I. 473 (Terr. Ct. S. C. 1977).

In Re Lee, 13 V.I. 105 (Terr. Ct. St.C. 1976).

Rouss v. Government of the Virgin Islands, 13 V.I. 203 (Terr. Ct. St. C. 1977).

Williams vs. Williams, Civ. No. 932/1978, (Terr. Ct. St. C. 1979).

FDIC v. Creque, Civ. No. 1396/1977 (Terr. Ct. St. C., file July 31, 1979).

Goodwin v. Goodwin, 23 V.I. 80 (Terr. Ct. St. C. 1987).

Government v. Rodriguez, 23 V.I. 386 (Terr. Ct. St. C. 1988).

In the Matter of Sylvie Alison, D.Ct.V.I. 249/1985, (Terr. Ct.St.C.Fam. No. C18/1983) (App. Div. U.S.D.Ct. 1990).

- 15.(2) Linda Garraway v. Dr. Chester Copeman, Dist. Ct. No. 1992-0078, (Feb. 1994). Reversed in part, affirmed in part. The reversal came about because of an award of



\$500.00 in damages as cost of a deposition which never occurred.

- 15.(3) In the Matter of Sylvie Allison, Dist. Ct. V.I. No. 249/1985 (Terr.Ct.St.C. Fam. No. C18/1983), (App. Div. U.S.D.C. 1990).
16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None.

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:
1. whether you served as a clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were clerk;
  2. whether you practiced alone, and if so, the addresses and the dates;
  3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

After my graduation from law school and until August 1966, I was a law clerk in the Municipal Court of the Virgin Islands. I clerked for former judges Alexander A. Farrelly and Antoine L. Joseph and the late Cyril Michael. During my tenure as a law clerk I did extensive legal research and analysis and drafted many advisory opinions for the judges mentioned.

In September 1966 I left St. Croix to report to active duty in the U.S. Army. My ranking upon entry was that of First Lieutenant. I was assigned to the Second Armored Cavalry Regiment, headquartered in Hamburg, Germany. After a tour of duty in Germany, I was assigned to duties in the Republic of Vietnam.

While in the Army my duties were varied and extensive.

In Vietnam, I was assigned to the office of the Staff Judge Advocate, H/Q 1IFFV. In that capacity I served essentially with the Office of the Staff Judge Advocate, performing the following functions: adjudicated claims of United States personnel and Vietnamese Nationals; appeared before Elimination Boards as an advocate; appeared as advocate in Article 15 Hearings; appeared as an advocate in Article 32 Investigations.

In October 1969 I returned to St. Croix and was employed as a law clerk by the firm of Hodge & Sheen located at #46-47 Company Street, Christiansted, St. Croix, Virgin Islands. I was employed in the stated capacity until December 1970. During this employment I did much legal research and analysis, drafted pleadings, and prepared legal memoranda and trial briefs. I also did investigative reporting on cases and otherwise generally assisted the lawyers in their trial preparations.

I have never practiced alone.

In December of 1971 I became a partner in the firm of Hodge, Sheen & Finch located at #46-47 Company Street, Christiansted, St. Croix, Virgin Islands. I remained a partner of the aforementioned law firm until February 1976.

In February 1976 I was appointed to the Municipal Court bench in the Virgin Islands.

- b. 1. **What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?**

After my graduation from law school and until August 1966, I was a law clerk in the Municipal Court of the Virgin Islands. I clerked for former judges Alexander A. Farrelly and Antoine L. Joseph and the late Cyril Michael. During my tenure as a law clerk I did extensive legal research and analysis and drafted many advisory opinions for the judges mentioned.

In September 1966 I left St. Croix to report to active duty in the U.S. Army. My ranking upon entry was that of First Lieutenant. I attained the rank of Captain before being honorably discharged.

While in the Army my duties were varied and extensive.

In October 1969 I returned to St. Croix and was employed as a law clerk by the firm of Hodge & Sheen located at #46-47 Company Street, Christiansted, St. Croix, Virgin Islands. I was employed in the stated capacity until December 1970. During this employment I did much legal research and analysis, drafted pleadings, and prepared legal memoranda and trial briefs. I also did investigative reporting on cases and otherwise generally assisted the lawyers in their trial preparations.

In December of 1971 I became a partner in the firm of Hodge, Sheen & Finch located at #46-47 Company Street, Christiansted, St. Croix, Virgin Islands. I remained a partner of the aforementioned law firm until February 1976.

In February 1976 I was appointed to the Municipal Court bench in the Virgin Islands. From February 1976 to the present, I have heard an excess of 20,000 cases.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

My typical former civil clients were generally middle income Virgin Islanders who needed legal advice with reference to business contracts, especially contracts related to the sale or purchase of real estate. My biggest corporate client was First Federal Savings & Loan Association of Puerto Rico.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I appeared in court regularly.

2. What percentage of these appearances was in:
- (a) federal court;
  - (b) state courts of record;
  - (c) other courts.

Approximately fifty percent (50%) of my court appearances were in the United States District Court of the Virgin Islands. Approximately fifty percent (50%) of my court appearances were in the Municipal Court of the Virgin Islands. I did not appear before any other courts.

3. What percentage of your litigation was:
- (a) civil;
  - (b) criminal.

Approximately eighty-five percent (85%) of my litigation was civil. Approximately fifteen percent (15%) of my litigation was criminal.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

During the years I was in practice, approximately 200 of my cases were tried to verdict or judgment. In all these cases I was chief counsel.

5. What percentage of these trials was:
- (a) jury;
  - (b) non-jury.

Ten percent (10%) of these trial were jury trials in the District Court of the Virgin Islands. The remaining ninety percent (90%) were non-jury.

18. **Litigation:** Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
- (a) the date of representation;
  - (b) the name of the court and the name of the judge or

- (c) judges before whom the case was litigated; and the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Robert Gustafson v. Fort Louise Augusta Condominiums, Inc. and The Government of the Virgin Islands.

In this civil action for damages, the plaintiff a minor, recovered \$125,000 for injury to the left lacrimal duct as a result of an automobile accident. Sensitive bone restoration was performed by a specialist in New York. This case is of significance because it was tried thirty days after the Federal Rules of Evidence became effective in the Virgin Islands and I was able to use the Rule 703 so as to allow an expert resident in the Virgin Islands to testify using the medical records of the doctor in New York.

I represented the plaintiff and did all of the pre-trial and trial work. The trial occurred in November of 1975 in the United States District Court of the Virgin Islands before the Honorable Warren H. Young. Counsel for the other party was Robert Ruskin, now deceased.

Government of the Virgin Islands v. Jesus Santiago.

In this criminal prosecution for burglary, I represented the defendant. The case was tried before a twelve person jury in the United States District Court of the Virgin Islands, Judge Warren H. Young presiding. The jury returned a verdict of not guilty. This case is of significance because of the overwhelming odds of an acquittal. Every member of the firm except myself declined representation of the accused. The Government was represented by Attorney Julio Brady, 1232 King Street, Christiansted, St. Croix, Virgin Islands, telephone number (809) 773-7121.

In Re the Discharge of Private Clyde Miller.

This was a charged trial which occurred in the Republic of Vietnam. The trial was had before a board of officers presided over by an officer of the rank of colonel whose name I do not

recall. Private Miller was about to be discharged because he was caught in a homosexual act. This case is of significance to me because I was able to convince the board with credible evidence, that Miller's sexuality was a result of a psychological defect. Considering the grave charge involved, and considering the tense, combat atmosphere of the time and place involved, Miller's discharge was a significant achievement.

First Federal Savings & Loan Association of Puerto Rico v. Giddel Martinez.

This was a foreclosure action in which I represented the plaintiff in the United States District Court of the Virgin Islands, Judge Warren H. Young presiding. This case was significant because the defendant challenged the annual percentage mortgage rate as usurious. George H. T. Dudley, Sr. defended the case and lost. Mr. Dudley is now deceased.

United States Army v. Michael Smith.

This was a court martial for AWOL, (3 charges) and failure to obey a lawful order. The matter was tried before a board of officers presided over by an officer of colonel rank, whose name I do not recall. I defended Private Smith who was convicted. However, I raised a defense in that case that is now law. The only identification the military had against Private Smith was his name, rank and serial number which he was forced to give upon return to camp after an absence of 3 months. His unit had been eliminated in an attack and no one could identify him. I argued that the Miranda warnings should have been given to Smith even prior to questions as to his identity.

Government of the Virgin Islands v. Roy Seales.

In this criminal prosecution for unlawful entry and larceny tried in the Municipal Court of the Virgin Islands before the Honorable Antoine L. Joseph, the defendant was convicted. The significance of the case is that it presented in the Municipal Court for the first time, the question as to the admissibility of statements of co-defendants against each other. The prosecutor was William Brown who is now practicing law in the United States.

Lourdes Cintron v. Clemente Cintron, Sr.

This was an action for divorce filed in the United States District Court of the Virgin Islands, Judge Warren H. Young presiding. I represented the plaintiff in this case. It was significant because of the extensive personal properties which became involved in the litigation and the question of child custody. The defendant was represented by Mr. Francisco Corneiro, former Attorney General of the Virgin Islands, now deceased.

Anna Deering v. The Coca Cola Bottling Co. of the Virgin Islands.

This was a personal injury action filed in the United States District Court of the Virgin Islands, Judge Warren H. Young presiding. I represented Ana Deering, the plaintiff. It was a trial before a jury which, in my opinion, was significant in view of the jury award of \$25,000 to the plaintiff, notwithstanding very minimal damages. In this case, the plaintiff, the operator of a restaurant, happened to be in the vicinity of a Coca Cola bottle which exploded and cause a small one-inch cut on the forehead.

Opposing counsel: Robert Ellison, P.O. Box 253, Frederiksted, St. Croix, Virgin Islands 00840. Telephone No. (809) 772-4700.

Monserate Velez Gonzalez v. Isabel Velez Gonzalez.

This was an action for divorce filed in the United States District Court of the Virgin Islands, Judge Warren H. Young presiding. This action is important because of the vast amount of real property involved and the fact that my client, the plaintiff, did not suffer the loss of his assets. Attorney for the defendant was John D. Merwin, now living in New Hampshire, and on St. Croix. Mr. Merwin's address is P.O. Box 297, Franconia, New Hampshire 03580. Telephone No. (603) 823-5217.

Christian Hendricks v. Gulf Mortgage Corporation.

This is an action in foreclosure against the Gulf Mortgage Corporation filed in the United States District Court of the Virgin Islands, Judge Warren H. Young presiding. This foreclosure is important because of the extensive title search involved and substantial questions of priorities of mortgages that arose. The defendant was represented by Warner Alexander of Christiansted, St. Croix, Virgin

Islands, whose phone number is (809) 773-3930.

The records in all the above-mentioned cases in which I appeared as counsel were destroyed by Hurricane Hugo, and thus any additional information is difficult to obtain.

The following is a list of attorneys who have appeared before me since 1990:

Winston A. Hodge, Esquire  
Hodge & Sheen, P.C.  
Sunny Isle Professional Bldg.  
Suite 5-6  
St. Croix, Virgin Islands 00823  
Tel: (809) 773-7725

Joel H. Holt, Esquire  
2132 Company Street  
Suite 2  
Christiansted, St. Croix  
Virgin Islands 00820  
Tel: (809) 773-8709

Martial A. Webster, Esquire  
Law Offices of Wynter & Webster  
P.O. Box 1847  
Frederiksted, St. Croix  
Virgin Islands 00841  
Tel: (809) 772-1900

Douglas L. Capdeville, Esquire  
P.O. Box 4191  
Christiansted, St. Croix  
Virgin Islands 00822  
Tel: (809) 773-7275

Britain H. Bryant, Esquire  
Bryant, White & Associates, P.C.  
47 King Street, 2nd Floor  
Christiansted, St. Croix  
Virgin Islands 00822  
Tel: (809) 773-2785

Gertrude LeCointe, Esquire  
298 Estate Peter's Rest  
St. Croix, Virgin Islands 00820  
Tel: (809) 773-7577



Jacqueline Warner Mills, Esquire  
81 Castle Coakley  
St. Croix, Virgin Islands 00820  
Tel: (809) 778-4621

O. S. Lad Mingus, Esquire  
Law Offices of R. Eric Moore  
2108 Company Street, 2nd Floor  
Christiansted, St. Croix  
Virgin Islands 00822  
Tel: (809) 773-4150

Todd Newman, Esquire  
Nichols, Newman & Silverlight  
1131 King Street, Suite 204  
Christiansted, St. Croix  
Virgin Islands 00820-4970  
Tel: (809) 773-3200

Kevin A. Rames, Esquire  
2111 Company Street  
Suite 3  
Christiansted, St. Croix  
Virgin Islands 00820  
Tel: (809) 773-7284

19. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

My career on the bench is my most significant legal activity and has been so for the past eighteen years.

Member, Judicial Ethics Committee of the American Judges Association, 1979 - present.

The Committee has given attention to the formation of new commissions investigating judges and has studied cases involving allegations of past judicial misconduct. As a member of the stated committee I have read much material on the various judicial ethics committees, judicial accountability commissions and judicial nominating commissions. It is my opinion that the matter of ethics in judging

is of crucial importance to the judiciary. Judges must continue to exhibit impartiality in word and deed so as to foster confidence in the judicial system. A judge must be perceived to be unfailingly fair.

II. FINANCIAL DATA AND  
CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Retirement benefits equal to 66-2/3% of the current salary of judges of the Territorial Court as retirement benefits.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I do not anticipate any potential conflict of interest. However, if any conflict of interest arise, I shall apply the Code of Judicial Conduct insofar as it relates to recusal of judges.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

None.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See Financial Disclosure Report.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for.)

See attachment.

6. Have you ever had a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No.

SCHEDULE A

|   |          |
|---|----------|
| Bank of Nova Scotia<br>Sunny Isle Branch<br>Account # 11939 | \$500.00 |
|---|----------|

|   |             |
|---|-------------|
| Prudential Bache<br>Christiansted, St. Croix<br>Account # 05Q.128550-55 | \$34,000.00 |
|   | <hr/>       |
|   | \$34,500.00 |

## CONFIDENTIAL FINANCIAL STATEMENT

### NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

| ASSETS                                  |            |   | LIABILITIES                                      |            |  |
|---|------------|---|--|------------|--|
| Cash on hand and in banks               | See Sch    | A | Notes payable to banks—secured                   | 0          |  |
| U.S. Government securities—add schedule | 0          |   | Notes payable to banks—unsecured                 | 0          |  |
| Listed securities—add schedule          | 0          |   | Notes payable to relatives                       | 0          |  |
| Unlisted securities—add schedule        | 0          |   | Notes payable to others                          | 0          |  |
| Accounts and notes receivable:          |            |   | Accounts and bills due                           | 0          |  |
| Due from relatives and toends           | 0          |   | Unpaid income tax                                | 0          |  |
| Due from others                         | 0          |   | Other unpaid tax and interest                    | 0          |  |
| Doubtful                                | 0          |   | Real estate mortgages payable—add schedule       | 69,000.00  |  |
| Real estate owned—add schedule          | See below  |   | Chattel mortgages and other liens payable        | 0          |  |
| Real estate mortgages receivable        | 0          |   | Other debts—itemize:                             | 0          |  |
| Autos and other personal property       | 0          |   |  |            |  |
| Cash value—life insurance               | 0          |   |  |            |  |
| Other assets—itemize:                   | 0          |   |  |            |  |
|   |            |   |  |            |  |
|   |            |   |  |            |  |
|   |            |   | Total liabilities                                | 69,000.00  |  |
|   |            |   | Net worth  | 367,500.00 |  |
| Total assets                            | 436,500.00 |   | Total liabilities and net worth                  | 436,500.00 |  |
|   |            |   |  |            |  |
| CONTINGENT LIABILITIES                  |            |   | GENERAL INFORMATION                              |            |  |
| As endorser, comaker or guarantor       | 0          |   | Are any assets pledged? (Add schedule.)          | NO         |  |
| On leases or contracts                  | 0          |   | Are you defendant in any suits or legal actions? | NO         |  |
| Legal Claims                            | 0          |   | Have you ever taken bankruptcy?                  | NO         |  |
| Provision for Federal Income Tax        | 0          |   |  |            |  |
| Other special debt                      | 0          |   |  |            |  |

#### Schedule of property owned

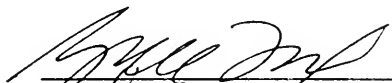
|  |   |              |
|--|---|--------------|
| 4B Estate Solitude,<br>St. Croix, Virgin Islands                     | - | \$350,000.00 |
| 28 LaGrange, Frederiksted,<br>St. Croix, Virgin Islands              | - | 45,000.00    |
| 78A Estate Two Brothers<br>Frederiksted, St. Croix<br>Virgin Islands | - | 7,000.00     |

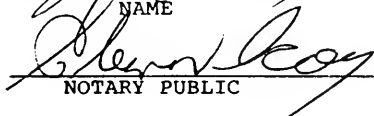
AFFIDAVIT

I, RAYMOND L. FINCH, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

3/28/94

DATE

  
NAME

  
NOTARY PUBLIC

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Member, Donald Walker's Scholarship Foundation - three days per month. This foundation funds and operates the Boys' Club of St. Croix and awards scholarships to needy graduates of the public schools.

Served on Board of Directors, Boys Club of St. Croix, Virgin Islands.

Served on Board of Directors, Boys Scout Council of the Virgin Islands - one day each month. This organization approved operating guidelines for the Boy Scouts Troop in the Virgin Islands.

Served on church council, Lord God of Sabbaoth Lutheran Church. This organization operates the Lutheran Church on St. Croix.

Served as a member of the Virgin Islands Law Enforcement Planning Commission. This organization approved guideline funding of law enforcement agencies of the Virgin Islands.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership.

No.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection



process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Although there is no judicial selection commission in this jurisdiction, I was recommended to the Justice Department. I was interviewed by Virgin Islands Delegate to Congress Ron deLugo and some members of the Democratic Party of the Virgin Islands. I was also interviewed personally by the Governor of the Virgin Islands, the Honorable Alexander A. Farrelly. Following these local interviews, several persons at the United States Department of Justice conducted interviews and thereafter, I was notified that I would be subjected to an FBI and ABA investigation. On March 23, 1994, I was notified I was being nominated.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

In rendering decisions, I have always felt constrained by the rule of law, precedent, and the United States Constitution. I have not used the authority of the court to impose administrative oversight on the other branches of government. The legislative branch of the government makes the law and the judicial branch interprets it.

In arriving at conclusions of law, and in making judgments and otherwise rendering decisions, courts must follow the appropriate jurisdictional requirements. Courts should always require that litigants have standing to bring suit and further, that cases before the court are ripe for decision.

UNITED STATES SENATE  
Committee on JudiciaryQuestionnaire for Judicial Nominees

## I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)  
Solomon Oliver, Jr.
2. Address: List current place of residence and office address(es).  
  
Residence:  
1644 Crest Road  
Cleveland Heights, Ohio 44121  
  
Office:  
Cleveland State University  
Cleveland-Marshall College of Law  
1801 Euclid Avenue  
Cleveland, Ohio 44115
3. Date and place of birth.  
July 20, 1947; Bessemer, Alabama.
4. Marital Status (include maiden name of wife, or husband's name). List spouses's occupation, employer's name and business address(es).  
  
Louisa Stroop Oliver (maiden name is Stroop). Cleveland Heights Board of Education. Career Education Specialist. 14780 Superior Road, Cleveland Heights, Ohio 44118.
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.  
  
Miles College, 1965-66, transferred.  
Harvard University, Summer 1966, transient.  
College of Wooster, 1966-69, B.A. June 1969.  
New York University School of Law, 1969-72, J.D. June 1972.  
Columbia University, Graduate School, Summer 1972, transient.  
Case Western Reserve University, Graduate School, 1973-78, M.A. June 1974.
6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were

connected as an officer, director, partner, proprietor, or employee since graduation from college.

1991-present Associate Dean of Faculty and Administration.  
1982-present Professor of Law, Associate Professor of Law.  
Cleveland-Marshall College of Law of  
Cleveland State University.

1976-1982 Assistant U.S. Attorney.  
1978-1982 Chief, Civil Division.  
1982 Chief, Appellate Litigation.  
U.S. Attorney's Office, Cleveland.

1979-1982 Lecturer, Trial Advocacy, Case Western  
Reserve University School of Law (part-time).

1975-1976 Senior Law Clerk, Judge William H. Hastie,  
U.S. Third Circuit Court of Appeals  
(deceased).

Summer 1975 Interim Summer Associate, Jones, Day, Reavis  
& Pogue, Cleveland, Ohio.

1972-1975 Assistant Professor of Political Science,  
College of Wooster, Wooster, Ohio.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Summer 1987, National Endowment for the Humanities Fellowship; among twelve law professors chosen nationwide to serve as Visiting Scholar at Stanford University College of Law to participate in Seminar entitled "Political Experience and Thought in the Making of the Constitution."

Other Awards:

Outstanding Faculty Award, Black Faculty and Staff Organization, Cleveland State University, 1993.  
Department of Justice Special Achievement Award, 1982.  
Commendation, Assistant Attorney General Land and Natural Resources, 1980.  
Commendation, Director of the F.B.I., 1978.

9. Bar Associations: List all bar associations, legal or

judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

1973-75, Wayne County Bar Association, Legal Aid Services and Referral Committee.

1973-present, Ohio State Bar Association, Federal Courts Committee 1992-present.

1980-present, Norman S. Minor Bar Association, Chairman, Judicial Selection Committee 1980-82.

1986-present, Cleveland Bar Association, Ethics Committee 1986-present and Long Range Planning Committee 1989; Chair, CLE Program Committee on Ethics, 1989, which sponsored the first programs by Cleveland Bar for lawyers on this subject after state mandatory CLE requirements became effective.

1989-present, American Bar Association, Section on Legal Education and Admission to Bar (1993-present, Student Services Committee) and Litigation Section.

1991-present, Civil Justice Reform Act Advisory Group, Northern District of Ohio.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong

Those organizations to which I belong that are active in lobbying before public bodies are the NAACP and the Southern Poverty Law Center.

The other organizations to which I belong are the Cleveland Museum of Art, the Cleveland Museum of Natural History, WVIZ Public Television, WCPN Public Radio, FHC Housing Corp. I was President of the College of Wooster Alumni Association from 1986-1988 and am currently a Trustee of the Wooster Board of Trustees, a position I have held since 1991.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Ohio Bar Association, May 5, 1973.

United States District Court for the Northern District of Ohio, October 10, 1977.

United States Sixth Circuit Court of Appeals, April 20,

1977.

United States Supreme Court, August 8, 1980.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Articles

- (1) "A Survey of Post-Croson Developments," 38 LOYOLA L. REV. 7 (1992).
- (2) "Litigating the Constitutionality of State and Local Affirmative Action Plans: Issues and Approaches," 10 REV. LITIG. 55 (1990).
- (3) "Municipal Liability For Police Misconduct Under 42 U.S.C. §1983 After City Of Oklahoma City v. Tuttle," 64 WASH. U.L.Q. 151 (1986).
- (4) "Appellate Fact Review Under Rule 52(a): An Analysis and Critique of Sixth Circuit Precedent," 16 U. TOL. L. REV. 667 (1985).

Speeches

I have given two speeches involving constitutional law or legal policy:

- (1) "Affirmative Action to Vindicate Civil Rights After City of Richmond v. Croson," University of Wisconsin, February 25, 1989. (Earlier draft of what became my article listed above published at 10 REV. LITIG. 55 (1990).)
  - (2) "Post-Croson Developments," Minority Law Teachers Conference, New Orleans, Louisiana, September 29, 1992. (Earlier draft of what became my article listed above published at 38 LOYOLA L.REV. 7 (1992).)
13. Health: What is the present state of your health? List the date of your last physical examination.
- Very good. October 15, 1993.
14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or

appointed, and a description of the jurisdiction of each such court.

None.

15. Citations: If you or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

N/A.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:
1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and dates of the period you were a clerk;
 

Senior Law Clerk, Judge William H. Hastie, United States Third Circuit Court of Appeals, Philadelphia, Pennsylvania, 1975-76.
  2. whether you practiced alone, and if so, the addresses and dates;
 

1973-75. I did an extremely small amount of practice while I was employed full-time as an Assistant Professor of Political Science by the College of Wooster; my address was 449 College Avenue, Wooster, Ohio 44691.

1982-present. I have consulted with other attorneys and represented selected clients from 1982-present on a part-time basis. My address is 1644 Crest Road, Cleveland Heights, Ohio 44691.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

From 1972 to 1976. I was an Assistant Professor of Political Science at the College of Wooster, Wooster, Ohio 44691. I had a leave of absence during 1975-1976.

During the summer of 1975 only. I worked for Jones, Day, Reavis and Pogue, 901 Lakeside Avenue, Cleveland, Ohio 44113, as a interim summer associate.

From 1976 to 1982. All of my practice was on behalf of the United States as an Assistant United States Attorney for the Northern District of Ohio, 600 Superior Avenue East, Cleveland, Ohio 44114. I became the Chief of Civil Litigation of that office in 1978 and continued in that capacity until 1982. In 1982, I became the Founding Chief of Appellate Litigation in that office.

From 1982 to present. I have been a faculty member at Cleveland-Marshall College of Law where I am a tenured professor; from 1991 to present, I have also been Associate Dean for Faculty and Administration at the College of Law.

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

1972-75. As an Assistant Professor of Political Science at the College of Wooster, my primary teaching areas were Constitutional Law, Civil Liberties and American Politics.

Summer 1975. As summer Associate at Jones, Day, I had a variety of research assignments in civil cases.

1975-76. As a law clerk, I drafted bench memoranda and opinions on a wide range of civil and criminal issues raised by the cases heard by the federal appellate judge for whom I clerked.

1976-82. The U.S. Attorney's Office represented the United States in almost all the litigation in which it was engaged in this district. I frequently appeared in the District Court during



this time frame. I had supervisory responsibility over all the civil cases in our office, approximately 3600. My career in the U.S. Attorney's Office involved handling a wide range of civil cases. Early in my career, I had responsibility for some criminal matters as well. The following is a list of some of the types of litigation in which our office was engaged: tort litigation against the United States (including swine flu litigation), Bivens (constitutional tort) litigation against governmental officials, environmental litigation under the Clean Air and Clean Water Acts and other environmental statutes, FOIA and Privacy Act cases, cases under the Food, Drug and Cosmetic Act against adulterated and misbranded products, suits under the Consumer Product Safety Act and the Federal Trade Commission Act, condemnation and foreclosure actions, social security disability suits, employment discrimination cases, bankruptcy matters, cases under the Food Stamp Act and cases involving student loan defaults.

1982-present. I have been employed at Cleveland-Marshall College of Law of Cleveland State University College of Law as a faculty member teaching litigation related courses -- federal jurisdiction, trial advocacy and civil procedure. I am currently a full Professor of Law with tenure; from 1991 to present, I have served as Associate Dean of Faculty and Administration; from 1987-89, I served on the Cleveland State University Board of Trustees as one of two elected representatives of the entire university faculty; within the law school and the university I have served as the College of Law's representative to the Faculty Council (now Senate), as a member of the Presidential Search Committee of the University and on the University President's Advisory Committee on Human Relations and Campus Unity. As Associate Dean, I have a wide range of responsibilities, including to act in the place of the Dean in his absence. Other responsibilities include exercising supervisory responsibility over the Financial Aid and Career Services offices and Support Services. I also plan and preside over a faculty seminar series, have responsibility for approving grades submitted by faculty, provide input to the Dean on faculty committee assignments and faculty performance, facilitate faculty resource support and serve on a number of committees, including Curriculum, Budget and Honor

Code Committees.

1982-85. I was retained by the U.S. Attorney to complete litigation of some complex environmental cases and appeals.

1985-present. As a professor at Cleveland-Marshall College of Law, I have taught federal jurisdiction, civil procedure and trial advocacy and written articles in the first two areas. Since 1985 I have consulted with attorneys on a wide range of federal procedural and jurisdictional issues and litigated a number of civil cases including tort, contract, and 42 U.S.C. 1983 cases. For example, the City of Cleveland has retained me on four occasions in Section 1983 matters.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.
- b. 2. From 1973-1975. I represented only a few individuals, primarily by drafting wills or in regard to matters involving contracts.

From 1976-1982. As an Assistant U.S. Attorney, the United States was my only client.

1982-present. I represented the United States as a Special Assistant U.S. Attorney from 1982-1985, mainly in environmental cases. I have been retained by a municipal government in civil rights lawsuits under Section 1983 of the Civil Rights Act. I have also been consulted by attorneys on a wide range of civil procedural and jurisdictional issues and have served as counsel for individuals in several cases in federal court, involving contract, tort and other issues.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varies, describe each such variance, giving dates.

When I was employed in the U.S. Attorney's Office I appeared regularly in court. Thereafter, I have appeared there occasionally.

2. What percentage of these appearances was in:
  - (a) federal courts;

90%

- (b) state courts of record;

10%

- (c) other courts.

0%

3. What percentage of your litigation was:

- (a) civil;

97%

- (b) criminal.

3% or less was criminal.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I tried approximately twelve cases to verdict. I was sole counsel in nine and chief counsel in the other three. This does not include hearings in foreclosure proceedings, social security disability cases or bankruptcy proceedings, for example.

5. What percentage of these trials was:

- (a) jury;

- (b) nonjury.

To the best of my recollection, all these cases were tried to the court. Most civil cases against the United States, especially those that are likely to lead to litigation such as those under the Federal Tort Claims Act, are required by statute, to be tried to a court without a jury.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and ate if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the

litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) The individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

- i. Palmarini v. United States of America, Defendant C76-369 A (N.D. Ohio 1977). Judge Contie.

I represented the United States in this personal injury action under Federal Tort Claims Act for injuries allegedly suffered as the result of negligent design, construction and maintenance of the sidewalk of a postal facility. The court denied recovery to Plaintiff on basis of his own contributory negligence.

Opposing counsel was George Vasko, Suite 1706, 76 S. Main Street, Akron, Ohio 44308, 216-376-3607.

- ii. Furlan v. U.S., Defendant, C78-67 (N.D. Ohio). Judge Manos.

I represented the United States in this action seeking to hold the U.S. liable for the actions of two F.B.I. agents who allegedly violated the Fourth Amendment rights of a homeowner during the execution of an arrest warrant for a third party. The plaintiff claimed psychological and other injuries. The court found in favor of the government.

Opposing counsel was Walter S. Haffner, 4972 Oakland Drive, Cleveland, Ohio 44124, 216-621-3800.

- iii. Kittle v. U.S., C77-188A (N.D. Ohio 1978). Judge Contie.

I represented the United States. This was a suit under the Federal Tort Claims Act. Trial was on issue of damages only. U.S. admitted liability for serious injuries to plaintiff in head-on car crash caused by member of Ohio National Guard who was on duty. Our object was to be fair to plaintiff but to keep damages within appropriate range. We accomplished our goal. Verdict was for approximately one hundred twenty five thousand dollars (\$125,000).

Opposing counsel was Howard L. Calhoun, 707 Society Building, Akron, Ohio 44308, 216-253-1111.

- iv. In re: Milton Phillip Shulman, C79-111 7A (N.D. Ohio).  
Judge Contie.

I represented the court for the Northern District of Ohio. This was a hearing to determine whether or not lawyer should be barred from practicing in District Court as a result of continuous obstreperous conduct during trial of housing discrimination case under 42 U.S.C. 1981 case before Judge in District. The disbarment proceeding was initially commenced by a show cause order of the District Judge who presided in the housing discrimination case. It was issued while the jury was still out in the case and allowed the defendant attorney very little response time. The Court barred him from the role of attorneys for a period of two years on the grounds of both willful obstreperous conduct and incompetence. As a condition of readmission, he was required to demonstrate that he had a proficiency and understanding in the Federal Rules of Civil Procedure and Evidence, and the Local Rules. He was also required to show understanding of and a commitment to the Code of Professional Responsibility, to take courses in Evidence, Procedure, Criminal Law, Trial Advocacy, and Professional Responsibility at an accredited law school as well as sit second chair in a number of cases in the District Court. I first entered the cases at the appeal stage when the court requested representation by the U.S. Attorney. The 6th Circuit reversed the suspension partly on the ground that the Defendant was not given enough time to prepare to defend and that personal feelings between the judge and lawyer during the proceeding indicated that the matter should be heard before another judge. I tried the case in the second proceeding before another judge. The Court placed restrictions on the attorney's ability to remain a member of the bar by requiring him to demonstrate competence in procedure, evidence and professional responsibility and to have co-counsel in cases before the Court. This order was upheld in substantial part by the 6th Circuit on appeal, a case I did not argue.

Opposing counsel was Jack Schulman (son of the Defendant), 1700 Standard Building, Cleveland, Ohio 44113, 216-621-0580.

- v. U.S., Plaintiff-Appellee, v. John Doe, Defendant-Appellant, 556 F.2d 391 (6th Cir. 1977). Judges Celebrezze, Lively and Rubin.

I represented the United States and argued the appeal. Defendant-Appellant pled guilty to a charge of embezzlement from a bank whose deposits were insured by the FDIC. Defendant-Appellant, being a youth offender, was sentenced to two years probation under the Federal Youth Corrective Act, 18 U.S.C. §505, et seq. The primary issues were (1) whether a person who had been sentenced under the Youth Corrections Act, 18 U.S.C. 5021(b), and whose conviction had been set aside in the discretion of the court under that Act, was automatically entitled to have his record expunged and (2) whether or not the judge's refusal to expunge was an abuse of his discretion to expunge pursuant to the inherent equitable power of the court. The Court of Appeals affirmed the judgment of the District Court denying expungement.

Opposing counsel was Stephen T. Parisi, Esq., McDonald Hopkins Burke & Haber, 600 Superior Avenue, Suite 2100 Cleveland, Ohio 44114, 216-348-5740.

- vi. U.S., Plaintiff-Appellee v. Samuel Damiano, Jr., Defendant-Appellant, 579 F.2d 1001 (6th Cir. 1978). Judges Engel, Keith and Merritt.

I represented the United States and argued the appeal. The issue was whether or not the court should affirm the contempt conviction of a defendant who pled guilty to passing and uttering counterfeit obligations for refusal to testify at the trial of an acquaintance charged with similar crimes on the ground it would violate his 5th Amendment Privilege against self-incrimination in that such testimony might subject him to further prosecution. The Court of Appeals affirmed the judgment of conviction finding that the trial judge had taken every precaution to ensure that his rights would not be violated before holding defendant in contempt. The trial court held a voir dire hearing and determined what questions the U.S. Attorney would ask at trial. He then made a careful ruling stating which questions were permissible and which questions could not be asked as violative of his Fifth Amendment rights.

Opposing counsel was Thomas Longo, 28001 Chagrin Blvd., Suite 300 Woodmere Village, Ohio 44122, 216-292-0520.

- vii. U.S., Plaintiff-Appellee v. Arthur L. Phillips, 575 F.2d 97 (6th Cir. 1978). Judges Phillips, Edwards and Cecil.

I represented the United States and argued the appeal.

The defendant, Arthur Lawrence Phillips, was found guilty by a jury on both counts of an indictment which charged him with armed bank robbery and taking a hostage in violation of 18 U.S.C. 2113 (a), (d) and (c). Defendant was sentenced by the judge to a period of 18 years in prison. Thereafter, defendant filed an appeal alleging: (1) that the trial court had improperly allowed statements taken from Defendant by law enforcement officers in violation of his Miranda rights to be utilized by the prosecution for impeachment purposes, (2) that the trial court had improperly admitted evidence from a government fingerprint expert who testified in rebuttal that the failure to recover suspect's fingerprints does mean that a suspect has not touched the relevant surface, and (3) that his Sixth Amendment Right to confrontation was violated when the probation officer of an admitted participant in the robbery for which defendant was being tried was allowed to testify as a rebuttal witness to impeach the robbery participant's testimony that defendant had not been a participant. The Sixth Circuit confirmed the conviction.

Opposing counsel was Mike Dane, Assistant Federal Public Defender, 1660 West 2nd Street, Suite 750, Cleveland, Ohio 44113, 216-522-4856.

viii.

Addison Savmor, Inc., Plaintiff-Appellee v. United States of America, Defendant-Appellant, 657 F.2d 80 (6th Cir. 1981). Judges Edwards, Lively and Peck.

I represented the United States and argued the appeal. The issue was whether or not a District Judge had the authority to remand a case to the Department of Agriculture for reconsideration of a three-year administrative sanction of disqualification for egregious violations of the Food Stamp Act under Amendments passed subsequent to the Agency's determination. The new amendments allowed an option not previously available, the ability of the Secretary of Agriculture to impose a civil monetary penalty if he determined the disqualification of a store found in violation of the Act would cause hardship to recipients. The court upheld the position of the U.S. that the statute could not be applied retroactively and reversed the District Court. Opposing counsel was Christopher Nardi, informed by Cleveland Bar Association he has been suspended from practice, no longer listed in phone book.

ix.

United States, Plaintiff-Appellee v. 169.86 Acres of Land, 679 F.2d 111 (6th Cir. 1982). Per curiam by

Judges Lively, Keith, and Merritt.

I represented the United States and argued the appeal. The issue was whether or not to affirm the District Court's denial of a county's claim for real estate taxes from the U.S. on property taken by eminent domain proceedings. The Court of Appeals affirmed the District Court's holding, finding that the lien which the county sought to enforce for taxes attached after the U.S. became an owner and was prohibited by the Supremacy Clause of the Constitution as interpreted in McCulloch v. Maryland (1819).

Opposing counsel was William E. Schultz, Assistant Prosecuting Attorney for Akron, Ohio, 53 University Avenue, Akron, Ohio 44308, 216-643-2800.

- x. United States of America, Plaintiff-Appellant v. Sylvester Tate and William Tate, Appellees-Defendants, 575 F.2d 1152 (6th Cir. 1978). Per curiam by Weick Edwards and Lively.

Upholding armed bank robbery and aiding and abetting armed bank robbery convictions against claims of insufficiency of the evidence and a defective charge to jury.

Opposing counsel were Timothy Potts, 600 Standard Building, Cleveland, Ohio 44113, 216-648-0800, and Donald Krosin, Assistant Federal Public Defender, 1660 West 2nd Street, Suite 750, Cleveland, Ohio 44113, 216-522-4856.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)
- i. I have served as counsel in several major environmental cases concluded by consent decree, including:
- a. U.S. v. Republic Steel (now L.T.V. Steel) C 78-1659 (N.D. Ohio), environmental litigation seeking to hold company in contempt for violation of previous decree in regard to its Warren and Youngstown facilities. Consent decree requiring payment of two hundred fifty thousand dollars (\$250,000) cash penalty to government and installation of approximately one million dollars,



- in environmental controls. I represented the United States.
- b. U.S. v. Republic Steel (now L.T.V. Steel) C 82-1680 (N.D. Ohio), environmental litigation under Clear Air Act for violation at Cleveland blast furnaces basic oxygen furnace shop; consent decree requiring payment of one hundred fifty thousand dollars (\$150,000) cash penalty to U.S. and installation of approximately three to four million dollars in environmental controls. I represented the United States.
  - c. U.S. v. First Federal Credit and Control Corp., C 79-2274 (N.D. Ohio), one of first lawsuits concluded under the Fair Debt Collection Practices Act; consent decree enjoins debt collector from engaging in acts prohibited under statute, requires company to maintain certain records and submit to FTC monitoring and to pay cash penalty of thirty five thousand dollars (\$35,000). I represented the United States.
  - d. U.S. v. Cleveland Electric Illuminating Company, C 81-438 (N.D. Ohio), environmental litigation under the Clean Air Act; consent decree requiring payment of one hundred seventy five thousand dollars (\$175,000) cash penalty to U.S. and the installation of approximately fifty million worth of environmental controls. I represented the United States.
  - e. U.S. v. Copperweld Steel Company (N.D. Ohio), suit for violation of the Clean Water Pollution Control Act and its discharge permit issued by the state of Ohio. The action was concluded by a Consent Decree which set forth a timetable by which Copperweld was required to bring its activities into compliance with the Act and to pay a Fifty Thousand Dollar (\$50,000.00) penalty. I represented the United States.
  - f. U.S. v. U.S. Steel, C 79-141 (N.D. Ohio) settlement agreement with United States Steel in a lawsuit brought for violation of the Clean Water Act at U.S. Steel's Lorain facility. The Consent Decree committed U.S. Steel to the expeditious completion of a blast furnace recycle system which would enable the company to comply with the limitations set by the Clean Water Act and its discharge permit granted by the State of Ohio, which limits the amount of various wastes that it

could discharge into the Black River. In addition, U.S. Steel, in lieu of paying a penalty of three million two hundred thousand dollars (\$3,200,000) for past violations of the Act, agreed to other environmental controls that went well beyond those required by the Act. I represented the United States.

- ii. The following tort case is representative of the tort cases I have concluded short of trial: Bethlehem Steel v. U.S., C78-250 (N.D. Ohio), I represented the U.S. Bethlehem Steel sued the U.S. under the Federal Tort Claims Act, the Suits in Admiralty Act and the Public Vessels Act seeking indemnity of nearly three thousand dollars (\$300,000) for its contribution to a five hundred fifteen thousand dollars (\$515,000) settlement with an employee on one of its ships based on the alleged negligence of a coast guard medical duty officer and a Public Health Contract facility and contract doctor. The trial court granted summary judgment in favor of the United States.
- iii. U.S. v. Walter Brudno and Marshall Brudno, Cr. 78-53 (N.D. Ohio) criminal indictment for selling adulterated egg products with simulated USDA labels to local bakeries in violation of the Egg Product Inspection Act. An agricultural official indicated that this was the first conviction under the Act. Walter Brudno and Marshall Brudno were sentenced to prison for the conduct. I represented the United States.
- iv. I have participated as a member of the American Bar Association and/or Association of American Law Schools inspection teams at five law schools over the past four years.
- v. During 1990-91, served as consultant to Cuyahoga Department of Human Services for purpose of reviewing its Legal Affairs Department which is responsible for bringing neglect, abuse and dependency cases. I co-authored 63-page report for the client analyzing strengths and weaknesses of Department and setting forth blueprint for change.
- vi. I have been a member of the Ethics Committee of the Cleveland Bar Association for the last several years which given opinions to lawyers seeking advice on whether contemplated action is consistent with the Ohio Code of Professional

## Responsibility.

- vii. I have been involved as panelist on CLE programs for lawyers including programs in 1992 and 1993 sponsored by the U.S. Attorney's Office on Ethical Issues for Prosecutors. I am scheduled to be on a February 24, 1994, CLE program sponsored by the Cleveland Chapter of the Federal Bar Association on the recent changes to the Federal Rules of Civil Procedure.
- viii. My article "Municipal Liability for Police Misconduct under §42 U.S.C. 1983 After City of Oklahoma v. Tuttle," 64 Washington University Law Quarterly 151 (1986) has been nationally recognized. It has been cited in at least eleven law reviews, including Illinois, Southern California, Georgetown, and U.C.L.A. It has been referred to in four books, including the leading federal jurisdiction textbook, HART and WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM (3d ed., 1988).
- x. Since 1991, I have served on The Civil Justice Reform Act Advisory Group of the Northern District of Ohio which made the proposal to the court that is now in effect for this District. One of the elements of our Plan involves the use of early neutral evaluation, arbitration and mediation as a means of getting cases ready for trial, reducing cost and delay and resolving disputes. I serve as a member of a panel of Federal Court mediators arbitrators and neutrals, appointed by the Judges of the Northern District of Ohio. I have been assigned five cases over the last two years in this capacity.
- x. I served as a Visiting Professor for three weeks in May 1991 at Comenius University, Faculty of Law, in Bratislava, Czechoslovakia, and Charles University in Prague, Czechoslovakia, lecturing on the American federal judicial system and meeting with law faculty and administrators on a range of topics including important issues in legal education. I also met with governmental officials to discuss the major reforms in their country's legal and judicial system.
- xi. I am currently assisting the Cuyahoga County Department of Children and Family Services in interviewing candidates for Director of Legal Services of that agency.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred incomes arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I will be eligible for a pension under the State Teacher's Retirement System of Ohio based on my contributions to the system and matching contributions by the University. The estimate of what that pension would be based on 12 years of service at age 60 is approximately \$23,000.

2. Explain how you will resolve any potential conflict of interest, including the procedures you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

If it involves a conflict as a result of financial holdings, I would either divest myself of the security or asset, have it put in a blind trust or get appropriate advice on other ways to eliminate the conflict or potential conflict. If the potential conflict is of another type and cannot be resolved in this manner, I would remove myself from hearing any case presenting a potential conflict or explore other appropriate options. In any case, I will follow the guidelines of the Code of Judicial Conduct for resolving such issues.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethic in Government Act of 1978, may be substituted here.)

See attached Financial Disclosure Report.

5. Please complete the attached financial net worth statement in detail. (Add schedules as called for.)

See attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidates, dates of the campaign, your title and responsibilities.

No.

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I have engaged in a fair amount. Most of it has come in the form of legal advice rather than litigation. I have drawn up a number of deeds and wills. Below I cite examples of recent activity.

I have been advising a pro se litigant over the past three or four years on a series of lawsuits in the state and federal courts on matters of civil and appellate procedure in lawsuits against a municipality for violation of civil rights, conversion, fraud, etc. I have committed approximately 20 hours to this.

From 1988-90, I advised a pro se litigant on procedural matters involving federal claims against a County Department of Human Services for denial of welfare benefits and regarding a state court lawsuit against Regional Transit authority for injuries. I committed approximately 10 hours to this.

In addition, I have served on the Board of a fair housing organization, The Cuyahoga Plan, and on the Board of the FHC housing corporation which backs loans made by banks for home repairs to persons who have poor credit. As a member of the Executive Committee of the N.A.A.C.P., I was chair of the Fair Housing Committee.

I also serve on the Pro Bono Committee at Cleveland-Marshall College of Law which oversees our program that provides pro bono opportunities for students with public service agencies or attorneys doing pro bono cases.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of memberships. What you have done to try to change these policies?

I do not belong and have never belonged to any such organizations.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

There is no selection commission in my jurisdiction. I began the process by sending a letter and resume to Senators Glenn and Metzenbaum in early December. I had a few people who were familiar with my qualifications write letters to them. I completed a biographical information form for the senators. I was jointly interviewed in Cleveland in early February by two staff member from each senators office. I interviewed in Washington in early March with the Senators. On May 6, I was questioned in detail by a member of Senator Metzenbaum's staff on matters related to my background. On May 7, I was recommended to the president by Glenn and Metzenbaum. I was then sent several forms to complete by the White House Counsel's Office which I completed and returned. Thereafter, I talked with attorneys at the Department of Justice with responsibility for gathering additional information bearing on qualifications. On October 13, 1993, I met with a person from the F.B.I. who was beginning the process of conducting a background check on me. I met with members of the Assistant Attorney General Eleanor Acheson's office on October 20, 1993. I also submitted a completed questionnaire to the ABA Standing Committee on the Federal Judiciary around that time. I met with Mr. John Elam, the Circuit Representative of the ABA who conducted the background qualifications check on me on November 17, 1993. Thereafter, I have talked with persons in Ms. Acheson's office from time to time.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has

become the target of both popular academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Judges must be cognizant of the limited role that federal courts play in our federal system and vis a vis the other branches of our national government. They should recognize that Article III of the U.S. Constitution and its clarifying doctrines impose upon them a duty to hear only live, ripe controversies -- not advisory in nature -- presented by parties who have been injured or are threatened with injury. It is important that they be committed to the doctrine of stare decisis and truly understand the critical role that precedent plays as a check on misuse of judicial authority. It is especially important to our democratic scheme of government that the courts adhere to these tenets, in light of the fact that members of the judiciary are not popularly elected.

I would add, however, that it would be hard to draw conclusions about whether a court has been too activist or overreaching without having the particular circumstances before me. Clearly in some cases and circumstances, the nature of the issues and the complexity of the problems would dictate extensive judicial orders and some ongoing management by the court.



## FINANCIAL DISCLOSURE REPORT

Report Required by the Ethical  
Reform Act of 1989, Pub. L. No.  
101-194, November 30, 1989  
(5 U.S.C.A. App. 6, §§101-112)

AO-10  
Rev. 1/93

|  |  |  |
|--|--|--|
| 1. Period Reporting (Last name, first, middle initial)<br><br>Oliver, Solomon Jr.  | 2. Court or Organization<br><br>U.S. District Court<br>Northern District Ohio  | 3. Date of Report<br><br>3/10/94               |
| 4. Title (Article III Judges indicate active or senior status; Magistrate Judges indicate full- or part-time)<br><br>U.S. District Judge - active  | 5. Report Type (check appropriate type)<br><input checked="" type="checkbox"/> Nomination, Date <u>3/9/94</u><br><input checked="" type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Fiscal | 6. Reporting Period<br><br>1/1/93 -<br>2/15/94 |
| 7. Chambers or Office Address<br><br>102 U.S. Courthouse<br>201 Superior Ave.<br>Cleveland, OH 44114   | 8. On the basis of the information contained in this Report, it is, in my opinion, in compliance with applicable laws and regulations _____<br>Reviewing Officer Signature _____   |  |
| IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on last page. |  |  |

## I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

POSITION NAME OF ORGANIZATION/ENTITY

NONE (No reportable positions)

Executor Estate of Fannie Patton deceased, Cleveland OH  
Alumni Trustee College of Wooster, Wooster, OH  
Trustee Cuyahoga Plan, Cleveland, OH

## II. AGREEMENTS. (Reporting individual only; see p. 8-9 of Instructions.)

DATE PARTIES AND TERMS

NONE (No reportable agreements)

Beginning Emp- Future Ohio State Teacher's Retirement System pension based on  
loyment date: August 1982 twelve years of service at age 60 for an estimated \$23,000 yr.  
if I do not withdraw my contributions.

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

DATE SOURCE AND TYPE GROSS INCOME  
(Honoraria only) (yours, not spouse's)

NONE (No reportable non-investment income)

|   |                |  |    |           |
|---|----------------|--|----|-----------|
| 1 | Jan - Dec 1993 | Clev.Hts.-Univ.Hts. Board of Education (S) | \$ |           |
| 2 | Jan - Dec 1993 | Cleveland Marshall College of Law (net)    | \$ | 56,421.39 |
| 3 | Jan - Dec 1993 | self-employment income (gross)             | \$ | 12,300.00 |
| 4 | Jan - Dec 1992 | Cleveland Marshall College of Law (net)    | \$ | 55,861.16 |
| 5 | Jan - Dec 1992 | Self-employment income (gross)             | \$ | 200.00    |

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Oliver, Solomon Jr.

Date of Report

3/10/94

**IV. REIMBURSEMENTS and GIFTS** – transportation, lodging, food, entertainment.  
 (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

|                          | <u>SOURCE</u>                                     | <u>DESCRIPTION</u> |
|--------------------------|---|--------------------|
| <input type="checkbox"/> | NONE (No such reportable reimbursements or gifts) |                    |
| 1                        |   |                    |
| 2                        |   |                    |
| 3                        |   |                    |
| 4                        | EXEMPT  | EXEMPT             |
| 5                        |   |                    |
| 6                        |   |                    |
| 7                        |   |                    |
| 8                        |   |                    |

**V. OTHER GIFTS.** (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp.15-16 of Instructions.)

|                          | <u>SOURCE</u>                   | <u>DESCRIPTION</u> | <u>VALUE</u> |
|--------------------------|---------------------------------|--------------------|--------------|
| <input type="checkbox"/> | NONE (No such reportable gifts) |                    |              |
| 1                        |                                 |                    | \$ _____     |
| 2                        |                                 |                    | \$ _____     |
| 3                        |                                 |                    | \$ _____     |
| 4                        | EXEMPT                          | EXEMPT             | \$ _____     |
|                          |                                 |                    | \$ _____     |

**VI. LIABILITIES.** (Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp.16-18 of Instructions.)

|                                     | <u>CREDITOR</u>                  | <u>DESCRIPTION</u> | <u>VALUE CODE*</u> |
|-------------------------------------|----------------------------------|--------------------|--------------------|
| <input checked="" type="checkbox"/> | NONE (No reportable liabilities) |                    |                    |
| 1                                   |                                  |                    |                    |
| 2                                   |                                  |                    |                    |
| 3                                   |                                  |                    |                    |
| 4                                   |                                  |                    |                    |
| 5                                   |                                  |                    |                    |
| 6                                   |                                  |                    |                    |
| 7                                   |                                  |                    |                    |

\* VALUE CODES: J = \$15,000 or less    K = \$15,001 to \$50,000    L = \$50,001 to \$100,000    M = \$100,001 to \$250,000  
 N = \$250,001 to \$500,000    O = \$500,001 to \$1,000,000    P = More than \$1,000,000

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Oliver, Solomon Jr.

Date of Report

3/10/94

## VII. INVESTMENTS and TRUSTS -- income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

| A.<br>Description of Assets<br>(Including trust assets)<br><br>Indicate, where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.<br><br>Place "(H)" after each asset exempt from prior disclosure.   | B.<br>Income during reporting period |  | C.<br>Gross value at end of reporting period |                                 | D.<br>Transactions during reporting period        |                        |                          |                         |  |
|---|--------------------------------------|--|--|---------------------------------|---|------------------------|--------------------------|-------------------------|--|
|   | (1)<br>Int. Code* (A-E)              | (2)<br>Type (e.g., div., rent or Int.) | (1)<br>Value Code* (J-F)                     | (2)<br>Value Method Code* (Q-W) | If not exempt from disclosure                     |                        |                          |                         |  |
|   |                                      |  |  |                                 | (1)<br>Type (e.g., buy, sell, margin, redemption) | (2)<br>Date: Month/Day | (3)<br>Value Code* (J-S) | (4)<br>Gain Code* (A-B) | (5)<br>Identity of Buyer/Seller (if private transaction) |
| <input type="checkbox"/> NONE (No reportable income, assets, or transactions)   |                                      |  |  |                                 |   |                        |                          |                         |  |
| 1 AT&T common (J)   | A                                    | div.                                   | J  | T                               |   |                        |                          |                         |  |
| 2 Bell Atlantic common(DC)  | A                                    | div                                    | J  | T                               |   |                        |                          |                         |  |
| 3 Bell South common (J)   | A                                    | div                                    | J  | T                               |   |                        |                          |                         |  |
| 4 Bristol Meyers common(J)  | A                                    | div                                    | J  | T                               |   | F                      |                          |                         |  |
| 5 Centerior Energy com(J)   | A                                    | div                                    | J  | T                               |   | X                      |                          |                         |  |
| 6 Centerior Energy com(DC)  | A                                    | div                                    | J  | T                               |   |                        | E                        |                         |  |
| 7 Centerior Energy com(DC)  | A                                    | div                                    | J  | T                               |   |                        |                          | P                       | T  |
| 8 CocaCola common (J)   | A                                    | div                                    | J  | T                               |   |                        |                          |                         |  |
| 9 Comair common (DC)  | A                                    | div                                    | J  | T                               |   |                        |                          |                         |  |
| 10 Dean Witter Discovery common (J)   | A                                    | div                                    | J  | T                               |   |                        |                          |                         |  |
| 11 Ford common (J)  | A                                    | div                                    | J  | T                               |   |                        |                          |                         |  |
| 12 General Electric com(J)  | A                                    | div                                    | J  | T                               |   |                        |                          |                         |  |
| 13 Glaxo common (DC)  | A                                    | div                                    | J  | T                               |   |                        |                          |                         |  |
| 14 Glaxo common (DC)  | A                                    | div                                    | J  | T                               |   |                        |                          |                         |  |
| 15 BF Goodrich common (J)   | A                                    | div                                    | J  | T                               |   |                        |                          |                         |  |
| 16 Goodyear common (J)  | A                                    | div                                    | K  | T                               |   |                        |                          |                         |  |
| 17 Heinz common (J)   | A                                    | div                                    | J  | T                               |   |                        |                          |                         |  |
| 18 Home Depot common (J)  | A                                    | div                                    | J  | T                               |   |                        |                          |                         |  |
| 19 K-Mart common (J)  | A                                    | div                                    | J  | T                               |   |                        |                          |                         |  |
| 20 May Co. common (J)   | A                                    | div                                    | J  | T                               |   |                        |                          |                         |  |
| 1 Income/Gain Codes: A=\$1,000 or less; B=\$1,001 to \$1,500; C=\$2,501 to 5,000; D=\$5,001 to \$15,000<br>(See Col. B1 & C4) E=\$15,001 to \$50,000; F=\$50,001 to \$100,000; G=\$100,001 to \$1,000,000; H=More than \$1,000,000<br>2 Value Codes: J=\$15,000 or less; K=\$15,001 to \$50,000; L=\$50,001 to \$100,000; M=\$100,001 to \$250,000<br>(See Col. C1 & D3) N=\$250,001 to \$500,000; O=\$500,001 to \$1,000,000; P=More than \$1,000,000<br>3 Value Method Codes: Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash/Market<br>(See Col. C2) U=Book Value; V=Other; W=Estimated |                                      |  |  |                                 |   |                        |                          |                         |  |

FINANCIAL DISCLOSURE REPORT (cont'd)

|   |                           |
|---|---------------------------|
| Name of Person Reporting<br>Oliver, Solomon Jr. | Date of Report<br>3/10/94 |
|---|---------------------------|

VII. INVESTMENTS AND TRUSTS - income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

| A.<br>Description of Assets<br>(including trust assets)<br><br>Indicate, where applicable, owner of the asset by using the nomenclature "(S)" for joint ownership of reportable individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.<br><br>Place "(X)" after each asset except from prior disclosure. | B.<br>Income during reporting period |                                       | C.<br>Gross value at end of reporting period |                                   | D.<br>Transactions during reporting period       |                               |                            |                           |  |
|---|--------------------------------------|---------------------------------------|--|-----------------------------------|--|-------------------------------|----------------------------|---------------------------|--|
|   | (1)<br>Amt. Code<br>(A-B)            | (2)<br>Type (accr., div., int., etc.) | (1)<br>Value Code<br>(J-P)                   | (2)<br>Value Method Code<br>(Q-W) | (1)<br>Type (e.g. buy, sell, margin, redemption) | If not exempt from disclosure |                            |                           |  |
|   |                                      |                                       |  |                                   |  | (2)<br>Date: Month-Day        | (3)<br>Value Code<br>(J-P) | (4)<br>Gain Code<br>(S-B) | (5)<br>Identity of Buyer/Seller (if private transaction) |
| <input type="checkbox"/> NONE (No reportable income, assets, or transactions)   |                                      |                                       |  |                                   |  |                               |                            |                           |  |
| 1 common (J)  | A                                    | div                                   | J  | T                                 |  |                               |                            |                           |  |
| 2 Merck common (J)  | A                                    | div                                   | J  | T                                 |  |                               |                            |                           |  |
| 3 Morrison Knudsen common (J)   | A                                    | div                                   | J  | T                                 |  |                               |                            |                           |  |
| 4 Nike common (J)   | A                                    | div                                   | J  | T                                 |  | E                             |                            |                           |  |
| 5 Pacific Telesis comm(J)   | A                                    | div                                   | J  | T                                 |  |                               | X                          | F                         |  |
| 6 Resbak common (DC)  | A                                    | div                                   | J  | T                                 |  |                               |                            |                           | F  |
| 7 Sears common (J)  | A                                    | div                                   | J  | T                                 |  |                               |                            |                           | T  |
| 8 Telecomm."A" common(J)  | A                                    | div                                   | J  | T                                 |  |                               |                            |                           |  |
| 9 US Marathon common (J)  | A                                    | div                                   | J  | T                                 |  |                               |                            |                           |  |
| 10 US Steel common (J)  | A                                    | div                                   | J  | T                                 |  |                               |                            |                           |  |
| 11 Wal-Mart common (J)  | A                                    | div                                   | J  | T                                 |  |                               |                            |                           |  |
| 12 Putnam Global Growth (J)   | A                                    | div                                   | J  | T                                 |  | E                             |                            |                           |  |
| 13 20-h Cent. Growth (DC)   | A                                    | div                                   | J  | T                                 |  |                               | X                          | E                         |  |
| 14 20-h Cent. Growth (DC)   | A                                    | div                                   | J  | T                                 |  |                               |                            |                           | M  |
| 15 20-h Cent Select (J)   | A                                    | div                                   | R  | T                                 |  |                               |                            |                           | P  |
| 16 Charter One Bank, Univ. Hts. OH (J)  | A                                    | int                                   | K  | T                                 |  |                               |                            |                           | T  |
| 17 Cleveland Clinic Municipal Bonds (J)   | A                                    | int                                   | J  | T                                 |  |                               |                            |                           |  |
| 18 Fidelity Ohio Tax Free (J)   | A                                    | int                                   | J  | T                                 |  |                               |                            |                           |  |
| 19 Fidelity Ohio Muni Money Market (J)  | A                                    | int                                   | J  | T                                 |  |                               |                            |                           |  |
| 20 Third Federal Cleveland (J)  | A                                    | int                                   | J  | T                                 |  |                               |                            |                           |  |

1 Income/Gain Codes: A=\$1,000 or less (See Col. B1 & D4) B=\$15,001 to \$50,000 C=\$2,501 to \$2,500 D=\$100,001 to \$100,000 E=\$15,001 to \$30,000 F=\$300,001 to \$1,000,000 G=\$100,001 to \$1,000,000 H=\$150,001 to \$300,000 I=\$350,001 to \$1,000,000 J=More than \$1,000,000 K=More than \$1,000,000 L=More than \$1,000,000 M=More than \$1,000,000 N=More than \$1,000,000 O=Other (real estate only) P=Assessment Q=Charitable R=Other S=Estimated T=Other U=Book Value V=Other W=Estimated X=Estimated Y=Estimated Z=Estimated

|                                      |   |                            |
|--------------------------------------|---|----------------------------|
| FINANCIAL DISCLOSURE REPORT (cont'd) | Name of Person Reporting<br>Oliver, Solomon Jr. | Date of Report<br>3/10/94. |
|--------------------------------------|---|----------------------------|

VII. INVESTMENTS and TRUSTS - income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

| A.<br>Description of Assets<br>(including trust assets)<br><br>Indicate, where applicable, owner of the asset by using the parenthetical (J) for joint ownership of reportable individual and spouse, (S) for separate ownership by spouse, (DC) for ownership by dependent child.<br><br>Place "(X)" after each asset exempt from prior disclosure. | B.<br>Income during reporting period |                                      | C.<br>Gross Value at end of reporting period |                         | D.<br>Transactions during reporting period |                       |                         |                        |  |   |
|--|--------------------------------------|--------------------------------------|--|-------------------------|--|-----------------------|-------------------------|------------------------|--|---|
|  | (1)<br>Amt. Code (A-B)               | (2)<br>Type (e.g., div., int., etc.) | (1)<br>Value Code (J-S)                      | (2)<br>Value Code (Q-W) | If not exempt from disclosure              |                       |                         |                        |  |   |
|  |                                      |                                      |  |                         | (1)<br>Buy, Sell, Margin, Redemption       | (2)<br>Date Month Day | (3)<br>Value Code (J-S) | (4)<br>Sale Code (X-Z) | (5)<br>Identify as buyer/seller (if private transaction) |   |
| <input type="checkbox"/> NONE (No reportable income, assets, or transactions)  |                                      |                                      |  |                         |  |                       |                         |                        |  |   |
| 1 TransOhio Savings Cleveland (J)  | A                                    | int                                  | J  | T                       |  |                       |                         |                        |  |   |
| 2 U.S. Gov't Series E Bonds (DC)   | A                                    | int                                  | J  | T                       |  |                       |                         |                        |  |   |
| 3 U.S. Gov't Series E Bonds (DC)   | A                                    | int                                  | J  | T                       |  |                       | F                       |                        |  |   |
| 4 20th Cent. Growth IRA  | B                                    | div                                  | J  | T                       |  |                       | X                       |                        |  |   |
| 5 20th Cent. Select IRA  | B                                    | div                                  | K  | T                       |  |                       |                         | N                      |  |   |
| 6 20th Cent. Select IRA(S)   | B                                    | div                                  | J  | T                       |  |                       |                         |                        |  | T |
| 7 Fidelity Puritan Keogh   | A                                    | div                                  | J  | T                       |  |                       |                         |                        |  |   |
| 8 CREF stock-403(b)  | D                                    | div                                  | M  | T                       |  |                       |                         |                        |  |   |
| 9 TIAA Annuity-403(b)  | D                                    | int                                  | L  | T                       |  |                       |                         |                        |  |   |
| 10   |                                      |                                      |  |                         |  |                       |                         |                        |  |   |
| 11   |                                      |                                      |  |                         |  |                       |                         |                        |  |   |
| 12   |                                      |                                      |  |                         |  |                       |                         |                        |  |   |
| 13   |                                      |                                      |  |                         |  |                       |                         |                        |  |   |
| 14   |                                      |                                      |  |                         |  |                       |                         |                        |  |   |
| 15   |                                      |                                      |  |                         |  |                       |                         |                        |  |   |
| 16   |                                      |                                      |  |                         |  |                       |                         |                        |  |   |
| 17   |                                      |                                      |  |                         |  |                       |                         |                        |  |   |
| 18   |                                      |                                      |  |                         |  |                       |                         |                        |  |   |
| 19   |                                      |                                      |  |                         |  |                       |                         |                        |  |   |
| 20   |                                      |                                      |  |                         |  |                       |                         |                        |  |   |

Income Code: A=\$1,000 or less B=\$1,001 to \$2,500 C=\$2,501 to \$5,000 D=\$5,001 to \$10,000 E=\$10,001 to \$25,000 F=\$25,001 to \$50,000 G=\$50,001 to \$100,000 H=\$100,001 to \$250,000 I=\$250,001 to \$500,000 J=\$500,001 to \$1,000,000 K=\$1,000,001 to \$2,500,000 L=\$2,500,001 to \$5,000,000 M=\$5,000,001 to \$10,000,000 N=\$10,000,001 to \$25,000,000 O=\$25,000,001 to \$50,000,000 P=\$50,000,001 to \$100,000,000 Q=\$100,000,001 to \$250,000,000 R=\$250,000,001 to \$500,000,000 S=\$500,000,001 to \$1,000,000,000

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Oliver, Solomon Jr.

Date of Report

3/10/94

## VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

My wife is the remainder beneficiary under her deceased mother's will  
of one half of the assets of a trust under which her father, who is still  
alive, is the income beneficiary. The ultimate value of that asset  
cannot be determined at this time.

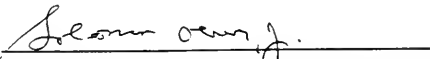
## IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature



Date

3/10/94

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, § 104, AND 18 U.S.C. § 1001.)

## FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Judicial Ethics Committee  
 Administrative Office of the  
 United States Courts  
 Washington, DC 20544

## FINANCIAL STATEMENT

Solomon Oliver, Jr.  
and Family

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

| ASSETS  |                     | LIABILITIES                                      |                       |
|---|---------------------|--|-----------------------|
| Cash on hand and in banks                               | 25 000 00           | Notes payable to banks—secured                   |                       |
| U.S. Government securities—add schedule                 | 8 800 00            | Notes payable to banks—unsecured                 |                       |
| Listed securities—add schedule                          | 317 410 00          | Notes payable to relatives                       |                       |
| Unlisted securities—add schedule                        |                     | Notes payable to others                          |                       |
| Accounts and notes receivable:                          |                     | Accounts and bills due                           |                       |
| Due from relatives and friends                          |                     | Unpaid income tax                                |                       |
| Due from others   |                     | Other unpaid tax and interest                    |                       |
| Deceaseful  |                     | Real estate mortgages payable—add schedule       | 2 100 00              |
| Real estate owned—add schedule                          |                     | Consumer mortgages and other liens payable       |                       |
|   | 87 000 00           | Other debts—itemize:                             |                       |
| Real estate mortgages receivable                        |                     |  |                       |
| Automobiles and other personal property                 | 21 000 00           |  |                       |
| Cash value—life insurance                               |                     |  |                       |
| Other assets—itemize: Furniture & Clothing              | 10 000 00           |  |                       |
| 403(b) annuity IIAA-CREF                                | 202 000 00          |  |                       |
| IRAs: 20th C. Select & Growth & Reoigh-Fidelity Puritan | 43 500 00           |  |                       |
| Silver coins  | 700 00              | Total Liabilities                                | 2 100 00              |
| State Teacher's and Empl. Retirement Contributions      | 73 400 00           | Net Worth  | 786 710 00            |
| Total Assets  | 788 810 00          | Total liabilities and net worth                  | 788 810 00            |
| CONTINGENT LIABILITIES                                  | GENERAL INFORMATION |  |                       |
| As endorser, cosigner or guarantor:                     |                     | Are any assets pledged? (Add schedule)           | mortgage on home only |
| On leases or contracts                                  |                     | Are you defendant in any suits or legal actions? | yes                   |
| Legal Claims  |                     | Have you ever taken bankruptcy?                  | no                    |
| Provision for Federal Income Tax                        |                     |  |                       |
| Other special debt:                                     |                     |  |                       |

In addition: My wife is the beneficiary under her deceased mother's will of one half of the assets of a trust under which her living father is the income beneficiary. The value of this potential asset cannot be determined at this time. Also, my wife, sons and I stand to inherit some money under my aunt's will in an amount which is undetermined but will probably be in the \$25,000 range. Neither amount is included above.

Solomon Oliver, Jr. and Family

## Listed Securities - Schedule 2

A. Louisa and Solomon Oliver, Jr.

1. STOCK

| <u>Number</u> | <u>Name</u>            | <u>Value</u> |
|---------------|------------------------|--------------|
| 200           | A T & T                | \$11,200.00  |
| 100           | Bell South             | 5,625.00     |
| 200           | Bristol Meyers Squibb  | 11,326.00    |
| 300           | Centerior Energy       | 3,750.00     |
| 100           | Centocor               | 1,236.00     |
| 200           | CocaCola               | 8,250.00     |
| 78            | Dean Witter            | 2,994.00     |
| 100           | Ford                   | 6,750.00     |
| 100           | General Electric       | 10,800.00    |
| 100           | B.F. Goodrich          | 4,138.00     |
| 400           | Goodyear               | 19,052.00    |
| 100           | Heinz                  | 3,438.00     |
| 133           | Home Depot             | 4,972.00     |
| 200           | K Mart                 | 3,950.00     |
| 100           | May Company            | 7,726.00     |
| 100           | MCI                    | 5,526.00     |
| 300           | Merck                  | 10,539.00    |
| 200           | Morrison Knudsen       | 5,076.00     |
| 100           | Nike                   | 5,188.00     |
| 600           | Pepsi                  | 24,000.00    |
| 100           | Pacific Telesis        | 5,700.00     |
| 200           | Sears                  | 10,045.00    |
| 129           | USX Marathon           | 2,029.00     |
| 24            | USX Steel              | 1,035.00     |
| 200           | Telecommunications "A" | 5,526.00     |
| 13            | Venture                | 299.00       |
| 400           | WalMart                | 10,100.00    |
|               | TOTAL                  | \$190,297.00 |

2. MUNICIPAL BONDS

| <u>Name</u>   | <u>Amount</u> |
|---|---------------|
| State of Ohio Hospital Improvement Revenue<br>Refunding Bond (Cleveland Clinic Foundation<br>Project - Series 1983) | \$10,000.00   |
| State of Ohio Water Development Revenue<br>Financing Bond, Safe Water Refunding<br>1987 Series B                    | 10,000.00     |
| TOTAL   | \$20,000.00   |



Listed Securities - Schedule 2 (page 2)  
Solomon Oliver Jr. and Family

A. Louisa and Solomon Oliver, Jr., continued

3. MUTUAL FUNDS, MONEY MARKET FUNDS, BOND FUND

| <u>Name</u>                               | <u>Amount</u> |
|---|---------------|
| Twentieth Century Select                  | \$25,000.00   |
| Putnam Global Growth                      | 14,400.00     |
| Fidelity Tax Free (Ohio) High Yield       | 9,254.00      |
| Fidelity Ohio Muni Money Market Portfolio | 7,754.00      |
| TOTAL                                     | \$56,408.00   |

B. Solomon Michael Oliver - son

1. STOCK

| <u>Number</u> | <u>Name</u>   | <u>Value</u> |
|---------------|---------------|--------------|
| 100           | Bell Atlantic | \$5,600.00   |
| 100           | ComAir        | 2,525.00     |
| 100           | Glaxo         | 1,975.00     |
|               | TOTAL         | \$10,100.00  |

2. MUTUAL FUND

| <u>Name</u>              | <u>Amount</u> |
|--------------------------|---------------|
| Twentieth Century Growth | \$17,000.00   |
| TOTAL                    | \$17,000.00   |

Listed Securities - Schedule 2 (page 3)  
Solomon Oliver, Jr. and Family

C. Jonathan Douglass Oliver - son

1. STOCK

| <u>Number</u> | <u>Name</u>      | <u>Value</u> |
|---------------|------------------|--------------|
| 100           | Centerior Energy | \$ 1,250.00  |
| 100           | Glaxo            | 1,975.00     |
| 3             | Harcourt General | 105.00       |
| 100           | Reebok           | 3,275.00     |
|               | TOTAL            | \$ 6,605.00  |

2. MUTUAL FUND

| <u>Name</u>              | <u>Value</u> |
|--------------------------|--------------|
| Twentieth Century Growth | \$17,000.00  |
| TOTAL                    | \$17,000.00  |

D. GRAND TOTAL

A1 + A2 + A3 + B1 + B2 + C1 + C2 = \$317,410.00

## Solomon Oliver Jr. and Family

## U.S. Government Securities - Schedule 1

A. Solomon Michael Oliver - son

Series E Bonds                      approximate value \$4,000.00

B. Jonathan Douglass Oliver - son

Series E Bonds                      approximate value \$4,800.00

A + B TOTAL =        \$8,800.00



**NOMINATIONS OF THEODORE McKEE, TO BE  
U.S. CIRCUIT JUDGE; BILLY MICHAEL  
BURRAGE, VANESSA GILMORE, TERRY C.  
KERN, GLADYS KESSLER, AND EMMET SUL-  
LIVAN, TO BE U.S. DISTRICT JUDGES**

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**THURSDAY, MAY 12, 1994**

U.S. SENATE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The committee met, pursuant to notice, at 10:32 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Howell Heflin presiding.

Also present: Senator Specter.

**OPENING STATEMENT OF SENATOR HEFLIN**

Senator HEFLIN. The hearing will come to order.

If all the Senators and Congressmen are here to introduce our nominees, if they will be seated at the table, we will let them do the introductions and then excuse them so they can go about other business.

Senator Boren, I believe you are the senior one right now, you and Senator Nickles, so if you would go ahead.

**STATEMENT OF HON. DAVID L. BOREN, A U.S. SENATOR FROM  
THE STATE OF OKLAHOMA**

Senator BOREN. Thank you very much, Mr. Chairman.

I am pleased that you and I share the same seniority. It is a privilege to appear before the committee today on behalf of two extraordinary and outstanding nominees from the State of Oklahoma, and let me introduce them in alphabetical order to you. They will be coming to present testimony and to answer your questions a little later on.

The first is Michael Burrage. I might ask judge-designate Burrage to stand, if he would, so you will be able to know him. He has been nominated for the U.S. District Court for the Northern, Eastern, and Western Districts in Oklahoma. We refer to this as the roving position in the State, because this judge serves all three districts.

He was born in Durant, OK. He now lives in Antlers, OK, and he is married to Carolyn Booker Burrage of Antlers. He is a long-time law partner of Mr. Joe Stamper of Antlers, who I think is one of the senior members to have ever served in terms of longevity service in the House of Delegates of the American Bar Association.

Mr. Chairman, you may well have encountered him in your earlier life.

Mr. Burrage is a member by blood of the Choctaw Tribe of Oklahoma. He served as general counsel to the principal Chief of the Choctaw Nation in the 1970's. And it is my belief that, upon his confirmation, that he will become the first Native American sitting as a district judge in our country.

He is a graduate of Southeastern Oklahoma State University with a degree in business administration. He went on to the University of Oklahoma Law School, where he received his juris doctorate degree, and had an outstanding record as one of the finest students to ever come through the law school, graduating Order of the Coif, and was editor of the Oklahoma Law Review.

Since he graduated from law school in 1974, he has worked, as I mentioned, with the law firm of Stamper, Otis & Burrage in Antlers, OK, and is now a partner of the firm which is currently known as Stamper & Burrage.

His career has been concentrated in trial and appellate practice, and he has handled both civil and criminal cases in the State and Federal courts. He has quite a reputation as one of the finest courtroom lawyers in our State and also one of the finest brief writers at the same time. So it is a career that is marked by scholarship and courtroom ability.

He has been president of the Oklahoma Bar Association and comes with a very high recommendation of his colleagues in that organization who elected him as president. He served also as a trustee of the Oklahoma Bar Foundation. He was appointed by the Oklahoma State Supreme Court to serve as a member of both the Oklahoma Supreme Court Committee for Uniform Civil Jury Instructions and the standing committee to monitor and revise these instructions.

He has been chairman of the Uniform Rules Committee for the U.S. District Court of the Eastern District of Oklahoma, and he is also a member of the American College of Trial Lawyers and a fellow of the American Bar Foundation, and has himself served as a member of the House of Delegates.

I think you can see, Mr. Chairman, that this is a person who has extraordinary respect within the legal profession in Oklahoma, chosen by his peers again and again to provide leadership to the profession.

It has been my privilege to know him for many years, and I can tell you and members of the committee that, in my opinion, he would become, upon the initiation of his service, one of the most outstanding intellectually keen members of the bench, and also one in whose character we can have total and complete confidence. He is a person of integrity and fairness.

The second nominee that I am privileged to present this morning, and I would ask him to stand, is Terry Curtis Kern. Mr. Kern has been nominated by the President to be a U.S. district judge in the U.S. District Court of the Northern District of Oklahoma, which sits in Tulsa, OK.

He was born in western Oklahoma, in Clinton, grew up in Ponca City, which is a community known to my colleague from Oklahoma, Senator Nickles. He now lives in Ardmore, OK, where he has lived

a number of years. He is married to Mary Charlene Kern, and they have a wonderful and talented family, as does Judge Burrage.

He is a graduate of Oklahoma State University. But in spite of the fact that I am now president-designate of another university in the State, I will not hold that against him. He managed to get a very fine education there, with a B.S. degree. He went on to the University of Oklahoma School of Law, where he received his juris doctorate. He had a legal research and a teaching assistance scholarship during his time at the University of Oklahoma, which indicates the high regard in which he was held by the faculty, and he was president of Phi Delta Phi International Legal Fraternity during that period of time.

He currently serves as senior partner of Kern, Mordy & Sperry, a very fine law firm in Ardmore, OK, and he has practiced in Ardmore in southern Oklahoma since 1970. His practice has emphasized virtually every area, particularly litigation, products liability, personal injury. He is increasingly active in the health care area, serving as general counsel to the Memorial Hospital of Southern Oklahoma.

He was one of the first attorneys in southern Oklahoma to use computer-generated video reenactment to demonstrate certain aspects of cases. From 1969 to 1970, he had experience here, serving as general attorney in the Bureau of Deceptive Trade Practices, Division of Compliance of the Federal Trade Commission.

He is active with the Oklahoma Bar Foundation, has been a trustee of the Oklahoma Bar Foundation for a number of years, and has served as president of the Oklahoma Bar Foundation. He has also been very active, of course, in the Oklahoma Bar Association, Southern Oklahoma Legal Institute, and many other professional organizations, and also renders great service to his community. He has been a member of the pro bono panel of Legal Aid of Western Oklahoma, and has also rendered great service there.

He, again, a person that I have known very, very well. I know him both in terms of his professional reputation, which is extraordinary, but I know him also individually as a fine, reliable and very capable human being.

I might mention to the chairman that both of these judges also come highly recommended by a former Oklahoma trial judge known to you, who is with them here this morning, Molly Shi Boren, who served as a colleague with them in the legal profession before the time that she herself left the bench, and she also joins me in knowing that her opinion might have greater weight with the chairman of the committee than mine. I cite her to you, and her enthusiastic recommendation, as well.

But it is a real privilege for me to be able to be here today and present these two nominees of the President to you for your consideration and the consideration of the committee for confirmation.

Senator HEFLIN. Thank you, sir.

Senator Nickles.

#### **STATEMENT OF HON. DON NICKLES, A U.S. SENATOR FROM THE STATE OF OKLAHOMA**

Senator NICKLES. Judge Heflin, I will be very brief. I think my colleague has said most everything that needs to be said. I would

like to echo that strong support. We have bipartisan support for both nominations.

I have had the pleasure of knowing Terry Kern for a long time. As Dave mentioned, he had the wisdom of growing up in Ponca City, OK, and so I have known Terry for a long, long time and I think he is an outstanding nomination and will do a super job. He has a great reputation. He has been very active in the Ardmore community.

Michael Burrage, as well, is a member of a very distinguished law firm in southeastern Oklahoma, has an excellent reputation within the legal community, also within the legal profession, but also in southeastern Oklahoma.

I compliment Senator Boren and his nomination committee for putting forth two outstanding nominees who I think will serve Oklahoma and the country quite well on the Federal bench. I compliment them and congratulate both nominees.

Senator HEFLIN. Senator Wofford, do you have someone?

#### **STATEMENT OF HON. HARRIS WOFFORD, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA**

Senator WOFFORD. Senator Heflin, thank you very much.

I am delighted to come before the committee this morning to introduce Theodore A. McKee, who has been nominated by the President for the Third Circuit U.S. Court of Appeals.

Judge McKee, if you would stand and be counted. In due course, you will not stand and deliver, you will sit and deliver. You are a person who has stood and been counted on many fronts of service in our community.

Judge McKee is accompanied today by his wife Ana, his daughters Emilia and Marisol, his brother Clarence and his mother Etta. I wonder if they would be willing to stand.

There is an extended family. I gather he learned his first lessons in justice in that very fine family.

Judge McKee earned his bachelor's degree from the State University of New York at Cortland. Following graduation, he became director of minority recruitment and admissions for the State University of New York at Binghamton, and graduated magna cum laude in 1975 from Syracuse University Law School, and was awarded the Order of the Coif.

As a young attorney, he was a litigator at the Philadelphia law firm of Wolf, Block, Schorr & Solis-Cohen. Following his stint in private practice, he served 8 years as a government prosecutor, first as an assistant U.S. attorney for the Eastern District of Pennsylvania, where he worked in the General Crimes Unit, the Narcotics and Firearms Unit, and Political Corruption Unit. He then became deputy solicitor for Philadelphia's Law Department.

In 1983, Judge McKee was elected to the Court of Common Pleas for the First Judicial District of Pennsylvania, where he has served for the past 11 years.

Judge McKee's accomplishments on the bench were recognized in 1986, when he was appointed by the chief justice of the Pennsylvania Supreme Court to the Commonwealth's Commission on Sentencing, where he currently serves as acting chair. In addition to



his outstanding legal career, Judge McKee has committed himself to a life of service and active-duty citizenship.

He is a long-time member of the Big Brothers Program, has served on a number of civic boards, including Crisis Intervention Network, Crime Prevention Association, New Directions for Women, and Concerned Black Men. He has earned the respect not only of members of the bench and bar in southeastern Pennsylvania, but of many people throughout our whole community.

I am confident that, once confirmed, Judge McKee will serve with distinction on the third circuit, which has been graced with some of the finest judges in our Nation. It is a tradition built on the shoulders of distinguished jurists like William H. Hastie, who in 1949 became the first African-American in our history to sit on a Federal court of appeals. Judge McKee will carry on that high tradition.

I thank you, Mr. Chairman and Senator Biden, for the expeditious hearing, because the sooner Judge McKee is able to serve on the third circuit bench, the better for our country and for justice.

Senator HEFLIN. Senator Specter, who is a member of the committee, just came in and we were talking about Judge McKee.

Would you have some remarks?

**STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA**

Senator SPECTER. Thank you, Mr. Chairman.

I appreciate being recognized to join with my colleague Senator Wofford in presenting Judge McKee to this committee. I hope it is not a conflict of interest to present him to the committee, to recommend him to the committee, to recommend him to the Senate and then to vote for his confirmation.

Senator HEFLIN. What are you going to do, resign from the committee? [Laughter.]

Senator SPECTER. That might not help the committee as much as it would help the Senate if I resigned from the Senate, in which case I might become a competitor for the third circuit.

I will not go through Judge McKee's illustrious résumé, because Senator Wofford has already done an excellent job in doing that. I have had the opportunity to sit and talk with Judge McKee at some length about his prospective appointment, and I am convinced he will be an outstanding addition to a very distinguished court, the Court of Appeals for the Third Circuit.

Judge McKee has a distinguished record. He has been a common pleas judge in Philadelphia for 10 years, and that is tough duty. It is a large, tough city with a very heavy criminal backlog. It had 30,000 cases a year on the criminal docket when I was D.A. there, including 500 homicides, and also a very extensive civil list. When you sit in that court for 10 years, you gain a lot of experience and a lot of know-how.

Before that, he was a prosecuting attorney, which I think is good experience, and he worked for a very distinguished law firm, Wolf, Block, Schorr & Solis-Cohen. I once interviewed for that firm and was offered a summer job and was told that I would be permitted to sit and twiddle my thumbs and look at the ceiling. I did not take the job, but I know it is a strong law firm.

He comes to a really outstanding court, the third circuit, and I think he will be a very fine addition there. I am pleased to join Senator Wofford in recommending him to the committee. The only recommendation that I might have which would take precedence over this one, Mr. Chairman, would be that perhaps if President Clinton cannot make up his mind on the Supreme Court, he has a good prospect here in Judge Ted McKee.

Thank you, Mr. Chairman.

Senator HEFLIN. Thank you.

Delegate Eleanor Holmes Norton.

**STATEMENT OF HON. ELEANOR HOLMES NORTON, A  
DELEGATE IN CONGRESS FROM THE DISTRICT OF COLUMBIA**

Delegate NORTON. Thank you, Mr. Chairman.

I have to offer to you today two nominees who are outstanding for what they have accomplished and for what they represent in the jurisdiction they will serve, the District of Columbia.

Let me say a word, if I may, Mr. Chairman, as to the latter point first. These are the first nominees to the U.S. District Court for the District of Columbia to be recommended by the residents of the District of Columbia.

President Clinton, for the first time in our history, has accorded to the District of Columbia, this Capital City, the privileges and the courtesies long granted to Senators in the selection of district court judges, the U.S. attorney and the U.S. marshal.

These two nominees are among a group recommended to me by my 17-member judicial nominating commission. I believe you will find that the extraordinary quality of today's nominees is a testament to the dedicated and skillful work and superior judgment of my commission, and that you will find that these nominees are a vindication of President Clinton's view that the rights accorded to other Americans cannot in principle be denied to the residents of the District of Columbia.

The first judge, Gladys Kessler, I am going to ask Judge Kessler to stand, and if her husband Art Mackwell is here, perhaps he would stand, as well.

Judge Kessler is one of the most distinguished, experienced and one of the most respected judges in our local court system. She has served for 17 years on the District Superior Court. She has been a leader on that court, and is nationally recognized for her leadership among her peers.

Among her extensive national service, for example, has been the presidency of the National Association of Women Judges. She served on the board of the National Center for State Courts. She has had leadership roles in the American Bar Association.

Here in the District, however, she has been an architect of court reform itself. On our superior court, she led the much-acclaimed multi-door Disputes Resolution Program and the Voluntary Arbitration Program that encourages techniques that settle and mediate disputes, something our courts need to do much more of, Mr. Chairman. These techniques and her leadership have greatly added to the efficiency of our local courts. She has been a leader of alternative disputes resolution of family law, including being the presid-

ing judge of the family division of our superior court, and she is an expert on bioethics.

She is recognized for her judicial contributions and her civic contributions to the city. Among the many awards, one by the Trial Lawyers Association called the Judicial Excellence Award. She is a graduate of Harvard Law School.

I am just as happy to present to you, as well, Associate Judge for the District of Columbia Court of Appeals, Emmet Sullivan. I am going to ask Judge Sullivan if he would stand and if his wife Nan, who is here with him, would stand, his son Eric who is here, and his father who is also here, if they would stand.

Mr. Chairman, I take special pride in this very successful 100 percent hometown product, as a native Washingtonian myself, because Judge Sullivan was born and educated here in the District of Columbia, from kindergarten all the way through law school, a McKinley High School graduate, Howard and Howard Law School, a partner in an old and, indeed, the oldest African-American law firm in this country. And surely some of its most distinguished law firm partners before him have included such stars of the judiciary as the late Chief Judge of the U.S. Court of Appeals for the Third Circuit, William Hastie, and former Chief Judge of the U.S. District Court for the District of Columbia, William Bryant.

The rapid rise of Judge Sullivan in our judiciary makes its own statement about his reputation and his ability. He was appointed to our trial court, our superior court in 1984, and he has been a member of our highest court since February 1992. He served as a presiding judge of the probate and tax divisions. He has taught as an adjunct professor at the Howard University School of Law, and he has been generous in his many contributions to civic activities in this city.

These two nominees, Mr. Chairman, are nominees any Senator or a Member of Congress would be proud to sponsor before this body. I am pleased to strongly recommend to you Judge Gladys Kessler and Judge Emmet Sullivan.

Thank you.

Senator HEFLIN. Thank you.

I believe we have Texas day. We have Senator Brooks and Congressman Andrews, if they would come forward and give us a Texas flavor, and Senator Kay Bailey Hutchison.

**STATEMENT OF HON. KAY BAILEY HUTCHISON, A U.S.  
SENATOR FROM THE STATE OF TEXAS**

Senator HUTCHISON. Thank you, Senator Heflin.

Mr. Chairman, I want to say I am very pleased to be here with two distinguished Congressmen from my State in support of Vanessa Gilmore before your committee for the Federal judgeship in the District Court for the Southern District of Texas.

Senator Gramm and I have a Federal judicial evaluation committee of 10 distinguished lawyers in Texas that are very bipartisan, and they interviewed Ms. Gilmore and looked at her record and recommended her to us.

She graduated from Hampton University in Virginia and the University of Houston School of Law. I have seen her as a civic leader in Houston and in Texas. She has been very active in com-

munity affairs. She served as chairman of our Texas Department of Commerce Board. She has been president of the Greater Houston YWCA, and chairperson of Texans for NAFTA.

She has received numerous awards in the community. I support her nomination and I believe she should be confirmed by the Senate. I want to congratulate Vanessa and her family who are here today. This is a great honor and a great one for Texas, and I am very pleased to be here in support of Ms. Gilmore.

Thank you.

Senator HEFLIN. Chairman Brooks, we are delighted to see you here with the committee.

#### STATEMENT OF HON. JACK BROOKS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Representative BROOKS. Mr. Chairman, I am honored to be here to introduce to my colleagues in the Senate. I think the Senate is going back to a markup.

Senator HUTCHISON. I am sorry, we are in the Armed Services Committee and I really do apologize.

Representative BROOKS. You are interested in the defense of this country, and we appreciate your efforts.

Senator HUTCHISON. Thank you.

Representative BROOKS. I want to introduce to my colleagues in the Senate a fine Texan and nominee for the U.S. District Court for the Southern District of Texas, Ms. Vanessa Gilmore.

She is an attorney practicing in Houston, specialized in commercial litigation, in 1991 was appointed by Gov. Ann Richards to the Texas Department of Commerce's policy board, and served as the board's chairperson—that used to be chairman—chairperson. The newest way is to call them chairs. Now that is a funny one, everyone is a chair. I guess you have got four legs.

Senator HEFLIN. That is not as bad as a mailman. Do you know what a mailman is now?

Representative BROOKS. What?

Senator HEFLIN. A person-person.

Representative BROOKS. You are bad. [Laughter.]

But she has got a full plate of civic and community activities, including positions on St. Joseph's Hospital Advisory Board and the Neighborhood Recovery Community Development Cooperation Board.

In addition to her community services and activities, she is a member of several professional organizations and associations, and I believe that you will find that she is capable and qualified to fill the position of U.S. District Judge for the Southern District of Texas.

She is accompanied by her daddy, Clinton Gilmore, from Washington, DC, and her mother Laura from Atlanta, and her brother David, who lived in Washington, DC. Where is David? David got on the front row now. [Laughter.]

I thank you for your consideration of her nomination, and I appreciate the opportunity to be here. If I may, if you have any questions I will answer them, but if you do not, I am going to go back. We are having a hearing on aviation product liability. They want to say that you cannot sue those airplanes, you have just got to sue

the people. It is kind of interesting. You passed something like that over here, you know.

Senator HEFLIN. We failed to protect the public.

Representative BROOKS. Well, there is some problem about the public and we are going to try and do that.

I want to thank you very much.

Senator HEFLIN. Let me ask one question.

Representative BROOKS. Yes, sir.

Senator HEFLIN. Is she a Democrat?

Representative BROOKS. I believe that she is. [Laughter.]

I believe that she is, yes, sir. I have confidence that she is.

Senator HEFLIN. Congressman, is the Pope Catholic? [Laughter.]  
Congressman Andrews.

#### STATEMENT OF HON. MICHAEL A. ANDREWS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Representative ANDREWS. Thank you very much, Mr. Chairman.

I am Michael Andrews, and I represent the 25th Congressional District in Eastern Texas.

I am here first to attest that Vanessa Diane Gilmore is a Democrat. She is one of my constituents.

I am really honored to be here to participate in recommending her nomination to be forwarded to the full Senate for confirmation.

Vanessa is an outstanding leader in Houston. She has led an exemplary life, and her reputation is flawless. She has been a star, as a student, as a specialist in commercial litigation. She graduated from the University of Houston Law School, and Hampton University was her undergraduate work.

She has been a part of the younger leadership in Texas for over a decade, and during that time she has distinguished herself not just in the legal field, which she has done, but in her participation in civic and community and professional organizations from St. Joseph's Children's Hospital to the Development Board of Texas Southern University, to neighborhood community redevelopment boards, and, most importantly, probably, she was appointed by Gov. Ann Richards to represent the Texas Department of Commerce. She was the first African-American to be appointed to such a position.

She has done everything anyone could ask to be qualified for this important position, and one that very necessarily needs to be filled in the Southern District of Texas. President Clinton has recognized her achievements, and I think the quality of leadership and the kind of person that she is, when he nominated her this March to serve as a U.S. district judge for the Southern District of Texas.

I am honored to be here to second that nomination.

[The prepared statement of Mr. Andrews follows:]

#### PREPARED STATEMENT OF CONGRESSMAN MICHAEL A. ANDREWS

Mr. Chairman, it is a pleasure to come before the Committee to introduce Ms. Vanessa Diane Gilmore, a constituent of mine, to the Committee and strongly recommend that her nomination be forwarded to the full Senate for confirmation. I thank you for extending me this opportunity.

Vanessa Gilmore is currently a practicing attorney in Houston, Texas, specializing in commercial litigation. A graduate of Hampton University and the University of Houston Law School, Ms. Gilmore has been in my part of Texas for the past thirteen years. During these years, she has distinguished herself among her colleagues in the

legal field. She has participated in a number of civic, community, and professional organizations and currently serves on the St. Joseph's Hospital Advisory Board, the Texas Southern University Foundation Board, the Neighborhood Recovery Community Redevelopment Corporation Board, the Texas Lyceum Association and the University of Houston Law School Alumni Board. She is a past president of the Greater Houston YWCA and currently serves on the YWCA advisory board.

But, Ms. Gilmore is more than just a civic-minded, altruistic lawyer. In 1991, Governor Ann Richards appointed Ms. Gilmore to the Texas Department of Commerce Policy Board, making her the first African-American ever to serve on the board. As chairperson of the Board of Directors for the Texas Department of Commerce from 1992 to 1994, Ms. Gilmore ably represented the Governor on behalf of economic development in my state. And, near to my heart, she served as chairperson of Texans for NAFTA.

Mr. Chairman, President Clinton recognized the extraordinary achievement and quality of leadership that Ms. Gilmore exemplifies when he nominated her this March to serve as United States District Judge for the Southern District of Texas. I have full faith that the Committee will agree with the President, and I look forward to her speedy confirmation by the full Senate.

Again, thank you, Mr. Chairman.

Senator HEFLIN. Thank you, sir.

If all of the nominees, Judge McKee, Mr. Burrage, Ms. Gilmore, Mr. Kern, Judge Kessler, and Judge Sullivan, if you will come forward and raise your right hand, let me give you the oath.

Do each of you solemnly swear that the testimony that you will give at this hearing and before this committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Judge MCKEE. I do.

Mr. BURRAGE. I do.

Ms. GILMORE. I do.

Mr. KERN. I do.

Judge KESSLER. I do.

Judge SULLIVAN. I do.

Senator HEFLIN. Judge McKee, if you will have a seat, we will start with you. We are delighted to see you.

#### **TESTIMONY OF THEODORE MCKEE, OF PENNSYLVANIA, TO BE U.S. CIRCUIT JUDGE FOR THE THIRD CIRCUIT**

Senator HEFLIN. First, I think you have some members of your family, but any friends or anybody else that you or any of the other nominees would like to introduce that we are present, we would be delighted for you to do so.

Judge MCKEE. Senator, I appreciate that.

My immediate family was introduced and stood up. I do have some other family members and friends I would like to introduce to the committee and ask your indulgence in that.

My mother-in-law Francisca Pujols. In addition to her other talents, she made the dresses that both of my daughters are wearing on one day's notice, by the way.

My sister-in-law, from New York City, Ada Torres; and my nieces, her two daughters, Quetzali Torres and Rosana Torres. Another sister-in-law, Rosa Pujols. A friend of the family, Hayford Baido; and another friend of the family, Ms. Terry Comer; and one other friend and former colleague, Mr. Andy Purde, who is counsel on the staff of the U.S. Sentencing Commission, who was kind enough to come over and support me here today.

I would also just add my brother, in addition to his other wonderful achievements and support, is a former Senate staffer, and I wanted to call that to your attention.

QUESTIONING BY SENATOR HEFLIN

Senator HEFLIN. Judge McKee, if you are confirmed as an appellate judge, at some point you may be faced with applying a Supreme Court precedent of which you do not personally agree. Would you consider yourself bound by such a precedent?

Judge MCKEE. I would be absolutely bound by that.

Senator HEFLIN. Of course, you will also be faced with cases involving issues in which the Supreme Court has not ruled. In many of those cases, however, you will have decisions from the third circuit on which to rely. Under what circumstances, if any, do you believe an appellate judge should overturn the precedent within his or her own circuit?

Judge MCKEE. I do not foresee any precedent, any situation that would justify a circuit court judge overturning the prior decision or his or her own circuit.

Senator HEFLIN. You served on the court of common pleas for 10 years, and you also have experience as a deputy city solicitor for the city of Philadelphia and as an assistant U.S. attorney for the Eastern District of Pennsylvania. In what ways do you believe that your experience has prepared you for a position on the third circuit?

Judge MCKEE. Sitting as a State court judge, I have for the past 10 years had to very thoughtfully and carefully think about issues and the people directly affected by those issues. I also have been during my tenure in the court exposed to both civil and criminal litigation. I also prior to that, as you know, was an assistant U.S. attorney, and during the period of time that I was a Federal prosecutor has exposure to some of the issues of the Federal system and the form of the Federal court.

Senator HEFLIN. Since your inception, the Federal sentencing guidelines have been the subject of debate. In fact, one district court judge resigned because, according to press accounts, he could no longer follow Federal sentencing guidelines in criminal cases. The press reported that this Federal judge felt that the mandatory guidelines were too harsh and too rigid.

Your questionnaire indicates you have served on the Pennsylvania Sentencing Commission, and you were appointed by the Chief Justice in 1986, and you currently serve as chairperson of the commission, and you also chair a subcommittee that analyzes the sentencing guidelines and makes recommendations to the full commission for general changes to their substance and form.

However, you also indicated on the questionnaire that you had been reversed by the Superior Court of Pennsylvania for deviating from the sentencing guidelines. For example, in the case of *Commonwealth v. Cleveland Amos*, you sentenced the defendant, who was convicted of knowing or intention of possession of a controlled substance and manufacture and delivery or possession with intent to manufacture or deliver a controlled substance, to incarceration of no less than 11½ months and no more than 23½ months, followed by a period of consecutive probation of 10 years.

The factors that you considered in determining the sentence included a small quantity of the sale, the defendant was 49 years old, was at a point in life where "his current activity is aging out." The defendant supported 8 children, he had never been in an inpatient treatment program, he showed remorse for his involvement with drugs. You wrote that, "It must be remembered that the purpose of the Sentencing Commission is to guide, not compel judges in their sentencing task."

The Pennsylvania Supreme Court reversed the sentence and held that, "while the factors relied on by the trial court may have justified sentencing within the mitigated minimum range, we see nothing which justifies the sentence actually imposed." Based on these experiences, what do you see as the pros and cons of mandatory sentencing?

Judge MCKEE. Senator, let me begin by first of all addressing the specific instances that you have mentioned. I was, as you correctly point out, reversed in those two instances, and I certainly respect that and respect the decision of the superior court.

I would add, however, that Pennsylvania guidelines are very different than the Federal guidelines. The Pennsylvania guidelines are just that, they are recommended sentences and the judges in Pennsylvania have a duty to consider those guidelines along with all of the other circumstances in the case, but they are not presumptive valid sentences, as would be the case in the Federal sentencing guidelines.

In those cases, the superior court, as you mentioned, agreed with the factors that I relied upon and weighed in imposing a sentence less than the guidelines. They simply weighed those factors differently. I would point out that after those two cases were reversed by the superior court, the Pennsylvania Supreme Court, in a case called *Commonwealth v. Sessums* in 1988, implicitly overruled the cases that the superior court had relied upon in reversing my decision, primarily *Commonwealth v. Hutchins*, and adopted the view of the Pennsylvania guidelines which I had set forth in both of those cases, and particularly in the quotation which you just pointed out.

In terms of the policy question that you ask, that is simply a matter of policy, as you quite correctly state, and it would be my duty as a judge, if I am fortunate enough to be confirmed, to follow the laws that I would take an oath to do, and I would so, and it would be up to this body in its wisdom to enact whatever guidelines and sentencing laws it deems appropriate, and up to me as a judge to follow that.

Senator HEFLIN. What do you see as pros and cons relative to it? I mean this issue may come back again before the courts. We may hold some oversight hearings just to review where it is at the Federal level. We have a lot of complaints from judges particularly that extending the guidelines and the mandatory sentences involved therein and the ranges sometimes create a great deal of problems and harshness that perhaps ought to be prevented.

Judge MCKEE. Well, there are pros and cons, and reasonable people can disagree on how they come out on that. In my role as chairperson of the Pennsylvania Sentencing Commission, I serve a different capacity. I serve in a capacity which is quasi-legislative,



and under our enabling legislation, part of my function is to make certain recommendations to the legislature.

However, in my capacity here today, hopefully as being confirmed as a judge, I am a bit uncomfortable responding to that, because it is a policy matter and, again, my only obligation is to follow the law that is passed by this body in its wisdom, and those issues that I might be speculating on now could conceivably come before me in the form of a challenge to the guidelines, no matter what form they might take.

Again, respectfully, Senator, I am a bit uncomfortable answering that policy question in my capacity here today.

Senator HEFLIN. We might call you back.

Judge MCKEE. Senator, if I am fortunate enough to be confirmed, I would be honored to be called back and put on a different hat and respond.

Senator HEFLIN. Thank you, sir. We appreciate your testimony.

Judge MCKEE. Thank you, Senator.

Senator HEFLIN. We will call now Mr. Burrage, if you will come forward.

**TESTIMONY OF BILLY MICHAEL BURRAGE, OF OKLAHOMA, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN, EASTERN, AND WESTERN DISTRICTS OF OKLAHOMA**

Senator HEFLIN. You had quite a fine introduction, but the words of Judge Boren were much more compelling than Senator Boren right now.

Mr. BURRAGE. Thank you, Senator.

Senator HEFLIN. She might have a particular interest, since she has some Native American blood in her, too.

Mr. BURRAGE. Well, she helped me through law school, the only way I got through, and now she is here today to help me.

Senator HEFLIN. Are there members of your family or friends that you would like to introduce?

Mr. BURRAGE. Yes, Senator. I have with me here today my oldest son, Sean, who is a new lawyer, my brother Steve, and my dear friend Jim Rosenthal from Antlers.

Senator HEFLIN. If they would please stand.

Anybody else you want to introduce that is with you.

Mr. BURRAGE. No, sir.

Senator HEFLIN. I know many of your friends would have loved to be here, but the air fare between here and Oklahoma is a little expensive, and we realize that.

Mr. BURRAGE. It certainly is.

**QUESTIONING BY SENATOR HEFLIN**

Senator HEFLIN. What would you do, if faced with a tenth circuit precedent that controls a matter before you, but with which you personally disagreed?

Mr. BURRAGE. My personal views would have nothing to do with it, and I would follow the tenth circuit decision.

Senator HEFLIN. In evaluating candidates for the bench, this committee traditionally has looked not only at nominees' credentials and professional background, but also their temperament. Good temperament and demeanor are characteristics which I think

everyone should agree are some of the most important qualities needed in judges. Given your background and prior experience, please speak about the role and significance of judicial temperament.

Mr. BURRAGE. Well, the litigants that come before a court and the lawyers that come before a court should be treated with respect. They have serious disputes, they have serious problems, and a judge should be very reserved, I believe, and nice to people. There is no reason not to be nice to the people.

Senator HEFLIN. Well, we notice that as Federal judges grow in their office, they more and more think that they are anointed, rather than appointed, and they sometimes forget their judicial temperament. Hopefully, that is something that all people can endeavor at all times to follow and at least show courtesy to lawyers and to litigants that come before them.

You indicated on your questionnaire that you and other members of your firm have represented many women, most of whom had children in divorce actions, where there was physical abuse and/or an unwillingness to support the family. As you know, the members of the Judiciary Committee are very concerned with the ever-growing problem of violence against women.

In fact, I was proud to join Senators Biden and Hatch in introducing the 1993 Violence Against Women Act earlier this year. One section of the bill addresses the problem of gender bias in the courts, providing training for State and Federal judges on a number of issues, including sexual assault, domestic violence, and racial and gender stereotyping. Based on your experience, do you think such training is necessary, and how might it affect judicial decisions?

Mr. BURRAGE. Senator, it is a serious problem. Even in the small town that I am from, you see it on a daily basis, and possibly training in these areas would be very helpful, because the problems that are presented to these people are enormous.

Senator HEFLIN. Since graduating from law school, you have had a variety of legal experience as a partner in a law firm, as general counsel for David Gardner, the principal Chief of the Choctaw Nation and the Choctaw Nation of Oklahoma, as a judge on a temporary court of appeals to help alleviate a heavy docket, and since 1982 as a director of the First National Bank of Antlers, OK. How has this experience prepared you to be a Federal district court judge?

Mr. BURRAGE. I believe the wider or the more variety of experience that a person has, it is helpful. I think serving on the courts and writing the opinions has helped me. When you practice law in a small town, you learn a lot about people, a lot of street sense.

Senator HEFLIN. Thank you, sir. We appreciate your answers to questions.

Mr. BURRAGE. Thank you, Senator.

Senator HEFLIN. We will now ask Ms. Gilmore if she will come forward.

**TESTIMONY OF VANESSA GILMORE, OF TEXAS, TO BE U.S.  
DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS**

Senator HEFLIN. Ms. Gilmore, are there members of your family that you would like to introduce, or friends that are here.

Ms. GILMORE. Yes, I would, Senator. Thank you for the opportunity.

As Congressman Brooks already mentioned, my mother, Laura Gilmore is here; and my father, Clifton Gilmore; and my brother, Dave Gilmore; sitting with me on the front row. Some of my other friends are also here that I would like to introduce to the committee, with your permission, Senator.

Lisa Peoples is here from Washington, Sylvia Cirus has come down today from New Jersey; Deidra Davis is here, an attorney with the EEOC—

Senator HEFLIN. If the people would stand up.

Ms. GILMORE. Ms. Davis in the back. Also, Myra Shiplett, a friend of my mother, who is also with the U.S. courts and has promised me any help that I might need if I am fortunate enough to be confirmed. Mr. John Davidson and Mr. Al Tomlinson are also here to support me this morning, Senator.

**QUESTIONING BY SENATOR HEFLIN**

Senator HEFLIN. Thank you. We are delighted to see them.

You have indicated on your questionnaire that throughout your career you have participated in many pro bono activities. For example, you are an active member of the Neighborhood Recovery Community Development Corp. board of directors. You also have won many awards for your public service, including the YWCA award, the Austin Metropolitan Business Resource Center Award, and the Houston Business and Professional Men's Club Award.

In your view, how important is it for an attorney to perform pro bono work in his or her community?

Ms. GILMORE. Senator, I think that it is critical for attorneys to be involved in pro bono matters, from a legal point of view, as well as from a civic point of view. It brings me tremendous satisfaction, and I think that it can be a very big service to the community and something that I strongly encourage among my peers and other attorneys in the Houston area.

Senator HEFLIN. Your legal experience has focused on private practice, including civil litigation, on personal injury, elections, business, and commercial matters. Most of your practice has been in State court. However, if confirmed, you will be assuming the position of an impartial arbiter in the Federal district court. You will face a docket that includes a heavy criminal caseload, as well as constitutional, employment, and civil rights cases.

What steps do you plan to take to familiarize yourself with those areas of law in which you may lack experience?

Ms. GILMORE. Senator, the Federal Judicial Center has already been very helpful to me in suggesting a manner in which I might begin a mentorship program in the U.S. District Court for the Southern District of Texas, in Houston.

I have availed myself of those opportunities by soliciting the help of sitting judges and asking them for their assistance in helping me become familiar with areas that I have not previously practiced in.

Some of those judges have already begun to assist me in many ways, alerting me to proceedings that are going on that I might have an interest in viewing, and they have indicated a willingness to assist me in any way that I might need in terms of getting up to speed in the areas that I have not previously practiced in before.

Senator HEFLIN. In recent years, much has been said about Federal courts' increased caseload generally and the resulting problem of docket backlog. This backlog has had an adverse effect on litigants before the courts who have been forced to suffer, at least some, if not significant delay, in the resolution of their claims. You state in your questionnaire that the trial docket in Houston, Harris County, TX, is extraordinarily crowded and it is not unusual for it to take up to 3 to 4 years to get a trial on a simple matter.

If confirmed, what steps will you take to ensure that your docket progresses at a pace that is reasonable and fair?

Ms. GILMORE. One of the things that I have already looked into, Mr. Chairman, is the possibility of adding some additional computer support to the courts that would make me a lot more efficient. I have already spoken with the clerk's office in Houston and have requested the possibility of adding different computer-aided support that I think could really add to the efficiency.

The court has been very amenable to it, has been very helpful in helping me determine what steps we might take. I think that is just one method that we can use to make ourselves more efficient, something that I have utilized myself in my private practice and has increased my efficiency tremendously, and I hope to be able to take that experience, some of the experience that I have had there with me, if I am fortunate enough to be confirmed and go to the court.

There are many other things, an increased use of the Federal magistrates in the Houston area, as well as an increased use of alternative disputes resolution, all of which I hope to avail myself of if I am confirmed.

Senator HEFLIN. What would you do when faced with a fifth circuit precedent which controls a matter before you, but with which you personally disagree?

Ms. GILMORE. Senator, I feel that I am bound to follow the precedent of my circuit court.

Senator HEFLIN. The Judicial Conference has completed 2 years of a 3-year experiment allowing the use of cameras in Federal courts during civil trials. A restriction on that experiment is that the media, when it is interested in televising a particular trial must notify the presiding judge in advance, and the judge may refuse a request at his or her discretion. Do you think that this experiment will contribute significantly to the public's understanding of how our Federal judicial system works? And what are your thoughts on whether televising a trial may have a negative effect on a defendant's right to a fair trial?

Ms. GILMORE. I think that the ability of the press to cover court proceedings can contribute to the understanding of the community in terms of the way the court system works. I think that there is a lot that is unknown and just not understood in terms of how the court system works, and I think that could be very helpful in terms

of increasing the confidence of the community in the judiciary and in the court system.

In terms of weighing and balancing the relative dangers of a person receiving a fair trial because of media coverage, I think that is something that the court needs to weigh and balance in every individual situation. I think that there is a need and a desire to have open courts and to allow the press coverage, and I think that you have to weigh and balance that against the potential prejudicial effects on the defendant, particularly in cases where the jury might be influenced to make a decision that they might not have made because of the scrutiny or coverage of the press. I think it is a weighing and balancing act, but I am certainly in favor of a free press and in favor of any opportunity to help the community understand more about the judicial system.

Senator HEFLIN. Thank you. I appreciate your testimony.

Ms. GILMORE. Thank you, Senator.

Senator HEFLIN. Mr. Kern, if you could come forward.

**TESTIMONY OF TERRY C. KERN, OF OKLAHOMA, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OKLAHOMA**

Senator HEFLIN. Are members of your family or friends here with you that you would like to introduce?

Mr. KERN. Thank you, Mr. Chairman.

None of the members of my family were able to make the trip. I have a daughter, Lauren, at Rice, who is flying home probably as we speak; and I have a daughter, Susanne, who had a lot of activities; and a son, Justin, who is likewise involved in a lot of school activities at this time.

I would be remiss if I did not convey to you the regrets of my wife, Charlene, who was a Hill staffer for a number of years after college. She worked on both Senator Monroney's staff and Senator Harris' staff, both from Oklahoma. I know that she would love to have had the opportunity to return to the Hill for this occasion.

I have, however, adopted Molly Sheid Boren as my family for this hearing. She has been a great friend of my children and my wife and myself for a number of years, and she has agreed to stand in as my family, but she did indicate it would only be on a temporary basis, that she has other obligations.

**QUESTIONING BY SENATOR HEFLIN**

Senator HEFLIN. Well, we couldn't have a better one. Thank you.

I understand you were appointed by the Supreme Court of Oklahoma in September 1991 to serve as one of three judges on a temporary panel of the court of appeals. Your particular panel was deciding three cases for decision. How were you selected to serve on the temporary panel, and did this experience play any part in your decision to seek a Federal judgeship? And, third, what insights on being a judge did you gain from this experience?

Mr. KERN. Senator, that appointment was made by the Chief Justice of the Oklahoma Supreme Court, who I understand you know, Justice Opala, and that was basically a situation where the backlog got so great that they went around to members of the profession who had achieved some reputation and had the qualifica-

tions of a district judge and asked them to serve in that capacity, and I was happy to do so.

The experience I think was very enlightening, in removing me from the normal job of a trial lawyer, of being an advocate for a client and being able to read the briefs and review the work that both sides had done on the case, and to make an impartial decision. Yes, I think that did. I had a longstanding interest in the Federal judiciary, but I think that certainly helped with that interest and helped me to understand some of the problems that you face when you are the impartial judge.

Senator HEFLIN. Well, you are certainly right about Judge Opala. I have known him a long time, and he is a remarkable individual and does a great job as a member of that Supreme Court, and also nationwide is recognized for his abilities in trying to bring about a much more effective administration of justice.

For much of your career, you have practiced in the area of personal injury defense, product liability, business litigation, and corporate law. How do you plan on making the transition from advocate to impartial arbiter?

Mr. KERN. Senator, I think it is a matter of hard work and study and using materials that are available to make that transition. During my career, sometimes I view it as a curse, but often it was a blessing. I had the ability to see both sides, both the one that I was presenting and the one that the other side was presenting. I was able to settle a lot of cases that way, instead of going to trial, and I think I have some natural ability in that regard to view both sides and to make the correct decision. The rest of that I think is a matter of training, study and the hard work that comes with taking a position on the Federal bench.

Senator HEFLIN. Of course, you will be faced with a docket that has a heavy criminal caseload, as well as constitutional, employment, and civil rights cases. How do you intend to bring yourself up to speed in the areas of law in which you may lack familiarity or experience?

Mr. KERN. Mr. Chairman, in my early years of practice I did some criminal work and I enjoyed it very much. In fact, I am sorry that over the years that I strayed away from that area.

I believe that the Federal Judicial Center is very helpful. In fact, I have already received a rather large box of reading materials in these areas. I have already started, in hopes of confirmation, some study in this area to bring myself up to speed. As Vanessa Gilmore indicated, I have also checked into the mentorship program, and the judges in the Northern District of Oklahoma have indicated every willingness to help me get up to speed in the areas that I have not practiced in lately.

Senator HEFLIN. In August 1990, the Judiciary Committee passed a resolution where it expressed the sense of the committee that it was inappropriate for judicial nominees to be members of clubs where business was conducted at those clubs invidiously discriminated on the basis of race, sex, or religion in their membership policies. In your committee questionnaire, you stated you belong to the Dornick Hills Golf and Country Club. It is my understanding that the club currently has no African-American members. Does the country club invidiously discriminate on the basis of

race, sex, or religion? Would you explain what the situation is pertaining to that club?

Mr. KERN. Mr. Chairman, in my view that club does not discriminate in any way. There are other minority members of that club. There are Asian-Americans, there are Hispanics, there are Native Americans that belong to that club. There is a long waiting list. It is not a very exclusive club.

I have taken steps throughout the time that I have been a member of that club to make sure that there were no discriminatory policies. In the early 1970's, I was asked, as a private attorney, to review the bylaws of the club with an eye toward making some changes with regard to matters that are not of any particular consequence.

But in doing so, I found a provision which was frankly discriminatory, and I immediately went to the chairman or the president of the board and was able to get his permission to rewrite those provisions, and they were placed on the ballot for the very next annual meeting. Quite frankly, the members of that club apparently had not read their bylaws in a very long time and were not even aware that provision was there. But I was successful in getting that removed.

I have made attempts, as I think my questionnaire indicates, to recruit African-Americans, one individual on more than one occasion. I have been on a committee that attempted to recruit another. We have been unsuccessful, but we continue to try. So I think I have a very good record in that regard, Mr. Chairman.

Senator HEFLIN. Thank you, Mr. Kern.

Mr. KERN. Thank you, Mr. Chairman.

Senator HEFLIN. We will now call Judge Kessler.

#### TESTIMONY OF GLADYS KESSLER, OF THE DISTRICT OF COLUMBIA, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA

Senator HEFLIN. Judge Kessler, are there members of your family or friends here that you would like to introduce?

Judge KESSLER. Good morning, Senator. Thank you very much for chairing these hearings.

Yes, I would like to mention my husband again, of course, Arthur Mackwell. I would like to introduce my very closest and oldest friend, Prof. Florence Roisman, who is teaching at Georgetown Law School now, and we have known each other since high school.

Senator HEFLIN. Please stand up. Thank you.

Judge KESSLER. I am very pleased that my Chief Judge, Chief Judge Eugene Hamilton, is here today. This is a particularly busy time at our court, because we are doing court-wide training today and tomorrow and Saturday. And our court executive Ulysses Hammond is also present. A very close friend of mine named Lois Schiffer is present. Two people who are indispensable to my life are here, and they are my secretary, Ms. Shirley Clayborne, and my current law clerk, Ms. Shurnae Prince.

Those are the people I would like to introduce.

Senator HEFLIN. Thank you.

We have heard from people in my State. Former Chief Justice Tolbert speaks very highly of you and seems to know you quite well.

Judge KESSLER. We worked together on the Center for State Courts. Of course, as you know, he was the chair of the State Justice Institute for a number of years, and I worked on a lot of projects that were funded by them.

#### QUESTIONING BY SENATOR HEFLIN

Senator HEFLIN. Congress is contemplating legislation aimed at reducing pervasive overcrowding in Federal courts, by allowing Federal judges to assign some of their smaller cases to court-appointed arbitrators. Many judges and lawyers have expressed concern about this approach, saying that it infringes upon the right of citizens for a jury trial. Given your experience as an active litigator, especially in light of your background in public interest law, do you have any thoughts on this proposal?

Judge KESSLER. As you know, Senator, at Superior Court we have a very sophisticated program that now involves both voluntary and mandatory arbitration, so we have had experience with both options, as it were.

Under both of those options, we have always allowed litigants, if they were unhappy with the results of the arbitration, to have a de novo right to a trial in front of a regular trial judge. Our arbitration program has been very successful. I think one of the reasons it has been successful is because litigants know that even if they go before an arbitrator, they are never foreclosed from going back to court to getting a full trial.

I think that is extremely important, whether it be the Federal system or the State court system, that litigants understand that they always have a right to a trial and they are not going to have the courthouse door slammed in their faces. At the same time, I think everybody is aware of the incredible backlog in the Federal and the State court system. Arbitration can be used very effectively, it should be encouraged, and we should be training people to be competent and qualified arbitrators.

Senator HEFLIN. In the old mandatory court annexed arbitration program, there is a provision to the effect that if the judgment obtained by a jury trial on a de novo appeal, that the judgment is less than what the plaintiff-appellee received through arbitration, then that they have to pay the cost of arbitration. How do you approach this? That is one of the impediments that some people feel is a restraint on the constitutional guarantee of a right of trial by jury.

Judge KESSLER. Our system works in the following manner, and we have changed it a little bit, and I think that we have improved it. Originally, when it was as a purely voluntary system of arbitration, we required that if you did not improve your position at trial by 10 percent or more, then that party who did not improve their position was responsible for court costs, witness fees and attorneys fees.

When we changed the program and made it a mandatory one, we concluded that the imposition of attorneys fees was too heavy a burden on litigants, and so we changed the program in the following respect. If you do not improve your position by 10 percent or



more, then you are required only to bear the costs of witness fees and court costs, but you are not required to pay counsel fees.

Senator HEFLIN. What about the cost of arbitration? Who pays the cost of arbitration under yours?

Judge KESSLER. Under our system, the court does bear that cost and we pay our arbitrators, I believe it is \$150 an arbitration.

Senator HEFLIN. Since 1977, you have sat on the Superior Court of the District of Columbia. What do you see as the primary differences between sitting on this court and sitting on the bench at the Federal level? And what steps do you plan to take to familiarize yourself with those areas of the law in which you may lack experience?

Judge KESSLER. Obviously, the subject matter is different. There are going to be areas that will be new to me, such as bankruptcy law and antitrust. There will be areas that will be somewhat different, but certainly comfortably familiar, namely, much of the criminal area is very similar in Federal court to the kinds of drug cases, for example, that we are trying in superior court.

Many of the civil cases, the diversity cases will be very similar, although, again, there will be all sorts of administrative law cases that will be very different and very challenging, in my view.

What I have been doing in the past year since we first filed our applications, I have been reading all the appellate opinions out of my Federal circuit, just so that I will have a pretty good idea of what direction the law was moving in in my own circuit, and what the significant differences were between my circuit's view of certain issues, such as fourth amendment questions, and my own court of appeals.

I, too, have received that huge box of materials from the Federal Judicial Center. I am actually due today at a seminar at the University of Pennsylvania on multidistrict complex litigation in the Federal courts. I expect to be doing as much reading as I humanly can in the next couple of months, if I am fortunate enough to be confirmed.

Senator HEFLIN. Several of your publications address issues surrounding the role of women and minorities among the Federal judiciary. In 1983, you wrote an article entitled "Affirmative Action Can Mean the Best Person for the Job," in which you argue that judges must in the future ensure that women, Hispanics, blacks, Asian-Americans, and a whole host of others from nontraditional legal practices are given the opportunity to ascend to the bench. Do you still believe that it is important to have a Federal judiciary that is diverse, and, if so, why?

Judge KESSLER. I certainly still believe it. My reasons are the same. I think that it is vitally important to have a Federal system that uses and encompasses the incredible strength and diversity of the many wonderful lawyers practicing law in this country. I think the six nominees who have been presented to you today are a wonderful example of that philosophy.

Senator HEFLIN. Do you believe that sufficient progress has been made to diversify the Federal judiciary?

Judge KESSLER. I think a lot of progress is being made right now.

Senator HEFLIN. Not enough.

Thank you. We appreciate your testimony.

Judge KESSLER. Thank you, Senator.

Senator HEFLIN. Judge Sullivan, if you will please come forward.

**TESTIMONY OF EMMET SULLIVAN, OF THE DISTRICT OF COLUMBIA, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA**

Senator HEFLIN. Are there members of your family or friends that you would like to introduce?

Judge SULLIVAN. Yes, Senator. My wife and father and my son, Eric, were previously introduced. I would at this time like to also recognize my older son, Emmet A. Sullivan II, who is not able to be present this morning. I would like to recognize my sisters, Patricia Norris and Judy Smiley, and their husbands Jeff and Marchel.

Also present with me today is my colleague the Honorable Annice Wagner, associate judge of the District of Columbia Court of Appeals. Once again, I recognize the Honorable Eugene Hamilton, the chief judge of the superior court; and a friend of longstanding, a lifelong friend of mine and former business associate, who is also a judge on the superior court, Wendell P. Garner, Jr., is present.

My staff is present, Geraldine Kyler, my secretary of longstanding; my law clerks, Cari Dawson and Melody Webb, are present. My sister-in-law, Rosalind Harmond, who is a Hill staffer, is present. I would like to recognize also Ulysses Hammond, the court executive for the District of Columbia courts, and a lifelong friend, Mrs. Marshall Whitley.

Thank you.

**QUESTIONING BY SENATOR HEFLIN**

Senator HEFLIN. Thank you.

Since their inception, the Federal Sentencing Guidelines have been the subject of debate. In fact, one district court judge resigned because, according to press reports, he felt that the mandatory guidelines were too harsh and too rigid. As a Federal judge, what will you do if you are faced with a situation where the sentencing guidelines called for you to impose a sentence that you felt was too harsh?

Judge SULLIVAN. Assuming the constitutionality of the guidelines, I am duty-bound to apply them, regardless of my personal opinions.

Senator HEFLIN. You served as a judge of the District of Columbia Superior Court and as a judge on the District of Columbia Court of Appeals, and in many respects you have performed duties similar to those of a Federal district court judge. Given your background and prior experience, please speak about the role and significance of judicial temperament, and indicate what elements of this temperament you consider the most important.

Judge SULLIVAN. Senator, I have but one rule of thumb. I do treat all litigants who appear before me in the manner in which I would be expected to be treated were I to appear in any court in this country.

Senator HEFLIN. Some people have suggested that settling appropriate cases early would relieve some of the court's backlog. While that may be true, some litigants would prefer their day in court to

even a favorable settlement. As a trial judge, what role, if any, do you intend to play in the settlement process?

Judge SULLIVAN. I think the settlement efforts by a trial judge are very important. All cases cannot be tried by a judge. It is very important to embark upon settlement opportunities, especially early on litigation. It is more fruitful that efforts to settle the case will be successful early on, so I think it is very important that judges explore any and all types of settlement techniques.

Senator HEFLIN. What factors would you consider to determine whether a case was appropriate for settlement or not?

Judge SULLIVAN. Senator, when I was as trial judge, I was the presiding judge of both the tax division and probate division, and both of those divisions had calendars that had hundreds of cases on them. There were too many cases for two judges assigned to those divisions to try. So we had to make a decision early on as to what to do with them, and the decision was to place all of those cases into mandatory settlement at the earliest opportunity.

There was a lot of resistance to that suggestion, because attorneys believe that tax cases and probate cases did not lend themselves well to settlement efforts. But after 6 months of intense settlement efforts and in an effort to reduce the staggering caseloads, everyone was applauding the efforts to put those cases into settlement. So there is no type of case that is not worthy of an attempt at settlement, and we demonstrated that in superior court with the tax and probate cases.

Senator HEFLIN. That is a very excellent answer. I think you are right there. The problem is that sometimes the lawyers or the litigants do not understand their risk.

Judge SULLIVAN. That is correct.

Senator HEFLIN. Therefore, if they had a better understanding and a better evaluation of the case, I think that settlements could be more readily reached in a lot more cases.

Thank you. I appreciate your testimony.

Judge SULLIVAN. Thank you.

Senator HEFLIN. I believe that concludes the hearing on everyone. We would expect the process to move rapidly. None of you seem to have any problems, and so I congratulate you and hope that your confirmation process moves very rapidly and that you will be confirmed in the near future.

Thank you.

The committee is adjourned.

[Whereupon, at 11:46 a.m., the committee was adjourned.]

[Submissions for the record follow:]

## SUBMISSIONS FOR THE RECORD

## I. BIOGRAPHICAL INFORMATION (PUBLIC)

## 1. Full name (include any former names used.)

Theodore Alexander McKee

## 2. Address: List current place of residence and office address(es).

Work: Room 429 City Hall, Philadelphia, Pa. 19107  
Home: 519 Pelham Road, Philadelphia, Pa. 19119

## 3. Date and place of birth.

Rochester, New York, June 5, 1947

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Married for 23 years to (nee) Ana Pujols-McKee, a self-employed physician with offices at:

6000 West Cxford St., Philadelphia, Pa. 19151

and

Presbyterian Medical Center, Medical Office Building, Suite 320, 51 North 39th Street, Philadelphia, Pa. 19104

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

State University of New York  
Cortland, New York  
September, 1965 to May, 1969  
Bachelor of Arts 1969

Syracuse University College of Law  
September, 1972 to May, 1975  
Juris Doctorate 1975

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

January, 1984 to Present - Judge of the Court of Common Pleas for the First Judicial District of Pennsylvania.

January, 1980 to 1991 - Lecturer in Law at Rutgers University College of Law. I taught a Spring semester course in trial advocacy to third-year law students.

March, 1983 to December, 1983 - General Counsel to the Philadelphia Parking Authority.

February, 1980 to March, 1983 - Deputy City Solicitor with Law Department of Philadelphia.

March, 1977 to February, 1980 - Assistant United States Attorney for Eastern District of Pennsylvania.

September, 1975 to March, 1977 - Associate with firm of Wolf, Block, Schorr & Solis-Cohen, Philadelphia, Pa.

1969 to 1972 - Director of Minority Recruitment and Admissions for State University of New York at Binghamton (Harpur College).

1986 to present - General partner - Pujkee Associates. This is a family limited partnership which consists of my wife, myself, and my mother-in-law. The partnership owns a four unit residential building in Philadelphia.

**7. Military Service:** Have you had any military service? if so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.  
No.

**8. Honors and Awards:** List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

I graduated magna cum laude from law school. In addition, I was a member of the Justinian Society which is the law school's honor society, and was awarded Order of the Coif. I also received book awards for receiving the highest grade in each of the following subjects in law school:

1. Contracts
2. Law and Education (outstanding paper)
3. Conflict of Laws (highest grade, no award given)

**9. Bar Associations:** List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

American Bar Association (1975 to 77, 1990 to 1993)

National Bar Association (Judicial Conference) (1992 to present)  
 Barristers' Association of Philadelphia (1975 to present)  
 Pennsylvania Bar Association (1984 to present)  
 Philadelphia Bar Association (1975 to 77; 1984 to present)  
 Temple Inn of Court (1993 to present).

**10. Other Memberships:** List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Other than bar associations, I do not belong to any organizations that are active in lobbying efforts. The other organizations to which I now belong are as follows:

1. Crime Prevention Association (Board of Directors).
2. Diagnostic and Rehabilitation Center of Philadelphia. (Board of Directors).
3. New Directions for Women, Inc. (Board of Directors) (formerly known as Program for Female Offenders of the Delaware Valley).
4. World Affairs Council.
5. Urban League of Philadelphia.

**11. Court Admission:** List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

COURT:

ADMISSION DATE:

- |   |                     |
|---|---------------------|
| 1. U.S. Third Circuit Court of Appeals.                                   | approximately 9/77  |
| 2. United States District Court for the Eastern District of Pennsylvania. | approximately 9/77  |
| 3. Supreme Court of Pennsylvania.   | approximately 11/75 |

**12. Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy

of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

None.

13. Health: What is the present state of your health? List the date of your last physical examination?

My health is excellent. My last full physical examination was in February of 1991, however, my wife (an internist) routinely checks my blood pressure, and cholesterol levels.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

The only judicial office which I have ever held is the one I currently hold. I was elected to the Court of Common Pleas for the First Judicial District of Pennsylvania in November of 1983. My duties on that Court have been as follows:

I was initially assigned to the Felony Waiver Program (January, 1984 to December, 1985) where I presided over bench trials of felonies.

From January, 1986 to December 1987, I was assigned to the Major Felcny Program. This includes all felonies except homicides, and I presided over jury trials as well as waiver trials.

From January, 1988, to September 1992 I was assigned to the Homicide Program where I presided over jury and waiver trials of persons charged with varying degrees of homicide. Approximately 15% of these involved a death qualified jury.

In September 1992 I began serving in the Orphans' Court division where I now preside over matters involving trusts, wills, and the estates and affairs of minors, incompetents, and nonprofit, charitable organizations. By statute, all trials in this division are bench trials with two very limited exceptions. In addition, the Court sits en banc as an appellate court once each month to hear appeals from hearing judges within the division. In this sense, the Court functions as an appellate court, and I have written opinions for the majority, dissenting opinions, and concurring opinions for the Court.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or

procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

(1). The names and citations of these cases are as follows:

1. Commonwealth v. Marcelette Miller, February Term, 1991, Nos. 1690-1697, aff'd 526 Pa. Super. 410, 627 A.2d 741 (1993).

2. Commonwealth v. Robert Madden, June Term, 1985 No. 2563, my opinion rev'd at 523 Pa. 420, 567 A.2d 1041 (1990), Superior Ct. reversed at No. 27 E.D. Pa. Supreme Court Appeal Docket 1989 in judgment filed January 1, 1990.

3. Commonwealth v. Anthony White, April Term, 1986 No. 659, aff'd 371 Pa. Super. 578, 538 A. 2d. 887 (1988).

4. Estate of George Earle, Sr., O.C.No. 332 of 1908, Amended Adjudication filed April 1, 1993.

5. Commonwealth v. Frederick Leach, May Term, 1986, Nos. 2494 - 2496, aff'd at 1983 Philadelphia 1987, filed March 17, 1989 (slip opinion).

6. Estate of Philip V. Marrone, O.C. No 313 of 1990, Adjudication filed January 17, 1992.

7. Estate of William G. Nicholas, O.C. No. 3782 of 1956, Majority Opinion filed April 21, 1992.

8. Estate of Samuel W. Salus, O.C. No. 1190 of 1947, Majority Opinion filed, aff'd 617 A.2d 737 (Pa. Super. 1992).

9. Trusts of Jonathon Holdeen O.C. Nos. 3321 of 1971, 2249 of 1971, and 2250 of 1971, filed March 29, 1993.

10. Commonwealth v. Manuel Ortiz Vega, November Term 1987, Nos. 2647 to 2648. filed



Sept 6, 1989, aff'd 576 A.2d 1140 (table).

(2). I have done a WestLaw search, and searched my files and recollection for those cases where I have been reversed or my reasoning criticized. I have found the following cases:

1. Commonwealth v. Cleveland Amos, a/k/a/ Amos Cleveland, 364 Pa. Super. 402, 528 A.2d 219 (1986).

The issue was the appropriate sentence which should have been imposed upon a 50 year old chronic heroin addict who was convicted of a street sale of heroin. I sentenced him outside of the guidelines because of his age, personal circumstances, and the fact that I thought he could best be rehabilitated through treatment of his longstanding addiction, and that such treatment would not pose a threat to the community as he was not a violent offender. The Superior Court agreed that there were mitigating circumstances in the case, but determined that the circumstances allowed only for a downward departure to within the mitigated range of the guidelines. I had departed below the guidelines.

2. Commonwealth v. Windell, 365 Pa. Super. 392, 529 A.2d 1115 (1987).

I convicted the defendant and a codefendant of robbery, theft and possession of stolen property following a bench trial in which the Commonwealth established that the defendants were in possession of a stolen change purse. The owner of the purse testified that it was stolen from her while she was riding on a bus near Sears, and additional evidence established that the defendant had been on the bus at the same time as the complainant. It had been stolen a short time before the bus passed Sears where the defendant had gotten off the bus. The victim testified that she felt herself being brushed or jostled while on the bus, and that she was jostled particularly hard when the bus stopped near Sears. She turned and noticed a tall youth standing near her, but could not

identify that person as the defendant. Although the evidence clearly supported a conviction for possession of stolen property, there was a real issue as to the sufficiency of the evidence to prove that the defendant was the one who removed the card from the victim's purse thereby establishing robbery. I thought that the timing was such as to establish that the defendant was the robber. The Superior Court disagreed.

3. Commonwealth v. Waters, 361 Pa. Super. 154, 522 A.2d 60 (1987).

Waters was convicted of drunk driving. The issue at sentencing was the legislative intent of two apparently conflicting statutes. One appeared to allow Accelerated Rehabilitation Diversion (ARD) to persons afflicted with an addiction, specifically including alcohol. The other statute was the mandatory sentencing scheme for persons convicted of driving under the influence. The issue was whether the legislature intended to preclude such persons from ARD if they could establish their alcoholism, or whether the seemingly broad language of the ARD statute included persons convicted of drunk driving if they were addicted to alcohol. I determined that the legislative intent was the latter. The Superior Court disagreed.

4. Commonwealth v. Fluellen 345 Pa. Super 167, 497 A.2d 1357 (1985)

The defendant was arrested for the possession and sale of approximately \$120.00 worth of heroin. I convicted him of felony drug offenses following his waiver of a jury trial. The defendant had been a heroin addict for over 14 years. He had also developed an addiction to cocaine and, as a result of his polysubstance dependence, he had a significant criminal record. However, he did not have a history of violent offenses. He had also developed serious medical complications because of the numerous intravenous injections he had given himself.

Noting that his prior record consisted solely of drug offenses, and his long history of drug addiction, I deviated from the sentencing guidelines and sentenced him to a period of incarceration of 6 to 23 months and ordered that he undergo inpatient treatment.

The Superior Court felt that I had placed too much emphasis on the lack of significant inpatient treatment which the defendant could get while incarcerated, and remanded the case for resentencing.

5. Estate of Margaret Sevier Moran, O.C. No. of 1990, filed June 30, 1992, (I wrote a dissenting opinion); majority opinion aff'd at Appeal of Gancor, 428 Pa. Super 349, 631 A.2d 136 (1993).

The issue was the authority of a hearing judge to terminate a testamentary trust pursuant to a family settlement agreement which was entered into in order to settle litigation surrounding the will which established the trust. The hearing judge terminated the trust pursuant to the agreement and a majority of the Orphans' Court agreed. I wrote a dissent in which I reasoned that the authority relied upon by the hearing judge concerned *inter vivos* trusts where all remaindermen joined in the agreement. I reasoned that since the settlor can not consent to terminating a testamentary trust (obviously; the settlor was dead), the situation was similar to case law where the settlor was suffering from an incapacity and courts ruled that it was an abuse of discretion to terminate the trust. My reasoning was rooted primarily in the desire to uphold the property interest of the deceased settlor and insure that his property was disposed of in a manner which he had dictated in his will.

The Superior Court agreed with the majority and relied only upon an examination of the language of the trust instrument, determined that terminating the trust would not frustrate the settlor's purpose, and upheld the authority of the hearing judge to terminate the trust.

(6). Commonwealth v. Richard L. Davis, April Term 1986, Nos. 1244 to 1247.

I inherited this case from another judge who had heard the trial without a jury and convicted the defendant of the burglary of a carpenter supply store. That judge was no longer on the bench, and it was reassigned to me. The evidence was that police observed the defendant and his cousin parked near a warehouse at 2:00 am and observed them as they made several trips from their station wagon to the back door of the warehouse. The police then heard a banging and went to the rear of the warehouse where they caught the defendant as he was attempting to break into the building with a sledge hammer. He was arrested along with his cousin and in the station wagon they had been going to, the police found numerous boxes of building materials that were unopened and that bore the name Carpenter Supply Store. That store was three blocks away from the warehouse, and the police took the defendant and his cousin there while they inspected that building.

Upon their arrival at the building, they found a hole had been punched in the roof and the inside of the building had been ransacked. The owner was called and stated that he had secured the building about 5:00 the preceding afternoon. Thus between then and 2:00 am it had been burglarized.

I ruled that the defendant's conviction could not stand as the circumstances did not establish that the defendant had burglarized the Carpenter Supply Store. I felt particularly sure of this since there was no conspiracy charge, and the car that the stolen materials were found in belonged not to the defendant, but to his cousin. The Superior Court reversed my granting the defendant a new trial and determined that the evidence was sufficient to support a conviction for burglary.

(3) Having been a state court judge for all of my judicial career, it has been rare that I have ruled upon federal constitutional issues, and when those issues have been raised, they are always raised in conjunction with

concomitant provisions of the Pennsylvania constitution. However, I would submit the following as examples of such rulings:

1. Commonwealth v. Marcialette Miller, February Term, 1991, Nos. 1690-1697, aff'd 526 Pa. Super. 410, 627 A.2d 741 (1993).

2. Commonwealth v. Manuel Ortiz Vega, November Term 1987, Nos. 2647 to 2648, filed Sept 6, 1989, aff'd 576 A.2d 1140 (1990) (Table).

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

The only public office which I have ever held is my current judicial office.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

I have never served as clerk to a judge.

2. whether you practiced alone, and if so, the addresses and dates;

I have never been a sole practitioner.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

March, 1983 to December, 1983  
Philadelphia Parking Authority.  
General Counsel  
2 Penn Center.

Philadelphia Pa. 19107

February, 1980 to March, 1981  
 Law Department of the City of Philadelphia,  
 Deputy City Solicitor  
 Law Department  
 City of Philadelphia  
 11th Floor ARA Building  
 Philadelphia, Pa. 19107

March, 1977 to February, 1980  
 U.S. Department of Justice-  
 Assistant United States Attorney for the  
 Eastern District of Pennsylvania.  
 U.S. Courthouse  
 6th & Market Streets  
 Philadelphia, Pa. 19106

September, 1975 to March, 1977  
 Wolf, Block, Schorr & Solis-Cohan.  
 Associate assigned to litigation department  
 12th Floor Packard Building  
 Philadelphia, Pa. 19102

January, 1980 to 1991  
 Lecturer in Law at Rutgers University  
 College of Law.  
 Camden, New Jersey 08102

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

a). March, 1983 to December, 1983  
 Philadelphia Parking Authority. (General Counsel)

I went to the Parking Authority because of the expertise which I had developed as a Deputy City Solicitor in charge of the Enforcement Division. While I was at the Authority, it was primarily concerned with moving from an agency that dealt exclusively with off-street parking, to one that would have primary responsibility for enforcement of on-street parking. In addition to the various ordinances and amendments to enabling legislation that I was involved with, I was also concerned with attempting to standardize and professionalize

bidding procedures, and contracts. The Authority's shift to on-street parking required a large procurement of vehicles and equipment needed for parking enforcement. A substantial part of my time at the Authority was, therefore, devoted to insuring the fairness and legality of the procurement process.

b). February, 1980 to March, 1983

Deputy City Solicitor  
Law Department of the City of Philadelphia,

As Deputy in charge of the Enforcement Division, I coordinated and administered the Revenue Unit and Code Enforcement Unit of the City's Law Department. Together, those two units comprised the Enforcement Division, which was then the second largest division in the law department.

The Revenue Unit was responsible for representing the Department of Revenue before administrative boards and in court, and was responsible for the collection and enforcement of municipal taxes, fines and claims. I was also responsible for providing legal counsel to the Revenue Commissioner.

The Code Enforcement Unit was charged with enforcing various City codes including the Housing, Building and Health Codes. My primary responsibility was the development and administration of a program to collect municipal claims and fines, and to insure better enforcement of various City codes and ordinances.

c). March, 1977 to February, 1980

Assistant United States Attorney for the  
Eastern District of Pennsylvania.

While at the U.S. Attorney's Office, I was assigned first to the General Crimes Unit, then to Narcotics and Firearms and finally to the Political Corruption Unit. I prepared cases for indictment and trial and followed those cases through the appellate procedure up to, but not including, the U.S. Supreme Court.

In addition, after my first seven months at the office, I became generally responsible for coordinating and investigating allegations of police brutality before a Special Grand Jury established to investigate these matters. In this capacity I had the opportunity to represent the

United States Civil Rights Commission when it attempted to subpoena files of the police department as part of its overall inquiry into alleged police abuse nationally.

d). September, 1975 to March, 1977  
Associate with firm of Wolf, Block, Schorr & Solis-Cohen.

After doing a mandatory rotation through three of the firm's departments, I was granted my choice of assignments and was permanently assigned to the litigation department. My most interesting experience at the firm, however was not in litigation. One of the firm's senior partners represented an individual who wanted to run for the United States Senate. The Federal Election Campaign Financing Act had just been passed and no one at the firm was familiar with it or fully understood its ramifications. I had done some work for the partner in charge of the client, and he asked me to begin advising the client on the provisions of the new law. I eventually became the firm's expert on the law, had several meetings with the candidate's staff, and attended at least one session of the Federal Election Campaign Commission on his behalf.

2. Describe your typical former clients, and mention the areas, if any, in which you specialized.

I had no "typical" client with the exception of my stay at Wolf Block, where nearly all of the clients whose matters I was assigned to were highly successful and sophisticated business persons.

c. 1. Did you appear in court regularly, occasionally or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

While at Wolf Block (1975 to 1977) I appeared in court rarely. At the United States Attorney's office (1977 to 1980) I appeared in court frequently. Upon going to the City Solicitor's office (1980 to 1983) I again appeared in court only rarely, and at the Parking Authority (1963) I did not appear in court at all.

2. What percentage of these appearances was in:

(a) Federal courts.



Overall, approximately 75% of all of my court appearances before coming on the bench were in federal courts.

(b) State courts of record.

Overall, approximately 25% of all of my court appearances before coming on the bench were in state courts of record.

(c) Other courts.

I did not appear in other courts at all as part of my legal practice.

3. What percentage of your litigation was:

(a) Civil.

Approximately 25%.

(b) Criminal.

Approximately 75%.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I tried approximately 15 cases to verdict. All of these were in federal court, and I was the sole counsel on all except for one where I was associate counsel to the lead prosecutor.

5. What percentage of these trials was:

(a) jury;

Approximately 95%

(b) non-jury.

Approximately 5%

10. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;

(b) the name of the court and the name of the judge or judges before whom the case was litigated; and

(c) the individual name, address, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. United States v. Vignola, before Chief Judge Lord, United States District Court for the Eastern District of Pennsylvania, Crim No. 78-242, 464 F. Supp. 1091, aff'd 605 F. 2d 1199 (1979). The date of the trial was October 31, 1978 to November 4, 1978. Sentencing was January 12, 1979.

I co-prosecuted the case for the United States.

Lead counsel for the prosecution whom I assisted was Alan M. Lieberman, Esq.  
current address: Schnader, Harrison, Segal & Lewis  
1600 Market Street, Suite 3600  
Philadelphia, Pa. 19103  
215 751-2010

Opposing counsel was Thomas A. Bergstrom, Esq.  
1515 Market Street, Suite 520.  
Philadelphia, Pa. 19102  
215 569-2444

Alan Lieberman and I indicted and tried Louis Vignola who was then President Judge of the Philadelphia Traffic Court. Alan left the office before the matter was concluded and I therefore concluded the matter on my own. The matter was concluded when the Third Circuit Court of Appeals affirmed the defendant's conviction under the RICO statute. I had the opportunity to argue the Government's case to the Third Circuit. The main issue on appeal was the applicability of the RICO statute to a governmental agency like Traffic Court. At the time there was a split of authority as to whether the "enterprise" specified in the statute referred only to an enterprise of organized crime. It was argued that the statute's intent was to prosecute organized crime, and that it should not be extended to legitimate enterprises, and especially not to units of government. The issue has since been settled in favor of the position which I argued. That position allows for an expansive reading of the term "enterprise", and does not limit the application of the statute to organized crime. The case was also significant as it ended what had been a longstanding pattern of official corruption inside the Philadelphia Traffic Court.

2. United States Civil Rights Commission v. O'Neill, before Judge E. Mac Troutman, United States District Court for the Eastern District of Pennsylvania. No. Misc. 79-90, 81 F.R.D. 664 (1979). The hearing on the United States' subpoena duces tecum was February 2, 1979.

Opposing counsel was Ralph J. Teti, Esq. who was then a Deputy City

Solicitor,  
 his current address is:  
 Willig, Williams & Davidson  
 1845 Walnut Street, 24th Floor  
 Philadelphia, Pa. 19103  
 215 656-3620

While I was an Assistant United States Attorney, I was asked to coordinate the special grand jury which had been empanelled to investigate allegations of police abuse on the part of the Philadelphia Police Department. The work of the grand jury coincided with a national inquiry into police abuse which was being undertaken by the United States Civil Rights Commission. That Commission subpoenaed various Philadelphia police personnel files as part of its inquiry. The Commission's subpoena was resisted by police Chief O'Neill, and then Mayor Frank Rizzo, and I was able to successfully litigate the issue of the Commission's right to access those files. The case was significant because it allowed the investigation of the Commission to proceed, and it also helped to reaffirm the principal that the records that the Commission was seeking were not privileged.

3. United States v. Parnell Green, before Judge Alfred Luongo (now deceased), United States District Court for the Eastern District of Pennsylvania, Crim. No. 77-254. The trial began on September 13, 1977. The sentencing was December 9, 1977.

Opposing counsel was Joseph C. Santaguido, Esq.  
 North American Building, Second Floor  
 121 South Broad Street  
 Philadelphia, Pa. 19107  
 215 893-0900

This case involved the investigation and prosecution of an individual whom postal inspectors believed to have been involved in a large scale and ongoing theft of U.S. Treasury checks from mail carriers. I obtained a conviction before Judge Luongo, and later was able to persuade the defendant to cooperate in the continuing investigation. The case was significant in that it put an end to a ring that had been routinely burglarizing mail boxes in several high rise apartment buildings in Philadelphia and stealing social security checks.

4. United States v. Drax Quartermain, before Judge Norma Shapiro, United States District Court for the Eastern District of Pennsylvania, Crim. No. 78-308, 613 F. 2d 38 (3rd Cir, 1980). The defendant was indicted on October 20, 1978, the indictment was dismissed by Judge Shapiro on February 8, 1979, and the United States appealed on February 12, 1979.

Opposing counsel was Alan A. Turner, Esq.  
 Rutter, Turner, Solomon & DiPiero  
 Suite 750, The Curtis Center  
 Independence Mall West  
 Philadelphia, Pa. 19106

215 925-9200

The case concerned the prosecution of a defendant who had previously been placed in the witness protection program. He was thereafter indicted for manufacture of methamphetamine, as well as illegal manufacture and sale of silencers. The case was interesting because the government's main witness against the defendant was an individual whom the defendant had previously testified against (Zelmon). Quartermain had been given use immunity for his testimony and, following Zelmon's conviction, Quartermain was given a new identity and placed into the witness protection program. Following Zelmon's conviction he agreed to cooperate with an ongoing investigation and furnish DEA agents with evidence of a large methamphetamine distribution ring. Zelmon was given a body wire, but the person he "fingered" as being the "meth king" was none other than Quartermain. Quartermain's attorney argued that his client's indictment for illegal drug and weapons manufacture should be quashed as it violated his client's use immunity.

In a case of first impression, the District Court dismissed the indictment, however, the decision was appealed to the Third Circuit which reinstated it. I handled a large part of the investigation and indictment, but transferred to a different unit within the office (political corruption) before the matter was argued in the Third Circuit and, consequently did not argue it or represent the government when the matter finally came to trial.

5. Homeowners' Association of Philadelphia v. Philadelphia before Judge Abraham Gaffni, Court of Common Pleas, Philadelphia County, April Term 1980, No. 2042. A Complaint for Declaratory Judgment was filed June 13, 1980, against the City of Philadelphia seeking a determination that a recently enacted ordinance was unconstitutional.

The attorney for plaintiff was Darrell M. Zaslow, Esq.  
455 Two Greenwood Sq.  
Bensalem, Pa.  
215 750-6249

I represented the City of Philadelphia.

This litigation arose from an ordinance that was passed (Bill 1202(a)) in response to the city's housing crisis. The ordinance created a procedure whereby interested persons could repair vacant and dilapidated housing stock, acquire a mechanics lien for the work done, and then bid in the amount of that lien at a subsequent Sheriff Sale of the property which would be brought based upon delinquent taxes, liens and fines. The prospective buyer would first have to sign a commitment to reside in that property for a specified period of time to discourage speculators from buying up vacant housing. The Homeowners' Association brought suit alleging that the ordinance allowed an unconstitutional taking of property without due process. The suit was dismissed by Judge Gaffni.

6. United States vs. John Ellis, Rosboro McMillan, et al. Before Judge Van Arsdale, United States District Court for the Eastern District of

Pennsylvania, Crim. Nos. 77-428-01 to 77-428-06, 595 P.2d 154 (3rd Cir. 1979). The defendants were indicted on October 4, 1977, and trial began March 3, 1978 and ended March 22, 1978.

Opposing counsel was A. Charles Peruto Sr., Esq.  
 Washington W. Bldg.  
 235 S. Eighth St.  
 Philadelphia, Pa. 19106  
 215 925-5800

I was not trial counsel on this case but assisted with the grand jury investigation. The trial prosecutor was:

James Coleman, Esq.  
 Ballard, Spahr, Andrews & Ingersoll  
 1735 Market Street 51st Floor  
 Philadelphia, Pa.  
 215 864-8101

This case involved the indictment and prosecution of six homicide detectives for the violation of the civil rights of citizens during an investigation into a racially motivated fire bombing of a residence in which several people were killed. The detectives involved had engaged in a pattern of physical and psychological intimidation of neighbors and defendants which ultimately resulted in an innocent person being wrongly convicted of the offense and serving over a year in prison before the U.S. Attorney's office could establish his innocence through the prosecution of the actual firebomber.

7. United States v. Thomas McNellis, Bernard Gilbert, et. al. Before Judge Van Arsdale, United States District Court for the Eastern District of Pennsylvania, Crim. Nos. 79-210-01 to 79-210-03. The defendants were indicted on September 24, 1979, trial began on March 18, 1980, and the defendants plead guilty on March 19, 1980.

Lead opposing counsel was Joseph Bongiovanni, III, Esq.  
 Bongiovanni & Berger  
 121 South Broad Street Suite 1700  
 Philadelphia, Pa. 19102  
 215 760-0060

I left the office before the matter went to trial. I was involved with coordinating the grand jury investigation, and presenting the matter to the grand jury which returned indictments against owners and employees of a trucking company. The case involved an ongoing theft of large quantities of coca beans from customs at a Philadelphia pier. The matter was significant because it ended what appeared to be an ongoing pattern of thefts of merchandise from customs custody.

8. Louis Santoro v. City of Philadelphia. Before Judge Stanley Greenberg. Court of Common Pleas, Philadelphia County, 59 Pa. Cmwlth. 114, 429 A.2d 113 (1981).

(Trial dates throughout 1972 through 1981) in Court of Common Pleas, Philadelphia Pennsylvania.

Trial counsel for City of Philadelphia was Nicholas Panarella, Esq.  
404 S. Front Street  
Philadelphia, Pa. 19106  
215 574-9700

This ongoing litigation was brought by residents of New Jersey who worked in Philadelphia and were challenging the legality of their being required to pay Philadelphia's wage tax. I was not directly involved in the courtroom litigation, but did supervise a portion of it. It was significant because the case established the legality of applying the wage tax to nonresidents who were employed in the City of Philadelphia. The challenge was brought under the state constitution. The cited case involved an appeal of the trial judge (Judge Stanley Greenberg) granting the City's motion for summary judgment. The plaintiffs appealed to the Commonwealth Court, and that Court's affirmance of summary judgment is the cited decision. The case is significant not for the legal issues it raised (those were settled in a series of cases brought by the same plaintiffs over a ten year period), but because the Court finally imposed sanctions against plaintiffs for vexatious conduct and frivolous litigation. This paved the way for collection of the Philadelphia wage tax from non residents who owed the tax but had engaged in protracted warfare via the courts to avoid paying it.

9. United States v. Robert Dobson, Before Judge Clifford Scott Green, United States District Court for the Eastern District of Pennsylvania, Crim. No. 77-283, 585 F. 2d 55 (1978).

Defense Counsel was Robert B. Mozenter, Esq.  
Mozenter and Mozenter  
1411 Walnut St.  
Suite 700  
Philadelphia, Pa. 19102  
215 568-4630

This was a case of first impression, and became a leading case on the Interstate Agreement on Detainers. Pub L. No. 91-538, §§ 1-8, 84 Stat. 1397-1403 (1977), codified at 18 U.S.C. App. 1395-98 (1976). The defendant had been on parole after serving part of a lengthy state sentence, and was charged with new state and federal offenses. He posted bail on those offenses, but was detained in state custody as a technical parole violator. Subsequently he was transferred to federal custody for two bail hearings on federal charges, and at the conclusion of each hearing he was sent back to state custody. Thereafter, while still in state custody, he was indicted on federal charges related to the magistrate's warrants for which he had been twice transferred to federal custody.

The defendant moved to dismiss the federal indictments alleging that his return to state custody pursuant to his parole detainer prior to resolution of the federal charges violated the Interstate Agreement on Detainers, and that the federal charges therefore had to be dismissed

pursuant to the terms of that law. I argued unsuccessfully to the District Court that Congress never intended the Act to apply to parole detainees, and that it should only be applied to terms of imprisonment resulting from sentences imposed pursuant to determinations of guilt. The Court ruled in favor of the defendant and dismissed the federal indictments. On appeal, the decision was reversed, and the indictments were reinstated. I argued before the District Court, and prepared the appellate brief. I did not argue to the Third Circuit, however, as I transferred to a different unit (public corruption) before the appeal was argued.

10. Imprisoned Citizens' Union ("I.C.U.") V. Shapp, Before Chief Judge Lord, Civ. United States District Court for the Eastern District of Pennsylvania, No. 70-3054 (lead case), filed March 4, 1971 and continuing on to the present.

Counsel for the class of plaintiffs included:

John Snavely, Esq.  
[no longer practicing law]

Gilbert Cantor, Esq.  
[no longer practicing law]

Jack Levine, Esq.  
[no longer practicing law]

Francis R. Filipi, Esq.  
Then Asst. Attorney General  
Bureau of Corrections  
Dept. of Justice  
P.O. Box 598  
Camp Hill Pa. 17011  
814 355-4874

Amicus Curiae  
Alan J. Davis, Esq.  
Ballard, Spahr, Andrews & Ingersoll  
1735 Market Street 51st Floor  
Philadelphia, Pa.  
215 864-8200

This was a class action suit brought by numerous inmates in various state penal institutions in Pennsylvania who had formed an entity called the "Imprisoned Citizens' Union" ("I.C.U."). The plaintiffs challenged the constitutionality of the conditions of their confinement. Although such suits were, and continue to be, commonplace, this suit is significant, at least in part, because of the breadth of the attack. They alleged such things as an affirmative duty to provide not just medical and dental treatment, but regular preventative examinations, unduly broad restrictions upon reading material and mail, etc. One of the partners at Wolf Block (Alan Davis) whom I came to work closely with had been appointed Amicus Curiae by the Court shortly before I arrived at the firm, and Alan asked me to write the amicus brief. The

litigation continues because of the terms of a consent decree, but the Court felt the brief had greatly helped to focus issues, and clarify relevant case, statutory and regulatory law.

**19. Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

The most significant legal activities which I have pursued would include some of the cases I have set forth above, particularly, my representation of the United States Civil Rights Commission in United States v. O'Neill in an attempt to enforce a subpoena against the City of Philadelphia. It would also include my participation in the grand jury investigation which led to the indictments in United States v. John Ellis et. al. and the conviction of the individual who threw a fire bomb, killing sleeping residents of a row house in Philadelphia. This was related to the previously mentioned investigation into, and trial of, the six homicide detectives and not only caused an innocent person to be released from prison, it caused one who was guilty of killing innocent people in their sleep to finally have to pay for his crime.

In addition, there were two grand jury investigations which I feel merit mentioning as follows:

Grand Jury Investigation of a National Oil Company.

Another Assistant U.S. Attorney and I were assigned by the then chief of the Special Prosecutions Unit of the Criminal Division of the U.S. Attorney's Office to investigate allegations of fraud by a large national oil company. This came during the time of an oil crisis because of a purported shortage of oil in the United States. The other Assistant who investigated it was named Frank Sherman. He is currently Chief of the Frauds unit of the U.S. Attorney's office in Miami.

We spent a great deal of time looking at the import records of the oil company and interviewing various employees in New Jersey and New York. The investigation was being conducted by Customs officials. No indictment was ever brought as there was insufficient evidence of fraud. The allegations were that the oil company was secretly importing and stockpiling oil and then manipulating the measurements of oil which it took in its storage facilities in order to drive the price



of oil and gasoline up. I feel it was significant because of the magnitude of the investigation and its importance to this nation's interests even though no one was indicted.

Grand Jury Investigation of Summer Feeding Program

The main target was a food service contractor who was under investigation along with several small churches. The investigation centered around alleged fraud in the billing for, and distribution of, food in the government's summer luncheon program. The allegation was that the churches were billing for food not ordered, and placing ghost employees on the payroll. There were also charges that a major corporation that had won the contract to be the food service vendor for the government was charging the government for food that it never delivered, and that had never been ordered.

Although no indictments were brought as there was insufficient evidence of fraudulent intent (as opposed to negligent record keeping), the case is significant for the size of the investigation and the improvements in the administration of the program that were motivated by it.

In addition, in April, 1986, The Honorable Robert N.C. Nix, Jr., Chief Justice of the Supreme Court of Pennsylvania, appointed me to the Pennsylvania Sentencing Commission. The Commission's membership is determined by statute and consists of judges, legislators, a defense attorney, a district attorney, and an academician. The Commission writes guidelines which are used by every judge in the Commonwealth in imposing sentences for felonies or misdemeanors. I was recently elected Vice-Chairperson of the Commission, and I am now serving as Acting Chairperson due to the retirement of the Chairperson. I also currently chair a sub-committee charged with analyzing the Sentencing Guidelines and making recommendations to the full Commission for general changes to their substance and form. I feel that I was instrumental in formulating the revisions which were subsequently adopted by the entire Commission, and which are awaiting submission to the legislature.

I feel that my continuing work as Chair of the Pennsylvania Sentencing Commission is of crucial importance, and allows me to make a real contribution to society by developing sentencing policy that balances existing resources, the need to protect society, the need to treat those offenders who do not pose a risk to their fellow citizens' safety, and the need to punish those members of society who refuse to abide by its laws.

I feel that my teaching experience is also important. From January, 1980 to 1991 I was a lecturer in Law at Rutgers University College of Law. I taught a Spring semester course in trial advocacy to second and third-year law students.

**II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)**

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

None

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I do not think that my current involvement with any business entity or organization would create the appearance of a conflict of interest. However, I have always followed the policy that even an appearance of a conflict should be avoided and I have thus recused myself from sitting on any such case. In all such matters I have followed all applicable Canons of Judicial Ethics, and applicable provisions of the Code of Judicial Conduct and will continue to do so. I will continue to be as cognizant of the appearance of impropriety as I am of actual impropriety, and I will conduct myself accordingly, both on and off the bench.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See a copy of my AO-10 financial disclosure form which is attached, and hereby incorporated herein.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See attached Net Worth Statement and accompanying schedules.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

The only activity which would arguably be included is my active campaigning for Robert Kennedy when he ran for President in 1968 (I believe that to be the year). I was in college at the time and had no title in any campaign organization but distributed flyers and leaflets for the campaign. In addition, while in high school, I was the student director of John F. Kennedy's presidential campaign in 1964. This involved a mock campaign and election within the high school.

AO-10  
Rev. 1/91

## FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics  
in Government Act of 1969, Pub. L. No.  
91-354, November 30, 1969, and  
(5 U.S.C.A. App. 6, 101-112)

|  |  |                               |
|--|--|-------------------------------|
| 1. Person Reporting (Last name, first, middle initial)<br>MCKEE, THEODORE A.   | 2. Court or Organization<br>THIRD CIRCUIT COURT OF APPEALS   | 3. Date of Report<br>03/22/94 |
| 4. Title (Article III judges indicate active or senior or status; Magistrate judges indicate full- or part-time)<br>JUDGE  | 5. Report Type (check appropriate type)<br><input checked="" type="checkbox"/> Nomination, Date 03/22/94<br>___ Initial ___ Annual ___ Final                             | 6. Reporting Period<br>1/1/93 |
| 7. Chambers or Office Address<br>6TH & MARKET STREETS<br>PHILADELPHIA<br>PA. 19106   | 8. On the basis of the information contained in this Report, it is, in my opinion, in compliance with applicable laws and regulations ___<br>Reviewing Officer Signature |                               |
| IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on last page. |  |                               |

## I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

## POSITION

## NAME OF ORGANIZATION/ENTITY

 NONE (No reportable positions)

General Partner

Pujkee Associates

## II. AGREEMENTS. (Reporting individual only; see pp. 8-9 of Instructions.)

## DATE

## PARTIES AND TERMS

 NONE (No reportable agreements)

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

## DATE

## SOURCE AND TYPE

GROSS INCOME  
(YOURS, NOT SPOUSE'S) NONE (No reportable non-investment income)

|   |      |   |              |
|---|------|---|--------------|
| 1 | 1993 | Commonwealth of Pennsylvania - judicial salary            | \$ 90000.00  |
| 2 | 1993 | McKee & Shepard Medical Associates (wife's med. practice) | \$ 180000.00 |
| 3 | 1993 | City of Philadelphia (Health Dept) (S)                    | \$ 40000.00  |
| 4 | 1993 | Rent from rental properties                               | \$ 17360.00  |
| 5 |      |   | \$           |

## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting  
MCKEE, THEODORE A.Date of Report  
03/22/94

## IV. REIMBURSEMENTS and GIFTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp. 12-14 of Instructions.)

|                                     | <u>SOURCE</u>                                     | <u>DESCRIPTION</u> |
|-------------------------------------|---|--------------------|
| <input checked="" type="checkbox"/> | NONE (No such reportable reimbursements or gifts) |                    |
| 1                                   |   |                    |
| 2                                   |   |                    |
| 3                                   |   |                    |
| 4                                   |   |                    |
| 5                                   |   |                    |
| 6                                   |   |                    |
| 7                                   |   |                    |

## V. OTHER GIFTS. (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp. 15-16 of Instructions.)

|                                     | <u>SOURCE</u>                   | <u>DESCRIPTION</u> | <u>VALUE</u> |
|-------------------------------------|---------------------------------|--------------------|--------------|
| <input checked="" type="checkbox"/> | NONE (No such reportable gifts) |                    |              |
| 1                                   |                                 |                    | \$ _____     |
| 2                                   |                                 |                    | \$ _____     |
| 3                                   |                                 |                    | \$ _____     |
| 4                                   |                                 |                    | \$ _____     |

## VI. LIABILITIES. (Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 16-17 of Instructions.)

|                          | <u>CREDITOR</u>                  | <u>DESCRIPTION</u>                            | <u>VALUE CODE*</u> |
|--------------------------|----------------------------------|---|--------------------|
| <input type="checkbox"/> | NONE (No reportable liabilities) |   |                    |
| 1                        | Chemical Mortgage Co.            | Mortg. - 4 unit dwelling (mother's residence) | K                  |
| 2                        | Unity Bank                       | Mortg. - bldg occupied by wife's medical pr   | K                  |
| 3                        | Amre Inc.                        | Home Improv. loan (storm & replacement wind   | J                  |
| 4                        | Lu Ann Thorndyke, M.D.           | Buyout of interest in medical partnership (   | L                  |
| 5                        |                                  |   |                    |
| 6                        |                                  |   |                    |
| 7                        |                                  |   |                    |

\* VALUE CODES: J = \$15,000 or less; K = \$15,001 - \$50,000; L = \$50,001 - \$100,000; M = \$100,001 to \$250,000; N = \$250,001 or more; O = \$250,000 - \$500,000; P = \$500,001 - \$1,000,000; Q = More than \$1,000,000

## FINANCIAL DISCLOSURE REPORT

|   |                                   |
|---|-----------------------------------|
| Name of Person Reporting<br><b>MCKEE, THEODORE A.</b> | Date of Report<br><b>03/22/94</b> |
|---|-----------------------------------|

**VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions** (Includes those of spouse and dependent children; See pp. 18-26 of Instructions.)

| A.<br>Description of Assets<br>(including trust assets)<br><small>Indicate where applicable, owner of (1) trust, (2) joint ownership of reporting individual and spouse, (3) separate ownership by spouse, (4) (5) for ownership by dependent child. Place "X" after each asset except from prior disclosure.</small>  | B.<br>Income during reporting period |                                   | C.<br>Gross value at end of reporting period |                                | D.<br>Transactions during reporting period |                               |                         |                        |  |
|--|--------------------------------------|-----------------------------------|--|--------------------------------|--|-------------------------------|-------------------------|------------------------|--|
|  | (1)<br>Int. Code (A-H)               | (2)<br>Type (Div., rent, or Int.) | (1)<br>Value Code (J-P)                      | (2)<br>Value Method Code (0-U) | (1)<br>Type (buy, sell, redemption)        | If not exempt from disclosure |                         |                        |  |
|  |                                      |                                   |  |                                |  | (2)<br>Date                   | (3)<br>Value Code (J-P) | (4)<br>Gain Code (A-H) | (5)<br>Identity of Buyer/Seller (if private transaction) |
| <b>NOTE</b> (No reportable income, assets, or transactions)  |                                      |                                   |  |                                |  |                               |                         |                        |  |
| 1 Calvert Ariel Fund (DC)  |                                      | None                              | K  | T                              |  |                               |                         |                        |  |
| 2 Phoenix Tax Exempt Fund (J)  |                                      | None                              | J  | T                              |  |                               |                         |                        |  |
| 3 Phoenix Balanced Fund (S)  |                                      | None                              | K  | T                              |  |                               |                         |                        |  |
| 4 Calvert Appreciation Fund (J)  | D                                    | Div                               | J  | T                              | sell                                       | 8/14                          | J                       | B                      |  |
| 5 Meridian Bank, Money Market  |                                      | None                              | K  | T                              |  |                               |                         |                        |  |
| 6  |                                      |                                   |  |                                |  |                               |                         |                        |  |
| 7  |                                      |                                   |  |                                |  |                               |                         |                        |  |
| 8  |                                      |                                   |  |                                |  |                               |                         |                        |  |
| 9  |                                      |                                   |  |                                |  |                               |                         |                        |  |
| 10   |                                      |                                   |  |                                |  |                               |                         |                        |  |
| 11   |                                      |                                   |  |                                |  |                               |                         |                        |  |
| 12   |                                      |                                   |  |                                |  |                               |                         |                        |  |
| 13   |                                      |                                   |  |                                |  |                               |                         |                        |  |
| 14   |                                      |                                   |  |                                |  |                               |                         |                        |  |
| 15   |                                      |                                   |  |                                |  |                               |                         |                        |  |
| 16   |                                      |                                   |  |                                |  |                               |                         |                        |  |
| 17   |                                      |                                   |  |                                |  |                               |                         |                        |  |
| 18   |                                      |                                   |  |                                |  |                               |                         |                        |  |
| <b>1</b> {Income Code (See Col. B1 & B2)}    B=\$1,000 or less    C=\$1,001 to \$2,500    D=\$2,501 to \$5,000    E=\$5,001 to \$10,000    F=\$10,001 to \$25,000    G=\$25,001 to \$50,000    H=\$50,001 to \$100,000    I=\$100,001 to \$1,000,000    J=More than \$1,000,000<br><b>2</b> Value Codes: (See Col. E1 & E3)    J=\$15,000 or less    K=\$15,001 to \$50,000    L=\$50,001 to \$100,000    M=\$100,001 to \$250,000    N=\$250,001 to \$500,000    O=\$500,001 to \$1,000,000    P=\$1,000,001 to \$5,000,000    Q=\$5,000,001 to \$10,000,000    R=\$10,000,001 to \$250,000,000    S=More than \$250,000,000<br><b>3</b> Value Method Codes: (See Col. E2)    Q=Appraisal    R=Cost (real estate only)    S=Assessment    T=Cash/Market    U=Book Value    V=Other    W=Estimated |                                      |                                   |  |                                |  |                               |                         |                        |  |

**FINANCIAL DISCLOSURE REPORT**

| Name of Person Reporting |
|--------------------------|
| MCKEE, THEODORE A.       |

| Date of Report |
|----------------|
| 03/22/94       |

**VIII. ADDITIONAL INFORMATION or EXPLANATIONS.** (Indicate part of Report.)



## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting  
MCKEE, THEODORE A.Date of Report  
03/22/94

## IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature Date 4/1/94

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, 104, AND 18 U.S.C. 1001.)

## FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure  
Administrative Office of the  
United States Courts  
Washington, D.C. 20544

**FINANCIAL STATEMENT  
NET WORTH**

| ASSETS                            |              | LIABILITIES                         |           |
|-----------------------------------|--------------|-------------------------------------|-----------|
| CASH ON HAND AND IN BANKS         | \$26,500.00  | Notes payable to banks - secured    | \$26,500  |
| U.S. Government securities        | \$0.00       | Notes payable to banks-unsecured    | \$0       |
| Listed Securities                 | \$0.00       | Notes payable to relatives          | \$0       |
| Unlisted Securities               | \$0.00       | Notes payable to others             | \$0       |
| Accounts and notes payable:       | \$0.00       | Accounts and bills due              | \$3,000   |
| from relatives and friends        | \$0.00       | Unpaid income tax                   | \$0       |
| Due from others                   | \$0.00       | Other unpaid tax and interest       | \$0       |
| Doubtful                          | \$0.00       | Real Estate mortgages payable       |           |
| Real Estate Owned-add schedule    | \$369,000.00 | add schedule.....                   | \$76,000  |
| Real Estate mortgages receivable  | \$0.00       | Chattel mortgages and other liens   | \$0       |
| Autos and other personal property | \$22,500.00  | payable.....                        | \$0       |
| Cash value-life insurance         | \$10,000.00  | Other debts - itemize:              |           |
| Other assets-itemize:             |              | AUTO NOTES                          | \$38,500  |
| RETIREMENT ACCOUNTS               | \$53,000.00  |                                     |           |
| UGMA ACCOUNTS FOR KIDS' COLL      | \$20,000.00  |                                     |           |
| CALVERT ARIEL MUTUAL FUNDS        | \$18,000.00  |                                     |           |
| PHOENIX TAX EXEMPT MUTUAL F       | \$8,000.00   | Total liabilities                   | \$144,000 |
| CHECKING & SAVING ACCTS           | \$20,000.00  | Net Worth                           | \$403,000 |
| TOTAL ASSETS                      | \$547,000.00 | Total liabilities and net worth     | \$547,000 |
| CONTINGENT LIABILITIES            |              | GENERAL INFORMATION                 |           |
| As endorser, comaker etc          | \$0          | Are any assets pledged?             | NO        |
| Legal Claims                      | \$0          | Are you a defendant in any actions? | SEE BELOW |
| Provision for Federal Income tax  | \$0          | Have you ever taken bankruptcy?     | NO        |
| Other special debt                | \$0          |                                     |           |

## REAL ESTATE SCHEDULE

| ADDRESS             | USE           | PURCHASE PRICE | BALANCE     | APPROX VALUE | EQUITY    |
|---------------------|---------------|----------------|-------------|--------------|-----------|
| 519 PELHAM ROAD     | RESIDENCE     | \$35,000       | \$15,000.00 | \$175,000    | \$160,000 |
| 6000 WEST OXFORD ST | WIFE'S OFFICE | \$50,000.00    | \$20,000.00 | \$85,000     | \$65,000  |
| 5400 GREENE ST      | RENTAL        | \$110,000.00   | \$41,000.00 | \$185,000    | \$144,000 |
| TOTAL INDEBTEDNES   | \$76,000      |                |             |              |           |
| TOTAL EQUITY:       | \$369,000     |                |             |              |           |

### III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

During and since college I have devoted time and energy to attempting to help others who were less fortunate. Shortly after I arrived in Philadelphia in 1975 I began an association with a young boy who was part of the Big Brothers program. His Big Brother was leaving town because of a job change, and I took over for him on an informal basis. I devoted approximately one Saturday afternoon per month to spending time with my "little brother". I have continued to stay in touch with him except for a five year period when he was serving a prison sentence. He is now working and doing well.

In approximately 1980, I joined an organization known as Concerned Black Men, Inc (CBM). The organization consists primarily of retired police officers and fire fighters, but is open to any one who wishes to spend time working toward caring for youth. (The organization's motto is "For Our Youth"). The organization sponsors an annual banquet at which it announces winners of its essay contest, and provides winners with scholarship money for college.

CBM also works closely with the chess teams at Vaux and Douglas schools. Both teams have won international recognition, and both teams exemplify the organization's feeling that urban youth remain an untapped and wasted source of ability and potential. As part of its emphasis on providing positive role models for "disadvantaged" individuals, a few of us regularly visited prisons to meet with inmates and discuss what they could do upon their release to 1) keep from coming back themselves and 2) help young people in their community avoid the pitfalls which lead to prison.

The organization was the only organization in Pennsylvania to win President Reagan's "Volunteerism" award a few years ago.

While active in the organization I devoted several hours each week to it. I became inactive after the birth of our first child because I could no longer honor the time commitment without taking time away from my own family. I still remain in contact with the membership, but I could not be considered an active member.

Until it became defunct in 1990, I was on the board of directors of Crisis Intervention Network (1983 - 1990) which was an organization of community residents, public officials and professionals dedicated to fighting gang violence and drug

dependency through education and intervention in the neighborhoods where gangs are a problem. I spent approximately 2 hours a month working with this organization, except for the last six months of the organization when I spent at least 3 hours a day addressing the needs and concerns of the organization.

I currently sit on three boards of directors (Crime Prevention Association, Diagnostic and Rehabilitation Center, New Directions For Women, Inc.). The total time devoted to this is approximately 3 hours per month. Each of these is an organization working with disadvantaged individuals as follows:

Crime Prevention Association is a nonprofit social service agency which runs three community centers (some of which were formerly Boys' Clubs of America) and sponsors programs which include tutoring, day care for working mothers, health education for single expectant mothers, drug abuse education, and after school recreation as an alternative to the streets.

Diagnostic and Rehabilitation Center, Inc. works primarily with drug dependent individuals and targets the hardcore, drug dependent (or dually diagnosed) homeless individual. It runs outpatient rehab and treatment facilities in various communities around the city.

New Directions for Women, Inc. (formerly known as Program for Female Offenders) is an organization which maintains a facility for women who have been classified as offenders for various reasons. The facility functions as a "halfway house" and a work release center. The residents receive drug testing and education (most of the drug therapy is done at programs which specialize in outpatient addiction services) and job counseling.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? if so, list, with dates of membership. What you have done to try to change these policies?

I have not belonged to any such organizations.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Although there is such a commission for selection to the District Courts, there is none for selection to the Circuit Court. However, my Senator, Harris Wofford, did engage in a screening process which included a personal interview and a very inclusive and comprehensive inquiry of prominent members of the local bar to determine the professional qualifications, integrity, demeanor and

ability of those persons who had expressed an interest in the Circuit Court. I also provided the Senator with some copies of opinions which I had written. The Senator recommended me to the White House, and I was then interviewed by the White House Counsel and members of his staff as well as representatives of the United States Department of Justice, and both interviewed and investigated by the F.B.I. and the A.B.A.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking you how you would rule on such case, issue, or question? If so, please explain fully.  
This did not happen.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- d. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

It is the representatives who are elected by popular vote who must conduct the business of the people, and not judges who are isolated from public opinion by lifetime appointments, and therefore not responsible to the electorate. Thus, to the extent that "judicial activism" implies judicial legislating, it has no role in our system of government. This does not, however, mean that broad pronouncements such as those exemplified by Brown v. Board of Education are necessarily improper. It does mean that such pronouncements must emanate only from the United States Supreme Court, must be resorted to only in the rarest of situations, and must be consistent with evolving principles of our democracy.

It is not the role of a Circuit Court judge to use his or her personal views to engage in "judicial activism." The role of a Circuit judge is to follow the decisions of the Supreme Court. If the Supreme Court alters its prior decisions, or paints with a wide

brush in reaching a decision, it is the job of the Circuit judge to be guided by the language the Supreme Court has used, and to stay within the borders erected by such language. Stare decisis thus precludes "judicial activism" on the part of Circuit judges who have been sworn to uphold the law of the land.

## I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)  
 Billy Michael Burrage.  
 The name I generally go by is Michael Burrage.
2. Address: List current place of residence and office address(es).  
 Residence: 400 Maple Drive  
 Antlers, Oklahoma 74523  
 Main Office: Stamper & Burrage  
 P. O. Box 100  
 112 North High  
 Antlers, Oklahoma 74523  
 Branch Office: Stamper & Burrage  
 P. O.Box 28  
 701 S. Mississippi  
 Atoka, Oklahoma 74525
3. Date and place of birth.  
 June 9, 1950; Durant, Oklahoma.
4. Marital Status: (include maiden name of wife or husband's name) List spouse's occupation, employer's name and business address(es).  
 Carolyn Aletha Booker Burrage  
 Assistant Principal - Grade School  
 Antlers Public Schools  
 Antlers, Oklahoma 74523
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.  
 Southeastern State University  
 Durant, Oklahoma  
 Attended 1969-1971  
 B.S. Degree (1971)  
 Business Administration, major  
 Sociology, minor



University of Oklahoma  
 College of Law  
 Attended 1971-1974  
 Juris Doctor Degree (1974)

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

1. During law school I was a legal research assistant to Eugene Kuntz for his Volume 5, Kuntz on Oil & Gas. Eugene Kuntz is one of the nation's leading authorities on oil and gas law and is the author of a multi-volume treatise on oil and gas law.

2. During my last semester of law school, in 1974, I was a legal intern for the law firm of Stamper & Otis.

3. After graduation from law school and passing the Oklahoma Bar exam, I was an associate with Stamper & Otis until 1975.

4. From 1975 to 6-30-93, I was a partner in the law firm of Stamper, Otis & Burrage. Mr. Otis resigned from the firm in June of 1993 and since this date the firm has been known as Stamper & Burrage.

5. From 1982 to present, Director, First National Bank at Antlers, Oklahoma.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Graduated Order of Coif from University of Oklahoma, College of Law, 1974.

Editor, Oklahoma Law Review, 1973-1974.

1977 - Outstanding Young Lawyer Award given by the Oklahoma Bar Association.

1990 - University of Oklahoma; Distinguished Alumnus, College of Law, University of Oklahoma Centennial.

1991 - Neil E. Bogan Professionalism Award given by the Oklahoma Bar Association.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Oklahoma Bar Association (member since 1974)

1990 - Vice President and President  
 1990-1991 - Member, Board of Governors  
 1984-1986 - Member, Board of Governors  
 Served as a member of the House of Delegates to the Oklahoma Bar Association as representative from Pushmataha County for various years since 1974

1987-1990 - Trustee, Oklahoma Bar Foundation  
 Fellow of the Oklahoma Bar Foundation

1987-1989 - Member, Legal Specialization Committee, Chairman 1989

1977 - Member, Continuing Legal Education Committee

Appointed by the Oklahoma Supreme Court to serve as a member of the Oklahoma Supreme Court Committee for Uniform Civil Jury Instructions. These instructions have been used since 1979 by the District Courts for the trial of civil cases.

Appointed by the Oklahoma Supreme Court to be a member of the second Oklahoma Supreme Court Committee for Uniform Civil Jury Instructions. The new instructions were adopted by the Oklahoma Supreme Court in 1992 and are now used by the District Courts for the trial of civil cases.

Appointed by the Oklahoma Supreme Court, in November of 1992, to the Standing Committee to monitor, update and revise the Oklahoma Uniform Civil Jury Instructions.

Appointed in 1989 by the Honorable Frank H. Seay, as a Member and Chairman of the Uniform Rules Committee for the United States District Court for the Eastern District of Oklahoma.

Served on the faculty for the following Continuing Legal Education seminars:

- 1) Oklahoma Uniform Jury Instructions Civil, March, 1983
- 2) Oklahoma Appellate Advocacy April, 1983
- 3) Oklahoma Evidence, State & Federal Current Trends, Spring 1984
- 4) Insurance Litigation, Spring 1988
- 5) Faculty member for Continuing Legal Education seminar in May, 1993, in Ardmore, Oklahoma.

Appointed in 1993 as a Member of the Professional Responsibility Tribunal for the Oklahoma Bar Association (PRT). The PRT hears cases involving lawyer misconduct and makes recommendations to the Oklahoma Supreme Court as to what, if any, discipline should be imposed.

American College of Trial Lawyers (inducted 1993)

American Bar Association (member since 1974)

Member, House of Delegates, 1990  
Fellow, American Bar Foundation

Pushmataha County, Oklahoma, Bar Association  
(member since 1974)

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

American Trial Lawyers Association;  
Oklahoma Trial Lawyers Association;  
Life member, University of Oklahoma, College of Law  
Association (Board member 1979-1981);  
Member by blood of Choctaw Tribe of Oklahoma.

Other: None.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

June 12, 1974 - All Oklahoma State Courts;

June 26, 1974 - United States District Court for  
the Eastern District of Oklahoma;

January 9, 1980 - United States Court of Appeals for  
the Tenth Circuit;

March 29, 1982 - Supreme Court of the United States  
of America;

August 12, 1993 - United States District Court for the  
Northern District of Oklahoma.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

1. Estate & Gift Taxes: Flight Insurance,  
Volume 27, Summer 1974, Number 3,  
Oklahoma Law Review at Page 510.
2. Estate & Gift Taxes: Oklahoma's New Disclaimer  
Statute, Volume 27, Winter 1974, Number 1,  
Oklahoma Law Review at Page 62.  
This article was also published in Fundamentals  
of Estate Planning, University of Oklahoma Law  
Center, at Page 75.
3. Oklahoma Law in Federal Courts,  
published in the Quarterly Issue of the  
Oklahoma Bar Journal, June 1976, at Page 82.
4. Oklahoma Uniform Jury Instructions-Civil  
An Overview, published in Publication No. 149,  
Oklahoma Bar Association, Department of  
Continuing Legal Education, March 1983.

5. Problems of Relevancy Other Than Rule 403, published in Publication No. 106, Oklahoma Evidence State and Federal Current Trends, the Oklahoma Institute of Continuing Legal Education, Inc., Spring 1984.
  6. Bad Faith - Plaintiff's Perspective or "If The Insurance Company Does Not Pay, We'll Sue Them For Bad Faith," published in Publication No. 301, Insurance Litigation, Oklahoma Bar Association, Continuing Legal Education, Spring 1988.
13. Health: What is the present state of your health? List the date of your last physical examination.
- Good; September 30, 1993.
14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.
1. Appointed November 16, 1981, by the Honorable Pat Irwin, Chief Justice of the Oklahoma Supreme Court, to serve as justice on Temporary Division No. 82 of the Court of Appeals, State of Oklahoma to decide the appeal of and render opinions, with two other appointed justices in three cases.
  2. Appointed October 8, 1991, by the Honorable Marian Opala, Chief Justice of the Oklahoma Supreme Court, to serve as justice on Temporary Division No. XII of the Court of Appeals, State of Oklahoma, to decide the appeal of and render opinions, with two other appointed justices in three cases.

The Oklahoma Supreme Court, when their caseload gets heavy, appoints Temporary Courts of Appeals to decide cases and render written opinions on those cases assigned the Temporary Courts of Appeals.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Opinions rendered when serving on the Temporary Court of Appeals set forth in No. 14 above are:

- a) Case No. 55,508, Astro Drilling v. Perry Oil
- b) Case No. 55,617, Charley True Auto Service v. Blubaugh
- c) Case No. 55,799, Thurmond et al. v. Jackson et al.
- d) Case No. 75,423, American Reinsurance Company v. Michael B. Birnie and L. B. Windham, et al.
- e) Case No. 75,302, Walt Garner Associates, Inc., v. Nick Alan and David DiBenedetto and National Foundation Life Insurance Company
- f) Case No. 75,300, Evelyn Price v. Ray Riggs and Jeanette Riggs d/b/a Custombuilt Patio & Awning Company

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any successful candidacies for elective public office.

None.

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:
  - 1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;
 

I have not served as a clerk to a judge.
  - 2. whether you practiced alone, and if so, the addresses and dates;
 

I have never practiced alone.
  - 3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

January 2, 1974, to July 26, 1974

Stamper & Otis  
Box 100  
Antlers, Oklahoma 74523  
Legal Intern

July 26, 1974, to January 2, 1975

Stamper & Otis  
Box 100  
Antlers, Oklahoma 74523  
Associate

January 2, 1975, to June 30, 1993

Stamper, Otis & Burrage  
Box 100  
Antlers, Oklahoma 74523  
Partner

June 30, 1993, to Present

Stamper & Burrage  
Box 100  
Antlers, Oklahoma 74523  
Partner

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

The law firm of Stamper & Burrage is engaged in the general practice of law and handles both civil and criminal cases in state and federal courts at the trial court level and appellate level. I would not say that the character of my law practice has changed over the years, however, as time has passed most of my time in the practice has been involved in litigation.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

My clients include individuals who have sustained personal injuries generally through defective products, medical negligence or vehicle accidents. I also represent or have represented individuals charged with crimes; insurance companies, oil and gas companies, banks, companies involved in wood processing and paper industry, and hospitals. I have not specialized in any one area.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I appear in court frequently, usually on a monthly basis.

2. What percentage of these appearances was in:

- (a) federal courts  
 (b) state courts of record;  
 (c) other courts.

- (a) 15% to 20%  
 (b) 80% to 85%  
 (c) None

3. What percentage of your litigation was:

- (a) civil;  
 (b) criminal.

- (a) 95%  
 (b) 5%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have probably tried in excess of 100 cases to verdict or judgment and in most, if not all, I was either sole counsel or chief counsel.

5. What percentage of these trials was:

- (a) jury;  
 (b) non-jury.

- (a) approximately 50%  
 (b) approximately 50%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and the date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:



- a) the date of representation;
- b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Case #1. State of Oklahoma vs. Lorelei Lee Rice;  
in the District Court of Choctaw County, Oklahoma  
Case No. CRF-75-54

Judge: Honorable Neal Merriott  
(Neal Merriott is now in private practice  
in Atoka, Oklahoma)

In 1975, my partner, Joe Stamper, and myself represented Lorelei Lee Rice, who was charged with Murder in the Second Degree as a result of killing her husband. Ms. Rice and her children were the victims of many years of severe physical abuse from a husband and father who was an alcoholic. Ms. Rice did not have the financial resources to pay for all time necessary to prepare and try this case to a jury or to employ the experts needed in the area of psychiatry. The trial court was very restrictive with regard to evidence of physical abuse in both the trial of the case and jury instructions. At the trial court level, she was convicted of manslaughter and given a 12-year sentence. Joe Stamper and myself represented Ms. Rice through her jury trial. Other counsel handled the appeal of this case and on appeal the Court of Criminal Appeals reduced the sentence to four (4) years and it was suspended.

Date of representation: 1975 - 1976

Opposing counsel:

Gary Brock, District Attorney  
(now in private practice)  
McCombs & Brock  
P. O. Box 59  
Idabel, OK 74745  
405-286-3363

Vester Songer, Assistant District Attorney  
(now in private practice)  
P. O. Box 696  
Hugo, OK 74743  
405-326-7575

Co-counsel:

Joe Stamper  
 Stamper & Burrage  
 P. O. Box 100  
 Antlers, OK 74523  
 405-298-3332

Case #2. Town of Wapanucka, Oklahoma v. Robert L. Laney and his wife Evelyn P. Laney, Husband and Wife, in the District Court of Johnston County, Oklahoma, Case No. C-79-93;

Judge: Honorable H. Leo Austin, District Judge  
 (Leo Austin is now in private practice in Ada, Oklahoma.)

Robert L. Laney and his wife Evelyn P. Laney v. Town of Wapanucka, Oklahoma, and Oklahoma Water Resources Board, in the District Court of Johnston County, Oklahoma, Case No. C-81-39;

Judge: Honorable H. Leo Austin, District Judge  
 (Leo Austin is now in private practice in Ada, Oklahoma.)

In Re: Town of Wapanucka, Debtor, Chapter 9, in the United States Bankruptcy Court for the Eastern District of Oklahoma, Case No. 82-00231.

Judge: Honorable George R. Inghish,  
 United States Bankruptcy Judge

The Town of Wapanucka, Oklahoma's water supply was damaged when a semi carrying oil overturned in the lake which supplied the water. The Laney's, who were Texas residents, owned a tract of land which had springs located on same. The Town of Wapanucka filed an application with the Oklahoma Water Resources Board to take the water from the springs. The only notice, with regard to the Town's application, was published in the Johnston County, Oklahoma, newspaper where the springs were located. The Laney's, being Texas residents, were unaware of the Town's application to take the water from the springs and the water resources board's permission to the Town to take the spring water.

The Town of Wapanucka filed a condemnation action against the Laneys (C-79-93) to lay a water line across their property to connect to the springs. It was the Town's position that the Laneys were due no compensation for using any water from the springs because of the Oklahoma Water Resources Board's permit which had been granted to the Town to take water from the springs. The commissioners' award in this condemnation action was the sum of \$5,000.00.

The Laneys then filed an inverse condemnation action against the Town of Wapanucka, Oklahoma, and joined as a party defendant the Oklahoma Water Resources Board (C-81-39). It was the Laneys' position that the granting of the water rights from the springs to the Town of Wapanucka was unconstitutional because the statute relied upon by the Oklahoma Water Resources Board did not provide adequate notice.

These two cases (C-79-93 and C-81-39) were consolidated for jury trial. The jury awarded the Laneys \$84,000.00 and there was added to said award pre-judgment interest of \$7,337.26, plus attorney's fees in the sum of \$21,189.61.

To avoid payment of this judgment, the Town of Wapanucka filed a Chapter 9 bankruptcy in the United States Bankruptcy Court for the Eastern District of Oklahoma. The bankruptcy judge stated that the judgment of the Laneys could not be discharged in bankruptcy because of the constitutional provision that private property cannot be taken for public use without just compensation.

The Town of Wapanucka had an action pending against the trucking company which had damaged the Town's water supply. After the bankruptcy court's pronouncement, the case was settled by the Town of Wapanucka paying the Laneys the sum of \$105,000.00.

I represented the Laneys at all stages of these cases, which included all hearings before the Court, the jury trial and hearings in the bankruptcy case.

Dates of representation: 1980 - 1983

Counsel for the Town of Wapanucka, Oklahoma,  
at the jury trial:

Doug Gabbard II  
Atoka County Courthouse  
4 N. Main St.  
Atoka, OK 74525  
405-889-2423

(Doug Gabbard is now the District Judge  
for Atoka and Coal Counties.)

Counsel for the Town of Wapanucka, Oklahoma,  
after the jury verdict and in the bankruptcy action:

Don L. Wyatt  
Wyatt, Austin & Associates  
P. O. Box 333  
Ada, OK 74820  
405-436-2300

Case #3. Steve W. Hayes v. Bob L. Bruton, M.D.;  
in the District Court of Bryan County, Oklahoma,  
Case No. C-86-598

Judge: Honorable Joe C. Taylor, District Judge  
(Judge Taylor is now on the  
Court of Appeals, Tulsa Division)

Steve W. Hayes was a college student and employed  
at Potter's Sausage in Durant, Oklahoma. He sustained  
an on-the-job injury when he stuck a slender boning  
knife in his wrist. Steve was sent by Potter's  
Sausage to the company physician, Bob L. Bruton, M.D.  
Dr. Bruton treated this injury. Steve filed a  
malpractice action against Dr. Bruton for failure to  
diagnose an injury to the ulnar nerve caused by the  
boning knife. There was no offer of settlement prior  
to trial. After the first day of jury trial, an offer  
of \$75,000.00 was rejected. The jury returned a  
verdict of \$800,000.00 for actual damages. After  
computation of pre-judgment interest and costs, the  
judgment was the sum of \$1,004,998.03. Dr. Bruton  
filed a Motion for New Trial, which was overruled, and  
the cause was settled for the sum of \$950,000.00.

I was lead counsel in the case for Mr. Hayes.

Dates of representation: 1985 - 1989

Counsel for Dr. Bruton:

Jack Thomas  
 Thomas, Glass, Atkinson, Haskins,  
 Nellis & Boudreaux  
 Suite 1500, 525 S. Main St.  
 Tulsa, OK 74103  
 918-582-8877

Co-counsel:

Alan B. McPheron  
 116 North Third  
 Durant, OK 74701  
 405-924-7300

Case #4. Barton M. Cannon v. The Rust Engineering Company, a Foreign Corporation; Brown & Root, Inc., a Foreign Corporation; KMW of Sweden (Karlstads Mekanisk Werkstad of Sweden), a Foreign Corporation; and KMW (Karlstads Mekanisk Werkstad) - Johnson, now KMW Corporation, a Foreign Corporation, in the United States District Court for the Eastern District of Oklahoma, Case No. 83-556-C

Judge: Honorable Frank H. Seay  
 United States District Judge

Barton M. Cannon was a young boy who was employed by Weyerhaeuser Company in Valliant, Oklahoma. While working on the No. 1 Paper Machine, he was injured. Suit was filed against the manufacturer of the machine, which was a foreign corporation doing business in Sweden, as well as the engineering company and company that constructed the plant. In order to sue the Swedish corporation, there had to be compliance with the Treaty of the Hague, as well as translation of court documents to Swedish. There were extensive depositions, including depositions of the Swedish company in Stockholm, Sweden, which required an interpreter. The case was settled prior to trial, with the plaintiff receiving cash and a structured settlement which had a seven-figure pay-out value. The amount of such settlement cannot be disclosed by reason of the fact that the settlement agreement requires that it be kept confidential.

I was lead counsel in the case for Mr. Cannon and represented him in all stages of the case.

Dates of representation: 1983 - 1985

Counsel for Defendant, KMW of Sweden:

John H. Tucker  
Rhodes, Hieronymus, Jones, Tucker & Gable  
2800 Fourth National Bank Building  
Tulsa, OK 74119  
918-582-1173

Counsel for Defendant, The Rust Engineering Company:

Richard D. Wagner  
Knight, Wagner, Stuart, Wilkerson & Lieber  
233 W. 11th St.  
Tulsa, OK 74103  
918-584-6457

Counsel for Defendant, KMW-Johnson now  
KMW Corporation:

John F. McCormick  
Pray, Walker, Jackman, Williamson & Marlar  
2200 Fourth National Bank Building  
Tulsa, OK 74119  
918-583-1366

Counsel for Defendant, Brown & Root, Inc.:

Monte Brown  
Allford, Ashmore, Investor, Brown & Zellmer  
P. O. Box 130  
McAlester, OK 74502  
918-423-3131

Co-counsel:

Jerry McCombs  
McCombs & Brock  
P. O. Box 59  
Idabel, OK 74745  
405-286-3363

Case #5. Bill L. Kelley, Dwayne Henderson, and Marvin Blubaugh, on Behalf of Themselves and Others Who Are Similarly Situated v. Mid-America Racing Stables, Inc., an Oklahoma Corporation; D. Wayne Lukas; Jeffrey W. Lukas; R. Mark Geurkink; John V. Hazleton; C. Michael Williams; and Arthur Andersen & Co.,  
in the United States District Court for the Western District of Oklahoma;  
Case No. CIV-89-1362-A

Judge: Honorable Wayne Alley  
United States District Judge

Plaintiff brought an action in connection with an offering of common stock for violation of the state and federal securities law. Plaintiff sought class certification, together with damages of approximately \$4,000,000.00, plus attorney's fees and costs. Plaintiffs claimed the Prospectus was untrue and fraudulent. There was extensive discovery and briefing with regard to the class certification issue. The Court denied class certification and after the denial the case was settled. The individual defendants I represented did not pay any of the settlement. The company paid the money necessary to settle the case and it was felt the cost of settlement was what it would cost to defend the case.

I represented the individual defendants and participated in all aspects of the litigation.

Dates of representation: 1989 - 1990

Counsel for Plaintiff:

William B. Federman  
Day, Hewett & Federman  
Sixth Floor  
One North Hudson  
Oklahoma City, OK 73102  
405-236-8800

Roger B. Greenberg  
Richie & Greenberg  
Tenth Floor, Summit Plaza  
West Tower  
12 Greenway Plaza  
Houston, TX 77046  
713-627-2027

Co-counsel for Mid-America Racing Stables, Inc.:

Harry A. Woods, Jr.  
Crowe & Dunlevy  
1800 Mid-America Tower  
Oklahoma City, OK 73102  
405-235-7700

Co-counsel for Arthur Andersen Company:

Eric Eissenstat  
 Fellers, Snider, Blankenship, Bailey  
 & Tippens  
 2400 First National Center  
 Oklahoma City, OK 73102  
 405-232-0621

Case #6. Andrea Stangl v. Steven P. Stangl;  
 in the District Court of Pittsburg County, Oklahoma,  
 Case No. D-89-219

Judge: Honorable Steven W. Taylor  
 Associate District Judge

Steven P. Stangl is a successful dentist in McAlester, Oklahoma, and was sued by his wife for divorce. I represented him in the divorce action. There had been substantial assets accumulated during the marriage. There were two unique questions in this divorce action. The first was the wife's claim that she was totally disabled by reason of the "Yuppie Flu" (Epstein Bar Virus), which required a considerable amount of medical research and testimony. The second question involves the wife's claim that her husband's dental practice had a "good will" or "going concern" value. The case, along with these issues, was tried. The Court ruled that in the State of Oklahoma a dental practice did not have a "good will" or "going concern" value and that the wife was not disabled by reason of her "Yuppie Flu". I represented Steven P. Stangl in all phases of this case, including the trial.

Dates of representation: 1989 - 1991

Counsel for Andrea Stangl:

Warren Gotcher  
 Gotcher, Brown, Bland & Belote  
 P. O. Box 160  
 McAlester, OK 74502  
 918-423-0412

Case #7. Charles D. "Charley" Wilson v. AES Shady Point, Inc., a Corporation, and Oklahoma Gas and Electric Company, a Corporation;  
 in the District Court of LeFlore County, Oklahoma  
 Case No. C-90-185

Judge: Doug Gabbard II  
 District Judge



AES Shady Point, Inc., constructed a co-generation plant pursuant to federal law in LeFlore County, State of Oklahoma, at a cost in excess of \$500 million. Pursuant to the federal law, AES entered into a contract for the sale of all electrical power generated by the plant with Oklahoma Gas & Electric Company, which was the sole purchaser of power from this plant. Plaintiff filed this action seeking to void the contract because of alleged defects in the proceedings before the Oklahoma Corporation Commission to approve the contract. The facts surrounding the contract were not in dispute, but there was a hotly contested legal dispute as to the law that applied to the factual situation. There was extensive briefing and the case was set for trial and hearing with regard to the law and its application to the facts of the case. I argued the case on behalf of AES Shady Point at the trial court level, as well as participating in the briefs filed. The case was appealed to the Oklahoma Supreme Court and then assigned to the Court of Appeals. The trial court's decision was affirmed by the Court of Appeals and the Oklahoma Supreme Court denied certiorari.

Dates of representation: 1991 - 1993

Counsel for Plaintiff, Charles D. "Charley" Wilson:

Whit Pate  
P. O. Box 785  
Poteau, OK 74953  
918-647-3200

Co-counsel with me representing AES Shady Point:

Thomas F. Golden and Frank M. Hagedorn  
Hall, Estill, Hardwick, Gable, Golden & Nelson  
4100 Bank of Oklahoma Tower  
One Williams Center  
Tulsa, OK 74172  
918-588-2700

James E. Hamilton  
Hamilton, Warren & Bovos  
P. O. Box 660  
Poteau, OK 74953  
918-647-9171

Rigdon Boykin  
Chadbourne & Parke  
30 Rockefeller Plaza  
New York, New York 10112  
212-408-5100

Co-counsel for Oklahoma Gas & Electric Company:

Hugh D. Rice  
 Rainey, Ross, Rice & Binns  
 735 First National Center West  
 Oklahoma City, OK 73102  
 405-235-1356

Case #8. W. A. Gilbert v. State Farm Fire and Casualty Company;  
 in the District Court of Bryan County, Oklahoma,  
 Case No. C-85-414

Judge: Honorable Joe C. Taylor  
 District Judge  
 (Judge Taylor is now on the  
 Court of Appeals, Tulsa Division)

W. A. Gilbert's home was insured by State Farm Fire and Casualty Company and burned. The insurance policy issued by State Farm provided for coverage on the home of \$91,500.00, \$64,050.00 for personal property, and \$27,450.00 for loss of use. Mr. Gilbert filed a proof of loss with State Farm in the sum of \$167,500.00. State Farm denied payment on the loss, claiming that Mr. Gilbert had employed an arsonist to burn his home. This case was tried to a jury and the total judgment entered in the case was for the sum of \$373,193.40, which included attorney's fees, interest and costs. The case was appealed to the Oklahoma Supreme Court and then assigned to the Court of Appeals. The Court of Appeals reversed the judgment for the emotional distress of \$25,000.00, ordered a retrial on the bad faith cause of action only, and also reduced the attorney's fees awarded by the sum of \$10,000.00. Prior to the second trial, on the bad faith cause of action, the case was settled for approximately \$370,000.00.

I was lead counsel representing Mr. Gilbert in the trial court and on appeal.

Dates of representation: 1985 - 1989

Counsel for State Farm Fire and Casualty:

Bill Cathcart  
 Cathcart, Gofton & Stratton  
 2807 N. Classen Blvd.  
 Oklahoma City, OK 73106  
 405-524-1110

Co-counsel:

Alan B. McPheron  
116 North Third  
Durant, OK 74701

Case #9. Nicor Exploration Co., v. Atlantic Richfield Co., and ARCO Natural Gas Marketing, Inc.  
in the District Court of Latimer County, Oklahoma,  
Case No. C-88-97

I represent Atlantic Richfield Company ("ARCO") and ARCO Natural Gas Marketing, Inc. ("ANGMI") in the above lawsuit. This is a rather complex oil and gas case which has been trifurcated for trial. A general dicussion of each phase of the case is as follows:

Phase One: This portion of the case involved NICOR's claims that ARCO and ANGMI had violated the provisions of the Oklahoma Revenue Sharing Act. NICOR is a working interest owner with ARCO in the wells in question. In this phase of the trial, NICOR sought damages for gas sold from the well and violations of the Oklahoma Revenue Sharing Act in the sum of \$9.4 million. It was ARCO's contention that NICOR was not entitled to revenue share under the Act with ARCO because NICOR was a "contracted party". ARCO further contended that even if NICOR was entitled to revenue share that the only sums to which they were entitled would be the amount of \$832,000.00. It is ARCO's position that under the federal law, NICOR's portion of the gas from the wells is dedicated to interstate commerce and thereby prevents revenue sharing. This portion of the case was tried for approximately one week to the Court and the Court found that NICOR was entitled to judgment in this phase of the case for the sum of \$832,000.00, plus accounting fees of approximately \$145,000.00. The trial court refused to treble damages under the Revenue Sharing Act, but did treble the accounting fees. This portion of the case was tried in April of 1992, by myself and co-counsel, Jay Brandt.

Phase Two: This portion of the case was tried for approximately one week in August of 1992. ARCO and ARKLA, Inc., had entered into certain settlement agreements in 1987 and 1989. It was NICOR's position that, as a working interest owner in the wells, it was entitled to a portion of the settlement proceeds which settled issues regarding the gas purchase contract

between ARCO and ARKLA. NICOR was seeking damages in the sum of \$34.7 million. The trial court ruled for ARCO and ANGMI in this phase of the trial and NICOR was not awarded any damages. This phase of the case was tried by myself and Jay Brandt.

Phase Three: Phase Three of the case is what has been designated as the fraud cause of action in connection with ARCO's acquisition of minerals in the gas field prior to notifying NICOR of the discovery. The Court sustained ARCO's Motions for Summary Judgment on these claims by NICOR. This phase of the case was handled by myself, Jay Brandt and Eugene Kuntz.

All three phases of this case are presently on appeal in the Oklahoma Supreme Court.

Dates of representations: 1991 - 1994

Counsel for NICOR Exploration:

Danny P. Richey and  
Terry J. Barker  
Brune, Pezold, Richey & Lewis  
700 Sinclair Building  
Six East Fifth Street  
Tulsa, OK 74103  
918-584-0506

Co-counsel:

Jay Brandt  
George Kolb  
Wilson, Elser, Moskowitz,  
Edelman & Dicker  
3401 Renaissance Tower  
1201 Elm Street  
Dallas, TX 75270  
214-698-3831

Case #10. Moffett & Brewster, John Brewster, Trustee, and Robert Moffett, Trustee, vs. Atlantic Richfield Company, ARCO Natural Gas Marketing, Inc., Anadarko Petroleum Corporation, NICOR Exploration Company, Harry V. Allison, John T. Oxley, John C. Oxley, Roger S. Randolph, Individually and as Trustee for Mary Jane Tritsch and Thomas E. Oxley, Frank M. Engle, as Trustee for Thomas E. Oxley and Mary Jane Oxley, and Marjorie Ruth Soper, as Executrix of the Estate of R. L. Soper, in the District Court of Latimer County, Oklahoma, Case No. C-90-72

Judge: Honorable Joe C. Taylor, District Judge  
(Judge Taylor is now on the  
Court of Appeals, Tulsa Division)

Robert Moffett and John Brewster are two lawyers from Houston, Texas. Atlantic Richfield Company ("ARCO") made a substantial gas find in Latimer County, Oklahoma, in the early part of 1988. Moffett & Brewster, with financial backing from some very prominent corporate leaders and lawyers in Houston, Texas, obtained "top leases" in a substantial portion of this gas field.

After the top leases were obtained, Moffett & Brewster filed an action for the following:

- 1) to cancel the ARCO leases by reason of the fact that in earlier years there had been periods of time when production had ceased for sixty (60) day periods;
- 2) damages for breach of the implied covenant to market;
- 3) damages for breach of the Oklahoma Revenue Sharing Act;
- 4) damages by reason of the 1987 and 1989 ARCO/ARKLA settlement agreements.

The damage claim was in the sum of approximately \$200 million and the value of the leases which Moffett & Brewster sought to cancel equaled or exceeded the damage claim. Moffett & Brewster alleged that the total damages sought in the action were in excess of \$1 billion.

The case was tried to the Court for five weeks and judgment was rendered for the defendants. Moffett & Brewster recovered nothing.

The case was appealed to the Oklahoma Supreme Court. After the appeal was filed, the case was settled by ARCO paying Moffett & Brewster a portion of their litigation expenses and attorney's fees.

I was lead counsel for Atlantic Richfield Company and ARCO Natural Gas Marketing, Inc.

Dates of representation: 1991 - 1993

## Counsel for Moffett &amp; Brewster:

A. Lee McLain  
 1100 Louisiana, Suite 1770  
 Houston, TX 77002  
 713-650-6300

Warren Gotcher  
 Gotcher, Brown, Bland & Belote  
 P. O. Box 160  
 McAlester, OK 74502  
 918-423-0412

Joseph D. Jamail  
 Jamail & Kolius  
 500 Dallas, Suite 3300  
 Houston, TX 77002  
 713-651-3000

## Co-counsel for Anadarko Petroleum:

Mark D. Christiansen  
 Crowe & Dunlevy  
 1800 Mid-America Tower  
 20 North Broadway  
 Oklahoma City, OK 73102  
 405-235-7700

## Co-counsel for NICOR Exploration:

Danny P. Richey and  
 Terry J. Barker  
 Brune, Pezold, Richey & Lewis  
 700 Sinclair Building  
 Six East Fifth Street  
 Tulsa, OK 74103  
 918-584-0506

## Co-counsel for Soper estate:

Robert S. Thompson  
 Pool, Thompson, Coldiron, Blankenship  
 & Vincent  
 511 Couch Drive, Suite 202  
 Oklahoma City, OK 73102  
 405-235-0484

## Co-counsel also representing ARCO:

Eugene Kuntz  
 P. O. Box 720370  
 Norman, OK 73070-4274  
 405-321-5203

George H. Kolb and  
 Jay A. Brandt  
 WILSON, ELSER, MOSKOWITZ,  
 EDELMAN & DICKER  
 3401 Renaissance Tower  
 1201 Elm Street  
 Dallas, TX 75270  
 214-698-3830

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

During 1976, 1977 and part of 1978, I was general counsel for David Gardner, Principal Chief of the Choctaw Nation, and the Choctaw Nation of Oklahoma. This consumed a considerable amount of my time during this period of time. I represented David Gardner in his official capacity as Principal Chief of the Choctaws in an action entitled Noel Morris, et al. v. Cecil Andrus, in His Official Capacity as Secretary of the Interior, et al., filed in the United States District Court for the District of Columbia. I appeared in Washington, D.C., before Judge Richey for argument on motions and briefs filed on behalf of Chief Gardner. Chief Gardner died, during his tenure as Chief, and I did not conclude this litigation. As a result of this case, the Choctaws adopted a new Constitution.

The State of Oklahoma did not have Uniform Jury Instructions until the Oklahoma Supreme Court established the Oklahoma Supreme Court Committee for Uniform Civil Jury Instructions. I served on this committee. It is felt that by having uniform instructions, there have been fewer appeals involving jury instructions. These instructions have also been of great assistance to the trial court judges because of less time having to be spent on how the jury is to be instructed in civil cases. I am presently serving, by appointment from the Oklahoma Supreme Court, on the standing committee to monitor, update and revise these instructions.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

If selected as a federal judge, the income, other than my salary I would have, would be from the following:

a) I have an Individual Retirement Account ("IRA") and a retirement account with and administered by the American Bar Association. The assets in these retirement accounts are for retirement and cannot be withdrawn prior to retirement without substantial penalty. Hopefully, the assets in these retirement accounts will continue to increase in value and generate income. The assets in these accounts consist of bank stock, cash, promissory notes, minerals, real estate and publicly traded stocks.

b) Rental income from property owned. I presently receive \$18,887.64 per year as rental income from my law firm for rental of the portion of the law office building I own. I also receive probably less than \$1,200.00 per year for my portion of rental income for other rental property. This other rental property may not stay rented, so it is impossible to state the exact amount of rental income I may receive. With regard to the rental from the law office building, if I sold my interest to any other member of the firm, this rental income would stop.

c) Income from oil, gas and other minerals of approximately \$1,000.00 per year.

d) Interest income from promissory notes of less than \$1,000.00 per year.

e) Annuity income of \$48.00 per month, which is guaranteed through the year 2005, with lump sum payments as follows:

|             |   |         |
|-------------|---|---------|
| \$ 8,000.00 | - | 10-1-95 |
| 16,000.00   | - | 10-1-10 |
| 20,000.00   | - | 10-1-15 |
| 24,000.00   | - | 10-1-20 |
| 40,000.00   | - | 10-1-25 |



f) Members of my family own controlling interest in the First National Bank at Antlers, Oklahoma, with a branch bank in Atoka, Oklahoma. I serve as a bank director in the First National Bank at Antlers, Oklahoma, and receive bank director's fees of approximately \$5,000.00 per year. I will resign as a director upon confirmation.

g) The law firm of Stamper & Burrage consists of two partners: myself and Joe Stamper. Upon confirmation, the law firm will be dissolved. Joe Stamper will purchase my interest in the personal property. The fees due will be collected on pending cases and distributed to Joe Stamper and myself. Joe Stamper will rent my portion of the law office building or purchase my interest in the law office building.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts of interest during your initial service in the position to which you have been nominated.

I believe there would be a potential conflict of interest in any case (1) that my law firm was involved in; (2) that involved any former client of myself or my law firm; (3) that involved any matter in which I might have a financial interest; and (4) that involved a family member or close personal friend. There could possibly be other situations that could present a potential conflict of interest. I would strictly follow the Code of Judicial Conduct in this and all other areas.

In order to determine whether there is any potential conflict of interest, I would examine the case or take such other measures to determine the parties and legal counsel involved in the case, as well as the nature of the case. In the event there was any conflict of interest, I would disqualify from the case.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See attached Financial Disclosure Report.

5. Please complete the attached financial net worth statement in detail. (Add schedules as called for.)
6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have contributed to and supported various political candidates over the past twenty-four (24) years, however, I have never held a position or played a role, other than contributing and supporting, in a political campaign.

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

a) I, as well as other members of my law firm, have always spent time advising, as well as representing in litigation, individuals who were not able to pay legal fees. This ranges from representing individuals who can pay no fee at all to those that might be able to pay only a portion of the fee. During the time I have practiced law, I have represented many women, most of whom had children, in divorce actions where there was physical abuse and/or an unwillingness to support the family.

b) Boyce Ray Fobb was charged with First Degree Murder for the killing of his wife. Mr. Fobb was a severe alcoholic and during his life had sustained some severe head injuries. I represented Mr. Fobb through two jury trials and one appeal. A plea agreement was initially reached with the District Attorney's office for a 15-year sentence. After the election of a new District Attorney, the plea agreement was backed out of by the District Attorney's office. A motion to enforce the plea agreement was filed and sustained by the trial court. This was appealed to the Court of Criminal Appeals, which reversed the trial court. A jury trial was held to determine whether Mr. Fobb was competent to stand trial and the jury found he was. The murder case was thereafter tried to a jury in 1988. Mr. Fobb was convicted of Second Degree Murder and sentenced to 35 years. The appeal of the case was handled by the public defender's office and the case was affirmed. Mr. Fobb was indigent and could not pay any attorney's fees or fees for experts. No application was ever filed for the nominal fee the court fund would pay. I felt that Mr. Fobb was not guilty of First Degree Murder and wanted to help him.

c) I presently spend a considerable amount of time serving on the Trial Panel of the Professional Responsibility Tribunal of the Oklahoma Bar Association. Each trial panel consists of three individuals chosen from the members of the Professional Responsibility Tribunal and hear cases involving complaints filed by the General Counsel's Office of the Oklahoma Bar Association against lawyers. After the hearing, the panel makes a written recommendation to the Oklahoma Supreme Court, as to what, if any, discipline should be imposed against the lawyer

being tried. The panel members receive no fees for the time spent on these cases.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership what you have done to try to change these policies?

No.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

Yes.

If so, did it recommend your nomination?

Yes.

Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

I submitted my application to the commission and requested that various individuals send recommendation letters to the commission. I was interviewed by the entire commission. The commission submitted three (3) names to Senator Boren. I was interviewed by Senator Boren. In connection with my nomination, I have been investigated by the Federal Bureau of Investigation, the Justice Department and the American Bar Association.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has

become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The role of the federal district courts should be to determine the law in each case and apply that law to the case before it. The federal district courts should follow the law as set forth by Congress, the circuit courts and the United States Supreme Court. The federal district courts are courts of limited jurisdiction and each case should be examined to determine if jurisdiction is proper, whether there is standing and if the issues are ripe for determination. The judicial branch, under the separation of powers doctrine, should not attempt to legislate.

One of the main concerns of the federal district courts should be to determine the issues before it and make sure the docket is kept up to date.

A7-10  
Rev. 1/91

## FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics  
Reform Act of 1989, Pub. L. No.  
101-194, November 30, 1989  
(5 U.S.C.A. App. 6, 55101-112)

|  |  |   |
|--|--|---|
| 1. Person Reporting (Last name, first, middle initial)<br>Billy Michael Burrage  | 2. Court or Organization<br>United States District Court for<br>the Eastern, Northern & Western<br>Districts of Oklahoma (Roving)  | 3. Date of Report<br>3-9-94             |
| 4. Title (Article III Judges indicate active or<br>senior status; Magistrate Judges indicate<br>full- or part-time)<br>United States District Court for the<br>Eastern, Northern & Western Districts<br>of Oklahoma (Roving) | 5. Report Type (check appropriate type)<br><input checked="" type="checkbox"/> Voluntary, Date 3-9-94<br>___ Initial ___ Annual ___ Final  | 6. Reporting Period<br>1-1-93 to 3-9-94 |
| 7. Chambers or Office Address<br>Box 100<br>Antlers, OK 74523<br>405-298-3332  | 8. On the basis of the information contained in this Report, it<br>is, in my opinion, in compliance with applicable laws and<br>regulations ___<br>Reviewing Officer Signature _____ |   |

**IMPORTANT NOTES:** *The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on last page.*

## I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

POSITIONNAME OF ORGANIZATION/ENTITY

NONE (No reportable positions)

SEE ATTACHED STATEMENT

## II. AGREEMENTS. (Reporting individual only; see p. 8-9 of Instructions.)

DATEPARTIES AND TERMS

NONE (No reportable agreements)

Upon confirmation The law firm of Stamper & Burrage consists of two partners: myself and Joe Stamper. The law firm will be dissolved. Joe Stamper will purchase my interest in the personal property. The fees due will be collected on pending cases and distributed to Joe Stamper and myself. Joe Stamper will rent my portion of the law office building or purchase my interest in the law office building.

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

DATESOURCE AND TYPEGROSS INCOME  
(yours, not spouse's)

(Honoraria only)

NONE (No reportable non-investment income)

|   |                  |  |               |
|---|------------------|--|---------------|
| 1 | 1-1-93 to 3-9-94 | Professional fees from Stamper, Otis & Burrage and Stamper & Burrage | \$ 671,322.88 |
| 2 | 1-1-93 to 3-9-94 | Director's fees - First National Bank at Antlers, OK                 | \$ 5,150.00   |
| 3 | 1-1-93 to 3-9-94 | Teacher/Principal - Antlers Public Schools, Antlers, OK              | \$ (5)        |
| 4 |                  |  | \$            |
| 5 |                  |  | \$            |

## FINANCIAL DISCLOSURE REPORT (cont'd)

|   |                          |
|---|--------------------------|
| Name of Person Reporting<br>Billy Michael Burrage | Date of Report<br>3-9-94 |
|---|--------------------------|

**IV. REIMBURSEMENTS and GIFTS -- transportation, lodging, food, entertainment.**  
(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

SOURCEDESCRIPTION

|                          |   |        |
|--------------------------|---|--------|
| <input type="checkbox"/> | NONE (No such reportable reimbursements or gifts) |        |
| 1                        | Exempt  | Exempt |
| 2                        |   |        |
| 3                        |   |        |
| 4                        |   |        |
| 5                        |   |        |
| 6                        |   |        |
| 7                        |   |        |
| 8                        |   |        |

**V. OTHER GIFTS.** (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp.15-16 of Instructions.)

SOURCEDESCRIPTIONVALUE

|                          |                                 |  |    |
|--------------------------|---------------------------------|--|----|
| <input type="checkbox"/> | NONE (No such reportable gifts) |  |    |
| 1                        | None                            |  | \$ |
| 2                        |                                 |  | \$ |
| 3                        |                                 |  | \$ |
| 4                        |                                 |  | \$ |

**VI. LIABILITIES.** (Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp.16-18 of Instructions.)

CREDITORDESCRIPTIONVALUE CODE\*

|                          |                                     |   |   |
|--------------------------|-------------------------------------|---|---|
| <input type="checkbox"/> | NONE (No reportable liabilities)    |   |   |
| 1                        | Helen Thompson                      | Note and First Mortgage on real estate  | J |
| 2                        | Joe Stamper and Johnnie Lee Stamper | I co-signed a note for my brother and sister-in-law to build a home. The note is secured by a first mortgage on their home. (This is a contingent liability, the value of the home exceeds the debt.) | M |
| 3                        |                                     |   |   |
| 4                        |                                     |   |   |
| 5                        |                                     |   |   |
| 6                        |                                     |   |   |
| 7                        |                                     |   |   |

\* VALUE CODES: J = \$15,000 or less    K = \$15,001 to \$50,000    L = \$50,001 to \$100,000    M = \$100,001 to \$250,000  
N = \$250,001 to \$500,000    O = \$500,001 to \$1,000,000    P = More than \$1,000,000





FINANCIAL DISCLOSURE REPORT (cont'd)

|   |                          |
|---|--------------------------|
| Name of Person Reporting<br>Billy Michael Burrage | Date of Report<br>3-9-94 |
|---|--------------------------|

VII. INVESTMENTS and TRUSTS -- income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

| A.<br>Description of Assets<br>(including trust assets)<br><br>Indicate, where applicable, owner of the asset by using the parenthetical "(S)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.<br><br>Place "(X)" after each asset exempt from prior disclosure. | B.<br>Income during reporting period |                       | C.<br>Gross value at end of reporting period |                         | D.<br>Transactions during reporting period     |                      |                      |                     |   |
|---|--------------------------------------|-----------------------|--|-------------------------|--|----------------------|----------------------|---------------------|---|
|   | (1)                                  | (2)                   | (1)  | (2)                     | If not exempt from disclosure                  |                      |                      |                     |   |
|   | Am't. Code (A-B)                     | Type (S, J, DC) (1-3) | Value Code (J-P)                             | Value Method Code (Q-W) | (1) Type (e.g., buy, sell, margin, redemption) | (2) Date: Month- Day | (3) Value Code (J-P) | (4) Gain Code (A-B) | (5) Identity of buyer/seller (if private transaction) |
| <input type="checkbox"/> NONE (No reportable income, assets, or transactions)   |                                      |                       |  |                         |  |                      |                      |                     |   |
| 1 1/8 Interest in 80 acres near Antlers, Oklahoma   |                                      | none                  | J  | W                       | Exempt   |                      |                      |                     |   |
| 2 1/2 interest in house in Antlers, Oklahoma (S)  |                                      |                       |  |                         |  |                      |                      |                     |   |
| 3 1/4 interest in 150 acres near Antlers, Oklahoma (S)  |                                      |                       |  |                         |  |                      |                      |                     |   |
| 4 Teachers Retirement Account State of Oklahoma (S)   |                                      |                       |  |                         |  |                      |                      |                     |   |
| 5 1/3 interest in Promissory Note/Security Agreement from Randy Lohre - paid (S)  |                                      |                       |  |                         |  |                      |                      |                     |   |
| 7   |                                      |                       |  |                         |  |                      |                      |                     |   |
| 8   |                                      |                       |  |                         |  |                      |                      |                     |   |
| 9   |                                      |                       |  |                         |  |                      |                      |                     |   |
| 10  |                                      |                       |  |                         |  |                      |                      |                     |   |
| 11  |                                      |                       |  |                         |  |                      |                      |                     |   |
| 12  |                                      |                       |  |                         |  |                      |                      |                     |   |
| 13  |                                      |                       |  |                         |  |                      |                      |                     |   |
| 14  |                                      |                       |  |                         |  |                      |                      |                     |   |
| 15  |                                      |                       |  |                         |  |                      |                      |                     |   |
| 16  |                                      |                       |  |                         |  |                      |                      |                     |   |
| 17  |                                      |                       |  |                         |  |                      |                      |                     |   |
| 18  |                                      |                       |  |                         |  |                      |                      |                     |   |
| 19  |                                      |                       |  |                         |  |                      |                      |                     |   |
| 20  |                                      |                       |  |                         |  |                      |                      |                     |   |

1 Income/Gain Codes: A=\$1,000 or less (See Col. B1 & B4) E=\$15,001 to \$50,000 B=\$1,001 to \$2,500 F=\$50,001 to \$100,000 C=\$2,501 to 5,000 G=\$100,001 to \$1,000,000 D=\$5,001 to \$15,000 H=More than \$1,000,000

2 Value Codes: J=\$15,000 or less (See Col. C1 & C3) N=\$250,001 to \$500,000 K=\$15,001 to \$50,000 O=\$300,001 to \$1,000,000 L=\$50,001 to \$100,000 M=\$100,001 to \$250,000 P=More than \$1,000,000

3 Value Method Codes: (See Col. C2) Q=Appraisal R=Cost (real estate only) S=Assessed V=Other U=Book Value W=Estimated T=Cash/Market

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Billy Michael Burrage

Date of Report

3-9-94

## VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

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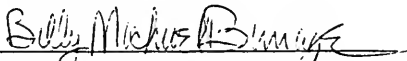
## IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature



Date 3-9-94

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, § 104, AND 18 U.S.C. § 1001.)

## FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Judicial Ethics Committee  
 Administrative Office of the  
 United States Courts  
 Washington, DC 20544

## I. POSITIONS.

- |     |                                   |   |
|-----|-----------------------------------|---|
| 1.  | Partner                           | Stamper & Burrage Law Firm,<br>Antlers, Oklahoma  |
| 2.  | Member by Blood                   | Choctaw Indian Tribe of Oklahoma  |
| 3.  | Member                            | Oklahoma Bar Association  |
| 4.  | Member                            | Pushmataha County Bar Association   |
| 5.  | Member                            | Oklahoma Trial Lawyers Association  |
| 6.  | Trustee                           | Oklahoma Bar Foundation   |
| 7.  | Trial Panel<br>Member             | Professional Responsibility Tribunal,<br>Oklahoma Bar Association   |
| 8.  | Member                            | Oklahoma University College of Law<br>Association   |
| 9.  | Member                            | Standing Committee appointed by the<br>Oklahoma Supreme Court -<br>Oklahoma Uniform Jury Instructions                             |
| 10. | Member                            | American College of Trial Lawyers   |
| 11. | Member                            | American Bar Association  |
| 12. | Fellow                            | American Bar Foundation   |
| 13. | Member                            | American Trial Lawyers Association  |
| 14. | Director                          | First National Bank at<br>Antlers, Oklahoma   |
| 15. | Part Owner in<br>Real Estate with | Herbert Rowland, M.D. (Dr. Rowland and<br>I each own a 1/2 interest in a vacant<br>lot and a rent house in Antlers,<br>Oklahoma.) |
| 16. | Part Owner in<br>Real Estate with | Foy Crockett. (I own a 1/3 interest and<br>Foy Crockett owns a 2/3 interest in a<br>20-acre tract of land in Hugo,<br>Oklahoma.)  |

17. Part Owner in Real Estate with David Smith. (Mr. Smith and I each own a 1/2 interest in a 20-acre tract of land near Antlers, Oklahoma, a duplex in Antlers, Oklahoma, and a Note and First Mortgage from Brad Miller in the approximate amount of \$4,000.00.)
18. Part Owner in Real Estate with Joe Stamper and Johnnie Lee Stamper Trust. (The law offices of Stamper & Burrage consist of two buildings, side by side, with an adjoining wall and is located in Antlers, Oklahoma. I own one of these buildings and the other building is owned 2/5ths by myself and 3/5 by Joe Stamper. Further, I own a 2/5 interest in a 100-acre tract and a 1/25 interest in a 320-acre tract with the remaining interest in these tracts being owned by Joe Stamper and the Johnnie Lee Stamper Trust. Joe Stamper is my law partner and his wife is Johnnie Lee Stamper.)
19. Part Owner in Real Estate with Alan McPheron. (Mr. McPheron and I each own an undivided 1/2 interest in a 40-acre tract of land in Bryan County, Oklahoma.)
20. Trustee Christopher Godlove Education Trust.
21. Trustee Amanda Godlove Education Trust.
22. Trustee Joe and Johnnie Lee Stamper Life Insurance Trust.

## FINANCIAL STATEMENT

## NET WORTH

BILLY MICHAEL and CAROLYN ALETHA BURRAGE

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

| ASSETS   |       |     | LIABILITIES         |   |              |
|--|-------|-----|---------------------|---|--------------|
| Cash on hand and in banks  | 109   | 504 | 00                  | Notes payable to banks—secured                                    |              |
| U.S. Government securities—add schedule Series E & EE Bonds          | 23    | 731 | 00                  | Notes payable to banks—unsecured                                  |              |
| Listed securities—add schedule                                       |       |     |                     | Notes payable to relatives  |              |
| Unlisted securities—add schedule                                     |       |     |                     | Notes payable to others   |              |
| Accounts and notes receivable:                                       |       |     |                     | Accounts and bills due  |              |
| Due from relatives and friends                                       |       |     |                     | Unpaid income tax   |              |
| Due from others  |       |     |                     | Other unpaid tax and interest                                     |              |
| Doubtful   |       |     |                     | Real estate mortgages payable—add schedule                        |              |
| Real estate owned—add schedule<br>See attached schedule              | 420   | 450 | 00                  | Chattel mortgages and other liens payable                         |              |
| Real estate mortgages receivable                                     | 3     | 000 | 00                  | Other debts—itemize:  |              |
| Automobile and other personal property                               | 67    | 000 | 00                  | Helen Thompson—Rent house   | 7 000 00     |
| Cash value—Life insurance  | 3     | 500 | 00                  |   |              |
| Other assets—itemize: Annuity value                                  | 18    | 000 | 00                  |   |              |
| Michael Burrage Rollover IRA   | 211   | 743 | 00                  |   |              |
| Michael Burrage ABA Retire. Acct.                                    | 179   | 182 | 00                  |   |              |
| Boat and boat slip improvements                                      | 325   | 000 | 00                  |   |              |
| Michael Burrage, Inc.  | 125   | 000 | 00                  | Total Liabilities   | 7 000 00     |
| Aletha Burrage Teacher's Retire.                                     | 19    | 873 | 00                  | Net Worth   | 1,498 983 00 |
| Total Assets   | 1,505 | 983 | 00                  | Total Liabilities and net worth                                   | 1,505 983 00 |
| CONTINGENT LIABILITIES   |       |     | GENERAL INFORMATION |   |              |
| As endorser, comaker or guarantor<br>See attached schedule           |       |     |                     | Are any assets pledged? (Add schedule) rent house                 | 7 500 00     |
| On leases or contracts   |       |     |                     | Are you defendant in any suits or legal actions? Yes <sup>1</sup> |              |
| Legal Claims /and State  |       |     |                     | Have you ever taken bankruptcy? No                                |              |
| 1993 Federal Income Tax Deposits<br>Provision for Federal Income Tax | 273   | 120 | 00                  |   |              |
| Other special debt   |       |     |                     |   |              |

1/ The suit has been dismissed by the Trial Court and is on appeal to the Oklahoma Supreme Court.

MB/dn

Real Estate Owned

|  |                  |
|--|------------------|
| Home   | \$ 175,000.00    |
| Office Building                                    | 157,000.00       |
| One (1) lot, Wood Addition                         | 36,000.00        |
| One-half (1/2) interest<br>Woody Pace lot          | 4,000.00         |
| One-half (1/2) interest<br>Gladys Booker house     | 20,000.00        |
| One-half (1/2) interest<br>in duplex               | 9,000.00         |
| One-half (1/2) interest<br>in Helen Thompson house | 7,500.00         |
| One-half (1/2) interest<br>in 20 acres             | 2,000.00         |
| Two-fifths (2/5) interest<br>in 100 acres          | 8,000.00         |
| One-twenty-fifth (1/25)<br>interest in 320 acres   | 2,500.00         |
| One-third (1/3) interest<br>in 20 acres            | 6,700.00         |
| Minerals   | 8,500.00         |
| One-fourth (1/4) interest<br>in 150 acres          | <u>11,250.00</u> |
|  | \$420,450.00     |

MB/dn

## Contingent Liabilities

1. My brother and sister-in-law built a new home at a cost of approximately \$250,000.00. They borrowed \$200,000.00 of this amount. I signed their note so they could obtain a favorable interest rate and borrow the money from my law partner, Joe Stamper. This note is payable at \$2,500.00 per month and they have made all the payments. The balance on the note is approximately \$132,000.00 and is secured by a first mortgage on the home.
2. When the money in my Rollover IRA and ABA Retirement Account is withdrawn, it will be subject to federal and state income taxes;
3. I have made federal income tax deposits of \$226,100.00 and state income tax deposits of \$47,020.00 for the tax year 1993. This does not count withholdings for state and federal income taxes made from my wife's payroll check as Principal at the Antlers, Oklahoma, elementary school. My 1993 income tax returns have not been prepared, but my accountant feels I have made enough tax deposits to pay my 1993 federal and state income taxes.

UNITED STATES SENATE  
Questionnaire for Judicial Nominees

I. Biographical Information (PUBLIC)

1. Full name (include any former names used.)

Vanessa Diane Gilmore

2. Address: List current place of residence and office address(es).

Vickery, Kilbride, Gilmore & Vickery  
2929 Allen Parkway, Suite 2770  
Houston, Texas 77019

1211 Post Oak Park Drive  
Houston, Texas 77027

3. Date and place of birth. ←

St. Albans, New York  
October 26, 1956

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Single.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Hampton University  
Hampton, Virginia 23668  
Dates of Attendance - 1973 to 1977  
B.S. Highest Honors - May, 1977

University of Houston College of Law  
4800 Calhoun  
Houston, Texas 77004  
Dates of Attendance - September, 1979 to December, 1981  
J.D. - December, 1981

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.



Vickery, Kilbride, Gilmore & Vickery - Professional Corporation, however, I have had a partnership arrangement since April, 1987 (and predecessor firms - Vickery & Kilbride and Vickery & Webb). Except for a brief period of time in late 1985 and early 1986, I have been employed by this firm since August, 1981. Attorney - general civil litigation practice.

Sue Schecter & Associates - (currently Martinez & Downs); October, 1985 to April, 1986 - General civil litigation practice including defense of personal injury and business and commercial cases.

University of Houston College of Law - Spring, 1984 - I worked as an Adjunct Professor of Law teaching first year legal research and writing.

1/81 to 8/81 - U.S. Attorney's Office, Houston, Texas. Law Clerk. Responsibilities included preparing memoranda, motions, complaints and briefs in the Land Division.

1/80 to 12/80 - National College of District Attorneys; Houston, Texas. Research Assistant.

9/79 to 12/79 - University of Houston law library; Library Assistant

1977-1979 - Foley's Department Store, Houston, Texas. Assistant Buyer/Group Sales Manager. Various responsibilities in women's ready-to-wear including buying blouses, sweaters, swimwear; and supervision of up to twenty-five employees.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Hampton University - Four Year Academic Scholarship, Recognized in Who's Who Among Students in American Colleges and Universities 1976-1977, Member Alpha Kappa Mu Honor Society

1989 - Honored as one of Houston's Young Black Achievers at the Human Enrichment of Life Program Annual Award Dinner

## Leadership Texas - 1990

September 1990 - Citizen of the Month award in recognition of community service presented by Houston Defender Newspaper

May 1991 - YWCA award in recognition of public service

August 1991 - Austin Metropolitan Business Resource Center award in recognition of public service

1992 - Houston Business and Professional Men's Club award in recognition of public service

1993 to 1194 - Fellow, American Leadership Forum - Class XI

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Houston Bar Association  
Texas Trial Lawyers Association  
W.J. Durham Legal Society  
American Trial Lawyers Association  
American Bar Association  
Houston Lawyers Association

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

I do not belong to any organization that is active in lobbying before public bodies. However, in my capacity as chairperson of the Texas Department of Commerce, I am often called upon to testify before the legislature on issues ranging from the budget for my agency to workforce training to tourism and international trade issues and business development. I have testified before both the Texas House and Senate on several occasions related to these matters.

I also served as co-chair of a group called Texans for NAFTA. This organization was formed to educate people about the free trade agreement and to organize support for its passage.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Supreme Court of Texas - May, 1982

United States District Court for the Southern District of Texas - May, 1987  
 United States Court of Appeals for the Fifth Circuit  
 United States District Court for the Northern District of Texas  
 Good standing in all courts

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Using Expert Help to Overcome Barriers with the Jury When you are Different from the Pool (and even when you're not); 1991 Copyright, American Bar Association.

Motions In Limine; 1993 Copyright, American Bar Association.

How to Ethically Develop an Environmental and Toxic Torts Practice; Copyright 1990, American Trial Lawyers Association.

Two copies of each writing attached to original Senate Questionnaire.

13. Health: What is the present state of your health? List the date of your last physical examination.

Good.

July 6, 1993.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions.

N/A

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

I have never held elected office, however, I have held an appointed public office. I served first as a member then as the chairperson of the Texas Department of Commerce and was appointed to that post by Governor Ann Richards. My first appointment to that post was in April of 1991 for a term which expired February of 1993. I was appointed chairperson in September, 1992. I was reappointed to the Board in February of 1993 and confirmed by the Senate in March of 1993 for a term which was to expire February of 1996. I resigned from the Commerce Board in January of 1994. The Texas Department of Commerce is the State agency responsible for business development, tourism and job training for the State of Texas. I represented the Governor on behalf of the State of Texas in all areas of economic development.

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk:

No.

2. whether you practiced alone, and if so, the addresses and dates;

No.

3. the dates, names and addresses of law firms or offices, companies, or governmental agencies with which you have been connected, and the nature of your connection with each;

Vickery, Kilbride, Gilmore & Vickery - Professional Corporation, however, I have had a partnership arrangement since April, 1987 (and predecessor firms - Vickery & Kilbride and Vickery & Webb). Except for a brief period of time in late 1985 and early 1986, I have been employed by this firm since August of 1981. Attorney - general civil litigation practice.

Sue Schecter & Associates - (currently Martinez & Downs); October, 1985 to April, 1986 - General civil litigation practice including defense of personal injury and business and commercial cases.

University of Houston College of Law - Spring 1984 - I worked as an Adjunct Professor of Law teaching first year legal research and writing.

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

My practice has always involved general civil litigation and over the years has included personal injury, aviation, election law, oil and gas, and business and commercial litigation. My emphasis in recent years has been in the area of business and commercial litigation.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

My clients are generally individuals or small business people in their own businesses. Typically I represent these people as plaintiffs, but I also have occasion to represent my business clients as defendants in some matters.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I have appeared in court regularly.

2. What percentage of these appearances was in:
- (a) federal courts; 20%
  - (b) state courts of record; 80%
  - (c) other courts.

3. What percentage of your litigation was:
- (a) civil; 100%
  - (b) criminal.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried approximately twenty-five cases to verdict. At the inception of my practice I tried more cases as an associate counsel rather than as lead counsel or co-counsel. In the last five years I have tried approximately ten cases to verdict. In each of those cases I was either sole counsel, chief counsel or co-counsel.

5. What percentage of these trials was:

- (a) jury - 90%  
(b) non-jury - 10%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, in the cases reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

First Case

- a. Case name, number, citation, name, of court and name of party you represented.

*Teledesign v. American Telephone & Telegraph Company*, Civil Action No. H-92-1414; In The United States District Court for the Southern District of Texas, Houston Division  
Represented the Plaintiff - Teledesign  
Trial Date: February 15, 1994 to March 11, 1994

- b. Brief summary and significance of the case.

Teledesign was a reseller of long distance service and had a contract with AT&T to purchase long distance time under their Software Designed Network (SDN) for resale. Plaintiff made claims against AT&T for violations of the Federal Communications Act, as well as claims for fraud and tortious interference. Plaintiff alleged that AT&T discriminated against them under the FCA by preferring one class of customers over another, that AT&T tortiously interfered with

their contract with a third party by failing to provide services under the contract and that they defrauded them by representing, among other things, that the network would have certain characteristics that it did not. Plaintiff suffered lost profits of approximately \$23 million as result of AT&T's actions.

c. The significance of your role in case.

This is the last case I tried. It was a month long trial involving numerous complex legal issues including attorney/client privilege, lost profits, lay opinion testimony and primary jurisdiction. This case is significant because my clients are one of some twenty to thirty resellers who have similar cases pending against AT&T nationwide. Our case was the first such case to go to trial in the United States and as such was closely followed by reseller attorneys across the country.

d. Presiding Judge

Judge Kenneth Hoyt.

e. Name, address and telephone number of opposing counsel.

Paula Weems Hinton  
Akin, Gump, Hauer & Feld  
1900 Pennzoil Place - S. Tower  
Houston, Texas 77002  
(713) 220-5822

f. Final disposition.

The case involved three separate causes of action. The Court chose to withdraw the FCA claims from the jury's consideration upon agreement by the parties. The causes of action that went to the jury were fraud and tortious interference. The jury found against the Plaintiff on the fraud cause of action, but was unable to reach a verdict on the tortious interference claims and did not return a verdict on that cause of action.

#### Second Case

a. Case name, number, citation, name, of court and name of party you represented.

Prentice Colour vs. AB Dick; Civil Action No. H-86-585; In the United States District Court for the Southern District of Texas, Houston Division.

Represented the Plaintiff - Prentice Colour.

Date: August, 1989 and January, 1992

b. Brief summary and significance of the case.

This was a business case involving breach of a contract to market a new patented process for producing color separations. The Plaintiff was a small company which owned the patent and had a limited opportunity to commercially exploit it before the technology became obsolete. The Defendant agreed to market the process, tied up the patent with an exclusive marketing agreement and then failed to market the process, waiting instead until it bought 100% of the next generation of technology. The Plaintiff was forced out of business because of the delay and eventually filed for bankruptcy. The case was first tried to a verdict in 1989. The Court granted a new trial based on concerns the Court had about the adequacy of the expert testimony as it related to damages. The retrial of the case took place in January, 1992.

c. The significance of your role in case.

I assumed the representation of the case after another law firm had to withdraw when the Plaintiff was no longer able to pay that firm on a standard hourly fee basis. I devised a creative fee structure to allow this client to pursue a meritorious claim that they would not have been able to otherwise pursue.

d. Presiding judge.

Judge James DeAnda (retired)

e. Name, address and telephone number of opposing counsel.

Steven McCormick - August, 1989  
Stephanie Scharf, Esp.  
Kirkland & Ellis  
200 East Randolph Drive  
Chicago, Illinois 60601  
(312) 861-2246

David Beck - January, 1992  
Beck, Redden & Sechrest  
1331 Lamar Street, Suite 1570  
Houston, Texas 77010-2002  
(713) 659-8140

f. Final disposition.

The case was tried to a jury in 1990 which resulted in a verdict of \$28,552,000.00 and a final judgment of \$41,215,000.00. After the Court granted a new trial, the case was tried to a jury in 1992 and resulted in a verdict of



\$378,000 and a final judgment of \$678,010.98. The case was eventually settled after being set for appeal.

### Third Case

- a. Case name, number, citation, name of court and name of party you represented.

*Beale vs. Beechnut Manor Nursing Home*; Cause No. 90-18826; In the District Court of Harris County, Texas 234th Judicial District. I represented the Plaintiff.  
Date: May 1992

- b. Brief summary and significance of the case.

This was a wrongful death case filed against a nursing home related to the drowning death of Mr. John Beale while a resident in that home. This case was significant because the coroner found the cause of death to be asphyxia due to drowning, but after the family notified the home that they intended to file a lawsuit related to their father's death, the nursing home had the autopsy investigation re-opened by filing fraudulent affidavits claiming there was no water in the bathtub. Thereafter the coroner changed the cause of death to coronary artery sclerosis. It was necessary to establish the correct cause of death as well as the fraud that had occurred in the amendment of the autopsy report.

- c. The significance of your role in case.

I pursued the case on behalf of the plaintiffs, originally representing the nine adult children of the deceased, but ultimately representing only one of the children after the others dropped out for religious reasons. I was able to locate evidence refuting the claims of the Defendant that there was no water in the tub and supporting the original diagnosis of death as asphyxia due to drowning.

- d. Presiding judge.

Judge Scott Brister

- e. Name, address and telephone number of opposing counsel

James B. Edwards, Esq.  
Christopher Aruffo, Esq.  
Edwards & Calvert  
1800 W. Loop South, Suite 1500  
Houston, Texas 77027  
(713) 622-2111

## f. Final disposition.

The case was tried to a jury which resulted in a verdict of \$1,000,000.00

Fourth Case

## a. Case name, number, citation, name of court and name of party you represented.

*Scott R. Hanley and Texas Gulf Marine, Inc. vs. Oxy USA Inc.*, formerly known as *Cities Service Oil and Gas and Marty Kelly*; Civil Action No. H-88-2944; In the United States District Court for the Southern District of Texas, Houston Division. I represented the Plaintiff.  
Date: October 1990

## b. Brief summary and significance of the case.

Plaintiff was a broker of utility boats for the oil and gas industry. He was under contract with Oxy to service their offshore oil platforms when an Oxy employee began to deliberately interfere with the Plaintiff's contract with the individuals from whom he brokered boats because of their unwillingness to comply with unreasonable demands. He injured plaintiff's reputation in the industry which eventually resulted in the destruction of the plaintiff's business. The plaintiff sued the defendant for tortious interference with Plaintiff's offshore utility boat business and the slander of Plaintiff in connection with the operation of that business.

## c. The significance of your role in case.

The essence of the Plaintiff's claims relating to lost profits required a deep investigation into and clear explanation of the nature of the offshore utility boat business in the oil and gas industry. Representation of this client required that I learn a substantial amount about the offshore utility boat business in order to give a complete picture to the jury about how the slanderous statements of defendant's employee resulted in the destruction of a business he had operated for several years.

## d. Presiding judge.

Judge James DeAnda (retired)

## e. Name, address and telephone number of opposing counsel.

J. Michael Dorman, Esq.  
Joel R. White, Esq.  
Liddell, Sapp, Zivley, Hill & LaBoon

3300 Texas Commerce Tower  
Houston, Texas 77002  
(713) 226-1200

f. Final disposition.

The case was tried to a jury which resulted in a verdict of \$201,000.00.

Fifth Case

a. Case name, number, citation, name of court and name of party you represented.

*Faridoon Felfeli vs. M. Sepahsalary, Trustee; Civil Action No. 82-36089; In the District Court of Harris County Texas, 164th Judicial District.*

Date: February 1983

b. Brief summary and significance of the case.

This was a suit filed to remove the cloud cast on the title of property by a forged deed. The deed allegedly conveyed property belonging to the Plaintiff worth in excess of \$10,000,000.00 to M. Sepahsalary, Trustee. At the time that the deed was allegedly signed, Plaintiff, an Iranian citizen, was being held captive in Iran after the nationalization of his businesses by the Ayotollah Khomeini. The "trustee" to whom the property was allegedly conveyed was actually the name of a mythical character in Iranian legend, and the address of the trustee was non-existent.

c. The significance of your role in case.

In representing the Plaintiff I was required to establish not only the forgery in question, but also that the underlying deed was a complete fraud. The determination of the forgery was accomplished by locating numerous documents and conducting an exhaustive study by a forensic document examiner. To establish the fraudulent nature of the underlying deed, I worked with the Iranian consulate to obtain confirmation that the address listed on the deed was non-existent. Eventually, I was able to obtain maps of the area to validate our claim that there was no such address. This evidence together with the evidence of the forensic document examiner proved sufficient to establish the validity of my client's claims.

d. Presiding judge.

Judge Alvin Zimmerman

e. Name, address and telephone number of opposing counsel.

George Houghton  
 Houghton & David  
 2302 Fannin St., Suite 369  
 Houston, Texas 77004  
 (713) 659-3146

f. Final disposition

Court ruled that the Sepahsalary deed was a forgery and that it would be declared void thereby clearing up the title to the property.

Sixth Case

a. Case name, number, citation, name of court and name of party you represented.

No. H-86-310; *Multivision Systems, Inc., et. al. vs. Donrey*; In the United States District Court, Houston Division  
 Date: September 1987

No. 88-2073; *Multivision Systems, Inc., et. al. vs. Donrey*; In the United States Court of Appeals for the Fifth Circuit  
 Date: October 1988

b. Brief summary and significance of the case.

My client, Multivision Systems, Inc. had an exclusive marketing arrangement with a Japanese company to market a state of the art electronic billboard in the United States. A joint venture agreement was formed with Donrey, a major national advertising company, to market, distribute, install and service the boards. Donrey did not live up to its obligations under the agreement and the venture failed.

c. The significance of your role in case.

I served as co-counsel in the trial of this case and lead counsel in the appeal. The technology involved in this action represented a significant advancement in outdoor advertising. My clients could have realized enormous profits from this venture if it had been successful. These boards were eventually put into the Astrodome in Houston, Texas and the Astrodome underwent major renovations to be able to accommodate the new boards.

d. Presiding judge.

Judge Norman Black

e. Name, address and telephone number of opposing counsel.

James Carmody, Esq.  
 Chamberlain, Hrdlicka, White, Johnson & Williams  
 1400 CitiCorp Center  
 1200 Smith Street  
 Houston, Texas 77002  
 (713) 658-1818

f. Final disposition

This case was tried to a verdict in favor of the defendant and appealed to determine if that finding was erroneous. The Fifth circuit declined to make a finding that the judgment rendered by the Court was erroneous.

Seventh Case

a. Case name, number, citation, name of court and name of party you represented.

C. A. No. 81-54973; *Joyce Stagg, et, al. vs. Estelle Morgan*, In the 190th Judicial District, Harris County, Texas;  
 Dates: August 1983, December 1986,

No. 01-87-0029-CV; *Joyce Stagg, et, al. vs. Estelle Morgan*, In the Court of Appeals, First Supreme Judicial District of Texas  
 Date: November 1987

b. Brief summary and significance of the case.

This case involved the sale of a drapery business by the Defendant to the Plaintiffs. After making the purchase, the Plaintiffs determined that the Defendant had misrepresented certain information regarding the value of the business and had deliberately withheld critical information that would have influenced their decision to purchase the business. Additionally, the Defendant violated a covenant not to compete by setting up a business in her home to perform the same work immediately after her sale of the business to the Plaintiffs. The first trial of this case resulted in a mistrial. Following the second trial, an appeal was filed which involved the issue of the court's error in making an award on the counterclaim and in refusing to submit the plaintiffs' claim under the Deceptive Trade Practices Act. Plaintiffs prevailed on appeal.

c. The significance of your role in case.

I participated in the trial of this case, but only discovered the defendant's fraud in withholding critical evidence during the trial of the first case. I was able to convince the Judge to declare a mistrial on the basis of the fraudulently

concealed evidence. Afterwards, I served as lead counsel in the re-trial of the case and on the appeal.

d. Presiding judge.

Judge Ruby Sondock

e. Name, address and telephone number of opposing counsel.

John Browne  
3636 Texas Commerce Tower  
600 Travis Street  
Houston, Texas 77002  
(713) 224-5341

f. Final disposition

The jury found that the seller had fraudulently misrepresented the business profits before the sale and that she had breached her contractual and fiduciary duties to the purchasers and awarded the purchasers damages of \$61,324.95 but also ordered the purchasers to pay the seller \$24,791.26 still unpaid under the sales contract. The Court of Appeals affirmed the payment to the purchasers and reversed the award to the seller.

#### Eighth Case

a. Case name, number, citation, name of court and name of party you represented.

C.A. No. 82-17906; Jennifer Graves vs. City of Houston; In the District Court of Harris County, Texas, 129th Judicial District

Date: December, 1984

b. Brief summary and significance of the case.

This was a personal injury case where a young woman was seriously injured after falling into a pit created when the sidewalk collapsed after a water main rupture. The central issue in the case turned on whether the city had sufficient notice of the problem to make them liable for the injuries of the Plaintiff.

c. The significance of your role in case.

As a result of my involvement with this young woman, I not only assisted her in pursuing this matter, but I also assisted her and her family with a number of other needs by helping her access available services in the community. I also felt that

it was a great compliment when my opposing counsel offered me a job after the trial of this case.

d. Presiding judge.

Judge Hugo Touchy

e. Name, address and telephone number of opposing counsel.

William Fiddes  
City of Houston  
Houston, Texas 77002

f. Final disposition

The jury awarded damages to the Plaintiff, however she was not able to make any recovery because they also found that the City of Houston had not had sufficient notice of the defect in the sidewalk to make the repairs that could have prevented this accident.

Ninth Case

a. Case name, number, citation, name of court and name of party you represented.

CA No. 84-21972; *Cecil Bush vs. Betty Brock Bell and the Executive Committee of the Harris County Democratic Party*; In the 61st Judicial District, Harris County, Texas  
Date: 1984

b. Brief summary and significance of the case.

In this election law case, I represented the Harris County Democratic Party in a claim by a Justice of the Peace challenging the right of his opponent to run against him. The incumbent elected official was being challenged in the election by a woman who was employed by him. He filed this action to challenge her right to run in the election because of questions concerning her residency. The Harris County Democratic Party was a necessary party to this action as the party was responsible for all candidates on the primary ballot. My role was to establish that the party was entitled to rely on the sworn representations of potential candidates regarding their residency, and that it was not required to look beyond those representations to investigate residency claims.

c. The significance of your role in case.

Although the case was tried to a verdict in favor of the challenger, it was appealed the week before the general

election. That necessitated an expedited appellate hearing in order to facilitate the preparation of the proper ballots for the election. I had previously represented the Harris County Democratic Party in a number of election law matters. This was the first case I had ever tried to verdict involving an election law issue.

d. Presiding judge.

Judge Shearn Smith

e. Name, address and telephone number of opposing counsel.

W. Ray Howard  
6526 Mykawa Road  
Houston, Texas 77033  
(713) 733-3030

Sarnie Randle  
Randle & Associates  
1111 Bagby, Suite 1530  
Houston, Texas 77002  
(713) 655-1700

f. Final disposition

Betty Brock Bell prevailed in the trial court and that ruling held up on appeal, so her name was placed on the ballot. She was elected to office and continues to serve in that position today.

Tenth Case

a. Case name, number, citation, name of court and name of party you represented.

CA No. 88-02706; *Melvyn and Christina Brandt vs. Memorial Hospital Systems, et.al.*; In the 234th Judicial District, Harris County, Texas  
Date: April 1992

b. Brief summary and significance of the case.

This case was brought by the surviving widow and children of a man who contracted AIDS as a result of the transfusion of contaminated blood and blood products during heart surgery. The case raised issues not only about the duty of the health care system to ascertain whether blood products are free of disease, but it also raised medical negligence issues related to the excessive number of blood transfusions given to the patient in this case.



## c. The significance of your role in case.

I was asked by the court to represent the minor child as his attorney ad litem. I felt this was a tremendous responsibility because despite my genuine concern for the family and all that they had been through, there were a number of legal hurdles that I did not believe the Plaintiffs could overcome related both to the duty and ability of the healthcare system to test blood products for AIDS at the time of this incident and the obligation of the health care providers to limit the amount of blood products used because of the potential danger those products might pose. It eventually became my role to convince the Plaintiffs to dismiss some of their causes of action after it was determined that there was no legal basis for those claims.

## d. Presiding judge.

Judge Scott A. Brister

## e. Name, address and telephone number of opposing counsel.

Carl Dawson  
Ryan & Winchester  
770 Post Oak Blvd., Suite 101  
Houston, Texas 77056  
(713) 960-1555

William G. Neumann, Jr.  
Krist, Gunn, Weller & Neumann  
17555 El Camino Real  
Houston, Texas 77058  
(713) 283-8500

John Shepherd  
John Ellis & Associates  
1211 Lamar, Suite 620  
Houston, Texas 77010  
(713) 654-7900

## f. Final disposition

The jury determined that there was no legal basis for any of the claims made by the Plaintiffs since the transfusion of the blood took place prior to the institution of established guidelines for testing blood for the AIDS virus.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the

attorney-client privilege (unless the privilege has been waived).

For several years I have volunteered my legal services in the area of election law. During every general election, I work to assure that all citizens are given an opportunity to vote by teaching classes to volunteers on election law, especially in the area of voter rights. Rather than working for any particular candidate, I try to make myself available to answer questions for anyone with an election or voting law issue or problem and work with the secretary of state and other local authorities to correct any problems that might interfere with the election process.

I am also involved in a number of community activities where I am often called upon to provide legal advice or counsel on matters such as leases, contracts, pending litigation, employment and real estate issues. I have provided legal work on a pro bono basis with regard to these issues for several organizations including the YWCA of Houston and the Neighborhood Recovery Community Development Corporation.

I have had several occasions to be appointed and serve as an attorney ad litem representing the interests of minor children in pending matters. I have found this experience very rewarding as it has given me an opportunity to provide a very vital and important service for these children and their families. One such case is previously discussed as the Tenth Case under question No. 18.

The trial court docket in Houston, Harris County, Texas is extraordinarily crowded. It is not unusual for it to take three to four years to get to trial on a simple matter. To alleviate some of the backlog in our courts, the practitioners in this area make frequent use of the "Alternative Dispute Resolution" statutes, and cases are frequently resolved through mediation or arbitration. I have made use of the mediation process where appropriate, and have been able to resolve a number of cases for my clients through this process. Although these hearings do not generally take on the formality of a trial, litigation skill and the ability to effectively argue and present your client's case is extremely critical. Some examples follow:

CA No. 87-60295; Ricca vs. City of Houston; In the 295th Judicial District, Harris County Texas - This case involved a serious injury suffered by a young executive when he was run over by a speeding police car while on his bicycle. He sustained serious closed head injuries, was comatose for a time. That case was eventually settled with the city for \$215,000.00

Mr. Ricca never fully recovered from the injuries sustained and I was required, in a companion case, to pursue his disability insurance carrier for bad faith insurance practices when they denied his disability benefits. That case was styled Civil Action No. H-92 -425; Ricca vs. Provident Life & Accident Insurance Co.; In the United States District Court for the Southern District of Texas. That case was settled with the carrier for \$288,000.00.

General Homes Corporation litigation: I represented this homebuilder in a number of cases involving lawsuits and claims by homeowners related to faulty plumbing that had been installed in their homes by the subcontractors of this builder. I worked to resolve hundreds of claims by seeking and obtaining commitments from numerous insurance carriers to compensate these homeowners and then arranging inspections and evaluations of each individual home. This procedure, although complicated and time consuming, avoided the necessity for expensive and protracted litigation for all parties concerned.

I have resolved a number of cases by seeking and obtaining temporary injunctions which resulted in the early settlement of lawsuits without the need for protracted litigation. One such case involved the procurement of a temporary injunction against a man who was illegally drilling oil from an oil well owned by my client. A temporary injunction was obtained which prohibited him from trespassing on the property of my client and removing his oil. This injunction enabled us to reach an early settlement of the case before the scheduled trial date.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

See attached Financial Disclosure Report.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts of interest during your initial service in the position to which you have been nominated.

The nature of my practice is such that I have always represented individuals or small business people. Because of that, I do not think there is a likelihood that I would have many conflicts arise. However, if a conflict did arise involving a former client, it would be easy to identify and I would take immediate steps to remove myself from the case. Additionally, I would follow the Code of Judicial Conduct with regard to any potential conflict of interest.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

Attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

For several years I have volunteered my legal services in the area of election law. During every general election, I work to assure that all citizens are given an opportunity to vote by teaching classes to volunteers on election law, especially in the area of voter rights. Rather than working for any particular candidate, I try to make myself available to answer questions for anyone with an election or voting law issue or problem and work with the secretary of state and other local authorities to correct any problems that might interfere with the election process.

AMENDED\*

## FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics  
Reform Act of 1989, Pub. L. No.  
101-194, November 30, 1989  
(5 U.S.C.A. App. 5, §§101-112)

|   |  |   |
|---|--|---|
| 1. Person Reporting (Last name, first, middle initial)<br>Gilmore, Vanessa D.   | 2. Court or Organization<br>U.S. District Court<br>Southern District of Texas  | 3. Date of Report<br>March 22, 1994                           |
| 4. Title (Article III judges indicate active or senior status; Magistrate judges indicate full- or part-time)<br>Attorney | 5. Report Type (check appropriate type)<br><input checked="" type="checkbox"/> Nomination, Date <u>March 22, 1994</u><br><input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final | 6. Reporting Period<br>January 1, 1993<br>to<br>March 1, 1994 |
| 7. Chambers or Office Address<br>2929 Allen Parkway, Suite 2270<br>Houston, Texas 77019                                   | 8. On the basis of the information contained in this Report, it is, in my opinion, in compliance with applicable laws and regulations _____<br>Reviewing Officer Signature _____   |   |

**IMPORTANT NOTES:** *The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on last page.*

## I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

POSITION

NAME OF ORGANIZATION/ENTITY

 NONE (No reportable positions)

President

VARA Broadcasting Corporation

## II. AGREEMENTS. (Reporting individual only; see p. 8-9 of Instructions.)

DATE

PARTIES AND TERMS

 NONE (No reportable agreements)

10/26/93

Agreement with Vickery, Kilbride, Gilmore &amp; Vickery (attached)

1/4/94

Agreement with Elizabeth Kilbride - 20% retained fee interest in matter of G. Oliver Williams

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

DATE

SOURCE AND TYPE

GROSS INCOME  
(yours, not spouse's)

(Honoraria only)

 NONE (No reportable non-investment income)

1

Vickery, Kilbride, Gilmore &amp; Vickery

\$ 268,243.00

2

\$

3

\$

4

\$

5

\$

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Date of Report

Gilmore, Vanessa D.

March 22, 1994

## IV. REIMBURSEMENTS and GIFTS - transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

SOURCEDESCRIPTION

| <input type="checkbox"/> NONE (No such reportable reimbursements or gifts) |        |
|--|--------|
| 1  | Exempt |
| 2  |        |
| 3  |        |
| 4  |        |
| 5  |        |
| 6  |        |
| 7  |        |
| 8  |        |

## V. OTHER GIFTS. (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp.15-16 of Instructions.)

SOURCEDESCRIPTIONVALUE

| <input type="checkbox"/> NONE (No such reportable gifts) |        |    |
|--|--------|----|
| 1  | Exempt | \$ |
| 2  |        | \$ |
| 3  |        | \$ |
| 4  |        | \$ |

## VI. LIABILITIES. (Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp.16-18 of Instructions.)

CREDITORDESCRIPTIONVALUE CODE\*

| <input checked="" type="checkbox"/> NONE (No reportable liabilities) |  |  |
|--|--|--|
| 1  |  |  |
| 2  |  |  |
| 3  |  |  |
| 4  |  |  |
| 5  |  |  |
| 6  |  |  |
| 7  |  |  |

\* VALUE CODES: J = \$15,000 or less    K = \$15,001 to \$50,000    L = \$50,001 to \$100,000    M = \$100,001 to \$250,000  
 N = \$250,001 to \$500,000    O = \$500,001 to \$1,000,000    P = More than \$1,000,000

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Gilmore, Vanessa D.

Date of Report

March 22, 1994

## VII. INVESTMENTS and TRUSTS - income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

| A.<br>Description of Assets<br>(including trust assets)<br><br>Indicate, where applicable, owner of the asset. If owned by the person, list the individual and spouse. If (DC) for separate ownership by spouse, list ownership by dependent child.<br><br>Place "(X)" after each asset exempt from prior disclosure.  | B.<br>Income during reporting period |   | C.<br>Gross value at end of reporting period |                             | D.<br>Transactions during reporting period |                        |                             |                            |  |
|--|--------------------------------------|---|--|-----------------------------|--|------------------------|-----------------------------|----------------------------|--|
|  | (1)<br>Int.<br>(A-B)                 | (2)<br>Type of div. (C-E)<br>(Int. or Div.) | (1)<br>Value<br>(Code: J-F)                  | (2)<br>Value<br>(Code: G-H) | If not exempt from disclosure              |                        |                             |                            |  |
|  |                                      |   |  |                             | (1)<br>Type of transaction                 | (2)<br>Date: Month/Day | (3)<br>Value<br>(Code: J-F) | (4)<br>Gain<br>(Code: A-B) | (5)<br>Identity of buyer/seller (if private transaction) |
| <input type="checkbox"/> NONE (No reportable income, assets, or transactions)  |                                      |   |  |                             |  |                        |                             |                            |  |
| 1 Chrysler Corp. (bond)  | A                                    | Int.  | J  | T                           |  |                        |                             |                            |  |
| 2 Certificate of Deposit   | A                                    | Int.  | K  | T                           |  |                        |                             |                            |  |
| 3 New England (muni. bond)   | A                                    | Int.  | J  | T                           |  |                        |                             |                            |  |
| 4 G.T. Global European Fund  | A                                    | Div.  | J  | T                           |  |                        |                             |                            |  |
| 5 G.T. Global Telecom. Fund  | A                                    | Div.  | J  | T                           |  |                        |                             |                            |  |
| 6 Gen. Motors (pref. stock)  | A                                    | Div.  | J  | T                           |  |                        |                             |                            |  |
| 7 Telefonos de Mexico (stock)  | A                                    | Div.  | J  | T                           |  |                        |                             |                            |  |
| 8 G.T. Global Health Fund  | A                                    | Div.  | J  | T                           |  |                        |                             |                            |  |
| 9 Smith Barney Daily Div. Fund   | A                                    | Div.  | J  | T                           |  |                        |                             |                            |  |
| 10 Smith Barney Tax Exempt   | A                                    | Div.  | J  | T                           |  |                        |                             |                            |  |
| 11 Southwest Bank of Texas Money Market  | A                                    | Int.  | J  | T                           |  |                        |                             |                            |  |
| 12 #B27 LaRochele Rental property  | D                                    | Rent  | L  | W                           |  |                        |                             |                            |  |
| 13 WARA Broadcasting Corp. note  | E                                    | Loan Repay                                  | J  | U                           |  |                        |                             |                            |  |
| 14 *G.T. Global Telecom.   | A                                    | Div.  | J  | T                           |  |                        |                             |                            |  |
| 15 Smith Barney Appreciation Fund  | A                                    | Div.  | J  | T                           |  |                        |                             |                            |  |
| 16 Smith Barney Utilities Fund   | A                                    | Div.  | J  | T                           |  |                        |                             |                            |  |
| 17   |                                      |   |  |                             |  |                        |                             |                            |  |
| 18   |                                      |   |  |                             |  |                        |                             |                            |  |
| 19   |                                      |   |  |                             |  |                        |                             |                            |  |
| 20   |                                      |   |  |                             |  |                        |                             |                            |  |
| <b>Income/Gain Codes:</b> A=\$1,000 or less (see Col. B) & D4) B=\$15,000 or less (see Col. C) & E) C=\$25,000 or less (see Col. C) & F) D=\$1,001 to \$2,500 E=\$2,501 to \$5,000 F=\$5,001 to \$10,000 G=\$10,001 to \$25,000 H=\$25,001 to \$50,000 I=\$50,001 to \$100,000 J=\$100,001 to \$250,000 K=\$250,001 to \$500,000 L=\$500,001 to \$1,000,000 M=\$1,000,001 to \$250,000 N=\$250,001 to \$500,000 O=\$500,001 to \$1,000,000 P=\$1,000,001 to \$250,000 Q=\$250,001 to \$500,000 R=\$500,001 to \$1,000,000 S=\$1,000,001 to \$250,000 T=\$250,001 to \$500,000 U=\$500,001 to \$1,000,000 V=\$1,000,001 to \$250,000 W=\$250,001 to \$500,000 X=\$500,001 to \$1,000,000 Y=\$1,000,001 to \$250,000 Z=\$250,001 to \$500,000<br><b>Value Codes:</b> J=\$15,000 or less (see Col. C) & E) K=\$15,001 to \$50,000 L=\$50,001 to \$100,000 M=\$100,001 to \$250,000 N=\$250,001 to \$500,000 O=\$500,001 to \$1,000,000 P=\$1,000,001 to \$250,000 Q=\$250,001 to \$500,000 R=\$500,001 to \$1,000,000 S=\$1,000,001 to \$250,000 T=\$250,001 to \$500,000 U=\$500,001 to \$1,000,000 V=\$1,000,001 to \$250,000 W=\$250,001 to \$500,000 X=\$500,001 to \$1,000,000 Y=\$1,000,001 to \$250,000 Z=\$250,001 to \$500,000<br><b>Value Method Codes:</b> O=Appraisal U=Book Value V=Other W=Estimated X=Assessment Y=Cash/Market |                                      |   |  |                             |  |                        |                             |                            |  |



## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Date of Report

Gilmore, Vanessa D.

March 22, 1994

## VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

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## IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature *Vanessa D. Gilmore*

Date March 26, 1994

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, § 104, AND 18 U.S.C. § 1001.)

## FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Judicial Ethics Committee  
Administrative Office of the  
United States Courts  
Washington, DC 20544

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

| ASSETS                                  |       |        | LIABILITIES                                      |     |        |
|---|-------|--------|--|-----|--------|
| Cash on hand and in banks               | 8     | 000 00 | Notes payable to banks—secured                   | 49  | 500 00 |
| U.S. Government securities—add schedule | 68    | 500 00 | Notes payable to banks—unsecured                 |     |        |
| Listed securities—add schedule          |       |        | Notes payable to relatives                       |     |        |
| Unlisted securities—add schedule        |       |        | Notes payable to others                          |     |        |
| Accounts and notes receivable:          |       |        | Accounts and bills due                           | 10  | 000 00 |
| Due from relatives and friends          |       | 500 00 | Unpaid income tax                                |     |        |
| Due from others                         | 14    | 167 00 | Other unpaid tax and interest                    |     |        |
| Doubtful                                |       |        | Real estate mortgages payable—add schedule       | 216 | 311 19 |
| Real estate owned—add schedule          | \$250 | 000 00 | Chattel mortgages and other liens payable        |     |        |
| Real estate mortgages receivable        |       |        | Other debts—itemize:                             |     |        |
| Automobile and other personal property  | 95    | 000 00 |  |     |        |
| Cash value—life insurance               | 1     | 400 00 |  |     |        |
| Other assets—itemize:                   |       |        |  |     |        |
|   |       |        |  |     |        |
|   |       |        | Total liabilities                                | 275 | 811 19 |
|   |       |        | Net Worth  | 161 | 755 81 |
| Total Assets                            | 437   | 567    | Total liabilities and net worth                  | 437 | 567    |
| CONTINGENT LIABILITIES                  |       |        | GENERAL INFORMATION                              |     |        |
| As endorser, comaker or guarantor       | 0     |        | Are any assets pledged? (Add schedule.)          | NO  |        |
| On leases or contracts                  | 0     |        | Are you defendant in any suits or legal actions? | NO  |        |
| Legal Claims                            | 0     |        | Have you ever taken bankruptcy?                  | NO  |        |
| Provision for Federal Income Tax        | 0     |        |  |     |        |
| Other special debt                      | 0     |        |  |     |        |

REAL ESTATE OWNED

|  | Est. Value       | Liability             |
|--|------------------|-----------------------|
| 1211 Post Oak Park Drive<br>Houston, Texas 77027 | \$170,000        | \$142,119.68*         |
| 7827 LaRochelle Circle<br>Houston, Texas 77071   | \$ 80,000        | \$ 74,191.51•         |
|  | <u>\$250,000</u> | <u>\$\$216,311.19</u> |

\*Prudential Home Mortgage

•NationsBanc Mortgage Corp.

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I am involved in numerous public service activities in my community and serve on the boards of or work with a number of other civic, charitable and educational institutions including the following:

For two years, until 1992, I served as President of the YWCA of Houston and worked in that capacity to enhance the lives of women and girls by providing quality low cost day care and activities for seniors and teens. I now serve on the advisory board of the YWCA.

I am also an active member of the Neighborhood Recovery Community Development Corporation board of directors, a board on which I serve with my pastor, Bill Lawson and our local Catholic Bishop, Joe Fiorenza. We are working to make affordable low-income housing available in Houston and feel that our work over the past two years has begun to come to fruition with the purchase and renovation of our first property in September, 1993.

From April of 1991 to January of 1994, I served as a member, then as the chairperson of the Texas Department of Commerce board, the Texas State agency responsible for business development, tourism development and job training.

Service Academy Nominations Board - Congressman Jack Fields - 1993

University of Houston Law Alumni Board - In 1993 and 1994 I served as a member of the Dean Search Committee to locate a new dean for the law school

Missouri City Chapter of the Links, Inc. - I served as Chairperson of the LEAD substance abuse and teen pregnancy prevention program and supervised a year long program for children living in one of Houston's poorest areas during the 1990-1991 school year.

NAACP -- Chairperson of the Churches and Organizations Committee for the 1989 - 1993 Freedom Fund Banquets

Texas Southern University Foundation Board  
 St. Joseph's Hospital Administrators Advisory Board  
 Houston Area Urban League - Banquet Committee  
 Texans for NAFTA - Chairperson  
 Post Oak Park Townhomes board of directors  
 African American Art Advisory Association - Museum of Fine Arts

I speak regularly to legal, business and educational groups in Texas and around the Country. The following list is representative of speeches I have given in recent years:

- September 17, 1993 - Minority Enterprise Development Week (MEDWEEK) - Houston, Texas - Presented proclamation for Governor Ann Richards and talked about minority business development opportunities with the state of Texas.

\* - August 6, 1993 - American Bar Association Convention - New York, New York - Motions in Limine.

- July 21, 1993 - Houston Business Council - Houston, Texas - Recap of business development legislation from 1993 legislative session and Texas Department of Commerce plans for business development and job training.

- July 9, 1993 - State Bar of Texas - Austin, Texas - Damages

- May 14, 1993 - Texas A&M University, 1993 Graduates - College Station, Texas - Commencement Address - Doing business in a global economy.

- May 12, 1993 - Governor's Business Development Council - Austin, Texas - Texas Department of Commerce plans for business development and job training.

- April 23, 1993 - XI Annual Border Governor's Conference - Monterrey, Mexico - Governor Richards' commitment to free trade.

- April 22, 1993 - Laredo Business and Professional Women's Association - Laredo, Texas - Business opportunities for women.

- November 7, 1992 - Hampton University Alumni Association - Dallas, Texas - Promoting involvement of the African American community in public service.

- January 31, 1992 - Leadership Texas - Austin, Texas - The public service role of boards and commissions.

\* - August 13, 1991 - American Bar Association - Atlanta, Georgia - Using expert help to overcome barriers with the jury.

\* - July 1990 - American Trial Lawyers Association - San Diego, California - How to ethically develop an environmental and toxic torts practice.

Between 1991 and 1993 I have addressed the Texas legislature as well as several business and economic development organizations and tourism industry groups on business development, tourism development and job training and the role and efforts of the Texas Department of Commerce in these areas in my capacity as chairperson of the Texas Department of Commerce.

(\* indicates a paper was published for this address)

This year, I am scheduled to speak at the following events and conferences:

May, 1994 - American Bar Association - Litigation Section - The Woman Advocate '94, Chicago, Illinois

May, 1994 - High School graduates of Holman Street Baptist Church

June, 1994 - Greater Houston Women's Foundation

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is an appropriate for a judge to hold membership in any organization that individually discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?

No.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Yes. There is a selection committee in this area. The committee is composed of a broad range of individuals from the community. Originally I was asked to serve as a member of that committee to assist with making recommendations to then Senator Krueger. However, I was asked by members of the committee to submit my name for consideration instead and I submitted an application and was interviewed by approximately

sixteen members of the committee. My name, along with several others as I understand, was submitted to Senator Krueger for consideration and a final selection was made by the Senator.

After recommendation by the Senator, I was contacted by the Justice Department and interviewed by a member of the Justice Department staff as part of the nomination process. Thereafter, I was contacted by the White House, Office of the General Counsel and requested to complete the forms for the Justice Department, American Bar Association, FBI, and Senate Judiciary Committee. I was interviewed by the FBI and provided them with additional requested information regarding my medical history, organizational involvement, speeches and published articles. I was also interviewed by a representative of the American Bar Association Judicial Selection Committee. I participated in a second interview with the Justice Department in Washington, D.C. where I was interviewed by a number of people from the Justice Department and private sector including a law professor with expertise in constitutional law.

As part of the process, I visited with members of the Congressional delegation from my state and submitted additional questionnaires to my state Senators, Kay Bailey Hutchison and Phil Gramm.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of the "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

I believe it is the proper role of the judiciary to provide a forum for the full and fair adjudication of all issues or matters which are properly before them. It is not the role of the judiciary to fashion solutions for a class of people that are not before the court or to expand or alter the intent of the law to provide standing for individuals who are not properly before the court.

My experience both as an attorney and as chair of a Texas state agency have given me a broad exposure to the relative roles of different branches and levels of government. Very often, as chairperson of the Department of Commerce, I was called upon to expand the statutes governing a particular issue to fashion a remedy for a particular problem or impose some broad affirmative duty on state government that was clearly beyond the legislative intent. In those instances where I have faced this challenge and I felt that the law on the issue was vague, unclear or subject to varying interpretations, I either sought to determine the legislative intent directly from the legislator or where appropriate, asked for an opinion from the attorney general. Where neither of those options has been available to me, I have declined to take it upon myself or my agency to alter or modify the legislative intent. I do believe that it is appropriate for the judiciary to provide relief in individual cases where a ruling that is consistent with the law would result in a violation of that individual's Constitutional rights.



## I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)  
Terry Curtis Kern
  
2. Address: List current place of residence and office address(es).  
Residence: 401 O Street SW  
Ardmore, OK 73401  
Office: 333 West Main, Suite 330  
Neustadt Plaza  
P.O. Box 1268  
Ardmore, OK 73402
  
3. Date and place of birth.  
September 25, 1944; Clinton, Oklahoma.
  
4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).  
Married  
Mary Charlene Heinen  
Not employed outside the home
  
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.  
Oklahoma State University, September 1962 - July 1966, B.S. Degree, July 29, 1966.  
University of Oklahoma College of Law, September, 1966 - June 1969, Juris Doctorate Degree, June 1, 1969.

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

|              |   |
|--------------|---|
| 1967         | Harrah's, Lake Tahoe, California  |
| 1968         | Oklahoma Department of Human Services,<br>Newkirk, OK   |
| 1969         | Teaching Assistant, University of Oklahoma<br>Law School  |
| 1969-70      | General Attorney, Bureau of Deceptive<br>Practices, Division of Compliance, Federal<br>Trade Commission, Washington, D.C. |
| 1970-86      | Partner, Law Firm of Fischl, Culp, McMillin,<br>Kern & Chaffin, Ardmore, OK.  |
| 1986-1989    | General Partner of Kern, Worsham & McPhail  |
| 1989-92      | General Partner of Kern and Associates  |
| 1992-present | President, Kern, Mordy & Sperry, P.C.   |

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

|                                 |   |
|---------------------------------|---|
| 1962-64                         | Reserve Officer's Training Corps,<br>Oklahoma State University                            |
| Sept. 1969 -<br>April 7, 1970   | Oklahoma Army National Guard, honorable<br>discharge. (transferred to USAR)               |
| Mar. 28, 1970-<br>Aug. 31, 1975 | United States Army Reserve, Specialist 4;<br>Serial No. 448-42-4820; honorable discharge. |

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.
- a) Phi Eta Sigma Honorary Scholastic Fraternity, Oklahoma State University;
  - b) Teaching Assistant Scholarship, Legal Research, University of Oklahoma Law School;
  - c) Phi Delta Phi International Legal Fraternity, President 1969, University of Oklahoma Law School.
9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.
- a) Oklahoma Bar Foundation, Board of Trustees, 1986-1992; President, 1991;
  - b) Oklahoma Bar Association
    - 1. Joint Oklahoma State Medical Association-Oklahoma Bar Association Committee, 1992 - present
    - 2. Civil Procedure Committee, 1992-present
    - 3. District Court Advisory Committee, 1987
    - 4. Legislative Action Committee, 1980-1982
    - 5. Resolutions Committee, 1979
    - 6. Chairman, Insurance Law Section, 1978
    - 7. Chairman, State Law Day Committee, 1976, 1977
  - c) American Board of Trial Advocates;
  - d) Sustaining Fellow, Oklahoma Bar Foundation;
  - e) Legal Institute of Pickens County I.T. (Board of Directors 1992-present);
  - f) Oklahoma Association of Defense Counsel (Board of Governors, 1981-1984) 1972-1994;

- g) Southern Oklahoma Legal Institute (President 1972);
- h) American Academy of Hospital Attorneys;
- i) Defense Research Institute, Inc., 1986-1994;
- j) Federation of Insurance and Corporate Counsel, 1986-1994;
- k) University of Oklahoma College of Law Association;
- l) American Bar Association;
- m) Faculty member of CLE Institute on "Voor Dire, Opening Statements and Closing Arguments" for the Oklahoma Bar Association Commission on Continuing Legal Education, 1988;
- n) Faculty member of CLE Institute on the Oklahoma Discovery Code sponsored by Oklahoma Bar Association Commission on Continuing Legal Education, 1982;
- o) Faculty member, Trial Tactics Seminar, University of Oklahoma Continuing Legal Education Program and Oklahoma Association of Defense Counsel, 1975;

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

I am not aware of any of these organizations being actively involved in lobbying activities.

- a) Southern Oklahoma Memorial Hospital, Trustee 1985-present; Chairman of the Board 1989-1991; currently Trustee and General Counsel;
- b) Ardmore Development Authority, Trustee 1988-present; Vice-Chairman 1990;
- c) Ardmore Chamber of Commerce, Board of Directors, 1975, 1980-1983;

- d) St. Philip's Episcopal Church;
  - e) Boy Scouts of America;
  - f) Perry Maxwell Intercollegiate Association;
  - g) Dornick Hills Golf and Country Club.
11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.
- a) Oklahoma Supreme Court, September 3, 1969;
  - b) United States District Court for the Eastern District of Oklahoma, October 24, 1974;
  - c) United States District Court for the Western District of Oklahoma, February 1, 1979;
  - d) United States Court of Appeals for the Tenth Circuit, January 16, 1979;
  - e) United States District Court for the Northern District of Oklahoma, September 6, 1993.
12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.
- a) 1982 presentation at the Oklahoma Discovery Program Seminar on Interrogatories (copy attached).

- b) 1975 presentation at the University of Oklahoma Law School on Voir Dire, Opening Statement and Closing Argument (copy attached).

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent

Date of last physical examination: September 30, 1993.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Appointed by the Supreme Court of Oklahoma in September of 1991 to serve as one of three judges on Panel XXI of the Court of Appeals. By statute the Oklahoma Supreme Court may convene additional divisions of the Court of Appeals to assist with its docket. Each temporary division consists of three judges and may include retired judicial officers and lawyers having the qualifications of a district judge. This particular panel was assigned three cases for decision. Oath of office and loyalty oath were required.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Ramakrishna, et al v. ARW Exploration Corp., No. 75529  
(Decision and Order Denying Petition For Rehearing attached)

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Appointed to the Housing Board of Appeals of the City of Ardmore and served as Chairman from 1979-1981.

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

I did not serve as a clerk.

2. whether you practiced alone, and if so, the addresses and dates;

I have not practiced alone.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

(a) 1969-1970 General Attorney,  
Bureau of Deceptive Practices,  
Division of Compliance, Federal  
Trade Commission, Washington, D.C.

(b) Nov. 1970-  
Oct. 1986 Fischl, Culp, McMillin, Kern &  
Chaffin  
100 E Street SW  
P.O. Box 1766  
Ardmore, OK 73402  
Senior Partner.

(c) In October of 1986, I started the law firm of Kern, Worsham & McPhail and was the General Partner of that firm located at Suite 330, Neustadt Plaza, Ardmore, Oklahoma. That firm was later called Kern and Associates and has now evolved into the firm of Kern, Mordy & Sperry, P.C., located at the same address. I am the President and majority shareholder of this professional corporation.

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years.

I have had a general law practice over the past 23 years, with emphasis on litigation, including personal injury, products liability, insurance defense, medical malpractice, commercial litigation, banking matters and real estate law.

From approximately 1970 to 1975, I was primarily involved in personal injury defense, family practice and some court appointed criminal matters. From 1975 to 1986, in addition to personal injury defense and products liability, I was also involved in oil and gas and real estate title work, contracts, collection and banking law. From 1986 to present, my practice has continued to be general in nature but with more emphasis on products liability, medical malpractice, business litigation and corporate law. Over the past three years, health care law has become an additional aspect of my practice and I am presently General Counsel for Memorial Hospital of Southern Oklahoma.

2. Describe your typical clients and mention the areas, if any, in which you have specialized.

Typical clients would include insurance companies with a variety of claims, including accident, health and life companies and product manufacturers. Other



clients would include banking institutions, real estate companies, small businesses and individuals. I have specialized in personal injury litigation during the majority of my years in practice. Over the past three years, I have also specialized in health care law.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.
- Frequently.
2. What percentage of these appearances was in:
- (a) federal courts;
  - (b) state courts of record;
  - (c) other courts.
- (a) Ten (10%) percent in federal court;
- (b) Ninety (90%) percent in state courts of record;
3. What percentage of your litigation was:
- (a) civil;
  - (b) criminal.
- (a) In excess of ninety-five (95%) percent civil;
- (b) Five (5%) percent or less criminal.
4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Approximately 65 to 70 jury trials.

Non-jury cases - over 200.

Jury Trials:

Six (6) as associate counsel or  
co-counsel;  
Fifteen (15) as chief counsel;  
Approximately forty-five (45) as sole  
counsel.

Non-jury Trials:

Ninety (90%) percent would be as sole  
counsel.

5. What percentage of these trials were:

- (a) jury;
- (b) non-jury.

- (a) Thirty percent (30%) jury;
- (b) Seventy percent (70%) non-jury.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. Gene Dan Hull and Linda Stevens Hull, Parents and Next of Kin of Lacey Dawn Hull, Deceased, plaintiffs, vs. Jim Morris, d/b/a 3M Transportation, Jerry Lee Beaty, Acceptance Insurance Company and

Mack Trucks, Inc., defendants, originally filed as No. CJ-91-1761 in the District Court of Oklahoma County, and removed to the Western District of Oklahoma and docketed as No. CIV-91-568-A. Notice of Removal was filed April 25, 1991. This case involved a truck-school bus collision west of Madill, Oklahoma that injured a number of children and caused the death of Lacey Hull, eight years old. Some fourteen suits involving children and the bus driver were eventually settled. Lacey Hull's case was tried before the Honorable Wayne E. Alley, United States District Judge for the Western District of Oklahoma, for seven (7) days with a verdict returned on March 6, 1992, in the amount of 2.6 million dollars on behalf of the plaintiffs. The case was unusual in that it involved allegations of negligence against two of the parties and mixed allegations of both negligence and manufacturer's products liability against Mack Trucks, Inc. The allegations were that the Mack truck was defective in that it was unstable and had a tendency to bounce up and down and dart left or right, taking it in this instance across the center line of the roadway. Mack Trucks, Inc. was represented by James H. Bellingham and John J. Love of McClelland, Collins, Bailey, Bailey & Bellingham, 1100 Colcord Building, 15 North Robinson, Oklahoma City, Oklahoma, phone 405/235-9371. Defendant Jim Morris, d/b/a 3M Transportation, was the owner of the truck and was charged with knowledge of the defect in the truck, violation of certain Department of Transportation regulations and knowingly putting drivers on the road without enough rest. Morris and Acceptance Insurance Company were represented by A. T. Elder, Jr., Stewart & Elder, 1329 Classen Drive, Oklahoma City, OK, phone 405/272-9351. Through Acceptance Insurance Co., I represented the truck driver, Jerry Lee Beaty. It was alleged that Beaty had not slept in some 24 hours prior to the accident, was aware of the tendency of the truck and likely fell asleep prior to the accident, allowing the truck to veer left of center, shearing off the side of the school bus. Beaty was also charged with negligent homicide in Marshall County. We also defended the criminal action. Burck Bailey and K. Nicholas Wilson of Fellers, Snider, Blankenship, Bailey & Tippens represented the plaintiffs. Their address is 2400 First National Center, 120 North Robinson, Oklahoma City, Oklahoma, phone 405/232-0621. Mitchell Sperry, of my office, and I prepared the case for trial and I acted as chief counsel during the trial. The case involved literally hundreds of exhibits and documents, numerous expert witnesses with regard to the Mack truck, National Transportation Safety Board investigators, cross-claims by all of the defendants and efforts at intervention by several other proposed plaintiffs.

2. Lawrence Young and Willie Mae Young, plaintiffs, vs. Stanley Anderson, Administrator of the Estate of Virgie White, Deceased; and Pate Corporation, an Oklahoma Corporation, d/b/a The Madill Record and The Texoman, Case No. C-91-13, in the District Court of Marshall County, Oklahoma. Virgie White, a waitress at Lake Texoma Lodge, had gained some notoriety as being the oldest working waitress in the United States. She had appeared on the Johnny Carson show, as well as numerous local television and radio talk shows. She also wrote a weekly column for The Madill Record and The Texoman, two newspapers owned by the Pate Corporation of Madill, Oklahoma. Ms. White was involved in an auto accident in which she became confused while entering a construction area and struck a State Highway Department flagman, severely and permanently injuring him. It was alleged Virgie White was on her way to the newspaper to deliver her column and was the agent of the Pate Corporation which would render Pate Corporation liable for all of the injuries. Ms. White died prior to the trial and, therefore, one of the defendants was her estate. The case was tried June 23 through June 25, 1992, before the Honorable John Scaggs. Judge Scaggs sustained a demurrer to the evidence on behalf of the Pate Corporation and the jury returned a verdict against the estate of Virgie White in the total amount of \$675,000.00. The Trial Court's sustaining of the demurrer to the evidence has been appealed by the plaintiff to the Supreme Court of the State of Oklahoma, Case No. 80,023 and assigned to the Oklahoma Court of Appeals. In a decision released for publication January 11, 1994, the Oklahoma Court of Appeals affirmed the decision of the trial court. Plaintiffs' Petition For Rehearing was denied March 14, 1994. Plaintiffs may file a Petition For Certiorari to the Oklahoma Supreme Court within twenty days.

A number of significant legal questions were presented in this case, including whether one who volunteers services without an agreement or consideration may be an agent of the one accepting the services; whether prior knowledge that someone has been involved in a number of automobile accidents makes the principal responsible for a subsequent accident; and whether prior knowledge of impaired vision makes the principal liable for a subsequent accident. Many small newspapers make use of volunteer writers who are neither paid by the paper nor considered employees of the newspaper. The Oklahoma Press Association and the National Press Association expressed interest in this case and concern that newspaper owners might be considered the employers of these volunteers or "country

correspondents". Plaintiffs are represented by James M. Hays, III, Merritt & Rooney, Inc., P.O. Box 60708, Oklahoma City, OK, phone 405/236-2222. The estate of Virgie White was represented by Mark A. Wolfe, One North Hudson, Suite 200, Oklahoma City, OK, phone 405/272-0322. I represented the defendant Pate Corporation, publisher of The Madill Record and The Texoman. I was lead counsel in the trial of the case and also prepared the case for trial. Mitchell D. Sperry of my office sat second chair during the trial.

3. John A. Chatham, plaintiff, vs. The Estate of Claude S. Sullivan, defendant, No. C-89-274, District Court of Carter County, Oklahoma. This case was filed in June of 1989, and tried before the Honorable John H. Scaggs, District Judge, March 15, 1990, through March 19, 1990. The jury found in favor of the plaintiff in the amount of \$40,000.00. There was no question as to liability as the defendant, Claude Sullivan, was attempting to play a prank on his friend, John Chatham, who was sleeping in his car outside a restaurant. Sullivan lost control of his car and collided with Chatham's vehicle. Plaintiff alleged serious injuries, including epilepsy, brain damage, post concussive syndrome and post traumatic syndrome. In excess of twenty-four (24) witnesses were called. Plaintiff's lowest offer of settlement was \$300,000.00, and defendant offered \$40,000.00 at a Settlement Conference several weeks prior to trial. The case was significant due to the type of injuries alleged and the preparation necessary to defend against allegations of epilepsy and brain injury. The case was also significant in that plaintiff's claim for attorney fees was appealed and decided by the State of Oklahoma Court Appeals, Division II, Case No. 75-985, by Decision dated April 21, 1992. The Court of Appeals noted that the Oklahoma Supreme Court had not addressed the issue of whether a party who enters into an out-of-court settlement of a claim for property damage is the "prevailing party". The Court of Appeals, following the Tenth Circuit Court of Appeals, found that under Oklahoma law, a final judgment is a prerequisite to being a prevailing party. The property damage was paid prior to trial and plaintiff's attorney accepted the check but after the verdict moved for attorney fees as the prevailing party. I represented the estate of Claude S. Sullivan, deceased, and the Co-Personal Representatives, Joe D. Sullivan and Jimmy C. Sullivan, at both the trial and during the appeal. J. H. Wilson of my office assisted in preparing the case and sat second chair during the trial. James A. Clark, 130 B. Street SW, Ardmore, Oklahoma, phone 405/223-2020, represented the plaintiff, John Chatham.

4. Nadia Jester, Special Administratrix of the Estate of Sammy K. Jones, plaintiff, vs. Joe Brown Company, Inc., defendant, Case No. C-88-580, in the District Court of Carter County, Oklahoma. This case involved an accident north of Paris, Texas in which a Joe Brown Company truck struck a van driven by Sammy Jones and killed him. It was a classic wrongful death case in which the accident was fully reconstructed by accident reconstruction experts on both sides, including photographs, videos, charts, graphs, etc. Our defense on behalf of Joe Brown Company was based upon evidence from electrical experts that the lights on the van were not working properly at the time of the accident, that it was totally dark and these conditions, combined with the dark color of the van, would have made it virtually impossible for the Joe Brown driver to have seen this van stopped on the highway. We coordinated with Texas attorneys for research on the applicability of Texas Statutes, as well as researching applicable Oklahoma law. The case was complicated by the mother of the deceased claiming she had a heart attack due to the stress of her son's death. Diane Worsham, who was then working for my office, helped prepare this case and I acted as lead counsel. The case was tried in the District Court of Carter County before the Honorable Lee Card from August 24, 1989, to August 26, 1989, and resulted in a defendant's verdict. Plaintiff's attorney was Rex K. Travis, 500 Colcord Drive, Oklahoma City, OK, phone 405/236-5400, and Robert W. Hayden, Ralston, Buck, Hayden & Diehl, 625 NW 13th Street, Oklahoma City, OK, phone 405/528-0004.

5. The State of Oklahoma, ex rel, Department of Transportation, plaintiff, vs. Sam Daube, et al, C-87-170, in the District Court of Carter County, Oklahoma. This was a condemnation action by the State of Oklahoma to condemn property belonging to Sam Daube and Jerry Putman for the proposed Twelfth Street exit onto I-35 in Ardmore, Oklahoma. The case is significant in that it resulted in one of the largest condemnation verdicts on behalf of a landowner in Carter County, a sum of \$525,500.00, plus attorney fees and costs in excess of \$42,000.00. It is further significant in that it indicates the ability of a trial lawyer to work in unfamiliar areas. I had never seen nor tried a condemnation case prior to this case. The case involved extreme conflicts in expert testimony on real property evaluation, as well as some interesting trial strategy. Preparation included record checking, location of comparable properties, and preparation of charts and exhibits for presentation to each juror. The case was tried in Carter County, Oklahoma before the Honorable Gary L. Lumpkin, District Judge. The

verdict was returned on March 2, 1988. The State of Oklahoma was represented by E. H. Purcer, Department of Transportation, 200 NE 21st Street, Oklahoma City, OK, phone 405/521-2681. The property owner, Sam Daube, was represented by Kenneth W. Turner, Turner, Turner & Braun, 1319 Classen Drive, Oklahoma City, OK, phone 405/236-1646, and myself. Mr. Turner and I shared both preparation and trial responsibilities equally.

6. American Fertilizer Specialists, Inc., plaintiff, vs. A. J. Wood, Jr., defendant, No. C-78-31, in the District Court of Johnston County, Oklahoma. Plaintiff, a dealer in agricultural fertilizer, brought suit on open account for fertilizer sold and delivered to Mr. Wood for use on his ranch property. Defenses raised included breach of implied warranty of fitness for a particular purpose and breach of an implied warranty of merchantability under the Uniform Commercial Code. Jury was waived and the case was tried to the Honorable H. Leo Austin in the District Court of Johnston County, Oklahoma. Clyde Stallings, 132 North Third Street, Durant, Oklahoma, phone 405/924-2997, represented the plaintiff fertilizer company and I was sole counsel for the defendant, A. J. Wood, through preparation, trial and subsequent appeal of the case. The case stands for several legal propositions under the Uniform Commercial Code, including timeliness of notice of breach of warranty; whether buyer's notification to seller of breach may be oral or written; use of circumstantial evidence to prove breach; and the concept of merchantability within the warranty of merchantability. Judge Austin entered judgment in favor of the defendant, A. J. Wood, Jr., and the Supreme Court, in an Opinion by Justice Lavender, affirmed the decision on August 6, 1981. The Supreme Court citation for this case is 635 P.2d 592.

7. Reeta Swafford v. Jimmy Lee Nave, District Court, Carter County, C-75-206. This case involved an automobile collision at the intersection of a street and U.S. Highway 70 in the town of Lone Grove, Oklahoma. Plaintiff sued for \$947,589.60, alleging among other injuries, hemorrhaging and retinopathy in both eyes resulting in total blindness. Plaintiff was a 29 year old woman at the time of the accident who was rendered totally blind and unable to earn any income.

This case involved all of the normal trial problems associated with a difficult personal injury lawsuit. Of particular significance was the complex medical testimony concerning

plaintiff's injuries. To properly try this case it was necessary that I do extensive research in areas in which I had no prior experience, including juvenile-onset diabetes, diabetic retinopathy, ophthalmology and the latest advances in micro-surgery. These latest advances included laser photocoagulation, vitrectomys and cyclocryo-therapy. Through technical research, conferences with ophthalmologists and conferences with diabetic specialists, I was able to learn enough about juvenile-onset diabetes and diabetic retinopathy to intelligently examine and cross-examine medical witnesses. Finally, I was able to condense this complicated material and present it to a jury in such a way that they could understand its significance and make their decision based upon the evidence.

I represented the defendant, Jimmy Lee Nave, of McAlester, Oklahoma, and Government Employees Insurance Company. I was sole counsel in this case which was tried for four days, from February 8 through February 11, 1977, and resulted in a unanimous jury verdict in favor of the defendant. The case was tried in the District Court for the Twentieth Judicial District, Ardmore, Carter County, Oklahoma, before Judge Earl LeVally. The case was appealed by the plaintiff but affirmed by the Court of Appeals, Division II, in an opinion by Judge Neptune.

Counsel for the plaintiff was Mr. Ted Pasley of Bickford, Pasley & Farabough, "B" and First Street, SW., P.O. Box 1027, Ardmore, OK 73402 (405/223-5566).

8. Tamsey E. Freeman vs. Ben C. Crump and Robert W. Crump, Co-Executors of the Estate of W. E. Crump, Deceased, No. P-74-107, Garvin County, Oklahoma. This case involved a will contest and my client, Tamsey Freeman, the testator's granddaughter, sought her intestate share of the estate as a pretermitted heir. She was one of three grandchildren but was left out of her grandfather's will completely and was not mentioned, either by name or by class. The trial judge, Judge Joe D. Shumate, District Court, Garvin County, ruled that Mrs. Freeman was a pretermitted heir and entitled to inherit her one-third part of her grandfather's estate. The co-executors of the estate, Mrs. Freeman's brothers, appealed from the decision. In a case of first impression, Justice Marion Opala, writing for the Oklahoma Supreme Court, determined that Oklahoma follows the Missouri prototype statute which benefits children not named or provided for in the will as opposed to the



Massachusetts-type statute which permits extrinsic evidence to show either presence or absence of intention to disinherit. The trial court's judgment in favor of Mrs. Freeman was affirmed by the Supreme Court on May 20, 1980, and rehearing denied July 21, 1980. Alan Agee of Garvin, Agee & Carlton, 600 W. Paul Avenue, Pauls Valley, Oklahoma, phone 405/238-5559, represented the Crump Estate, along with George Miesel, 100 East Paul Avenue, Pauls Valley, Oklahoma, 405/238-5564. I represented Mrs. Freeman from inception of the case through the trial and through the appeal. The Court's opinion may be found at 614 P.2d 1096.

9. Kenneth W. Hendrix and Bettie J. Hendrix, plaintiffs, vs. LeWayne E. Jones, d/b/a L. E. Jones Production Company, defendant, C-81-69, District Court of Carter County, Oklahoma. Plaintiffs sued L. E. Jones Production Company for allegedly allowing diesel gel to spill from a reserve pit onto plaintiffs' adjacent pasture land. Plaintiffs sued for \$175,000.00 in damages and \$150,000.00 punitive damages. Plaintiffs were represented by Mr. Harry Bickford of Wallace, Bickford, Pasley & Farabough, 29 B. Street SW, Ardmore, Oklahoma, phone 405/223-5566. I represented the defendant, L.E. Jones Production Company, throughout the case and subsequent appeal. The case was tried before the Honorable Woodrow George in the District Court of Carter County for six days, with the jury returning a verdict on April 20, 1983, in favor of the plaintiffs for \$1,600.00 actual damages. The case involved extensive preparation, including arranging for chemical testing of substances alleged to have been toxic or hazardous. Aerial photographs were obtained, downstream ponds were tested, and the entire closing of the reserve pit was videotaped. In excess of 300 exhibits were introduced, primarily photographs, and in general the case was tried to the hilt by both sides. Although settlement was attempted, plaintiff would never agree to accept less than \$100,000.00. Plaintiff appealed the jury verdict and Judge Charles Wilson, writing for the Court of Appeals Division 3, affirmed the verdict in an opinion not for publication filed July 31, 1984. The appeal was based on certain damage instructions given to the jury, including applicability of Corporation Commission Rules and also plaintiffs' claim that the Court erred by permitting the jury to view the premises. Petition For Writ of Certiorari was denied by the Oklahoma Supreme Court.

10. Henri Curry, plaintiff, vs. The City of Ardmore, Oklahoma, defendant, C-89-144, District Court of Carter County, Oklahoma. Henri Curry was arrested by police officers for the City of Ardmore on minor charges. However, due to the location and time of evening, the arrest provoked an altercation with close to 100 bystanders. Curry claimed the arrest was illegal and sued the City for police brutality, assault and battery, inflicting racial slurs, and intentionally inflicting emotional distress. James Clark, 130 B Street SW, Ardmore, Oklahoma, phone 405/223-2020, represented the plaintiff, Henri Curry, and I represented the City of Ardmore. The case was filed March 22, 1989, and tried before Judge Thomas Walker, District Court of Carter County, and jury verdict entered on December 15, 1989, finding the defendant liable to plaintiff for damages in the amount of \$3,000.00. This case generated considerable local publicity, both newspaper and television, due to the allegations of racial bias, special police emphasis on the northeast part of Ardmore, and allegations that the police department frequently beat prisoners in the elevator going from the garage to the city jail. The trial court sustained defendant's demurrer to the evidence as to plaintiff's claim of unlawful arrest and plaintiff's claim for lost wages. However, the jury apparently did not believe that an altercation between the plaintiff and one of the police officers was entirely unprovoked as the police officers had testified.

This case was significant in that it represented one of a series of cases involving the Ardmore City Police Department. Even though the verdict was small, it prompted the City Manager and police department officials to take a critical look at in-house training programs and community relations. The City Manager instituted a review of all police programs calling for special emphasis in any one part of town, and the officer in question was asked to resign. As a result of this case and several others handled by my firm, I was asked by the City Manager to assist in evaluating the city police force and its training, particularly in the areas of community relations and racial sensitivity, as well as the handling of prisoners. We were able to report to the City Manager with a number of suggestions and ideas for new programs and approaches.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

a. A significant legal activity which did not involve litigation was the acquisition of Ardmore Adventist Hospital by Memorial Hospital of Southern Oklahoma. First as Chairman of Memorial Hospital of Southern Oklahoma and later as General Counsel for Memorial, I was primarily responsible for the acquisition of Ardmore Adventist Hospital, a competing hospital which was located literally across the street from Memorial, including preparation of all legal documents, contracts and notices. By February of 1992, the acquisition had been completed at a cost of several million dollars. Brad Brickell of Mahaffey & Gore, Suite 1100, 211 N. Robinson Avenue, Oklahoma City, Oklahoma, phone 405/236-0478, represented the Oklahoma Conference of Seventh Day Adventists and the Ardmore Adventist Hospital. This acquisition has already been responsible for tremendous growth at Memorial Hospital and an influx of new programs and physicians. I also represented the hospital along with bond counsel before the rating agencies in New York City in November of 1992, and helped present a revenue bond program for expansion of facilities and purchase of new equipment totaling \$25,000,000.00. The hospital has now completed the only cardiac catheterization lab within 100 miles, as well as a new gastroenterology lab and radiation department.

I am particularly pleased not only with the negotiations and legal work involved but also with the knowledge of the tremendous amount of good that will come from this expanded facility in the future.

b. Products Liability Cases. I have been involved in a number of products liability cases which, due to the complexity, number of defendants, and extent of injuries, rarely proceed to trial. One example is the Estate of Clomer Anderson, plaintiff, vs. Propane Services, Inc., et al; No. C-87-378 in the District Court of Carter County, Oklahoma. This case was one of the early General Motors saddle gas tank rupture cases. Clomer Anderson was severely burned

in a fire which erupted in his truck as he was traveling on I-35 near Ardmore. The truck in question had a dual gasoline and propane fuel system. There were various causation theories which accounted for the fact of seventeen separate defendants, including General Motors. A formidable amount of discovery was conducted, including fire experts, metallurgical experts, propulsion system experts, wind experts, automotive design experts, etc. Video tapes of various experiments were conducted to show feasibility of various theories.

The case was finally settled in January of 1990, for 1.25 million dollars, after a number of marathon settlement conferences before Judge Thomas Walker of the District Court of Carter County. I represented the defendant Gas Equipment Company, supplier of portions of the propane system. Other attorneys involved included John Baum of Oklahoma City for the plaintiff, Jim Golden of Oklahoma City for Gates Rubber Company, Bill Greenwood of Oklahoma City for Beam Products, Jim Jennings of Oklahoma City for General Motors, Earl Mills of Oklahoma City for Bill Welborn, d/b/a Propane Services, Charles Watts of Oklahoma City for Colt Industries, Holley Automotive Division, Kenneth R. Webster of Oklahoma City for Fisher Controls, Inc., and John Wheatley of Yukon for Propane Services, Inc.

c. Computer Generated Video Re-enactments. I was one of the first attorneys in southern Oklahoma to use computer generated video re-enactments to demonstrate certain aspects of a case. The first time was in a case in Atoka County, Rawlins v. Gist, C-84-48, a car-truck accident south of Atoka, Oklahoma. The computer re-enactment was designed to show the position of the vehicles, relative speeds and the fact that we believed the plaintiff's vehicle pulled across two lanes of traffic in front of defendant's truck and caused the accident. Wilson Jones of Tulsa represented the plaintiff. I represented the trucking company and Cline Young of Stillwater, Oklahoma created the video re-enactment.

I used a Cline Young re-enactment again in the case of Morris v. Duncan Ford-Lincoln-Mercury, Inc., C-87-355E, District Court of Stephens County. The case involved the death of the Mayor of Comanche, Oklahoma, who was riding in the back of a pickup and retrieving flags from a city-wide celebration. Rick Rodgers of Duncan represented the plaintiff widow. As the pickup entered the highway south of Comanche, the Mayor was thrown from the back of the pickup and was immediately struck by an auto driven by an employee

of Duncan Ford. The video re-enactment was used to demonstrate how little time the driver of the car had to react to this situation. The computer re-enactment was responsible for a favorable settlement prior to trial.

I have also used video re-enactments which were not computer generated, most recently in a products liability case involving an allegedly defective Coca-Cola bottle carrier. The case was W. E. Roberts v. Cyanede Plastics, Inc., Great Plains Coca-Cola Bottling Company and Coca-Cola Bottling Company of Ardmore, C-91-102, District Court of Love County, Oklahoma. I represented the manufacturer of the bottle carrier, Cyanede Plastics, Inc. I was able to settle during the early stages of the trial primarily due to a video re-enactment demonstrating a defect in the design and not the manufacture of the carrier. Coca-Cola continued through several days of trial before settling for approximately three times what my client paid. James Clark of Ardmore represented the plaintiff and Brent Bahner of Ardmore represented Coca-Cola.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I expect to receive from my law firm, my proportionate part of accounts receivable and investments, as well as work in process. The remaining members of my firm and I are presently working on a written agreement which would basically provide for the purchase of my stock in the firm for an amount based on a percentage of the gross collected billings over a period of five years. There are no other deferred income arrangements, options or uncompleted contracts which would benefit me. I still own a portion of an office building with my former law firm, as well as one-half of an apartment house with a former partner. However, I do not anticipate any particular future benefits unless these properties are sold.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I will follow the guidelines of the Code of Judicial Conduct with regard to any potential conflict of interest. I anticipate few potential conflicts as my law firm does not regularly practice in the Northern District of Oklahoma and I have few clients with interests within the Northern District. Should my firm appear before me within the five year time period in which it is anticipated my stock will be purchased, then I would immediately advise the parties and recuse. In the event a company appears

before me in which I own stock or have a financial interest, I would recuse from the case. In cases involving direct actions against insurance companies I have represented in the past or other major clients, I would disclose this past representation to the parties to determine if there is any objection to my hearing the case. Upon objection, I would either recuse or, if the objection appeared to be without merit or based on other factors, I would refer the matter to the Chief Judge of the District.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978 may be substituted here.)

See attached copy of Financial Disclosure.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

Attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have never held a position or played a formal role in a political campaign. However, I have been involved in numerous political campaigns as a supporter. These campaigns would include, but not be limited to, the following: Bill Clinton's 1992 campaign for President; Senator David Boren's U.S. Senate campaigns; Cody Graves 1992 campaign for State Corporation Commissioner; David Walters' 1990 campaign for Governor.



## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Carter County, Oklahoma has three separate court appointed attorney lists, including criminal appointments, guardian ad litem and juvenile appointments. I have voluntarily served on one or more of these lists for the past twenty-three years. For the past approximately ten years, I have been on the court appointed list for guardian ad litem for minor children involved in abuse or parental neglect. I average six to ten assigned cases per year. Some of the cases last a number of years and until the child reaches majority. Serving on these lists is basically pro bono as remuneration from the Court Fund is extremely limited. I have also encouraged the lawyers working for me to participate and take their share of court appointments.

I am a member of the pro bono attorney panel of Legal Aid of Western Oklahoma. I have worked with and taken referrals from the local office of Legal Aid of Western Oklahoma.

As in any small town law practice, we donate legal services to organizations involved in helping the disadvantaged, such as Southern Oklahoma Ambulance Service, Southern Oklahoma Mental Health Services, Inc., and CASA. I have served on the board of two of these organizations and given many hours of free legal advice.

There are also specific clients for whom I have provide free legal services because of their particular situations. Examples would include a woman with three children whose husband is approximately my age and suffered a severe stroke some five years ago. I have continued to represent the family over the past several years without charging for my time. I have prepared all of the estate planning for this family, prepared guardianship proceedings and been involved with several problems of each of the children.

Another example is a widow whose husband I represented once through his insurance company. I have continued to provide either completely free services or much reduced fees in recognition of her economic condition. She is concerned over the slightest problem and visits my office at least on a monthly basis. I helped her sell a number of residential lots in Gene Autry, Oklahoma that were barely worth the taxes being paid. The services involved would have cost more than the money she received had I charged her. Over the years there have been numerous other examples. I have had a number of clients, particularly divorce clients, unable to pay our fees and because of their financial situation these fees were written off. I have never brought suit to collect a legal fee.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership, What you have done to try to change these policies?

I do not belong to any organization which discriminates through either formal membership requirements or the practical implementation of membership policies. In fact, I have helped some organizations change their policies. I belonged to the Ardmore Rotary Club from approximately 1974 to 1987. I supported the opening of the membership to women. At the present time there are several women members of the Ardmore Rotary Club.

Sometime after joining Dornick Hills Golf and Country Club in the early 1970s, I was involved in reviewing and revising a portion of the By-Laws. I came across some language that was without question discriminatory. I reported this to my firm and subsequently to the Board of Directors. I prepared certain amendments to the By-Laws and this language was removed at the next annual meeting of stockholders. When I was President of the club in 1981, I changed prior policies and allowed outside groups to use the club for their activities. This included an African-American dance

club called The After Six Club which used Dornick Hills' facilities for their winter formal. Although there are Native American, Hispanic and Asian members of Dornick Hills, there are no African-American members. I have tried to help recruit African-American members and continue to do so. Dornick Hills is not an exclusive country club and, in fact, various membership drives have been advertised in the local newspaper.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

A selection commission recommended my name, along with several others, to Senator David Boren for possible recommendation to the President. Initial notification of a vacancy on the federal bench appeared in the Oklahoma Bar Journal in February of 1993. I requested an application and received a list of the names of the Federal Judicial Advisory Committee, along with a questionnaire patterned after a questionnaire developed by the Senate Judiciary Committee. The completed questionnaire was to be mailed, along with supporting documentation, to each committee member. Due date for the completed questionnaire was March 26, 1993. Thereafter, I was notified by the Chairman of the Advisory Committee that I had been selected for interview and was scheduled to be interviewed in Tulsa, Oklahoma, on April 10, 1993. I appeared before the Advisory Committee as scheduled and was questioned at some length by each member of the Committee. I was later contacted by Senator David Boren and interviewed extensively by telephone. On April 20, 1993, I was again contacted by Senator Boren and advised that I would be recommended to the President for nomination to the U.S. District Court for the Northern District of Oklahoma.

I was contacted by letter from the White House Counsel's Office dated September 17, 1993, and requested to complete several forms. Following the return of these forms, I was called and interviewed at some length by an attorney with the Office of Policy Development, Department of Justice. At his request, I furnished the names and

phone numbers of five or six judges I had appeared before. I understand from local judges and lawyers that a number of them were contacted and questioned concerning my qualifications and temperament.

Two agents from the Federal Bureau of Investigation contacted me in early December of 1993 to begin their investigation. I was interviewed extensively concerning the information provided in a personal data questionnaire. Subsequently, the agents interviewed my staff, my neighbors and a significant number of townspeople. The agents also called me on two occasions to ask follow-up questions or clarify information.

Also I have attended personal interviews with the Department of Justice and the American Bar Association. The Department of Justice interview took place in Washington D.C. on December 13, 1993, with several members of the Office of Policy Development. The 10th Circuit representative of the American Bar Association's Standing Committee on Federal Judiciary met with me in Dallas, Texas on January 27, 1994.

I was advised by the White House Counsel's Office of my nomination by President Clinton on March 9, 1994.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The nature of my law practice as a trial attorney the past twenty-three years has been primarily that of grievance-resolution. I have confidence in that process, have experienced success with it, and will bring that approach to bear on any cases that are brought before me.

I regard the U.S. District Judge in the traditional sense -- one who is by oath obliged to apply the law in accordance with Supreme Court and Circuit precedent. Our Constitution clearly dictates the separation of powers between branches, investing legislative powers in a Congress elected by the people. It is my belief that changes in social policy are best effected through the consensus-building mechanisms that are exclusively committed to the executive and legislative branches.

I interpret judicial restraint as, quite simply, the acknowledgement that our government is founded on basic rights and freedoms established by our Constitution as interpreted by the Supreme Court. In upholding these precedents, I do not see an abdication of responsibility, but rather a very deep respect for the proven traditions of a government which protects the rights of the individual through a body of law that has evolved thoughtfully over time.

## FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics  
 Reform Act of 1995, Pub. L. No.  
 101-164, November 10, 1995  
 (5 U.S.C.A. App. 6, §6101-112)

|  |  |  |  |  |  |
|--|--|--|--|--|--|
| AC-10<br>Rev. 1/93   |  | <b>FINANCIAL DISCLOSURE REPORT</b>   |  | Report Required by the Ethics<br>Reform Act of 1995, Pub. L. No.<br>101-164, November 10, 1995<br>(5 U.S.C.A. App. 6, §6101-112) |  |
| 1. Person Reporting (Last name, first, middle initial)<br><br>KERN, TERRY C.   |  | 2. Court or Organization<br><br>Northern District of Oklahoma  |  | 3. Date of Report<br><br>Mar. 10, 1994   |  |
| 4. Title (Article III judges indicate active or senior status; Magistrate judges indicate full- or part-time)<br><br>Article III Nominee   |  | 5. Report Type (check appropriate type)<br><input checked="" type="checkbox"/> Nomination, Date 3/9/94<br>___ Initial ___ Annual ___ Final                                       |  | 6. Reporting Period<br>Jan. 1, 1993 -<br>Mar. 1, 1994  |  |
| 7. Chambers or Office Address<br>Suite 330, Neustadt Plaza<br>333 West Main<br>Ardmore, OK 73401   |  | 8. On the basis of the information contained in this Report, it is, in my opinion, in compliance with applicable laws and regulations _____<br>Reviewing Officer Signature _____ |  |  |  |
| IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on last page. |  |  |  |  |  |

## I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

| POSITION  | NAME OF ORGANIZATION/ENTITY                  |
|---|--|
| <input type="checkbox"/> NONE (No reportable positions) |  |
| Trustee   | Memorial Hospital of Southern Oklahoma, Inc. |
| Trustee   | Ardmore Development Authority                |
| Director  | Legal Institute of Pickens County I.T.       |

## II. AGREEMENTS. (Reporting individual only; see p. 8-9 of Instructions.)

| DATE   | PARTIES AND TERMS  |
|--|--|
| <input type="checkbox"/> NONE (No reportable agreements) |  |
| Pending  | Stock buyout by remaining members of law firm (Mr. Mordy, Mr. Sperry and Mr. Daniels); \$250,000 payable over 5 years. Mr. Kern will also receive his share of cash on hand, accounts receivable and work-in-process as collected. |

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

| DATE<br>(Honoraria only)  | SOURCE AND TYPE                      | GROSS INCOME<br>(yours, not spouse's) |
|---|--------------------------------------|---------------------------------------|
| <input type="checkbox"/> NONE (No reportable non-investment income) |                                      |                                       |
| 1 1992  | Kern and Associates P.C. - salary    | \$240,612.52                          |
| 2 1993  | Kern, Mordy and Sperry P.C. - salary | \$267,251.50                          |
| 3   |                                      | \$                                    |
| 4   |                                      | \$                                    |
| 5   |                                      | \$                                    |

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Kern, Terry C.

Date of Report

Mar. 10, 1994

## IV. REIMBURSEMENTS and GIFTS – transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

SOURCEDESCRIPTION

NONE (No such reportable reimbursements or gifts)

|   | <u>SOURCE</u> | <u>DESCRIPTION</u> |
|---|---------------|--------------------|
| 1 | Exempt        |                    |
| 2 |               |                    |
| 3 |               |                    |
| 4 |               |                    |
| 5 |               |                    |
| 6 |               |                    |
| 7 |               |                    |
| 8 |               |                    |

## V. OTHER GIFTS. (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp.15-16 of Instructions.)

SOURCEDESCRIPTIONVALUE

NONE (No such reportable gifts)

|   | <u>SOURCE</u> | <u>DESCRIPTION</u> | <u>VALUE</u> |
|---|---------------|--------------------|--------------|
| 1 | Exempt        |                    | \$           |
| 2 |               |                    | \$           |
| 3 |               |                    | \$           |
| 4 |               |                    | \$           |

## VI. LIABILITIES. (Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp.16-18 of Instructions.)

CREDITORDESCRIPTIONVALUE CODE\*

NONE (No reportable liabilities)

|   | <u>CREDITOR</u>                   | <u>DESCRIPTION</u>                | <u>VALUE CODE*</u> |
|---|-----------------------------------|-----------------------------------|--------------------|
| 1 | Exchange Nat'l Bank and Trust (S) | Mortgage 100 E St., Ardmore, OK   | J                  |
| 2 | Citizens Bank of Ardmore (S)      | Mortgage 3rd & B St., Ardmore, OK | L                  |
| 3 |                                   |                                   |                    |
| 4 |                                   |                                   |                    |
| 5 |                                   |                                   |                    |
| 6 |                                   |                                   |                    |
| 7 |                                   |                                   |                    |

\* VALUE CODES: J = \$15,000 or less    K = \$15,001 to \$50,000    L = \$50,001 to \$100,000    M = \$100,001 to \$250,000  
 N = \$250,001 to \$500,000    O = \$500,001 to \$1,000,000    P = more than \$1,000,000

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Kern, Terry C.

Date of Report

Mar. 10, 1994

## VII. INVESTMENTS and TRUSTS – income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

| A.<br>Description of Assets<br>(including trust assets)<br>Indicate, where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.<br>Place "(X)" after each asset except from prior disclosure. | B.<br>Income during reporting period     |  | C.<br>Gross Value at end of reporting period       |  | D.<br>Transactions during reporting period         |                        |                            |                           |  |
|---|--|--|--|--|--|------------------------|----------------------------|---------------------------|--|
|   | (1)<br>Asset Code<br>(A-W)               | (2)<br>Type (div., rent or int.)                     | (1)<br>Value Code<br>(J-F)                         | (2)<br>Value Method Code<br>(Q-W)                | If not exempt from disclosure                      |                        |                            |                           |  |
|   |  |  |  |  | (3)<br>Type (4)<br>Buy, Sell, Mover, Reacquisition | (2)<br>Date: Month Day | (3)<br>Value Code<br>(J-P) | (4)<br>Gain Code<br>(A-E) | (5)<br>Identity of Buyer/Seller (if private transaction) |
| <input type="checkbox"/> NONE (No reportable income, assets, or transactions)   |  |  |  |  |  |                        |                            |                           |  |
| 1 Paine Webber IRA  | B  | div.   | L  | T  |  |                        |                            |                           |  |
| 2 Paine Webber IRA (S)  | A  | div.   | J  | T  |  |                        |                            |                           |  |
| 3 Paine Webber (J)  | B  | div.   | M  | T  |  |                        |                            |                           |  |
| 4 Gruntal and Co., Inc.   | A  | div.   | K  | T  |  |                        |                            |                           |  |
| 5 Chas. Schwab (DC)   | A  | div.   | J  | T  |  |                        |                            |                           |  |
| 6 Invesco Funds (J)   | A  | div.   | J  | T  |  |                        |                            |                           |  |
| 7 CQM Funds (J)   | A  | div.   | J  | T  |  |                        |                            |                           |  |
| 8 Kern, Mordy & Sperry P.C.   | D  | div/int.   | O  | U  |  |                        |                            |                           |  |
| 9 100 E St., Ardmore, OK  | B  | rent   | L  | R  |  |                        |                            |                           |  |
| 10 3rd & B St., Ardmore, OK   | B  | rent   | M  | Q  |  |                        |                            |                           |  |
| 11 Oil and gas interests  | C  | int.   | K  | W  |  |                        |                            |                           |  |
| 12  |  |  |  |  |  |                        |                            |                           |  |
| 13  |  |  |  |  |  |                        |                            |                           |  |
| 14  |  |  |  |  |  |                        |                            |                           |  |
| 15  |  |  |  |  |  |                        |                            |                           |  |
| 16  |  |  |  |  |  |                        |                            |                           |  |
| 17  |  |  |  |  |  |                        |                            |                           |  |
| 18  |  |  |  |  |  |                        |                            |                           |  |
| 19  |  |  |  |  |  |                        |                            |                           |  |
| 20  |  |  |  |  |  |                        |                            |                           |  |
| 1 Income/Gain Codes:  | A=\$1,000 or less<br>(See Col. B) & D1)  | B=\$1,001 to \$2,500<br>F=\$20,001 to \$100,000      | C=\$2,501 to 5,000<br>G=\$100,001 to \$1,000,000   | D=\$5,001 to \$15,000<br>H=More than \$1,000,000 |  |                        |                            |                           |  |
| 2 Value Codes:  | J=\$15,000 or less<br>(See Col. C) & D3) | K=\$15,001 to \$50,000<br>O=\$500,001 to \$1,000,000 | L=\$50,001 to \$100,000<br>P=More than \$1,000,000 | M=\$100,001 to \$250,000                         |  |                        |                            |                           |  |
| 3 Value Method Codes:<br>(See Col. C2)  | Q=Appraisal<br>U=Book Value              | R=Cost (real estate only)<br>V=Other                 | S=Assessment<br>W=Estimated                        | T=Cash/Market                                    |  |                        |                            |                           |  |



FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Kern, Terry C.

Date of Report

Mar. 10, 1994

## VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

I. President, Kern and Associates P.C.President, Kern, Mordy & Sperry P.C.Partner, C.C.M.&K. Building Co.Partner, Arbuckle ApartmentsVII. (9) Cost, May 1, 1980 \$309,452VII. (10) Appraisal, October 28, 1993

## IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature

Terry C. KernDate Mar. 10, 1994

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, § 104, AND 18 U.S.C. § 1001.)

## FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Judicial Ethics Committee  
Administrative Office of the  
United States Courts  
Washington, DC 20544

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

| ASSETS   |              |            | LIABILITIES         |  |              |            |           |
|--|--------------|------------|---------------------|--|--------------|------------|-----------|
| Cash on hand and in banks                                    | 50           | 885        | 00                  | Notes payable to banks—secured                   |              |            |           |
| U.S. Government securities—add schedule                      |              |            |                     | Notes payable to banks—unsecured                 |              |            |           |
| Listed securities—add schedule #1                            | 329          | 265        | 00                  | Notes payable to relatives                       |              |            |           |
| Unlisted securities—add schedule                             |              |            |                     | Notes payable to others                          |              |            |           |
| Accounts and notes receivable:                               |              |            |                     | Accounts and bills due                           |              |            |           |
| Due from relatives and friends                               |              |            |                     | Unpaid income tax                                |              |            |           |
| Due <del>from</del> Kern, Mordy & Sperry, P.C. Inc           | 126          | 984        | 00                  | Other unpaid tax and interest                    |              |            |           |
| Doubtful   |              |            |                     | Real estate mortgages payable—add schedule #2    | 79           | 136        | 00        |
| Real estate owned—add schedule #2                            | 217          | 079        | 00                  | Chattel mortgages and other liens payable        |              |            |           |
| Real estate mortgages receivable                             |              |            |                     | Other debts—itemize:                             |              |            |           |
| Autos <del>and other personal property</del>                 | 40           | 000        | 00                  |  |              |            |           |
| Cash value—life insurance                                    | 33           | 201        | 00                  |  |              |            |           |
| Other assets—itemize:  |              |            |                     |  |              |            |           |
| Furn., Fixtures & Equip                                      | 60           | 000        | 00                  |  |              |            |           |
| Oil Interests  | 15           | 000        | 00                  |  |              |            |           |
| Work-In-Process Kern, Mordy & Sperry, P.C. Inc               | 165          | 872        | 00                  | Total Liabilities                                | 79           | 136        | 00        |
|  |              |            |                     | Net Worth  | 959          | 150        | 00        |
| <b>Total Assets</b>  | <b>1,038</b> | <b>286</b> | <b>00</b>           | <b>Total Liabilities and net worth</b>           | <b>1,038</b> | <b>286</b> | <b>00</b> |
| CONTINGENT LIABILITIES                                       |              |            | GENERAL INFORMATION |  |              |            |           |
| As endorser, comaker or guarantor                            |              | 0          | 00                  | Are any assets pledged? (Add schedule.)          |              |            | NO        |
| On leases or contracts                                       |              | 0          | 00                  | Are you defendant in any suits or legal actions? |              |            | NO        |
| Legal Claims   |              | 0          | 00                  | Have you ever taken bankruptcy?                  |              |            | NO        |
| Provision for Federal Income Tax (pd to IRS) <sup>1993</sup> | 65           | 590        | 00                  |  |              |            |           |
| Other special debt   |              | 0          | 00                  |  |              |            |           |

## LISTED SECURITIES

## SCHEDULE #1

-----  
March 1, 1994

| Name of Corporation<br>-----   | Current Market Value<br>----- |
|--|-------------------------------|
| Paine Webber, Inc.<br>(Bonds, Notes, Money<br>Fund, Equities - TCK & CHK)      | \$ 112,871.89                 |
| Paine Webber, Inc.<br>(IRA Rollover - TCK)                                     | \$ 70,426.78                  |
| Paine Webber, Inc.<br>(Rotan Mosle Division)<br>(Kern, Mordy and Sperry, P.C.) | \$ 56,961.05                  |
| Paine Webber, Inc.<br>(IRA - CHK)  | \$ 1,006.21                   |
| Gruntal & Co., Inc<br>(Dividends, Interest- TCK)                               | \$ 46,114.00                  |
| CGM Mutual Fund<br>(Reinvestment - TCK & CHK)                                  | \$ 3,284.09                   |
| Charles Schwab & Co., Inc.<br>(Money Fund)<br>(Kern, Mordy and Sperry, P.C.)   | \$ 32,375.00                  |
| Charles Schwab & Co., Inc.<br>(Money Fund - LK)                                | \$ 5,011.00                   |
| Invesco Funds Group, Inc.<br>(ISP-Gold - TCK & CHK)                            | \$ 1,215.09                   |

-----

## REAL ESTATE

## SCHEDULE #2

-----  
March 1, 1994

| <u>Description</u>  | <u>Date<br/>Purchased</u> | <u>TCK %<br/>Value</u> | <u>TCK %<br/>Mortgages</u> | <u>Nature of<br/>Improvements</u> |
|---|---------------------------|------------------------|----------------------------|-----------------------------------|
| Arbuckle Apts.<br>3rd & "B" N.W.<br>Ardmore, OK (TCK-50%) | 1985                      | \$149,000              | \$ 70,699.05               | Investment                        |
| Office Bldg<br>"E" Street, S.W.<br>Ardmore, OK (TCK-22%)  | 1979                      | \$ 68,079              | \$ 8,436.48                | Investment                        |

-----

UNITED STATES SENATE QUESTIONNAIRE

## I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Gladys Kessler

2. Address: List current place of residence and office address(es).

Home: 2220 20th Street, N.W.  
Washington, D.C. 20009Office: 500 Indiana Avenue, N.W.  
Washington, D.C. 20001

3. Date and place of birth.

January 22, 1938; New York, New York

- 4.
- Marital Status
- (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Married to Arthur Mackwell who is retired.

- 5.
- Education
- : List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Cornell University 1955-1959 B.A., February, 1959

Harvard Law School 1959-1962 L.L.B., June, 1962

- 6.
- Employment Record
- : List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

2/1959 - 8/1959 Prof. Clinton Rossiter  
Dept. of Government  
Cornell University  
Research Assistant and Secretary1962 - 1964 National Labor Relations Board  
Appellate Attorney1964 - 1966 Senator Harrison A. Williams  
Legislative Assistant

|                |   |
|----------------|---|
| 1966 - 1968    | Congressman Jonathan B. Bingham<br>Legislative Assistant  |
| 1968 - 1969    | New York City Board of Education<br>Special Assistant to the Director of<br>the Office of Staff Relations |
| 1969 - 1977    | Berlin, Roisman and Kessler which<br>became Roisman, Kessler and Cashdan<br>Partner                       |
| 1977 - present | D.C. Superior Court<br>Associate Judge  |

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

I had small scholarships at both Cornell and Harvard.  
Women's Bar Association Woman Lawyer of the Year, 1983

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

American Judicature Society Board of Directors,  
1985-1989

National Center for State Courts, Board of Directors,  
1984-1987

President, National Association of Women Judges, 1982-  
1983

Vice President, National Association of Women Judges,  
1979-1981

President, Women Judges' Fund for Justice, 1986-1987

President, Foundation for Women Judges, 1980-1982

Women Judges' Fund for Justice, Board of Directors  
1980-1992

District of Columbia Courts' Joint Committee on Judicial Administration, 1989-present

Council Harvard Law School Association, 1986-1989

District of Columbia Bar

Fellows of the American Bar Foundation

American Bar Association

American Law Institute

Women's Legal Defense Fund

National Council of Juvenile and Family Court Judges

Now Legal Defense and Education Fund, Inc.

International Association of Women Judges

ABA Standing Committee on Alternative Dispute Resolution, 1987 - 1990; Subcommittee on Multi-Door Courthouse (grant funded by State Justice Institute)

D.C. Superior Court Delegate to Judicial Administration Division, 1985-1990

Chair, ABA Judicial Administration Division, Committee on Bioethics and AIDS, 1993 - 1994

ABA Advisory Commission on Youth, Alcohol and Drug Problems

ABA National Advisory Board on Child Support

ABA Judicial Administration Division; Criminal Justice Section; Individual Rights and Responsibilities Section

ABA Section on Dispute Resolution - Committee on Committees

I have been a member of the planning committee of numerous judicial conferences in my own jurisdiction. I have chaired, organized or participated in the following activities:

**A. ADR Field**

Chairperson, Family Dispute Resolution Conference, March, 1990, Miami, Florida, sponsored by ABA Standing Committee on Dispute Resolution

Advisory Board, Project to Develop Standards for Court-Based Mediation, Center for Dispute Settlement-Institute for Judicial Administration (funded by State Justice Institute), 1990-92

Member, BNA Advisory Board, Alternative Dispute Resolution Report, 1987-1990

Numerous presentations to different state and local bar groups on ADR in general and the creation and development of the Multi-Door Courthouse in particular

**B. Family Law Field**

District of Columbia Court Child Support Guidelines Committee, 1985-1989

District of Columbia Advisory Commission on Child Support, 1984-1987

Advisory Committee, National Judicial Education Project on Domestic Violence: "The Crucial Role of the Judge in the Criminal Court" (funded by State Justice Institute), 1990-1991

Advisory Committee, National Judicial Education Project on Domestic Violence: "Domestic Violence in Civil Court Cases" (funded by State Justice Institute), 1991-1992

Speaker, June, 1991, Washington, D.C., National Women's Health Resource Center Conference on Violence Against Women

Advisory Committee to Women Judges' Fund for Justice Project on Enhancing Gender Fairness in the State Courts, and Chairperson of Child Custody Panel (funded by State Justice Institute), 1990-1991

Member, Georgetown University Family Law Curriculum Planning Committee



Lead Judge, Permanency Planning Project,  
National Council of Juvenile and Family Court  
Judges, 1983 to 1987

Advisory Panel, March 1990, U.S. Department of  
Justice Publication, "Civil Protection Orders:  
Legislation, Current Court Practice, and  
Enforcement"

Speaker, May 1986, District of Columbia Circuit Federal  
Judicial Conference, Panel on Juvenile Justice Issues

Moderator and Organizer, 1990 National Conference  
on the Future and the Courts, sponsored by American  
Judicature Society (funded by State Justice  
Institute), "Future of the Family Court"

### C. Bioethics Field

Keynote Speaker, April, 1992, Conference on  
Physician Assisted Dying, sponsored by  
American Society of Law and Medicine

Chairperson, Advisory and Review Committee,  
Science Curriculum for State Court Judges  
Presiding in Toxic Exposure Cases, conducted  
by Georgetown University, 1991-1992 (funded by  
State Justice Institute)

Chairperson, National Conference on Bioethics,  
Family and the Law, September 21-23, 1991,  
Washington, D.C.

Chairperson, National Conference of the State  
Judiciary on Bioethical Issues, September 7-  
10, 1989, National Judicial College

Moderator and Organizer, June 1991, District  
of Columbia Judicial Conference, "Decisions  
and Life and Health: Medical, Ethical and  
Legal Issues"

Moderator and Organizer, June 1990, District  
of Columbia Judicial Conference, "Parental-  
Fetal Rights"

Speaker, September, 1990, Cruzan Conference,  
sponsored by American Society of Law and  
Medicine, "Medical Decision-Making and the  
Right to Die After Cruzan: Competency Issues"

Speaker, 1990, National Conference on the Future and the Courts, sponsored by American Judicature Society (funded by State Justice Institute), "Bioethics"

Chairperson, Judicial Training Conference on Women, Families and Reproductive Health, April 9-11, 1991, Washington, D.C.

Chair, Training Conference on Impact of Reproductive Technology on Law, October 20-22, 1989, Washington, D.C.

Moderator and Organizer, June, 1989, District of Columbia Circuit Federal Judicial Conference, "Court Issues Raised by Advances in Reproductive Technologies"

Chairperson, Judicial Training Conference on Reproductive Technologies, November, 1988, Airlie House, Virginia

Moderator and Organizer, 1987 D.C. Superior Court Judicial Training Conference, Panel on Bioethics

#### **D. Current Projects**

Chairperson, National Advisory Committee for project on "Toxic Torts and State Courts: Judicial Deskbook and Science Curriculum for State Court Judges Presiding in Toxic Exposure Cases" (funded by State Justice Institute), 1991-present

Chairperson, Advisory Committee for ABA Commission on Legal Problems of the Elderly project on "Elder Abuse and State Courts: Guidelines for the Courts in Handling Elder Abuse Cases" (funded by State Justice Institute), 1993-present

Chairperson, Advisory and Review Committee project on "Tools to Describe Science Underpinnings of Mass Tort Litigation" (funded by State Justice Institute), 1993-present

10. Other Membership: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

While I periodically make contributions to certain organizations which lobby before public bodies, I have repeatedly

instructed them that I did not intend to be a member or receive any of the benefits of membership.

I am not sure if you mean to cover arts-related organizations, but I am a member of the Washington Performing Arts Society, the Smithsonian Resident Associates Program, and the Kennedy Center Stars.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

|   |           |
|---|-----------|
| New York State  | 8/26/1968 |
| U.S. Supreme Court  | 1/29/1968 |
| U.S. District Court<br>for the District of Columbia           | 6/19/1969 |
| U.S. Court of Appeals<br>for the District of Columbia Circuit | 6/17/1970 |
| U.S. Court of Appeals<br>for the Fourth Circuit               | 8/13/1973 |

I suspect, but do not really know, that my New York State bar membership has lapsed after all these years of being out of that jurisdiction.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

1990-1992 Judicial Associate Editor, Courts, Health Science and Law Journal, Georgetown University Medical and Law Centers - I never wrote any material for this publication, and it has gone out of existence

1989, Co-authored chapter "Integration of Women and Minority Judges into the American Judiciary," The Judge's Book published by ABA National Conference of State Trial Judges - Attachment 12A

December, 1984, "Crisis in Child Support," Trial Magazine - Attachment 12B

February, 1984, Forward in Symposium Issue, Golden Gate Law Review on National Association of Women Judges - Attachment 12C

Fall, 1983, "Affirmative Action Can Mean the Best Person for the Job," Judges' Journal - Attachment 12D

Summer, 1976, Litigation Magazine, "The Economics of Public Interest Litigation" - I have not been able to locate this article

May, 1970, George Washington University Law Review, "Public Interest Law," co-authored with Edward Berlin and Anthony Z. Roisman - Attachment 12E

I do not maintain a file of speeches.

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent. Last complete physical was December, 1992, although I have had examinations for minor ailments since then.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Associate Judge, D.C. Superior Court. Appointed by President Jimmy Carter in 1977; re-appointed by President

George Bush in 1992. Superior Court is a trial court of general jurisdiction and handles all criminal, civil, tax, probate, domestic relations, delinquency, and neglect and abuse cases in the District of Columbia.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

(1) I have attached six opinions which have not been published in any official reporter. In addition, I am listing the following citations to five opinions which are published and easily obtainable:

1. Fortt v. Plymouth Congregational Church, 119 Daily Wash. L. Rptr. 2053 (D.C. Super. Ct. July 25, 1991).
2. McKethean v. WMATA, 115 Daily Wash. L. Rptr. 61 (D.C. Super. Ct. December 3, 1986).
3. In re D.I., R.I., D.I., 113 Daily Wash. L. Rptr. 1293 (D.C. Super. Ct. May 6, 1985).
4. In re Brooks, 112 Daily Wash. L. Rptr. 353 (D.C. Super. Ct. January 10, 1984).
5. McCree v. McCree, 109 Daily Wash. L. Rptr. 2145 (D.C. Super. Ct. September 28, 1981).

(2) I am also listing those appellate opinions in which I was reversed. I have included in such listing the appellate citation and a short summary highlighting the central issue on

appeal. I am not aware of any decisions where my judgment was affirmed with significant criticism of any of my substantive or procedural rulings.

1. Carr v. Nat'l Delicatessen, 397 A.2d 914 (D.C. 1979)  
- landlord and tenant case.

The Court of Appeals reversed the trial court's dismissal of suit for possession of premises, finding that the landlord had given adequate notice to the tenant to vacate the premises.

2. In re Boyd, 403 A.2d 744 (D.C. 1979) - mental health case.

Announcing for the first time that a substituted judgment test would be applied in mental health proceedings, the case was remanded for reconsideration of trial court's order authorizing the hospital's administration of psychotropic drugs, in light of the new standard.

3. D.C. v. M.E.K., 407 A.2d 655 (D.C. 1979) - juvenile delinquency case.

The Court of Appeals reversed the trial court's granting of pre-trial motion to suppress evidence, finding that the government had established probable cause to arrest, based on a report of illegal activity personally witnessed by a reliable informant.

4. Global Van Lines v. Kleinow, 411 A.2d 62 (D.C. 1980)  
- civil case.

The Court of Appeals reversed the trial court's judgment

for plaintiff in a defamation suit, ruling that a judgment creditor could not be held liable in a defamation suit based upon the issuance of a writ of attachment by the Superior Court.

5. U.S. v. Stancil, 422 A.2d 1285 (D.C. 1980) - criminal case.

The Court of Appeals reversed the trial court's dismissal of the charge based on its conclusion that a moped is included under the category of motorcycle in the Unauthorized Use of a Vehicle statute.

6. AMAF International Corporation v. Ralston Purina Co., 428 A.2d 849 (D.C. 1981) - commercial case.

The Court of Appeals reversed the trial court's dismissal based on lack of personal jurisdiction, ruling that the statute authorizing service of process on resident agent of foreign corporation established jurisdiction when that foreign corporation did on-going business in the District.

7. In the Matter of An Inquiry into Allegations of Misconduct Against Juveniles Detained At and Committed at Cedar Knoll Institution, 430 A.2d 1087 (D.C. 1981) - juvenile delinquency case.

The Court of Appeals reversed trial court's order mandating changes in the internal operation of juvenile facility for lack of jurisdiction despite acquiescence of D.C. government to jurisdiction at trial court level.

8. Musgrove v. U.S., 441 A.2d 980 (D.C. 1982) - criminal case.

The Court of Appeals reversed a conviction of assault because of prejudicial admission of a citizen complaint form which had not been signed by complaining witness.

9. Arnold v. U.S., 443 A.2d 1318 (D.C. 1982) - criminal case - remanded for resentencing only.

10. D.C. v. Woody, 452 A.2d 324 (D.C. 1982) - civil case.

The Court of Appeals reversed the trial court's granting of plaintiff's motion for summary judgment, finding that the plaintiff was not entitled to consequential damages in absence of proof that the due process deprivation proximately caused an erroneous administrative decision on the merits. The case was remanded to the trial court for further remand to the Police Department for a hearing.

11. Washington v. U.S., 461 A.2d 1037 (D.C. 1983) - criminal case.

The Court of Appeals reversed the trial court's in limine decision to preclude cross-examination of the government's witness regarding his possible bias toward the defendant, finding that the decision erased the essential evidence regarding the credibility of the witness.

12. Padgett v. Padgett, 472 A.2d 849 (D.C. 1984) aff'd, vacated and remanded - domestic relations case.

The Court of Appeals affirmed the trial court's



determination that laches doctrine is applicable as a bar to plaintiff's claim, but remanded to give the trial court an opportunity to reconsider the laches claim in light of the defendant's present financial situation.

13. Cooper v. Cooper, 472 A.2d 878 (D.C. 1984) - domestic relations case.

The Court of Appeals reversed the trial court's increase of alimony and child support payments, finding that the trial court applied the standard used in modifying court ordered payments, instead of the standard used in modifying payments set by agreement of the parties.

14. In Re Hanna, 484 A.2d 537 (D.C. 1984) - mental retardation case.

The Court of Appeals reversed the trial court's order to discharge a patient committed for mental illness and to recommit him under the Retarded Citizen's Act. The appellate court found that the trial court's authority was limited to determining whether the hospital's decision regarding the patient's mental illness was based solely on statutory grounds and not motivated by concerns incompatible with the Ervin Act. The case was remanded to determine whether the hospital had decided that the patient was no longer mentally ill.

15. DeMontmorin v. DuPont, 484 A.2d 582 (D.C. 1984) - civil case.

The Court of Appeals reversed the trial court's granting of the defendant's motion to dismiss on the grounds of forum

non conveniens, finding that the public interest favored consideration in the District of Columbia courts of the merits of this case against a District resident to enforce child support payments due under a District of Columbia separation agreement.

16. Zapata v. Zapata, 499 A.2d 905 (D.C. 1985) - civil contempt case.

The Court of Appeals affirmed in part and reversed in part the trial court's order which found both the plaintiff and the defendant in contempt of a court order enjoining them from interfering with the quiet enjoyment of each other's property. The appellate court found that there was substantial evidence supporting the contempt charge against the husband, but found that there was no evidence supporting the contempt charge against the wife which was accordingly reversed and remanded for reconsideration of the wife's motion for attorney fees.

17. Cobb v. Cobb, 500 A.2d 1016 (D.C. 1985) - domestic relation case.

The Court of Appeals remanded for findings on whether the veteran's widows' benefits constituted a property interest, and if so, whether the plaintiff would have a colorable claim of entitlement to that property, in order to establish trial court jurisdiction. If the findings were negative, the trial court's previous dismissal of the plaintiff's complaint would stand.

18. In Re J.C. M., 502 A.2d 472 (D.C. 1985) - juvenile delinquency case.

The Court of Appeals reversed the trial court's conviction of the defendant for burglary and theft, ruling that fingerprint analysis alone did not constitute sufficient evidence to establish proof beyond a reasonable doubt.

19. Portlock v. Portlock, 518 A.2d 116 (D.C. 1986) - domestic relations case.

The Court of Appeals reversed the trial court's denial of a wife's motion to increase child support payments, announcing for the first time that when the moving party shows that the agreement between parties regarding child support was initially inadequate to meet the child's foreseeable needs, the trial court has the authority to consider motion for modification.

20. D.C. v. Daniels, 523 A.2d 569 (D.C. 1987) - administrative law case.

The Court of Appeals vacated the trial court's remand to the Metropolitan Police Department (MPD), and remanded for a decision on the merits to the Office of Employee Appeals (OEA), since the MPD failed to inform the plaintiffs of their rights to an OEA review.

21. Fotos v. Fireman's Insurance Co., 533 A.2d 1264 (D.C. 1987) - bailment case.

The Court of Appeals reversed the trial court's judgment for bailor's insurer in which it found that the omission on a

warehouse receipt regarding the storage place of a coat caused the bailee's liability for the theft of that coat. Instead, the appellate court found that the bailee's liability may be grounded in the law of conversion.

22. Norfleet v. Rosen, 539 A.2d 1089 (D.C. 1988) - civil case.

Trial court's granting of motion for summary judgment was reversed on ground that the plaintiff raised genuine and material issues of fact.

23. D.C. General Hospital v. D.C. Office of Employee Appeals, 548 A.2d 70 (D.C. 1988) - administrative law case.

The Court of Appeals reversed the trial court's affirmance of an Office of Employee Appeals (OEA) decision, finding that the OEA's decision was not supported by substantive evidence.

24. PERB v. Washington Teachers' Union Local 6, AFT, 556 A.2d 206 (D.C. 1989) - administrative law case.

The Court of Appeals set aside the judgment of the trial court and affirmed the Public Employee Relations Board's determination that Board of Education calendar decisions are not mandatory subjects of collective bargaining. The Court of Appeals ruled that the issue should not have been reviewed de novo by the trial court and that deference should have been given to PERB decision, unless it was found to be clearly erroneous.

25. Weiner v. Kneller, 557 A.2d 1306 (D.C. 1989) - medical malpractice case.

The Court of Appeals reversed the trial court's exclusion of certain expert testimony as a sanction against the plaintiff for her failure to indicate the content of that testimony in pretrial discovery, finding that the testimony did not surprise or prejudice defendants and further, that the testimony was important to the plaintiff's case and was inadvertently omitted from pretrial discovery.

26. Thompson v. Thompson, 559 A.2 311 (D.C. 1989) - domestic violence case.

The Court of Appeals reversed the trial court's denial of continuance in criminal contempt proceeding (for violation of a stay-away order) which had been based on the seriousness of the allegations, the age of the case, and the defendant's failure to secure counsel prior to hearing.

27. D.C. Metropolitan Police Dept. v. Broadus, 560 A.2d 501 (D.C. 1989) - administrative law case.

The Court of Appeals reversed the trial court's affirmance of an Office of Employee Appeals decision that a criminal indictment for offenses committed by an off-duty police officer, with his service revolver, constituted cause for suspension without pay.

28. Washington Post v. Minor. Bus. Opp. Comm., 560 A.2d 517 (D.C. 1989) - civil FOIA case.

The Court of Appeals remanded for trial court (1) to make

an in camera inquiry as to whether any part of parts of materials requested under the Freedom of Information Act could be segregated from other parts exempted; and (2) to make a de novo written review of the agency's exemption claims under FOIA.

29. Kling v. Peters, 564 A.2d 708 (D.C. 1989) - medical malpractice case.

The Court of Appeals ruled that directed verdict should have been granted, and the case should not have been submitted to the jury because (1) there was insufficient evidence to prove that defendant breached standard of care with respect to his failure to use certain medical instruments and (2) there was insufficient evidence to establish proximate cause of the plaintiff's injury.

30. Coughlin v. George Wash. Univ. Health Plan, 565 A.2d 67 (D.C. 1989) - medical malpractice case.

Trial court's granting of the hospital's motion to dismiss for failure to state a claim was reversed since the plaintiff adequately alleged physical impact sufficient to form the basis of a claim for negligent infliction of emotional distress. The Court of appeals ruled that whether the miscarriage in this case resulted in an injury to the mother, separate from any injury to the fetus, is an issue of fact, not law, that must be resolved by a jury.

31. Holle v. Washington Medical Center, 573 A.2d 1269 (D.C. 1990) - commercial case.

The Court of Appeals affirmed all of the trial court's two lengthy opinions, except one minor claim of damages for unpaid rent. The case was remanded for calculation of such damages.

32. Brown v. U.S., 576 A.2d 731 (D.C. 1990) - criminal case.

This case was remanded for resentencing only on the basis of a new ruling by the Court of Appeals that common law rape and statutory rape are the same for purposes of double jeopardy and sentencing.

33. Beckman v. Farmer, 579 A.2d 618 (D.C. 1990) - law firm dissolution case.

The Court of Appeals reversed the trial court's entry of summary judgment ruling that the parties had raised genuine issues of material fact concerning the existence of a law firm partnership.

34. First American Bank v. D.C., 583 A.2d 993 (D.C. 1990) - commercial law case.

The Court of Appeals reversed the denial of relief to plaintiff on the ground that the defendant's impoundment of plaintiff's vehicle involved a mutual benefit, thereby creating a quasi-bailment for hire, and providing a basis for plaintiff's relief. The case was remanded for new findings of fact.

35. Jones v. Howard University, 589 A.2d 419 (D.C. 1991)

- medical malpractice case.

The Court of Appeals ruled that trial court correctly entered summary judgment for defendants based on controlling law at time of its decision, but Court of Appeals reversed because, subsequent to trial court's ruling, it adopted new principles of law regarding defendant's alleged negligence.

36. Graham v. Graham, 597 A.2d 355 (D.C. 1991) -

domestic relations case.

The Court of Appeals reversed the trial court ruling that a modification of a child support award can not be based only upon an increase in the non-custodial parent's income. The appellate court held that modification of child support awards can be based upon material changes in either the needs of the children or the non-custodial parent's income.

37. Capitol Hill Hospital v. D.C., 600 A.2d 793 (D.C.

1991) - civil case.

The Court of Appeals reversed preliminary injunction issued by trial court to stop the closing of Capitol Hill Hospital until D.C. Health Planning Agency reviewed such closing. The Court of Appeals ruled that the case should have been brought directly to appellate court, rather than trial court which lacked jurisdiction.

38. Mosley v. Mosley, 601 A.2d 599 (D.C. 1992) -

domestic relations case.



Although trial court followed current case law and stated adequate basis for giving husband one-third of marital property and wife two-thirds of marital property, the case was remanded for findings on the precise amount of expenses husband was to repay wife.

39. Gray v. Washington, 612 A.2d 839 (D.C. 1992) - civil case.

Imposition of Rule 11 sanctions was reversed, with the Court of Appeals holding that an attorney may accept oral factual assertions of his client without making any independent investigation.

40. Schwartz v. Connors, Fiscina, Swartz & Zimmerly, 623 A.2d 595 (D.C. 1993) - civil case.

The Court of Appeals reversed that part of the trial court's order denying the defendant's request for Rule 11 sanctions against the plaintiff for a misstatement of facts. The Court of Appeals also, in the absence of findings concerning the applicability of Rule 11, reversed the trial court's second order which imposed Rule 11 sanctions against the defendant for filing a motion to reconsider the earlier order.

41. Roberts-Douglas v. Meares, 624 A.2d 405 (D.C. 1992) - civil case.

Where the trial court denied the plaintiff's pretrial discovery request after finding that requested discovery documents were in fact relevant to the subject matter of the

action and were not privileged information, the Court of Appeals remanded for reconsideration leaving to the trial court the initial balancing of interests involved, with the possibility of again denying the discovery request.

42. Early v. Dorchester House Associates, 629 A.2d 583 (D.C. 1993) - landlord and tenant case.

Case was remanded so that trial court could rule on a motion for reconsideration which another judge had erroneously denied. No ruling of mine was reversed.

As a state court judge sitting in a jurisdiction that does not have a state constitution, I rarely deal with constitutional issues. Two of the opinions I have attached-- D. Smith and Fortt--do, however, deal with Sixth Amendment and First Amendment issues, respectively.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:
1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;
  2. whether you practiced alone, and if so, the addresses and dates;
  3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

(1) I have never served as a law clerk to a judge.

(2) I have never practiced law alone.

(3) When I graduated from law school in 1962, I came to Washington, D.C. and spent approximately two years representing the National Relations Board in federal courts of appeals all over the country as well as in federal district courts. The Board is located at 1717 Pennsylvania Avenue, N.W., Washington, D.C.

Because of my interest in the legislative and political process, I then went to Capitol Hill where I first worked on the Senate side for Senator Harrison A. Williams of New Jersey as his Legislative Assistant for approximately two years from 1964 to 1966, and then on the House side in the same capacity for Congressman Jonathan B. Bingham for approximately two years.

After 5 1/2 years in Washington, D.C., I returned to my former home, New York City, and worked as a labor lawyer for one year for the New York City Board of Education in its Office of Staff Relations, located at 110 Livingston Street, Brooklyn, New York.

Close friends of mine were starting a public interest law firm and asked me to join them. I did and in 1969 I returned to Washington, for good, with the firm of Berlin, Roisman, and Kessler, which later became Roisman, Kessler and Cashdan. That law firm no longer exists, so there is no address for it.

In 1977, I became an Associate Judge on the D.C. Superior Court, and was re-appointed to that position in 1992.

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

As I indicated, I started my career as a labor lawyer with the National Labor Relations Board. I then did extensive legislative work, of a great variety, for a Senator and Congressman. When I returned to New York City, I once again practiced labor law--but in the specific area of public employment--with the New York City Board of Education. Upon returning to Washington, D.C. permanently, I handled mostly federal litigation including environmental cases, employment discrimination cases, and FOIA cases. However, I handled a broad spectrum of litigation ranging from Superior Court landlord-tenant work to administrative and regulatory proceedings before state and local agencies.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

My firm represented many public interest organizations such as the Sierra Club, Consumer Federation of America, and Environmental Defense Fund, as well as many individual litigants in Title VII cases and tenant associations in landlord-tenant litigation. We also provided in-house counsel and advice to many 501(c)(3) organizations on their tax status and the proper scope of their lobbying activities.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I appeared in both federal and state courts with some regularity. I never handled any criminal cases.

2. What percentage of these appearances was in:
- (a) federal courts;
  - (b) state courts of record;
  - (c) other courts.
3. What percentage of your litigation was:
- (a) civil;
  - (b) criminal.
4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.
5. What percentage of these trials was:
- (a) jury;
  - (b) non-jury.

Because I have not been in practice for more than 17 years, I cannot accurately answer questions 17c, 2, 4, and 5. I would estimate, very roughly, that I argued over 25 appellate cases and wrote well over 50 appellate briefs in my years at the National Labor Relations Board and my law firm.

8. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;

- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) The individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

It has been more than 17 years since I was in practice and I cannot accurately and fully answer this question after all these years. I am listing seven cases which I do remember well.

1. McLean Gardens Residents' Association v. District of Columbia Zoning Commission, 390 F. Supp. 165 (D.D.C. 1972). At the time, McLean Gardens was one of the few very large, middle-income housing developments located in the heart of the city. The owners were planning to replace the existing units with luxury housing and retail shops. Shortly before a Zoning Commission hearing, at which a decision was to be made on the developers' request for the zoning changes necessary to accomplish their plans, I was able to obtain a preliminary injunction in federal court on behalf of my clients, the tenants' association, for failure to comply with the National Environmental Policy Act. The issuance of the preliminary injunction was upheld on appeal.

The timing of the court action was significant because it enabled a groundswell of political opposition to develop resulting in the abandonment of that particular zoning proposal for intensive high-income development. Although the District Court ultimately--after many intervening motions and

briefs--denied a permanent injunction, that denial came at a time when all involved acknowledged the defects of the original proposal and the Gardens were no longer in danger of immediate demolition.

The case was tried before Judge Barrington Parker and the litigation time frame was October, 1972. I was the only lawyer handling the case for the plaintiff. Counsel for the District of Columbia Zoning Commission was Louis P. Robbins, 1666 K Street, N.W., Washington, D.C. 20006 (202-457-7833) and Nathan Dodell for the National Capital Planning Commission, United States Attorney's Office, 555 4th Street, N.W., Washington, D.C. (202-514-7168).

2. Cohen v. D.C. National Bank, 597 F.R.D. 84 (1972), 382 F.Supp. 270 (1974) (D.D.C.). This was a class action in which my law firm represented the plaintiff class of borrowers who had taken out consumer installment loans. We sued a number of banks in the District for usury and violation of the Sherman Anti-Trust Act. The District Court ruled, on a motion for partial summary judgment, that the failure to compute interest on the basis of the declining principal balance rather than the entire amount originally borrowed violated the usury laws.

The case was of enormous significance to borrowers and consumers in the District of Columbia for two reasons. First, the court ruled that a practice whereby the banks in the District had charged usurious interest to borrowers for

more than 60 years was illegal, and that practice was halted. Second, over 4,000 borrowers received refunds in excess of \$150,000 in illegal interest which they had been charged by the defendants. The case ultimately settled after we won our motion for partial summary judgment.

The case was tried before Judge Oliver Gasch. I was co-counsel on the case with my partner Anthony Z. Roisman, 1401 New York Avenue, N.W., Washington, D.C. (202-628-3500). While the core of the case was litigated in 1972, the case lasted more than six years, and I participated in the writing of all legal memoranda. I argued the class action certification motion, and was deeply involved in the complex strategy decisions that were necessary in the case. Lead counsel for defendants were Dan Gribbon and Hugh Cox of Covington & Burling, 1201 Pennsylvania Avenue, N.W., P.O. 7566, Washington, D.C. 20044 (202-662-6000).

3. Baker v. Reed, which is unreported, was heard in the District of Columbia District Court (Corcoran, J.), the U.S. Court of Appeals for the District of Columbia, and the District Court for the Southern District of Indiana. I was hired by the NAACP Legal Defense and Education Fund, Inc. to represent the plaintiff, an indigent prisoner. Plaintiff sought to challenge the absence of due process in Board of Parole procedures, in particular the refusal to allow representation by a lawyer, the failure to hold a hearing in each case, and the failure to give reasons for denial of



parole.

The significance of the case was that it was one of the early attempts to require the Board of Parole to adhere to accepted precepts of due process, fairness, and administrative regularity in the granting of parole.

Judge Corcoran granted the government's §1404 (a) motion to transfer the case to the district in which the prisoner was incarcerated. Despite a §1292 (b) certification by Judge Corcoran, the Court of Appeals denied the appeal. After filing of summary judgment motions, the plaintiff was paroled and the case was ultimately dismissed for mootness.

I was sole counsel on the case and did all briefs and oral arguments. The approximate trial periods were 1971 and 1972. Representing the government was Nathan Dodell, United States Attorney's Office, 555 4th Street, N.W., Washington, D.C. 20001 (202-514-7168).

4. Small v. Hart, 512 F.2d 918 (CADDC 1974). The Court of Appeals appointed me to handle this case which, with a similar companion case, provided a vehicle for the Court to re-examine the whole transfer policy governing lawsuits by indigent and pro se prisoners (and under which Baker v. Reed, supra, had been transferred to Indiana).

This case had great significance for this Circuit's workload because hundreds of such cases were being filed here annually. The government was most anxious to obtain automatic transfer of such cases, because many prisoners at that time

perceived this circuit to be a more sympathetic one. The Court essentially adopted plaintiff's position by fashioning a rule for a showing by all parties as to the most convenient forum, with a hearing if necessary, at the District Court level rather than automatic transfer to the district in which the prisoner was incarcerated.

I was sole counsel on the case and briefed the issues fully. I then presented oral argument which the Court ordered en banc. Representing the government was Nathan Dodell, United States Attorney's Office, 555 4th Street, N.W., Washington, D.C. 20001 (202-514-7168). The case was litigated in 1973-1974.

5. Cape Henry Bird Club v. Laird, 359 F. Supp. 404 (D.C.W.Va. 1973); 484 F.2d 453 (CA 4, 1973). I represented the National Wildlife Federation in an effort to enjoin the building of a massive and controversial dam on the Jackson River in Southeastern Virginia for violating the National Environmental Policy Act, the Federal Water Pollution Control Act Amendments of 1972, and the Fish and Wildlife Coordination Act of 1958.

The significance of the case was that an all-out effort was made to challenge many of the technical assumptions on which the Corps of Engineers based its flood-control projects. It was lost at both the trial and appellate levels.

I handled all trial and appellate work, although I did have the help of a staff lawyer at National Wildlife

Federation named Oliver Houck. Despite coming into the case only a month before trial, we presented all the technical and academic experts and carried the bulk of cross-examination in a trial of three weeks' duration. The approximate trial period was March, 1973. Representing the government was Paul R. Thompson, an Assistant U.S. Attorney then working in Roanoke, Virginia.

6. Smeal v. National Organization for Women, Superior Court of the District of Columbia (Stewart, J.), which is unreported. I represented the Board of Directors of the National Organization of Women which was being sued by a dissident faction for a temporary restraining order and permanent injunction against an upcoming election, on the ground that the Board had failed to comply with the District of Columbia Non-Profit Corporation Act. The request for a temporary restraining order was denied, but the preliminary injunction was granted.

The significance of the case was that while the litigation presented a very narrow and technical question of corporation law, the outcome ultimately contributed to the ouster of the incumbent majority and the election of a new board with a very different political outlook and orientation.

I was sole counsel and, on extraordinarily short notice, handled all aspects of the case including hearings, briefing, legal research, preparation of witnesses, etc. My opposing counsel was Warren Kaplan, Washington Lawyers Committee For

Civil Rights, 1400 I Street, N.W., Suite 450, Washington, D.C. 20006 (202-682-5900). The trial periods were May or June, 1974.

7. Conservation Foundation v. Reed, United States District Court for the District of Columbia, (Gasch, J.), which is unreported. I represented the Plaintiff in a Freedom of Information Act suit to obtain factual information contained in a confidential report to the Department of Justice. My client considered the information essential for completion of a report it was preparing for the Department of Interior.

The case presented some significant issues as to the scope of the fifth exemption to the Freedom of Information Act when factual and policy matters are interwoven in a report.

Plaintiff ultimately won. I was sole counsel, and prepared the Complaint, motion for preliminary injunction, supporting memoranda and affidavits, and presented the oral argument. So far as I know, there was no published opinion. I am sorry that I simply cannot remember who the Assistant U.S. Attorney was who represented the government.

(d) The Justice Department has asked me to provide you with the names of ten lawyers who have practiced extensively in front of me. They are:

1. David Schertler, Esquire  
U.S. Attorney's Office  
555 4th Street, NW  
Washington, DC 20001  
(202) 514-7425

2. Kathleen Corken, Esquire  
U.S. Attorney's Office  
555 4th Street, NW  
Washington, DC 20001  
(202) 514-7640
3. Shawn Moore, Esquire  
204 G Street, NE  
Washington, DC 20002  
(202) 544-1580
4. Jonathan Stern, Esquire  
Public Defender Service  
451 Indiana Avenue, NW  
Washington, DC 20001  
(202) 628-1200
5. Ken Mundy, Esquire  
Suite 1004  
1155 15th Street, NW  
Washington, DC 20005  
(202) 223-4470
6. Nancy Preiss, Esquire  
WILLIAMS & CONNOLLY  
725 12th Street, NW  
Washington, DC 20005  
(202) 434-5000
7. Diane Brenneman, Esquire  
601 Pennsylvania Avenue, NW  
Washington, DC  
(202) 393-2121
8. Steven Hamilton, Esquire  
MONTEDONICO, HAMILTON & ALTMAN  
Chevy Chase Plaza, Suite 400  
5301 Wisconsin Avenue, NW  
Washington, DC 20015  
(202) 364-1434
9. William Seals, Esquire  
917 6th Street, NW  
Washington, DC 20001  
(202) 833-4664
10. Leslie Scherr, Esquire  
SCHWEITZER, BENTZEN & SCHERR  
1225 Eye Street, NW - Suite 900  
Washington, DC 20005  
(202) 371-8900

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

I have been very active in several important areas of the law.

First, I was in charge of developing, and starting, and supervising our Multi-Door Dispute Resolution Program. This was one of the first comprehensive alternative dispute resolution programs in the country. It has been enormously successful and has been a model for many other jurisdictions. I have spoken at many judicial conferences and meetings about ADR, have been active in ABA committees dealing with ADR, and have done judicial training on the subject under State Justice Institute grants.

Second, I played a major role in developing and obtaining approval and implementation of child support guidelines for the District of Columbia. This project took, literally, years and hundreds of hours. However, I firmly believe that--in terms of improving the lives of children--the creation of these Guidelines, which provide clear, uniform and fair amounts of child support, may be the most significant contribution I have made to our community.

Third, I have pursued an interest in providing judicial education on bioethics issues to judges. This is a fascinating, terribly difficult, and newly emerging area of

the law. I have organized at least a half-dozen conferences and seminars on the subject and have found my colleagues around the country as challenged by the subject matter as I have been.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

The only deferred income arrangement is an official court-sponsored Plan under which we can defer \$7500 a year. Ultimately, I will receive these funds and pay taxes on them and their earnings.

In addition, I am a member of the D.C. Judges' Retirement Fund, pursuant to which I am entitled, after the age of fifty-five, to a reduced annuity, and at age sixty, to a full annuity based on my years of government service.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

There is a federal statute (28 U.S.C. 455 (d) (4)) which requires a federal judge to recuse themselves, automatically, if they own even one share of stock in a company in litigation. Naturally, I would fully comply with that statute and recuse myself immediately if a case involving a company in which I held stock appeared on my docket. My stock holdings are not so extensive that at any given moment I would not be able to immediately recognize any companies in which I held stock. Moreover, in recent years, I have very intentionally



not been purchasing shares of individual companies, but have been confining my investments to mutual funds and municipal securities. I plan to continue that approach to investing.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No. The only plans I have would be to occasionally, after I had become comfortable with my new responsibilities, return to some of the unpaid teaching I had been doing. In particular, I greatly enjoyed participating in the trial advocacy course at Harvard Law School, and would like to do that again in the future. However, that program only reimburses judges for actual expenses. Moreover, I would not anticipate doing that early in my tenure as a federal judge, because I am well aware of the incredible backlog on my federal district court.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

My Financial Disclosure Report of March 24, 1994 is submitted as Attachment II 4.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

My financial net worth statement is attached as Attachment II 5.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I did play a very small role in the reelection campaign of Senator Harrison A. Williams in 1964. He was running for reelection to the Senate from New Jersey and was successful. I remember working in New Jersey for a period of time at campaign headquarters. While I do not remember the exact time frame, I am fairly sure that I spent no more than two months working in the campaign. My duties ranged from doing research, writing speeches and press releases, to getting coffee, and cleaning up the office. I do not think that I was ever given a formal title during the campaign.

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I do make substantial contributions to charitable organizations each year, including the Public Service Activities Corporation of the Bar, For Love of Children, the Children's Defense Fund, and various homeless shelters.

Much of the work I have done over the years in the areas of child support, domestic violence, and neglected and abused children, has been for the benefit of "the disadvantaged" as Canon 2 of the Code of Professional Responsibility uses that term. I have also been very active in bar activities, in judicial education, and in national organizations dealing with the administration of justice such as the National Center for State Courts and the American Judicature Society. However, as a judge, I have been reluctant to undertake any more direct activities on behalf of "the disadvantaged" out of a concern that any such activities would be viewed as inappropriate and in possible conflict with Canons 2, 3, and 4 of the Model Code of Judicial Conduct.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates--through either formal membership

requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?

No

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Yes, there is a selection commission in the District of Columbia which recommends candidates for nomination to the federal courts and it recommended my nomination.

Congresswoman Eleanor Holmes Norton appointed a selection commission. That commission announced that there were four vacancies (at that time) on my federal bench, and that it was inviting applications. I filled out and submitted the questionnaire which the commission used. I was then called for an interview before the full commission, and that lasted at least 30, and perhaps 45 minutes. I was also interviewed by Congresswoman Norton for approximately 30 minutes.

Thereafter I was interviewed at the Department of Justice for approximately two hours by a group of five or six people. Representatives of both the Federal Bureau of Investigation and the ABA Standing Committee on the Judiciary have interviewed and investigated me.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

I am very familiar with these criticisms of "judicial activism". I am keenly aware that the first responsibility of a trial judge is to decide the merits of those specific civil and criminal cases on his or her docket. Moreover such decisions must be made on the basis of existing federal statutes, administrative agency regulations if applicable, and governing case law from the Supreme Court and the federal circuit courts. That case law includes concepts of standing, justiciability, ripeness, abstention, and political questions, which define the proper role of the federal courts and the subject matter which they may appropriately consider. It has

been my observation, over the years, that the federal courts are particularly unsuited to and ineffective at managing and overseeing the broad remedial orders which have been imposed in certain class action cases.

**AFFIDAVIT**

I, Gladys Kensler, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

March 29, 1994  
(DATE)

Gladys Kensler  
(NAME)  
Herbert C. Robinson  
(NOTARY)

AO-10  
Rev. 1/83

## FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics  
Reform Act of 1989, Pub. L. No.  
101-194, November 30, 1989  
(5 U.S.C.A. App. 6, §§101-112)

|  |   |  |
|--|---|--|
| 1. Person Reporting (Last name, first, middle initial)<br>Kessler, Gladys  | 2. Court or Organization<br>D.C. Superior Court   | 3. Date of Report<br>3/24/94                               |
| 4. Title (Article III Judges indicate active or senior status; Magistrate Judges indicate full- or part-time)<br>Associate Judge   | 5. Report Type (check appropriate type)<br><input checked="" type="checkbox"/> Nomination, Date <u>3/22/94</u><br><input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final | 6. Reporting Period<br>Jan. 1, 1993<br>to<br>Mar. 22, 1994 |
| 7. Chambers or Office Address<br>D.C. Superior Court<br>500 Indiana Avenue, N.W.<br>Washington, D.C. 20001   | 8. On the basis of the information contained in this Report, it is, in my opinion, in compliance with applicable laws and regulations<br>Reviewing Officer Signature <u>Gladys Kessler</u>                        |  |
| IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on last page. |   |  |

## I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

POSITION

NAME OF ORGANIZATION/ENTITY

 NONE (No reportable positions)

## II. AGREEMENTS. (Reporting individual only; see p. 8-9 of Instructions.)

DATE

PARTIES AND TERMS

 NONE (No reportable agreements)

I am a member of the D.C. Judges' Retirement Fund and eligible for all its benefits. I am entitled after the age of 55 to retire on a reduced annuity and after the age of 60 on a full annuity.

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

DATE  
(Honoraria only)

SOURCE AND TYPE

GROSS INCOME  
(yours, not spouse's)
 NONE (No reportable non-investment income)

|   |                          |  |                           |
|---|--------------------------|--|---------------------------|
| 1 | Salary                   | D.C. Government - paid for judicial duties | \$278,505.52 <sup>1</sup> |
| 2 | Prudential Insurance Co. | Pension from former employer (s)           | \$                        |
| 3 |                          |  | \$                        |
| 4 |                          |  | \$                        |
| 5 |                          |  | \$                        |



## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Kessler, Gladys

Date of Report

3/24/94

## IV. REIMBURSEMENTS and GIFTS – transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

SOURCEDESCRIPTION

| <input type="checkbox"/> | <u>SOURCE</u>                                     | <u>DESCRIPTION</u> |
|--------------------------|---|--------------------|
| <input type="checkbox"/> | NONE (No such reportable reimbursements or gifts) | Exempt             |
| 1                        |   |                    |
| 2                        |   |                    |
| 3                        |   |                    |
| 4                        |   |                    |
| 5                        |   |                    |
| 6                        |   |                    |
| 7                        |   |                    |
| 8                        |   |                    |

## V. OTHER GIFTS. (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp.15-16 of Instructions.)

SOURCEDESCRIPTIONVALUE

| <input type="checkbox"/> | <u>SOURCE</u>                   | <u>DESCRIPTION</u> | <u>VALUE</u> |
|--------------------------|---------------------------------|--------------------|--------------|
| <input type="checkbox"/> | NONE (No such reportable gifts) | Exempt             |              |
| 1                        |                                 |                    | \$ _____     |
| 2                        |                                 |                    | \$ _____     |
| 3                        |                                 |                    | \$ _____     |
| 4                        |                                 |                    | \$ _____     |

## VI. LIABILITIES. (Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp.16-18 of Instructions.)

CREDITORDESCRIPTIONVALUE CODE\*

| <input checked="" type="checkbox"/> | <u>CREDITOR</u>                  | <u>DESCRIPTION</u> | <u>VALUE CODE*</u> |
|-------------------------------------|----------------------------------|--------------------|--------------------|
| <input checked="" type="checkbox"/> | NONE (No reportable liabilities) |                    |                    |
| 1                                   |                                  |                    |                    |
| 2                                   |                                  |                    |                    |
| 3                                   |                                  |                    |                    |
| 4                                   |                                  |                    |                    |
| 5                                   |                                  |                    |                    |
| 6                                   |                                  |                    |                    |
| 7                                   |                                  |                    |                    |

\* VALUE CODES: J = \$15,000 or less    K = \$15,001 to \$50,000    L = \$50,001 to \$100,000    M = \$100,001 to \$250,000  
 N = \$250,001 to \$500,000    O = \$500,001 to \$1,000,000    P = More than \$1,000,000

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting  
Yessler, GladysDate of Report  
3/24/94

## VII. INVESTMENTS AND TRUSTS – income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

| A.<br>Description of Assets<br>(including trust assets) -<br>Indicate where applicable, owner of<br>the asset by using the parenthetical<br>"1)" for joint ownership of report-<br>ing individual, and spouse, "2)" for<br>separate ownership by spouse, "3)" for<br>joint ownership by dependent child.<br>Place "(1)" after each asset<br>exempt from prior disclosure. | B.<br>Income<br>during<br>reporting<br>period  |                                   | C.<br>Gross value<br>at end of<br>reporting<br>period |                                  | D.<br>Transactions during reporting period         |                                |  |   |  |
|---|--|-----------------------------------|---|----------------------------------|--|--------------------------------|--|---|--|
|   | (1)  | (2)                               | (1)   | (2)                              | (1)<br>Type<br>(A-F)                               | If not exempt from disclosure  |  |   |  |
|   | Asst.<br>Code*<br>(A-8)                        | Type<br>(1-9);<br>rest of<br>int. | Value;<br>Code<br>(J-V)                               | Value<br>Method<br>Code<br>(C-W) | Date;<br>Month,<br>Day                             | (2)<br>Value;<br>Code<br>(J-V) | (3)<br>Gain;<br>Code<br>(A-8)                    | (4)<br>Identity of<br>buyer/seller<br>(if private<br>transaction) |  |
| <input type="checkbox"/> NONE (No reportable<br>income, assets, or<br>transactions)   |  |                                   |   |                                  |  |                                |  |   |  |
| 1 ADP - common stock  | A  | Div.                              | J   | T                                |  |                                |  |   |  |
| 2 Hooper Holmes -<br>common stock   | A  | Div.                              | K   | T                                |  |                                |  |   |  |
| 3 AMP - common stock  | A  | Div.                              | J   | T                                |  |                                |  |   |  |
| 4 MMM - common stock  | A  | Div.                              | K   | T                                |  |                                |  |   |  |
| 5 GE - common stock   | A  | Div.                              | K   | T                                |  |                                |  |   |  |
| 6 Giant Food - common<br>stock  | A  | Div.                              | J <sup>2</sup>  | T                                |  |                                |  |   |  |
| 7 IBM - common stock  | A  | Div.                              | J <sup>2</sup>  | T                                |  |                                |  |   |  |
| 8 PPIT - common stock   | B  | Div.                              | K   | T                                |  |                                |  |   |  |
| 9 Black & Decker -<br>common stock  | A  | Div.                              | J   | T                                |  |                                |  |   |  |
| 10 Janus Twenty Fund -<br>mutual fund   | A  | Div.                              | K   | T                                |  |                                |  |   |  |
| 11 Nicholas II Fund -<br>mutual fund  | A  | Div.                              | J <sup>2</sup>  | T                                |  |                                |  |   |  |
| 12 Strong Income Fund -<br>mutual fund  | A  | Div.                              | J   | T                                |  |                                |  |   |  |
| 13 Strong Short Term<br>Bond Fund - mutual fund   | B  | Div.                              | K   | T                                |  |                                |  |   |  |
| 14 Vanguard Explorer<br>Fund - mutual fund  | A  | Div.                              | J   | T                                |  |                                |  |   |  |
| 15 Vanguard Municipal<br>High Yield Bond Fund -<br>mutual fund  | A  | Div.                              | L   | T                                |  |                                |  |   |  |
| 16 Vanguard Index-Total<br>Stock Market Fund -<br>mutual fund   | A  | Div.                              | K   | T                                |  |                                |  |   |  |
| 17 Vanguard Municipal<br>Money Market Fund  | A  | Int.                              | J   | T                                |  |                                |  |   |  |
| 18 T. Rowe Price New<br>Asia Fund - mutual fund   | A  | Div.                              | J   | T                                |  |                                |  |   |  |
| 1 Income/Gain Codes:<br>(See Col. B1 & 04)  | A=\$1,000 or less<br>E=\$15,001 to \$50,000    |                                   | B=\$1,001 to \$2,500<br>F=\$50,001 to \$100,000       |                                  | C=\$2,501 to 5,000<br>G=\$100,001 to \$1,000,000   |                                | D=\$5,001 to \$15,000<br>H=more than \$1,000,000 |   |  |
| 2 Value Codes:<br>(See Col. C1 & 03)  | J=\$15,000 or less<br>N=\$250,001 to \$500,000 |                                   | K=\$15,001 to \$50,000<br>O=\$500,001 to \$1,000,000  |                                  | L=\$15,001 to \$100,000<br>P=more than \$1,000,000 |                                |  |   |  |
| 3 Value Method Codes:<br>(See Col. C2)  | U=Appraisal<br>V=Book Value                    |                                   | W=Cost (real estate only)<br>X=Other                  |                                  | Y=Assessment<br>Z=Estimated                        |                                |  |   |  |

|                                      |                          |                |
|--------------------------------------|--------------------------|----------------|
| FINANCIAL DISCLOSURE REPORT (cont'd) | Name of Person Reporting | Date of Report |
|                                      | Kessler, Gladys          | 3/24/94        |

II. INVESTMENTS AND TRUSTS - income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

| A.<br>Description of Assets<br>(including trust assets).<br>Indicate, where applicable, owner of the asset by using the parenthetical (1) for the trust ownership of reporting individual and spouse, (S) for separate ownership by spouse, (DC) for ownership by dependent child.<br>Place (K) after each asset exempt from prior disclosure. | B.<br>Income during reporting period |                                  | C.<br>Gross value at end of reporting period |                                | D.<br>Transactions during reporting period      |                        |                         |                        |  |
|--|--------------------------------------|----------------------------------|--|--------------------------------|---|------------------------|-------------------------|------------------------|--|
|  | (1)<br>Ast. Code (A-S)               | (2)<br>Type (div., rent or int.) | (1)<br>Value Code (J-P)                      | (2)<br>Value Method Code (Q-W) | If not exempt from disclosure                   |                        |                         |                        |  |
|  |                                      |                                  |  |                                | (1)<br>Type (e.g. buy/sell, margin, redemption) | (2)<br>Date: Month/Day | (3)<br>Value Code (J-P) | (4)<br>Gain Code (A-S) | (5)<br>Identity of Buyer/Seller (if private transaction) |
| <input type="checkbox"/> NONE (No reportable income, assets, or transactions)  |                                      |                                  |  |                                |   |                        |                         |                        |  |
| 19 T. Rowe Price International Fund - mutual fund  | A                                    | Div.                             | J  | T                              |   |                        |                         |                        |  |
| 20 Twentieth Century Ultra - mutual fund   | A                                    | Div.                             | K  | T                              |   |                        |                         |                        |  |
| 21 First Trust Insured Municipal Bonds - unit trusts   | B                                    | Int.                             | K  | W <sup>3</sup>                 |   |                        |                         |                        |  |
| 22 Fairfield Inn - real estate limited partnership   | B                                    | Div.                             | J  | R <sup>4</sup>                 |   |                        |                         |                        |  |
| 23 New York City Municipal Bonds   | B                                    | Int.                             | J  | T                              |   |                        |                         |                        |  |
| 24 Maryland Community Development Bonds  | A                                    | Int.                             | J  | T                              |   |                        |                         |                        |  |
| 25 Okla. Housing Finance Agency Bonds  | A                                    | Int.                             | J  | T                              |   |                        |                         |                        |  |
| 26 D.C. Municipal Bonds  | A                                    | Int.                             | J  | T                              |   |                        |                         |                        |  |
| 27 Quick & Reilly - Self-Managed IRA   | B                                    | Div.                             | K  | T                              |   |                        |                         |                        |  |
| 28 Strong Short Term Bond Fund IRA   | C                                    | Div.                             | L  | T                              |   |                        |                         |                        |  |
| 29 Janus Twenty IRA  | A                                    | Div.                             | J  | T                              |   |                        |                         |                        |  |
| 30 D.C. Deferred Comp. Plan  | D                                    | Div.                             | L  | V <sup>5</sup>                 |   |                        |                         |                        |  |
| 31 B.F. Saul - notes   | B                                    | Int.                             | K <sup>2</sup>                               | T                              |   |                        |                         |                        |  |
| 32 Strong Opportunity Fund - mutual fund (s)   | B                                    | Div.                             | K  | T                              |   |                        |                         |                        |  |
| 33 Garages - real estate (s)   | 6                                    |                                  | 6  | R <sup>6</sup>                 |   |                        |                         |                        |  |
| 34 First Trust Insured Municipal Bonds - unit trusts (s)   | B                                    | Int.                             | K  | W <sup>3</sup>                 |   |                        |                         |                        |  |

1 Income/Gain Codes: A=\$1,000 or less (See Col. B1 & 04) B=\$1,001 to \$2,500 C=\$2,501 to 5,000 D=\$5,001 to \$15,000 E=\$15,001 to \$50,000 F=\$50,001 to \$100,000 G=\$100,001 to \$1,000,000 H=\$1,000,001 to \$5,000,000 I=\$5,000,001 to \$50,000,000 J=\$50,000,001 to \$500,000,000 K=\$500,000,001 to \$1,000,000,000 L=\$1,000,000,001 to \$5,000,000,000 M=\$5,000,000,001 to \$250,000,000,000 N=\$250,000,001 to \$500,000,000,000 O=\$500,000,001 to \$1,000,000,000,000 P=more than \$1,000,000,000,000  
 2 Value Codes: J=\$15,000 or less (See Col. C1 & 03) K=\$15,001 to \$50,000 L=\$50,001 to \$100,000 M=\$100,001 to \$500,000 N=\$500,001 to \$1,000,000 O=\$1,000,001 to \$5,000,000 P=\$5,000,001 to \$50,000,000 Q=\$50,000,001 to \$500,000,000 R=\$500,000,001 to \$5,000,000,000 S=\$5,000,000,001 to \$50,000,000,000 T=\$50,000,000,001 to \$500,000,000,000 U=\$500,000,000,001 to \$5,000,000,000,000 V=\$5,000,000,000,001 to \$50,000,000,000,000 W=\$50,000,000,000,001 to \$500,000,000,000,000 X=\$500,000,000,000,001 to \$5,000,000,000,000,000 Y=\$5,000,000,000,000,001 to \$50,000,000,000,000,000 Z=\$50,000,000,000,000,001 to \$500,000,000,000,000,000  
 3 Value Method Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cost/Market U=Book Value V=Other W=Estimated



FINANCIAL DISCLOSURE REPORT (cont'd)

|   |                           |
|---|---------------------------|
| Name of Person Reporting<br>Kessler, Gladys | Date of Report<br>3/24/94 |
|---|---------------------------|

## VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

- <sup>1</sup> This amount consists of my 1992 judicial salary of \$121,797.32, my 1993 judicial salary of \$125,877.80, and my 1994 judicial salary of \$30,830.40 (through March 5, 1994). These figures do not include the \$7500 a year which is automatically invested in the D.C. government Deferred Compensation Plan.
- <sup>2</sup> These items were either sold during the reporting period, or paid off, so their value is zero.
- <sup>3</sup> These unit trusts are exceedingly difficult to value because a substantial percentage of their principal has been returned over the years. This is our good faith estimate of their remaining worth.

## IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations. Not applicable

Signature Gladys KesslerDate March 24, 1994

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, § 104, AND 18 U.S.C. § 1001.)

## FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Judicial Ethics Committee  
Administrative Office of the  
United States Courts  
Washington, DC 20544

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Kessler, Gladys

Date of Report

3/24/94

## VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

<sup>4</sup> This interest was purchased for \$10,000 in 1990.

<sup>5</sup> This is the valuation given by the D.C. Deferred Compensation Plan. This valuation is as of September 30, 1993, the last date for which the Plan has supplied any data.

<sup>6</sup> On September 30, 1993 my husband purchased 24 parking spaces in the Elizabeth Condominium, Bethesda, Maryland for \$49,000. On December 1, 1993 he sold 10 of the spaces to Mortgage Title and Escrow, 4300 Evergreen Lane, Annandale, Virginia 22003 ( the Company was establishing an office in Bethesda and needed parking for its employees) for \$45,000, of which he received \$19,305.61 in cash and a one year note for \$22,500 at 8%.

## IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature

*Gladys Kessler*Date March 24, 1994

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, § 104, AND 18 U.S.C. § 1001.)

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United States Courts  
Washington, DC 20544

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting  
Kessler, GladysDate of Report  
3/24/94

## VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

<sup>6</sup> (...continued) On March 2, 1994 he sold 3 parking spaces to Schwartz Properties of Chevy Chase, Maryland for \$20,000, of which he received \$6,247.08 in cash and a one year note for \$12,000, payable in \$1,000 monthly installments at no interest.

## IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature Gladys KesslerDate March 24, 1994

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, § 104, AND 18 U.S.C. § 1001.)

## FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Judicial Ethics Committee  
Administrative Office of the  
United States Courts  
Washington, DC 20544

**FINANCIAL STATEMENT  
NET WORTH**

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

| ASSETS                                      | Joint   |        |        | H | W | LIABILITIES  | Joint  |        |        |
|---|---------|--------|--------|---|---|--|--------|--------|--------|
|   | C       | H      | W      |   |   |  | C      | H      | W      |
| Cash on hand & in banks                     | C       | 6000   | 6000   |   |   | Notes payable to banks - secured                   | C      | C      | C      |
| U.S. Government securities - add schedule 2 | C       | C      | 0      |   |   | Notes payable to banks - unsecured                 | C      | C      | C      |
| Listed securities - add schedule 2          | C       | 439500 | 117500 |   |   | Notes payable to relatives                         | C      | C      | C      |
| Unlisted securities - add schedule 2        | C       | 0      | 0      |   |   | Notes payable to others                            | C      | C      | C      |
| Accounts & notes receivable                 |         |        |        |   |   | Accounts and bills due - over 30 days              | C      | C      | C      |
| Due from relatives and friends              | C       | C      | C      |   |   |  |        |        |        |
| Due from others                             |         | 14500  | C      |   |   | Married income tax                                 | C      | C      | C      |
| Doubtful                                    | C       | C      | C      |   |   | Other "paid" tax and credits                       | C      | C      | C      |
| Real estate owned - add schedule 2          | 150000  | 204000 | 0      |   |   | Real estate mortgages payable - add schedule       | C      | C      | C      |
| Real estate mortgages receivable            |         | 0      | 0      |   |   | Chattel mortgages and other liens payable          | C      | C      | C      |
| Autos and other personal property           | 12000   |        | 15000  |   |   | Other Debts itemize:                               |        |        |        |
| Cash value life insurance                   | 0       | 0      | 0      |   |   |  |        |        |        |
| Other assets                                |         |        |        |   |   |  |        |        |        |
| Schedule 2                                  | C       | 314500 | 477000 |   |   |  |        |        |        |
|   |         |        |        |   |   | Total liabilities                                  |        | C      | C      |
|   |         |        |        |   |   | Net worth:   | 267000 | 970500 | 625730 |
| Total assets                                | 247,000 | 970500 | 625730 |   |   | Total liabilities and net worth:                   |        |        |        |
| CONTINGENT LIABILITIES                      |         |        |        |   |   | GENERAL INFORMATION                                |        |        |        |
| As endorser or guarantor                    | C       | 0      | C      |   |   | Are any assets pledged? Add schedule 2             |        |        |        |
| On leases or contracts                      | C       | 0      | 0      |   |   | Are you defendant in any suits or legal action? No |        |        |        |
| Legal claims                                | C       | C      | 0      |   |   | Have you ever taken bankruptcy? No                 |        |        |        |
| Provision for Federal income tax            | C       | 0      | 0      |   |   |  |        |        |        |
| Other special debt                          | C       | 0      | 0      |   |   |  |        |        |        |



LISTED SECURITIES - Schedule 1

|   |                               |               |                |
|---|-------------------------------|---------------|----------------|
| H | PPIT                          | 6,000 shares  | 47,250         |
| H | Boat Bank                     | 400 shares    | 12,000         |
| H | Bay View Fed'l Savings & Loan | 3,000 shares  | 60,000         |
| H | Public Storage #18            | 3,000 shares  | 42,000         |
| H | Public Storage #20            | 4,000 shares  | 48,000         |
| H | Aura Systems                  | 5,000 shares  | 45,000         |
| H | Hooper Holmes                 | 11,500 shares | <u>155,250</u> |
|   |                               |               | 409,500        |
| W | ADP                           | 225 shares    | 11,950         |
| W | Amp                           | 205 shares    | 12,900         |
| W | Black & Decker                | 317 shares    | 6,975          |
| W | General Electric              | 182 shares    | 18,840         |
| W | Hooper Holmes                 | 3,000 shares  | 40,500         |
| W | MMM                           | 198 shares    | 19,800         |
| W | PPIT                          | 2,100 shares  | <u>16,535</u>  |
|   |                               |               | 127,500        |

REAL ESTATE OWNED - Schedule 2

|       |                                |               |
|-------|--------------------------------|---------------|
| Joint | 2220 20th Street, N.W. Apt. 41 | 250,000       |
| H     | West Virginia country home     | 150,000       |
| H     | 9 parking spaces               | <u>54,000</u> |
|       |                                | 204,000       |

OTHER ASSETS - Schedule 3

|   |   |                |          |
|---|---|----------------|----------|
| H | Notes due                                 | 34,500         |          |
| H | Wisconsin Water Bonds                     | 20,000         |          |
| H | First Trust Insured Municipal Bonds       | 35,000         | (approx) |
| H | Strong Opportunity Mutual Fund            | 23,000         |          |
| H | Strong - Short Term Bond Fund - IRA       | 64,000         |          |
| H | Vanguard Municipal Money Market Portfolio | <u>138,000</u> |          |
|   |   | 314,500        |          |
| W | Vanguard Municipal Money Market Portfolio | 1,000          | (approx) |
| W | IRA - Quick & Reilly                      | 41,050         |          |
| W | Municipal Investment Trusts               | 30,000         | (approx) |
| W | New York City Bonds                       | 15,000         |          |
| W | Maryland State Community Dev. Bonds       | 10,000         |          |
| W | D.C. Municipal Bonds                      | 10,000         |          |
| W | Okla. Housing Finance Agency Bonds        | 10,000         |          |
| W | Strong Short Term Bond Fund               | 21,700         |          |
| W | Janus Twenty Mutual Fund                  | 15,850         |          |
| W | Vanguard Municipal High Yield Bond Fund   | 58,800         |          |
| W | Vanguard Index-Total Stock Market Fund    | 16,600         |          |
| W | 20th Century Ultra Mutual Fund            | 42,575         |          |
| W | IRA - Strong Short Term Bond Fund         | 58,800         |          |
| W | D.C. Deferred Compensation Plan           | 99,000         |          |
| W | Israel Bond                               | 450            |          |
| W | IRA - Janus Twenty Mutual Fund            | 2,350          |          |
| W | Strong Income Fund                        | 6,725          |          |
| W | Vanguard Explorer Fund                    | 10,000         |          |
| W | T. Rowe Price New Asia Fund               | 7,330          |          |
| W | T. Rowe Price International Fund          | 10,000         |          |
| W | Fairfield Inn Limited Partnership         | <u>10,000</u>  |          |
|   |   | 477,230        |          |

## I. BIOGRAPHICAL INFORMATION (PUBLIC)

QUESTIONNAIRE FOR JUDICIAL NOMINEES

1. Full name (include any former names used)

Answer: Emmet Gael Sullivan

2. Address: List current place of residence and office address(es).

Answer: 1810 Redbud Lane, N.W.  
Washington, D.C. 20012 (Residence)District of Columbia Court of Appeals  
500 Indiana Avenue, N.W.  
Washington, D.C. 20001 (Office)

3. Date and place of birth.

Answer: June 4, 1947  
Washington, D.C.

- 4.
- Marital Status
- (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Answer: Nan Lanita Clemmons  
Not employed outside the home

- 5.
- Education
- : List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Answer:

Howard University 9/64 - 6/68 B.A. 6/68  
Howard University Law School 9/68 - 6/71 J.D. 6/71

- 6.
- Employment Record
- : List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Answer:

6/70 - 9/71 D. C. Bail Agency  
(D.C. Pretrial Services Agency)  
500 Indiana Avenue, N.W.  
Washington, D.C.  
Part-time interviewer

- 9/71 -12/72 Neighborhood Legal Services Program  
701 4th Street, N.W.  
Washington, D.C.  
Law Clerk
- 12/72 - 12/73 Judge James A. Washington, Jr.  
Associate Judge  
Superior Court of the District of Columbia  
Judicial Law Clerk
- 1/74 - 8/80 Houston and Gardner  
615 "F" Street, N.W.  
Washington, D.C.  
Associate Partner (general practice of law)
- 8/80 - 11/84 Houston, Sullivan and Gardner  
921 6th Street, N.W.  
Washington, D.C.  
Partner (general practice of law)
- 11/91 - Pres. Frederick B. Abramson Memorial Foundation  
Director  
(non-profit corporation)
- 11/84 - 2/92 Associate Judge  
Superior Court of the District of Columbia  
500 Indiana Avenue, N.W.  
Washington, D.C.
- 2/92 - Pres. Associate Judge  
D. C. Court of Appeals  
500 Indiana Avenue, N.W.  
Washington, D.C.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

Answer: No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Answer:

Awards:

Reginald Heber Smith Fellow

- February 1993 - Outstanding Alumni Award, McKinley High School
- February 1993 - Outstanding Alumni Award, D.C. Public School System
- March 1993 - Certificate of Appreciation, Bar Association of the District of Columbia
- August 1992 - Award for contributions to the Nation's Judiciary, ABA Judicial Administration Division
- October 1991 - Award for serving as Presiding Judge of the Probate and Tax Divisions, D.C. Superior Court - Superior Court Board of Judges
- October 1991 - Award for service as a D.C. Superior Court Judge - Superior Court Board of Judges

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Answer:

D. C. Bar Association

Washington Bar Association

American Bar Association

National Bar Association

Annual Judicial Conference for the District of Columbia  
1977 - Present

Board of Directors of the D.C. Law Students in Court  
Program - June 1977 to March 1983

U.S. District Court Committee on Grievances - March 1977 to  
March 1983

D.C. Judicial Conference Committee - to study "fast-track"  
litigation - September 1979 to September 1981

Member - Superior Court Civil Rules Committee -  
June 1977 to November 1984

D.C. Judicial Conference Voluntary Arbitration Committee-  
October 1980 to October 1982

Circuit Judicial Conference - 1980 - 1984

Member - Nominations Committee of the Bar Association of the District of Columbia - 1984

Bar Association of the District of Columbia  
(Nominations Committee, 1984)

Member and Chair - Superior Court Probate Rules Committee -  
November 1984 to February 1992

Panelist, D.C. Court of Appeals Judicial Conference -  
June 14, 1991

Chair, Superior Court Tax Rules Committee -  
January 1991 to February 1992

Chairperson, Committee on Arrangements, 1994 Judicial  
Conference for the District of Columbia (to be held June  
23 and 24, 1994)

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Answer: North Portal Civic Association  
The Lawyer's Club of Washington  
(Copy of By-Laws are attached)

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Answer:

|  |               |
|--|---------------|
| Supreme Court of the United States                                     | July 7, 1977  |
| United States Court of Appeals for<br>the District of Columbia Circuit | May 1975      |
| United States Court of Military Appeals                                | May 1975      |
| United States Tax Court  | June 1975     |
| United States District Court for the<br>District of Columbia           | May 1974      |
| District of Columbia Court of Appeals                                  | December 1973 |

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Answer: None.

13. Health: What is the present state of your health? List the date of your last physical examination.

Answer: Very good. My last physical examination was in December, 1993.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Answer:

Associate Judge - District of Columbia Court of Appeals (February 21, 1992 - Present) - highest appellate court in the District of Columbia

Associate Judge - Superior Court of the District of Columbia (November 1984 - February 20, 1992) - Trial court of general jurisdiction

Both judicial positions were Presidential appointments.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinion. If any of the opinions listed were not officially reported, please provide copies of the opinions:

Answer:

(1)



- a. Jefferson v. Ourisman Chevrolet, 615 A.2d 582 (D.C. 1992)
- b. Donahue v. Thomas, et al., 618 A.2d 601 (D.C. 1992)
- c. Curington v. U.S., 621 A.2d 819 (D.C. 1993)
- d. Allegheny v. U.S., 622 A.2d 1099 (D.C. 1993)
- e. Spicer v. D.C., 636 A.2d 415 (D.C. 1993)
- f. Norman v. U.S., 623 A.2d 1165 (D.C. 1993)
- g. Lewis v. U.S., 632 A.2d 383 (D.C. 1993)
- h. Collins v. U.S., 631 A.2d 48 (D.C. 1993)
- i. Jones, et al. v. U.S., 625 A.2d 281 (D.C. 1993)
- j. Parks v. U.S., 627 A.2d 1 (D.C. 1993)

(2) The citations for the appellate decisions reversing my trial court judgments are as follows:

- a. McGee v. U.S., 533 A.2d 1268 (D.C. 1987) - criminal case wherein the Court of Appeals held that if the offense of assault is capable of being proved pursuant to more than one theory, the jury must be instructed on both theories.
- b. In re: A.C., 573 A.2d 1235 (D.C. 1990) - civil case wherein the court held that if a patient is incompetent or otherwise unable to give an informed consent to medical treatment, the patient's decision must be ascertained through the procedure known as substituted judgment.
- c. Brown v. U.S., 542 A.2d 1231 (D.C. 1988) - criminal case wherein the court held that special unanimity instruction should have been given.
- d. Washington Hospital Center v. Riggs, 575 A.2d 719 (D.C. 1990) - probate case wherein the court held that under will dividing trust proceeds among residuary legatees following death of life beneficiaries, language providing that if gift should "fail to take effect," then failed gift would be distributed to other named legatees, operated as anti-lapse provision.
- e. Hessey v. Burden, 584 A.2d 1 (D.C. 1990) - administrative agency case wherein the court held that proposed initiative did not impermissibly infringe on Mayor's responsibility for assessment of taxable property.
- f. Lewis v. U.S., 541 A.2d 145 (D.C. 1988) - criminal case wherein the court held that misstatements in the prosecutor's closing argument, not objected to

by the defendant, warranted reversal of defendant's conviction.

- (3) Lewis v. U.S., 632 A.2d 383 (D.C. 1993)  
Berg, et al. v. U.S., 631 A.2d 394 (D.C. 1993)

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Answer: None.

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:
1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

Answer:

9/71 - 12/72     Reginald Heber Smith Fellow  
 Neighborhood Legal Services Program  
 Law Clerk

12/72 - 12/73     Judge James A. Washington, Jr.  
 Associate Judge  
 Superior Court of the District of  
 Columbia  
 Judicial Law Clerk

2. whether you practiced alone, and if so, the addresses and dates;

Answer: No.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

Answer:

1/74 - 8/80     Houston and Gardner  
 615 "F" Street, N.W.  
 Washington, D.C.  
 Associate/Partner (general practice of  
 law)

8/80 - 11/84     Houston, Sullivan and Gardner  
                   921 6th Street, N.W.  
                   Washington, D.C.  
                   Partner (general practice of law)

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

Answer:

The general character of my practice centered around the practice of civil law, including: Probate law, domestic relations, civil litigation, and landlord and tenant Law. Moreover, I have represented a number of clients in felony and misdemeanor cases in the Superior Court of the District of Columbia and in U.S. District Court for the District of Columbia Circuit.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Answer:

In view of the fact that my law practice was general in nature, there was no typical client profile for a wide range of individuals and entities that I represented during the course of my career. For example, in addition to having represented many persons, including professionals in matters involving civil litigation, criminal law, fiduciary and probate law, and domestic relations, I have represented many corporations and a university.

I have specialized in the areas of civil litigation; fiduciary relations and probate law; landlord and tenant law, and the prosecution of actions pursuant to the "Master-Metered Apartment Buildings Act of 1980." See D.C. Code § 43-541, et seq.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Answer: Frequently.

2. What percentage of these appearances was in:
 

|                             |      |
|-----------------------------|------|
| (a) federal courts;         | 10 % |
| (b) state courts of record; | 0 %  |
| (c) other courts.           |      |
| (D.C. Court of Appeals)     | 1 %  |
| (Superior Court of D.C.)    | 89 % |
3. What percentage of your litigation was:
 

|                     |      |
|---------------------|------|
| (a) civil;          | 75 % |
| (b) criminal;       | 10 % |
| (c) administrative. | 15 % |
4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Answer:

Circa 150-200 cases tried to verdict or judgment. To the best of my recollection, realizing that the relevant period of time was from December 1973 - November 1984, I was sole counsel in circa 50 % of those cases and either chief or associate counsel in the remaining 50 % of those cases.

5. What percentage of these trials was:
 

|               |            |
|---------------|------------|
| (a) jury;     | circa 15 % |
| (b) non-jury. | circa 85 % |
18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
  - a. the date of representation;

- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Answer:

I have provided this information for significant cases that I can recall.

- I. (a) Lorena Smith Cabaniss, Executrix of the Estate of Charles M. Cabaniss v. Stephanie Cabaniss and Angella D. Ferguson, Conservator - Intervenor, Civil Action No. 12651-79, D.C. Superior Court;
  - (b) Party represented -- Angella Ferguson, M.D.
  - (c) Counsel for the other parties --  
William A. Bradford, Jr.  
Hogan & Hartson, Counsel for Plaintiff  
815 Connecticut Avenue, N.W.  
Washington, D. C. 20006  
(202) 637-5600
  - (d) Oral argument on cross motions for summary judgment, July 31, 1981, before Judge Timothy G. Murphy;
  - (e) The issue in this case was whether a transfer of substantial cash and negotiable instruments from a doctor to his sister, to be held by the sister for the benefit of the doctor's handicapped daughter, constituted an irrevocable inter vivos trust or, upon the death of the doctor three days subsequent to the transfer of funds, passed pursuant to the terms of the doctor's testamentary trust. Upon the death of the doctor, his Executrix commenced a suit against the said sister to recover the funds. My client, the daughter's motion and conservator, intervened in the pending suit to protect the interest of the daughter.
  - (f) I researched, prepared and argued a motion for summary judgment, advocating that an irrevocable inter vivos trust had been created. Judge Murphy agreed and granted my motion. Attorney Bradford appealed the decision to the District of Columbia Court of Appeals which affirmed Judge Murphy's ruling in an opinion which may be found at Cabaniss v. Cabaniss, 464 A.2d 87 (D.C. 1983).

- (g) This case is significant because the issue presented, which was a novel one in this jurisdiction, raised numerous questions regarding the applicability of varying legal theories involving the construction of trusts, principal-agency relationships, gifts causa mortis and probate law.

- II. (a) From September 1980 - November 1984, on behalf of The Washington Gas Light Company, I prosecuted, in the Superior Court of the District of Columbia, more than fifty (50) civil actions seeking the appointment of Receivers pursuant to the "Master-Metered Apartment Buildings Act of 1980," D.C. Code § 43-541, et seq.

This law was passed by the City Council in 1980, to afford the utility companies a remedy in cases in which the owners of Master-metered apartment buildings had accumulated outstanding arrearages on utility bills but, nonetheless, the utility companies were powerless to terminate service to the buildings. The new law provides that in such a situation the utility company may commence civil actions seeking the appointment of a Receiver to collect future rents from the tenants of such buildings and apply said rents to future bills for utility service provided to the buildings. The Receiver continues to function as such until the owner remits payment-in-full of the original arrearage which was the subject of the petition seeking the appointment of a Receiver.

The significance of these cases was that the law was new and unprecedented. It was a challenge to assist in not only educating the judiciary about this law, but to also assist as an advocate in its interpretation.

All of the aforesaid cases came on to be heard before various Superior Court Judges on the Motions of the utility company for the appointment of a Receiver.

- III. (a) In re: Guardianship of Janetta Moore, Guardianship Number 56-77 (Petition for Removal of Guardian), D. C. Superior Court, 1981.
- (b) Party represented -- The National Bank of Washington;
- (c) Counsel for the other Party --

Joseph L. Gibson, Jr.  
 1850 "K" Street, Northwest  
 Suite 880  
 Washington, D. C. 20006  
 (present address and telephone are  
 unknown to me)

- (d) In this action, a petition was filed seeking the removal of The National Bank of Washington as Guardian of the Estate of Janetta Moore. The petition alleged financial management problems associated with the management of the ward's estate and also alleged that the consent of the mother of the ward, to the appointment of the Bank as Guardian, was an unknowing consent. The action was tried before Judge Margaret Haywood who, on September 30, 1981, found in favor of the National Bank of Washington and dismissed the complaint for removal.

The significance of this case was the fact that it involved an estate valued at approximately One Million Dollars (\$1,000,000), one of the largest active guardianship cases then under supervision of the Superior Court. The resolution of the issues presented for review required a thorough analysis of a Court-appointed fiduciary and the issue of the appointment of a corporate fiduciary as guardian of an estate over the objection of a natural parent who, by virtue of statute, would normally have priority as to the appointment of guardian.

- IV. (a) In re: Application of Howard University, Case No. 13416, Board of Zoning Adjustment, Washington, D.C.; March 25, 1981 and May 25, 1981.
- (b) Party represented -- Howard University --

On behalf of Howard University, I petitioned the Board of Zoning Adjustment for the granting of special exceptions under the zoning regulations which would enable the University to amend its central campus plan. Although a campus plan had been approved by the Board in 1975, the plan, in 1980, was in need of drastic modifications as a result of the University's acquisition of new facilities, its development of new technology and a dire need for additional space.

The case was significant because the University, which is land-locked, was seeking approval to, inter alia, expand its boundary into the LeDroit Park Historic District and to utilize existing structures in that District to accommodate Howard University Hospital. Although the District of Columbia was not represented by its Corporation Counsel, opposition to the proposed amended plan came from The Department of Transportation, Office of Planning and Development and numerous community organizations and citizen groups. The hearings before the Board were held on March 25, 1981 and May 25, 1981. On March 22, 1982, the Board of Zoning Adjustment granted the Application of Howard University.

- V. (a) Hill v. Liner - 336 A.2d 533 (D.C. 1975) -
- (b) Party represented --  
John Hill and John R. Pinkett, Inc.; trial judge -  
The Honorable George Draper, D.C. Superior Court.

On behalf of Mr. Hill and the Pinkett Corporation, I defended an action for conversion of an automobile parked and later abandoned by a tenant of the property management corporation. On appeal from an adverse verdict in the trial court, my clients prevailed. The case is significant because the Court of Appeals articulated a distinction between the concepts of "abandoned" versus "parked" automobiles for prosecution and defense of conversion actions.

- VI. The following are the names of ten attorneys who may have opinions about me regarding my judicial competency:

- (a) Jacob A. Stein, Esq.  
1100 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
(202) 737-7777
- (b) Steven A. Hamilton, Esquire  
5301 Wisconsin Avenue, N.W.  
Washington, D. C. 20015  
(202) 364-1434
- (c) Deborah Long-Doyle, Esquire  
Assistant United States Attorney  
Office of the United States Attorney  
555 4th Street, N.W.  
Washington, D.C. 20001



(202) 514-6930

- (d) Donna Wulkan, Esquire  
1115 Massachusetts Avenue, N.W.  
Washington, D.C. 20005  
(202) 682-3909
- (e) Wayne P. Williams, Esquire  
Senior Litigation Counsel  
U. S. Department of Justice  
Criminal Division - Fraud Section  
P. O. Box 28188  
Central Station  
Washington, D.C. 20038  
(202) 514-0823
- (f) Angela Jordan Davis, Esquire  
Director, Public Defender Service of D.C.  
451 Indiana Avenue, N.W.  
Washington, D.C. 20001  
(202) 628-1200
- (g) C. William Tayler, Esquire  
Whiteford, Taylor & Preston  
Suite 400  
888 17th Street, N.W.  
Washington, D.C. 20006-3939
- (h) Thomas Hylden, Esquire  
Baker & Hostetler  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
(202) 861-1500
- (i) Michael M. Hicks, Esquire  
1133 15th Street, N.W.  
Washington, D.C. 20005  
(202) 872-1155
- (j) John E. Scheuermann, Esquire  
700 E Street, S.E.  
Washington, D.C. 20003  
(202) 547-9180

19. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

## Answer:

The most significant legal activities I have pursued are as follows:

- (1) Member, Jury Plan Committee that developed the one day/one trial juror plan in Superior Court of the District of Columbia. The juror plan was developed to implement congressional legislation that radically modified the then existing jury selection procedures for the District of Columbia. The period of jury service was reduced from two weeks to one day, if an individual was selected. The new legislation also made jury service mandatory for every eligible adult in the District of Columbia, including lawyers and judges. Accordingly, it was imperative to develop an appropriate plan to accommodate a larger pool of prospective jurors to serve over a shorter period of time.
- (2) Cast, two juror education movies. One movie is shown on a daily basis in the D.C. Superior Court to all prospective jurors who are summoned for jury service. The purpose of the movie is to acquaint those jurors with the procedures they will follow if they are selected to serve on a jury. The second movie was produced by the Council for Court Excellence. It is shown to high school students across the country and, I am informed, outside the United States, in an effort to acquaint the viewer with an appropriate perception of the role of a juror in a United States Court.
- (3) Panelist, D.C. Court of Appeals Judicial Conference, June 14, 1991.
- (4) U.S. District Court Committee on Grievances - March 1977 to March 1983
- (5) Board of Directors of the D.C. Law Students in Court Program - June 1977 to March 1983
- (6) D.C. Judicial Conference Committee - to study "fast-track" litigation - September 1979 to September 1981
- (7) D.C. Judicial Conference Voluntary Arbitration Committee -- October 1980 to October 1982
- (8) Member - Nominations Committee of the Bar Association of the District of Columbia - 1984
- (9) Member - Superior Court Civil Rules Committee - June 1977 to November 1984
- (10) Member and Chair - Superior Court Probate Rules Committee - November 1984 to February 1992

(11) Chair, Superior Court Tax Rules Committee - January 1991 to February 1992

(12) Chairperson, Committee on Arrangements, 1994 Judicial Conference for the District of Columbia (to be held June 23 and 24, 1994)

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future of any financial or business interest.

Answer:

As an employee of the D.C. Court of Appeals, I participated in the District of Columbia Deferred Compensation Plan. As a participant, a portion of my gross salary is deferred until I retire. I also expect to receive my earned judicial retirement benefits.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

Answer:

I will resolve any potential conflict of interest by disclosing to the appropriate parties the nature of the potential conflict and by recusing myself if and when appropriate. My conduct will be guided by the Code of Conduct for Judges issued by the Administrative Office of the United States Courts.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

Answer: No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends,

interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

Answer:

See attached Financial Disclosure Report.

5. Please complete the attached financial net worth statement in detail (and schedules as called for).

Answer: My financial net worth statement is attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Answer: No.

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Answer:

I have served as a judge for the past nine years. Accordingly, my outside activities have been restricted by the Code of Judicial Conduct for United States Judges. I have made time, however, to interact with area high school students at annual Law Day ceremonies. I have also participated in the filming of two juror education movies. One movie is presently shown to all prospective jurors in D.C. Superior Court. The other movie is shown to high school students across the country in an effort to educate them regarding their future role as jurors.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

Answer: No.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Answer:

There is a selection commission in my jurisdiction that recommended my nomination to my jurisdiction's elected representative to the House of Representatives. I submitted to the Commission answers to a questionnaire. Thereafter, I was interviewed by both the commission members and the congressional representative, who then recommended my name to the President. I have also been interviewed by officials

of the Department of Justice, the Federal Bureau of Investigations and the American Bar Association.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

Answer: No.

5. Please discuss your views on the following criticism involving "judicial activism."

Answer:

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Answer:

I have been a trial judge and an appellate judge for the past nine (9) years. I believe that my record over the past nine years reflects an appropriate awareness on my part of my role as a member of one of three co-equal branches of government. I am acutely aware that

a judge is constrained by certain hallmarks of judicial decision making:

- (1) the judge must listen to the witnesses and arguments of both sides;
- (2) the judge must make a decision on every grievance presented; and
- (3) the judge must justify his or her decision by applying the correct law agreeably to the Constitution. These safeguards make it more likely that a judge's decision regarding an appropriate remedy will be reliable and well-considered.

## FINANCIAL STATEMENT

NET WORTH OF EMMET G. SULLIVAN AND NAN L. SULLIVAN

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

| Assets                              | \$                   | Liabilities                                 | \$                |
|-------------------------------------|----------------------|---|-------------------|
| Cash on hand and in banks           | 10,000.00            | Notes payable to banks-secured              |                   |
| U.S. Govt. securities--add schedule | N/A                  | Notes payable to banks/unsecured            | N/A               |
| Listed securities--add schedule     | 119,933.82           | Notes payable to relatives                  | N/A               |
| Unlisted securities--add schedule   | N/A                  | Notes payable to others                     | N/A               |
| Accounts and notes receivable:      |                      | Accounts and bills due                      | N/A               |
| Due from relatives and friends      | N/A                  | Unpaid income tax                           | N/A               |
| Due from others                     | N/A                  | Other unpaid tax and interest               | N/A               |
| Doubtful                            | 7,800.00             |   |                   |
| Real estate owned--add schedule     | 450,000.00           | Real estate mortgages payable--add schedule | 270,000.00        |
| Real estate mortgages receivable    | N/A                  | Chattel mortgages and other liens payable   |                   |
| Autos and other personal property   | 50,000.00            | Other debts -- itemize:                     |                   |
| Cash value - life insurance         | N/A                  | VISA  | 7,000.00          |
| D.C. Deferred Compensation Plan     | 94,000.00            |   |                   |
| Other assets - itemize:             | None                 |   |                   |
| <b>Total Assets</b>                 | <b>\$ 731,733.82</b> | <b>Total liabilities</b>                    | <b>277,000.00</b> |
|                                     |                      | <b>Net Worth</b>                            | <b>454,733.82</b> |
|                                     |                      | <b>Total liabilities and net worth</b>      | <b>731,733.82</b> |



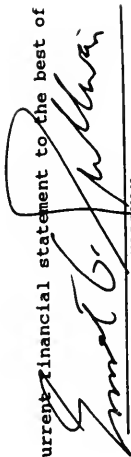
FINANCIAL STATEMENT (Cont.)  
 Net Worth of Emmet G. Sullivan and Nan L. Sullivan

Page 2

| CONTINGENT LIABILITIES            | GENERAL INFORMATION |   |     |
|-----------------------------------|---------------------|---|-----|
| As endorser, comaker or guarantor | None                | Are any assets pledged? (Add schedule.)           | No. |
| On leases or contracts            | None                | Are you defendant in, any suits or legal actions? | No. |
| Legal Claims                      | None                | Have you ever taken bankruptcy?                   | No. |
| Provision for Federal Income Tax  | None                |   |     |
| Other special debt                | None                |   |     |

I certify that this statement and attachments indicate my current financial statement to the best of my knowledge.

Date: April 4, 1994

  
 EMMET G. SULLIVAN

## Schedule "B"

Mortgages

|  |                     |
|--|---------------------|
| Lincoln Service Corporation<br>(1st Trust - 1810 Redbud Lane, N.W.<br>Washington, D.C. 20012 | \$ 190,000.00       |
| Citicorp (Home Equity Loan)<br>1810 Redbud Lane, N.W.<br>Washington, D.C. 20012              | 50,000.00           |
| First American Bank<br>1920 - 10th Street, N.W.<br>Washington, D.C.<br>1/2 of mortgage       | 30,000.00           |
| TOTAL  | <hr/> \$ 270,000.00 |

## Schedule "A"

LISTED SECURITIES\*

|                                     |    |            |
|-------------------------------------|----|------------|
| GEICO .....                         | \$ | 3,133.88   |
| McDonald's.....                     |    | 30,021.00  |
| Telefon De Mex.....                 |    | 20,842.50  |
| Fid SLCT Home Finance.....          |    | 4,329.74   |
| Schwab Money Market Fund.....       |    | 148.72     |
| AT&T.....                           |    | 6,683.00   |
| Novell, Inc.....                    |    | 6,063.00   |
| T. Rowe Price Equity Fund.....      |    | 6,137.09   |
| T. Rowe Price Int'l Stock Fund..... |    | 7,356.89   |
| Thompson Opp. Class B.....          |    | 14,626.00  |
| Merrill Lynch Latin "B".....        |    | 20,592.00  |
|                                     |    | <hr/>      |
| TOTAL                               | \$ | 119,933.82 |

\* All listed securities are either in I.R.A. or KEOGH Retirement Accounts.

## Schedule "C"

Real Estate

|  |    |            |
|--|----|------------|
| 1810 Redbud Lane, N.W.<br>Washington, D.C. 20012.....  | \$ |            |
|  |    | 400,000.00 |
| 1920 - 10th Street, N.W.<br>Washington, D.C.<br>(1/2 of value in view of<br>co-ownership)..... |    | 50,000.00  |
|  |    | <hr/>      |
| TOTAL  | \$ | 450,000.00 |

AO-10  
Rev. 1/83

## FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics  
Reform Act of 1989, Pub. L. No.  
101-194, November 10, 1989  
(5 U.S.C.A. App. 5, §§101-112)

|  |   |  |
|--|---|--|
| 1. Person Reporting (Last name, first, middle initial)<br><br>SULLIVAN, Emmet G.   | 2. Court or Organization<br>U. S. District Court<br>for the District of Columbia  | 3. Date of Report<br>March 25,<br>1994           |
| 4. Title (Article III Judges indicate active or senior status; Magistrate Judges indicate full- or part-time)<br><br>Article III Judge (Nominee) | 5. Report Type (check appropriate type)<br><input checked="" type="checkbox"/> Nomination, Date <u>3/22/94</u><br><input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final | 6. Reporting Period<br>1-1-93 through<br>2-25-94 |
| 7. Chambers or Office Address<br><br>District of Columbia Court of Appeals   | 8. On the basis of the information contained in this Report, it is, in my opinion, in compliance with applicable laws and regulations <input type="checkbox"/><br><br>Reviewing Officer Signature _____           |  |

**IMPORTANT NOTES:** *The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on last page.*

## I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

POSITIONNAME OF ORGANIZATION/ENTITY NONE (No reportable positions)Director, Frederick B. Abramson Memorial FoundationCo-owner of Rental Property known as 1920 - 10th Street, N.W.Washington, D.C.

## II. AGREEMENTS. (Reporting individual only; see p. 8-9 of Instructions.)

DATEPARTIES AND TERMS NONE (No reportable agreements)

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

DATESOURCE AND TYPEGROSS INCOME

(Honoraria only)

(yours, not spouse's)

 NONE (No reportable non-investment income)

|   |                   |                                     |               |
|---|-------------------|-------------------------------------|---------------|
| 1 | Salary            | D. C. Court of Appeals              | \$ 141,700.00 |
| 2 | Net rental income | 1920 10th Street, N.W., Wash., D.C. | \$ 1,798.00   |
| 3 |                   |                                     | \$            |
| 4 |                   |                                     | \$            |
| 5 |                   |                                     | \$            |

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting  
Emmet G. SullivanDate of Report  
March 25,  
1994

## VII. INVESTMENTS and TRUSTS - income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

| A.<br>Description of Assets<br>(including trust assets)<br>Indicate, where applicable, owner of<br>the asset by using the parentheticals:<br>"(J)" for joint ownership of report-<br>ing individual and spouse; "(S)" for<br>separate ownership by spouse; "(DC)" for<br>ownership by dependent child.<br>Place "(X)" after each asset<br>except from prior disclosure. | B.<br>Income<br>during<br>reporting<br>period |   | C.<br>Gross value<br>at end of<br>reporting<br>period |   | D.<br>Transactions during reporting period |                               |                              |   |  |
|---|---|---|---|---|--|-------------------------------|------------------------------|---|--|
|   | (1)<br>Ast.<br>Code<br>(A-B)                  | (2)<br>Type<br>(e.g.,<br>Div.,<br>Int.) | (1)<br>Value<br>Code<br>(J-F)                         | (2)<br>Value<br>Method<br>Code<br>(O-V) | Exempt                                     |                               |                              |   |  |
|   |   |   |   |   | If not exempt from disclosure              |                               |                              |   |  |
|   |   |   |   | (1)<br>Type<br>(e.g.,<br>Div.,<br>Int.) | (2)<br>Date:<br>Month<br>Day               | (3)<br>Value<br>Code<br>(J-F) | (4)<br>Sale<br>Code<br>(A-E) | (5)<br>Identity of<br>Buyer/Seller<br>(if private<br>transaction) |  |
| <input type="checkbox"/> NONE (No reportable<br>income, assets, or<br>transactions)   |   |   |   |   |  |                               |                              |   |  |
| <sup>1</sup> Common stock solely<br>owned by me:  |   |   |   |   |  |                               |                              |   |  |
| <sup>2</sup> KEOGH Account:   |   |   |   |   |  |                               |                              |   |  |
| <sup>3</sup> AT&T   |   |   | D   | T                                       |  |                               |                              |   |  |
| <sup>4</sup> McDonald's   |   |   | E   | T                                       |  |                               |                              |   |  |
| <sup>5</sup> Novell   |   |   | D   | T                                       |  |                               |                              |   |  |
| <sup>6</sup> Telefonos Mex.   |   |   | E   | T                                       |  |                               |                              |   |  |
| <sup>7</sup> Thompson Fund  |   |   | D   | T                                       |  |                               |                              |   |  |
| <sup>8</sup> Merrill-Lynch Latin  |   |   | E   | T                                       |  |                               |                              |   |  |
| <sup>9</sup> I.R.A. Account:  |   |   |   |   |  |                               |                              |   |  |
| <sup>10</sup> GEICO   |   |   | C   | T                                       |  |                               |                              |   |  |
| <sup>11</sup> McDonald's  |   |   | C   | T                                       |  |                               |                              |   |  |
| <sup>12</sup> Telefonos Mex.  |   |   | C   | T                                       |  |                               |                              |   |  |
| <sup>13</sup> Fid. Sel. Fund  |   |   | C   | T                                       |  |                               |                              |   |  |
| <sup>14</sup> I.R.A. Account(s)<br>T. Rowe Price  |   |   |   |   |  |                               |                              |   |  |
| <sup>15</sup> Int. Stock Fund   |   |   | D   | T                                       |  |                               |                              |   |  |
| <sup>16</sup> D. C. Deferred  |   |   | F   | T                                       |  |                               |                              |   |  |
| <sup>17</sup> Compensation Plan<br>Solely owned by me   |   |   |   |   |  |                               |                              |   |  |
| <sup>18</sup>   |   |   |   |   |  |                               |                              |   |  |
| <sup>19</sup>   |   |   |   |   |  |                               |                              |   |  |
| <sup>20</sup>   |   |   |   |   |  |                               |                              |   |  |

1 Income/Gain Code: A=\$1,000 or less B=\$1,001 to \$2,500 C=\$2,501 to 5,000 D=\$5,001 to \$15,000  
(See Col. 81 & D4) E=\$15,001 to \$50,000 F=\$50,001 to \$100,000 G=\$100,001 to \$1,000,000 H=more than \$1,000,000

2 Value Code: J=\$15,000 or less K=\$15,001 to \$50,000 L=\$50,001 to \$100,000 M=\$100,001 to \$250,000  
(See Col. C1 & G) N=\$250,001 to \$500,000 O=\$500,001 to \$1,000,000 P=more than \$1,000,000

3 Value Method Code: Q=Appraise R=Cost (real estate only) S=Assessment T=Cash/Market  
(See Col. C2) U=Book Value V=Other W=Estimated

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting  
Emmet G. SullivanDate of Report  
March 25,  
1994

## IV. REIMBURSEMENTS and GIFTS - transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

## SOURCE

## DESCRIPTION

| <input checked="" type="checkbox"/> X | NONE | (No such reportable reimbursements or gifts) |  |
|---------------------------------------|------|--|--|
| 1                                     |      |  |  |
| 2                                     |      |  |  |
| 3                                     |      |  |  |
| 4                                     |      |  |  |
| 5                                     |      |  |  |
| 6                                     |      |  |  |
| 7                                     |      |  |  |
| 8                                     |      |  |  |

## V. OTHER GIFTS. (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp.15-16 of Instructions.)

## SOURCE

## DESCRIPTION

## VALUE

| <input checked="" type="checkbox"/> X | NONE | (No such reportable gifts) |    |
|---------------------------------------|------|----------------------------|----|
| 1                                     |      |                            | \$ |
| 2                                     |      |                            | \$ |
| 3                                     |      |                            | \$ |
| 4                                     |      |                            | \$ |

## VI. LIABILITIES. (Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp.16-18 of Instructions.)

## CREDITOR

## DESCRIPTION

## VALUE CODE\*

| <input type="checkbox"/> | NONE                | (No reportable liabilities)                 |   |
|--------------------------|---------------------|---|---|
| 1                        |                     |   |   |
| 2                        | First American Bank | Mortgage                                    | L |
| 3                        |                     | Securing Rental                             |   |
| 4                        |                     | Property known as<br>1920 10th Street, N.W. |   |
| 5                        |                     | Washington, D.C.                            |   |
| 6                        |                     |   |   |
| 7                        |                     |   |   |

\* VALUE CODES: J = \$15,000 or less    K = \$15,001 to \$50,000    L = \$50,001 to \$100,000    M = \$100,001 to \$250,000  
 N = \$250,001 to \$500,000    O = \$500,001 to \$1,000,000    P = More than \$1,000,000

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting  
Emmet G. SullivanDate of Report  
March 25,  
1994

## VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

None that I am presently aware of.

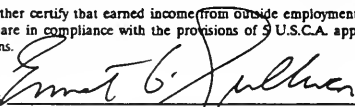
## IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income (from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature



Date

March 25, 1994

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, § 104, AND 18 U.S.C. § 1001.)

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Mail signed original and 3 additional copies to:

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Administrative Office of the  
United States Courts  
Washington, DC 20544



**AFFIDAVIT**

I, Emmet G. Sullivan, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

April 4, 1994

(Date)

Emmet G. Sullivan

(Name)

Herbert C. Parsons

(NOTARY)

My Commission Expires October 31, 1994

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DATE: March 25, 1994

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CITY/STATE: Washington, D.C.

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## BY-LAWS OF LAWYERS' CLUB OF WASHINGTON

November 8, 1974  
Amended May 20, 1982.  
(Section 5)

## Section 1

## Presiding Officers

At all meetings of the Club the President, or in his absence the Vice President, or in the absence of both of them, any member selected upon motion shall preside.

## Section 2

## Duties of the Officers

a. President. The President shall conduct all meetings of the Club and exercise all powers and perform all duties usually incident to the office.

b. Vice President. The Vice President shall perform all the duties and have the powers of the President in the absence of the latter.

c. Secretary-Treasurer. The Secretary-Treasurer shall keep the seal and records of the Club; record the minutes of each meeting of the Club and of the Board of Governors; send out all official notices; keep an accurate and up to date record of the names and addresses of all members; and have possession and supervision over the property belonging to the Club. He shall also keep the accounts of the Club; deposit all moneys of the Club; and report to the Club at each stated meeting and at the Annual Meeting the balance of money on hand. The funds of the Club shall be subject to withdrawal upon his signature or upon the signature of any other officer of the Club and his accounts shall be subject to audit.

## Section 3

## Board of Governors

The Board of Governors shall meet when called by the President or Secretary-Treasurer. The Secretary-Treasurer shall keep the minutes of each meeting of the Board. The Board shall have power to make such rules and take such actions, not inconsistent with the Constitution and By-Laws as shall be necessary for the protection of the property and the best interests of the Club and shall have the general management of its affairs. The Board shall report at each meeting any business which in its judgment requires the action of the membership of the Club.

## Section 4

## Election of New Members

Candidates for membership, active and associate, shall be elected or excluded by the Board of Governors by ballot, a quorum of said Board for said purpose being at least six (6) members thereof, and if there are two or more negative votes in the Board the candidate shall be refused admission, provided that nothing herein contained shall be construed to prohibit the renomination for membership in the Club of any member of the Bar after the lapse of twelve months from the date of his previous nomination.

Every candidate must be proposed in writing to the Board by at least two members of the Club, who shall send to the Secretary the name of the candidate, his office address and a statement of his qualifications. No candidate shall be voted on unless he is personally known to at least three members of the Board of Governors, and until his name together with the names of the members proposing him shall have been mailed to each member of the Club at least thirty days prior to the meeting of the Board at which his name may be considered. The Board shall consider all communications respecting the candidate and make diligent inquiry as to his character and qualifications. Seven (7) or more votes by active or senior members of the Club against a particular candidate shall prevent the Board's consideration of that candidate.

## Section 5

## Annual Dues and Assessment

The annual dues of all categories of members shall be \$30, payable in advance. The Board of Governors, upon the recommendation of the Secretary-Treasurer, shall fix such assessments against the membership of the Club each year as it shall deem necessary to keep the Club in sound financial condition. If said annual dues and assessments are not paid within sixty (60) days after written billing therefor from the Treasurer, the Board of Governors may in its discretion suspend or expel a defaulting member. Any member who is unable, by reason of incapacity or permanent residence outside of the metropolitan area of the District of Columbia, to attend Club functions may, upon written request to the Board of Governors, be excused by the Board in its discretion from the payment of annual assessments. The payment of annual dues shall, however, be mandatory.

## Section 6

## Resignations, Suspensions and Expulsions

a. The resignation of any member of the Club in good standing may be accepted by the Board of Governors at any of its meetings.

b. Any member may be suspended or expelled for misconduct in his relationship to the Club or in his profession by a vote of not less than two-thirds of the members of the Board of Governors at any of its meetings.

## Section 7

## Amendments

These By-Laws may be amended at any Annual or stated meeting or any special meeting called for that purpose, by a two-thirds vote of the active and senior members of the Club in attendance at that meeting provided notice of the proposed amendment or amendments shall have been mailed by the Secretary to every member in good standing at least ten (10) days in advance of the meeting at which the amendment or amendments are to be submitted for adoption.



**NOMINATIONS OF DIANA G. MOTZ AND ROBERT MANLEY PARKER, TO BE U.S. CIRCUIT JUDGES; RICARDO M. URBINA, RICHARD A. PAEZ, DENISE PAGE HOOD, PAUL L. FRIEDMAN, AND WILLIAM F. DOWNES, TO BE U.S. DISTRICT JUDGES**

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**WEDNESDAY, MAY 25, 1994**

**U.S. SENATE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.***

The committee met, pursuant to notice, at 2:34 p.m., in room 628, Dirksen Senate Office Building, Hon. Dennis DeConcini presiding.

Also present: Senator Simpson.

**OPENING STATEMENT OF SENATOR DeCONCINI**

Senator DECONCINI. The Senate Judiciary Committee will come to order.

Ladies and gentlemen, we have a number of nominees today and we also have a number of colleagues, both from the House and the Senate, to introduce them. Due to scheduling and what have you, I am going to take the Senators who are here and the House Members that are here and have them testify, if they care to make their introductory remarks.

Before doing so, let me say this afternoon the Judiciary Committee is going to conduct hearings on seven nominees, two for the position of circuit court and five for the position of Federal district court. As is customary, the nominees will be introduced, as I indicated, by their Senators and Representatives who are here, and we will proceed with that in just a moment.

There have been some statements of opposition to some of the nominees and the record will remain open. All the nominees have answered the questions that have been presented to them by the Judiciary Committee, and portions of those questionnaires will be printed in the record as part of this hearing.

It is also my understanding that the committee has received written testimony concerning several of the nominees, particularly nominees Paez and Urbina. The record of this hearing will be kept open for a period of time, determined by the chairman, in the event that any other written testimony is offered or other members wish to submit written questions for these particular members.

This afternoon, we will first take up with Senator Sarbanes for the introduction of Diana G. Motz to be U.S. Circuit Judge for the Fourth Circuit. Senator Sarbanes, we are very pleased to have you here, and you may proceed.

**STATEMENT OF HON. PAUL S. SARBANES, A U.S. SENATOR  
FROM THE STATE OF MARYLAND**

Senator SARBANES. Mr. Chairman, thank you very much.

I am very pleased to appear before you to introduce to the committee Judge Diana Gribbon Motz, who has been nominated by President Clinton to be the U.S. Circuit Judge for the Fourth Circuit.

Diana Motz has an extraordinarily distinguished record of both professional practice and public service. A native of Washington, DC, she is an honors graduate of Vassar College, an honor graduate of the University of Virginia Law School.

For over 25 years since finishing law school, she has been active in the practice of law in Maryland, in both the public and private sectors. She began her career with our city's largest law firm.

Three years later, in 1972, she joined the Maryland Attorney General's Office, where she served as an assistant attorney general to begin with and then moved on to more responsible positions within the office over a 14-year tenure. During the last 4 years, she was the chief of litigation in the Maryland Attorney General's Office, which involved supervising all trial and appellate civil litigation in an office of more than 200 lawyers.

She then returned to private practice for 5 years as a litigation partner in a large Baltimore law firm, and in 1991 was appointed to her current position as an associate judge on the Court of Special Appeals of Maryland. The court of special appeals is our State's intermediate appellate court. It hears all appeals, civil and criminal, from the trial courts of general jurisdiction, with a few limited exceptions that go directly to the court of appeals.

Diana Motz is an experienced litigator who enjoys an outstanding reputation in our community. She has appeared in State and Federal courts at all levels. She has received many honors and awards for accomplishments as a lawyer, and in 1988 was selected by the Chief Justice of the Supreme Court to be part of a 15-member Federal Courts Study Committee. This important committee, made up of judges, law professors, practicing lawyers, and four members of Congress, including Senators Heflin and Grassley from this committee, made significant recommendations for the improvement of the Federal courts system.

In addition to her very active legal career, she has been active in a number of important community events, has volunteered her time for important public interest legal representation of nonprofit and citizen groups.

Mr. Chairman, let me close with this observation. Over 30 years ago, I clerked for Judge Morris Soper on the Court of Appeals for the Fourth Circuit, so I have a particular personal interest in this very important appellate court. I am proud of the high quality of judges from Maryland who have served on the fourth circuit.

Judge Motz has consistently demonstrated outstanding ability. She has established herself as a highly respected appellate judge



in our State. She has the intelligence, the judicial temperament, the experience, and the character needed to hold this important position. She will be a very considerable asset to the fourth circuit and help this court maintain its high standard.

I congratulate Diana Motz, her husband, Fred, and her two children, and all of her friends and family, and I commend the President for nominating this outstanding person to this important judicial position. I am very pleased to come this afternoon and introduce her to the committee and to urge you to report her to the Senate favorably.

Thank you very much.

Senator DECONCINI. Senator Sarbanes, thank you for your fine testimony and recommendation.

Judge Motz, I am advised that Senator Barbara Mikulski is also going to be here, although because we have other Members of the Senate and the House here, we are going to go ahead and hear from them. We will hear from you shortly, Judge.

At this time, we will take up the introductory remarks for Judge Robert Manley Parker, from Tyler, TX, U.S. Circuit Court. Senator Hutchinson, would you care to lead off, and then we will hear from the chairman of the Judiciary Committee from the House of Representatives, Jack Brooks, who we are honored to have here today. He has a long history and legacy in the judiciary.

Senator Hutchison.

**STATEMENT OF HON. KAY BAILEY HUTCHISON, A U.S.  
SENATOR FROM THE STATE OF TEXAS**

Senator HUTCHISON. Thank you, Mr. Chairman.

I certainly do appreciate the opportunity to be here on behalf of Judge Robert Parker for the fifth circuit, and I am very pleased to have my distinguished colleague from the House side, the chairman of the Judiciary Committee there. I certainly work with him on these appointments and am pleased to be here with him.

Our distinguished nominee, Judge Parker, graduated from the University of Texas and the University of Texas School of Law, which makes him qualified per se.

He spent time on the Hill, Mr. Chairman. Judge Parker served as administrative assistant to Congressman Ray Roberts, who was a wonderful Congressman that I knew when I was an intern here in the summertime and a great leader.

Then he moved to Longview and practiced law and was a self-described country lawyer. You know what happens when you go against a country lawyer in the courtroom. They always beat you, and that is exactly the kind of reputation that Judge Parker had.

He has had a long and distinguished career as a jurist. He was appointed to the U.S. District Court for the Eastern District of Texas by President Carter in May 1979, and he became chief judge of the Eastern District in February 1990.

Judge Parker was a good nomination for President Clinton to make for the fifth circuit. I am very pleased that he has with him today his family, his wife, Frieda, and his daughter. I am pleased to be here on his behalf and I recommend him to the committee for confirmation.

Senator DECONCINI. Thank you very much, Senator Hutchinson.

Chairman Brooks, we will hear from you, and then we will return to Senator Barbara Mikulski for Judge Motz. You may proceed, and thank you for being with us.

**STATEMENT OF HON. JACK BROOKS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Representative BROOKS. Thank you very much, Senator.

I am especially honored to be here today in company with my attractive junior Senator, to be here with my Senate colleagues to introduce my good friend, Judge Robert Parker, nominee for the fifth circuit of appeals.

I would like to recognize his wife, Frieda. Stand up, Frieda. I want them to know who you are, and his daughter, Jennifer. He has another pretty daughter, also.

I have known Judge Parker for 25 years and have always been impressed by his hard work and dedication to the law and his local community. He served with distinction on the U.S. District Court for the Eastern District of Texas since 1979 and as chief judge since 1990.

I have some statistics on his record which you might be interested in. During his first 10 years on the Federal bench, he closed more cases than any other judge in this United States. In 1 year, he closed off a total of 911 cases. He has certainly earned his reputation as a dedicated judge, competent and efficient.

During my tenure as chairman of the House Judiciary Committee, I valued Judge Parker's straight information and wise counsel on matters related to administration and operation of our Federal courts. His experience as a judge and his insight on the issues facing the Federal judiciary and his outstanding work ethic are all qualities which lead me to give him my fullest, unequivocal support for the fifth circuit court of appeals. I am certain, after meeting Bob Parker, you will agree.

It is a pleasure, as always, to be here today, and I want to thank you for your usual courtesy and consideration of his nomination. Thank you very much.

Senator DECONCINI. Chairman Brooks, thank you very much, and Senator Hutchinson, thank you.

Judge Parker, we will return to you shortly.

Senator Mikulski, do you care to make your statement on behalf of Judge Motz?

**STATEMENT OF HON. BARBARA A. MIKULSKI, A U.S. SENATOR FROM THE STATE OF MARYLAND**

Senator MIKULSKI. Thank you very much, Senator.

I apologize to Judge Motz for being late. We are debating malpractice reform in the health insurance reform markup.

Senator DECONCINI. Do you have some questions for the judges on that subject matter? [Laughter.]

Senator MIKULSKI. I would like to take you and her with me right now, so that is why I am just kind of parachuting into this hearing.

I just want to lend my enthusiastic endorsement for the nomination of Judge Diana Motz to be on the U.S. Circuit Court for the Fourth Circuit. I know that my senior colleague, Senator Sarbanes,

has spoken about Ms. Motz' legal competence and her professional experience, her degree at Vassar, and her law degree from the University of Virginia. She is in more "Who's Who" than have been published in the field. Of course, now she is an associate judge on the court of special appeals, with extensive experience both in private practice and in supervising the 200 lawyers as the chief of litigation.

I always like to look at what people do as citizen volunteers, which I think also says something about the kind of person a judge may be.

When one looks at the role of Judge Diana Motz, we can see that she has worked on everything from the Union Memorial Hospital Board to make sure health care was available, with a particular orientation to women's health, to being on the board of the YMCA of the greater Baltimore area, and to now being a hands-on volunteer at the Mount Washington Pediatric Hospital with sick babies and toddlers.

Senator you might say, what has that got to do with being on the court of appeals? I believe it is important to couple community service with legal competence, extensive professional experience, and legal scholarship. I believe we need judges who like to be involved in the real world and to really engage with people in terms of their day-to-day problems and the day-to-day issues that they face.

Judges are prohibited from being community activists, but they are not prohibited from being community volunteers. Judge Motz is a wife, a mother, a judge, who still takes time to go to a pediatric hospital to hold a child who would not be held any other way, to try to bring comfort and solace to handicapped and sick children. I think that is exactly the type of person we need on our Federal court, combined with competence, scholarship, and ability. That is why I am so enthusiastic in my endorsement for her.

Senator DECONCINI. Thank you, Senator Mikulski. We are very pleased to have that recommendation for the committee's consideration, and I am sure that it will weigh heavily in our deliberations.

We will now proceed to the introductions for Judge Denise Page Hood from Detroit, MI. Introducing the judge for remarks will be Senator Levin and also Chairman Conyers is here. Chairman Conyers, would you like to come up? Congresswoman Collins is not here, I understand, at this time.

Judge Hood, welcome. Senator Levin, if you would like to proceed.

#### **STATEMENT OF HON. CARL LEVIN, A U.S. SENATOR FROM THE STATE OF MICHIGAN**

Senator LEVIN. Mr. Chairman, it is a real treat to be here to introduce Judge Hood to the committee. She has an illustrious judicial career already. After graduating from Columbia Law School in 1977, she became an assistant corporation counsel in the city of Detroit and from there was elected, first to the district court, then to the recorder's court, which is our criminal court of jurisdiction, and then to the circuit court. She also is just completing her term as president of the Detroit Bar Association, which indicates what her fellow lawyers think about her.

She was recommended from a long list of qualified candidates to Senator Riegle and myself, from the Citizen Merit Selection Committee that gave us a list of possible nominees. She was on everybody's list, and it was a real easy job, actually, for us to select her from that list.

With all her legal qualifications, it is her personal qualifications which are really the most outstanding. Perhaps her most unique personal asset is her uncommon sense of common decency, her determination to listen to people, to understand the issues that are brought before her. She has a reputation in each of the courts that she has sat on as having a heart as well as a mind and a willingness to truly listen to the people who appear before her and to those in the community from which she springs.

It is a personal treat, actually, for me to be with her and her family here today, and she will introduce her family to you later, because her husband now serves on the Detroit City Council. His father served with me on the Detroit City Council. So this family and the Levin family go back a long way together.

It is a matter of real personal pleasure and personal pride that I join Senator Riegle in recommending her to this committee. I would appreciate Senator Riegle's statement being made a part of the record. He is chairing a committee hearing right now and just was unable to be with us.

[The prepared statement of Senator Riegle follows:]

STATEMENT OF HON. DONALD W. RIEGLE, JR., A U.S. SENATOR FROM THE STATE OF MICHIGAN

Good afternoon, Senator DeConcini. I want to thank you for allowing me to be the first member to introduce nominee Judge Denise Page Hood this afternoon. While I can stay only a few minutes, because I am chairing a hearing in Banking Committee, I wanted to come by to express my unequivocal support for her, as the President's nominee for U.S. District Judge for the Eastern District of Michigan.

Before I say anything else, I'd like to take a moment to introduce her family members who have traveled many miles to be with her today.

Judge Hood's husband the Reverend Nicholas Hood III minister of Plymouth United Church of Christ and an esteemed City Councilman of the City of Detroit. Her children Nathan 10 years old and Noah 6 years old.

Judge Hood's parents, Richard and Nancy Page. Her father and mother-in-law Rev. Nicholas Hood Sr., who is a former member of the Detroit City Council, and his wife Doris.

Judge Hood's parents, Richard and Nancy Page. Her father and mother-in-law Rev. Nicholas Hood Sr., who is a former member of the Detroit City Council, and his wife Doris.

Judge Hood's sister Teri Page. Her brother-in-law Stephen F. Hood, and cousin Joyce Penn.

In the past two years, Denise Page Hood's life has taken some remarkable turns—she won a seat on the Wayne County Circuit Court bench, she was named as a nominee by President Bill Clinton for the US District Court, and she was sworn in as the first African-American woman President in the 157-year history of the Detroit Bar Association. And through it all she has shown the kind of character and dignity that befits all truly exceptional jurists. When asked how she felt about being the first African-American woman chosen to head the Detroit Bar Association, Judge Hood replied:

"Never mind that I'm the first. What's important is that I'm not the last. I hope that we can get to a point where we don't talk about first women, first African American, or first anything."

And that sums up the true mark of her integrity as a person. Mr. Chairman, today you'll hear about Judge Hood's qualification: her education at Yale University and Columbia Law School, and her background as judge on the Recorder's Court of Detroit and on Michigan's 36th District Court. But while all that information is im-

portant, I wanted to give you some insight into Denise Page Hood the person, and I feel that that quote says it all.

Her list of professional memberships and community organizations are too long for me to list here today, but it is clear that her commitment to her profession and community distinguishes her from many of her peers. And because of that, she has consistently been recognized as an excellent jurist with superior skills and judgment.

I am pleased that the Committee is moving ahead with Judge Hood's nomination, and I look forward to her swift consideration and confirmation. Thank you, Mr. Chairman.

Senator LEVIN. We do have two Members of the House of Representatives with us, as you mentioned, who I think might like to add a word to my own strong recommendation for Judge Hood.

Senator DECONCINI. Thank you very much, Senator Levin.

We welcome Chairman Conyers, chairman of the Government Affairs Committee. Mr. Conyers, we are glad to have you here, sir.

**STATEMENT OF HON. JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN**

Representative CONYERS. It is a pleasure, Mr. Chairman, to be here and join in this affirmation process that has been so well initiated by Senator Levin.

As we say in the Congress to shorten our remarks, I would like to associate myself entirely with the comments that he has made about Judge Denise Page Hood.

Let me tell you how happy I am. My congressional office sits in the Federal Courthouse of Detroit. I follow judges with uncommon interest, as a member of the Judiciary Committee, the first African-American ever to serve on the House Judiciary Committee.

What we are doing in this nomination is bringing forward to the Federal bench a very experienced jurist whose background is so perfectly tailored for this promotion that I am very, very happy that Don Riegle and Carl Levin saw this the same way as many of the people who are expert on judicial matters in our region.

Let me note that she is the first African-American to come back on the Federal Judiciary in our circuit in a dozen years, and that is a wonderful sign. By being a woman on top of it, this gives us the kinds of qualities, one of which I would like to make. Her concern about family violence has served her well on the various committees inside the bar. She is currently a president of a bar association. She was of another bar association earlier. She is never stunted in her contributions to the court and to the judicial system.

Finally, let me say that she springs from a family of gifted public servants. We have talked about Rev. Nick Hood, the councilman, who has now been succeeded by his son, a very talented young man. What we see here is the continuation of the Hood tradition in Detroit that is so absolutely celebrated by the entire community.

I might observe in closing that Nick Hood, her dad, started out with me in public service in about the same year, and it wasn't really that long ago. He is still very active in the community. This continuation of the Hood tradition of giving to their community is now taken one step higher, and we celebrate this nomination and recommend it to you without any reservation whatsoever.

Thank you so much.

Senator DECONCINI. Thank you, Chairman Conyers, very much.

We are glad to welcome Representative Barbara-Rose Collins.

**STATEMENT OF HON. BARBARA-ROSE COLLINS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN**

Representative COLLINS. I thank you very much, Mr. Chairman.

It is a great pleasure and privilege to introduce to you and recommend without reservation Judge Denise Page Hood of Wayne County Circuit Court.

Today, you are considering a very talented and skilled jurist for the Eastern District of Michigan. Judge Hood's background, tempered with her compassion and understanding of the conditions of this country, makes her an excellent candidate.

Judge Hood has a stellar academic record. She received her undergraduate education at Yale University and continued on at Columbia School of Law, where she received her law degree. Mrs. Hood began her distinguished law career in her hometown of Detroit, working in the city of Detroit's law department.

With such an outstanding record as a lawyer, it is no surprise that the people of Detroit elected her to serve as a judge on the 36th District Court, nor is it surprising that before her term had expired, then-Governor James Blanchard appointed her to sit on the recorder's court. She remained on that court until she was elected to the Wayne County Circuit Court.

I must tell you that I take special pride in the fact that Judge Hood has had a distinguished career in my hometown, Detroit, MI. I, too, served on the Detroit City Council with her father-in-law, Rev. Nicholas Hood.

She has spent the better part of her life being a positive example to young women of color in the city of Detroit. Using her gifted mind, honed by relentless hard work, she has used the law always carefully, without bringing a personal bias to the bench. I believe she will continue that tradition on the Federal bench and reach decisions fairly and knowledgeably. A woman with this integrity and independence is exactly what is needed on the Federal bench.

Judge Hood has the courage, the leadership ability, and the fortitude to be an outstanding Federal judge. There is no doubt that she has distinguished herself as a lawyer, judge, and an outstanding citizen. I enthusiastically recommend her to you.

Senator DECONCINI. Representative Collins, thank you very much. Thank you for your endorsements and introductory remarks.

Senator LEVIN. Mr. Chairman, if I can give assurance, now that Senator Simpson is here, Senator Simpson is a great fan of the Detroit Tigers and I want to assure him that Judge Hood qualifies in that regard as well. [Laughter.]

Senator DECONCINI. The judge will be questioned very heavily on that, I am sure. [Laughter.]

Senator SIMPSON. Thank you very much.

Senator DECONCINI. We will now proceed to the nomination of Paul Friedman to be U.S. District Judge for the District of Columbia and Ricardo Urbina, U.S. District Judge for the District of Columbia. We are very pleased to welcome Representative Eleanor Holmes Norton for introductory remarks. Please be seated, gentlemen.

Congresswoman, please proceed. We welcome you here, and are sorry to keep you waiting.

**STATEMENT OF HON. ELEANOR HOLMES NORTON, A  
DELEGATE IN CONGRESS FROM THE DISTRICT OF COLUMBIA**

Delegate NORTON. Thank you very much, Mr. Chairman.

This is a special set of nominees to the residents of the District of Columbia. In the 200-year history of the District of Columbia, these are the first judges to be chosen by the same process that Presidents allow judges to be chosen by the States. They were chosen by a judicial nominating committee appointed by me from a list submitted to me and then to President Clinton. They are from among a group of unusually well-qualified judges whose names were submitted.

Paul Friedman, whose wife, Elizabeth is here—and I am going to ask Elizabeth Friedman if she would stand—would appear to have been preparing for this nomination all his professional life. He clerked on the court to which he is seeking appointment, the District Court for the District of Columbia. He then clerked on the U.S. Court of Appeals for the District of Columbia.

He continued to litigate in the Federal sector and went on to become a litigator in private practice. He has been an assistant U.S. attorney for the District of Columbia. He has been an assistant to the Solicitor General of the United States. Most recently, he was associate independent counsel to the Iran-Contra investigation.

Paul Friedman has already had an important impact on the court on which he would serve. He is chair of the U.S. district court's Civil Justice Reform Act Advisory Committee, which has issued a groundbreaking report about the U.S. district court here.

Paul Friedman is a past president of the District of Columbia Bar, the third-largest State bar in the country. Paul Friedman has been a chair of the District of Columbia Judicial Nominating Commission, which recommends judges for appointment to the local District of Columbia courts by the President.

Mr. Friedman's career has been rooted deeply in the most distinguished part of the profession, locally and nationally. He is the State delegate from the District of Columbia to the House of Delegates of the American Bar Association. He is a former chair of the Federal Practice Committee Litigation Section. He is a member of the American College of Trial Lawyers. He has been on the faculty of the Federal Judicial Seminar for Newly-Appointed Federal Appellate Judges.

He is now managing partner at the District of Columbia office of White & Case, where he has specialized in white-collar criminal defense.

Much of Paul Friedman's work has been groundbreaking. In the 1980's, he led an effort for the appointment of women, minorities, and local lawyers to the Federal courts here. He established the very successful superior court settlement week here, which has improved the efficiency of our superior court markedly. He has led work in the bar for the homeless and the poor. He is a District of Columbia resident.

Paul's peers would want me to tell this committee that Paul Friedman is not only one of our most distinguished lawyers, he is a really nice guy.

Next, I would like to introduce one of the District's most distinguished and experienced judges, District of Columbia Superior

Court Judge Ricardo Urbina was appointed in 1980 and has had the deep, tough experience that more than prepares him for the district court seat here.

He has been selected to handle large and complex cases. He has presided over a special calendar, consisting of the toughest cases in his court—first-degree murder, rape, and child molestation.

He has been a presiding—and a particularly outstanding presiding—judge of the family division of his court. He chaired the committee of judges that drafted the child support guidelines for that court, and those guidelines were later adopted by our own city council and made into law.

Before coming to the bench, Judge Urbina worked as a District public defender in the District of Columbia public defender service, in commercial private practice, and as a professor of law specializing in criminal law and procedure at Howard University.

Finally, I must tell you that for those of us who live in the District, Judge Urbina has a very special leadership role. He has paved the way for Hispanics in our city. He was the first Hispanic to sit on the superior court. He will be the first to sit on the district court.

He has been named "Washingtonian of the Year". He has received the Simon Bolivar Award for his work on behalf of Latin American people. He was twice recognized by HHS, the Department of Health and Human Services, for his outstanding leadership in preventing child abuse and neglect. Judge Urbina is also a District resident.

If I may say so, Mr. Chairman, he has the talent for which so many lawyers long. He has been a three-time all-American NCAA champion.

Thank you, Mr. Chairman. [Laughter.]

Senator DECONCINI. Thank you very much, Representative Norton.

We will now go to Richard Paez of Los Angeles, CA, U.S. district judge for the Central District. Senator Boxer is here. Senator Boxer, we are sorry to keep you waiting. We are very pleased to have you here today.

#### **STATEMENT OF HON. BARBARA BOXER, A U.S. SENATOR FROM THE STATE OF CALIFORNIA**

Senator BOXER. Thank you so very much, Mr. Chairman and Senator Simpson.

It is such a pleasure for me to introduce you to Judge Richard Paez and to the members of his family, his wife, Diane, who is holding his son, David, who is 3, and his daughter, Lisa, who is right here taking photographs to get the moment, his mother, Paula, his sister, Daphne, and her husband, Darrell. This is a very big day.

I want to go quickly, because I know you have a very big agenda.

I am honored to have this opportunity for you to meet Judge Paez. He has a distinguished legal career in California. He received his law degree from Boalt Hall, the law school of the University of California at Berkeley.

He worked as a staff attorney for California Rural Legal Assistance and the Western Center on Law and Poverty. He went on to



serve as the director of litigation and senior counsel for the Legal Aid Foundation of Los Angeles, and later became the acting executive director.

During his 9 years as an attorney, Judge Paez has litigated and supervised numerous complex cases in State and Federal courts at the trial and appellate court levels.

In 1981, Judge Paez was appointed to the Los Angeles Municipal Court, which is one of the largest metropolitan courts in the country. He was elected presiding judge in 1988 and has been the supervising judge of the county courthouse since 1986.

He was appointed by California Supreme Court Chief Justice Malcolm Lucas to the prestigious California Judicial Council, where he is currently serving his second term.

Judge Paez is well respected by every segment of the community. In addition to his duties on the bench, he has taught numerous civil procedure courses to other judges throughout the State. He has contributed scores of hours to reforming judicial administration in the State's courts.

As one indication of his broad support, I would ask unanimous consent that you include in the record a Los Angeles Times editorial endorsing his nomination.

Senator DECONCINI. So ordered.

[The Los Angeles Times editorial is retained in committee files.]

Senator BOXER. Mr. Chairman, thank you.

I want to point out that when you confirm Judge Paez, as I am very confident that you will, you will be confirming the very first Mexican-American ever appointed to the Federal bench from the Central District of California.

I am, again, so confident that you will agree with me that Judge Paez is an outstanding nominee. He possesses exceptional integrity, skill, and experience which qualifies him to serve with distinction on the Federal bench. I urge your affirmative votes for Judge Paez's confirmation.

On behalf of his family and everyone else, I thank you.

Senator DECONCINI. Thank you, Senator Boxer, very much. Your recommendation will weigh heavily with the committee, I can assure you. Thank you.

Senator BOXER. Thank you very much, Senator.

Senator DECONCINI. Thank you, Judge Paez.

We now will go to William F. Downes from Casper, WY, U.S. district judge for the District of Wyoming. I yield to Senator Simpson from that great State.

#### STATEMENT OF THE HON. ALAN K. SIMPSON, A U.S. SENATOR FROM THE STATE OF WYOMING

Senator SIMPSON. First, Mr. Chairman, I want to thank both Bill and his wife for coming forward. Thank you very much for your courtesy and cooperation in this agenda today. I know it makes for a rather unusually long hearing, and I thank you very much for that.

Mr. Chairman, I am very pleased to be serving as the ranking member at hearing, and I am more than especially pleased to welcome Bill Downes, who is the administration's nominee to fill the

Federal district court vacancy in Casper, WY, in the District of Wyoming.

I extend my thanks to our able chairman, Senator Joe Biden, and our ranking member, Senator Hatch, these two friends, for making it possible for this agenda inclusion today.

For the benefit of the chairman and Congressman Bob Wise, who joins us here, who has known Bill for many years, I say that I do know this man personally. He is very able, very fair, very qualified. I am also very pleased that his wife, Cathy, who my wife, Ann, and I have known for many years, is present today. She is a sensitive and caring woman, a friend to her friends and a wonderful help-mate at his side.

Bill Downes is one fine and skilled attorney, and he has a splendid reputation in Wyoming, well deserved. He is a managing partner in a highly regarded law firm in Casper, Brown & Drew; a very fine husband, a proud father. He is a well-experienced litigator, principally in the areas of civil litigation. He is held in singularly high regard by members of the Wyoming bar. I am informed that he has received the ABA's well-qualified rating. I would question any lesser designation and have before, from time to time, with regard to the ABA, but enough of that.

I have known this man and his wife, Cathy. Wyoming will be very well served by having Bill as a Federal district judge.

If confirmed, and I am most certain he will be, Judge Downes will preside in Casper. That is especially important to our large State geographically, since litigants have had to travel great distances to appear in our Federal court. For many years, attorneys, litigants, and citizens in Wyoming have been asking for help and demanding to have a Federal judge permanently assigned to this central Wyoming location, where, thanks to the Judiciary Committee and Environment and Public Works, we have recently remodeled facilities standing ready to be put to effective, regular use.

His résumé is impressive, captain in the Marine Corps. Even beyond his military service, he was in the trenches with the people whose disputes he will soon be presiding over. He has labored in the vineyards.

In a sense, he has been both a white-collar executive and a blue-collar laborer. He is a man clearly in touch with everyday citizens and all of the problems and anguish and joys that fill their lives.

Bill Downes will be a judge that the people of Wyoming will be very proud of, that they can relate to, can trust. In my view, that is certainly one of the most important, yet most unscathed, qualifications for a trial judge. He will be a good one, and we can count on it.

His only defect, of course, is that he is a Democrat. [Laughter.] Senator DECONCINI. You don't hold that against him?

Senator SIMPSON. No, we must go forward, even under those circumstances.

Now, I would yield, so Bob Wise, a friend and Congressman from West Virginia, may have commentary.

Senator DECONCINI. Representative Wise.

**STATEMENT OF HON. ROBERT E. WISE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WEST VIRGINIA**

Representative WISE. Thank you very much, Senator Simpson and Senator DeConcini, for giving me the privilege of joining you here.

I have known Bill, I guess, probably even longer than Cathy. I have known Bill since law school, when we ran into each other the first day at law school and decided that we had something in common, which was that we both had some rent money and we needed an apartment. We struck out from there and were roommates for well over a year. We have stayed in close contact for all these many years since then.

I have the highest confidence in him. We have gone, obviously, different directions. I guess we both stayed in the West. He went to Wyoming; I went to West Virginia. [Laughter.]

But we stayed in contact all these many years, both through visits and through frequent telephone conversations.

I have known Bill, both in law school and as a practicing attorney, to have what I would consider to be the judicial temperament. We didn't always agree on a lot of things. We came from different ways. But what impressed me about Bill was his willingness to listen, to absorb, to be fair, and to hear everybody out, and that is what I think we are asking for in a Federal judge.

I know that he has a deep adherence to the law and he will enforce the law as the law is written.

I join with Senator Simpson in saying I don't know any person that could sit on the bench that can relate to every citizen better than Bill can. I have seen him in a whole wide range of different settings, able to talk to a diversity of people and to understand and to feel, and that, I think, is one of the most important things you can bring to the bench.

Senator since I do know Bill longer, if I have one reservation about Bill, it is that he tried to play rugby about 3 years longer than any sensible human being should in law school, but even with that, he brought to it the traditional Bill Downes flair, which was he tried hard and went out and worked hard.

With that, I would thank the Chair for letting me offer this testimony and give my highest endorsement, also, to Bill Downes for Federal judge.

Senator DECONCINI. Thank you, Representative Wise.

Mr. Downes, we will return to you shortly.

Senator DECONCINI. We now will ask Judge Motz and Judge Parker to return, please, if they would. Will you both please remain standing?

Do you swear the testimony you are about to give the committee is the truth, the whole truth, and nothing but the truth, so help you God?

Judge MOTZ. I do.

Judge PARKER. I do.

Senator DECONCINI. Very good.

Judge Motz, we will start with you for any opening statement you care to make or any introductions you care to make.

**TESTIMONY OF DIANA G. MOTZ, BALTIMORE, MD, TO BE U.S.  
CIRCUIT JUDGE FOR THE FOURTH CIRCUIT**

Judge MOTZ. I wonder if I could introduce my family, Senator DeConcini.

Senator DECONCINI. Please.

Judge MOTZ. I am here today with my husband, Fred Motz.

Senator DECONCINI. Judge, we are very pleased to have you.

Judge MOTZ. And our daughter, Catherine, our son, Daniel, and my parents, Jane and Daniel Gribbon, who I asked to stand, but apparently they are too shy.

Senator DECONCINI. We thank them for being here. I know it is a very proud moment.

Judge MOTZ. I am also accompanied with veritably a busload of friends from Baltimore. It is not very far, but it is an hour away, and I am most appreciative of their support.

Senator DECONCINI. We thank them.

Judge MOTZ. I am just absolutely delighted and honored to be here, Senator. I have no opening statement.

Senator DECONCINI. Thank you, Judge.

Judge Parker, do you have any opening statement or any introductions?

**TESTIMONY OF ROBERT MANLEY PARKER, TYLER, TX, TO BE  
U.S. CIRCUIT JUDGE FOR THE FIFTH CIRCUIT**

Judge PARKER. Mr. Chairman, I have no opening statement.

With some trepidation, I point out to the Chair that there is a typographical error about my middle name. It should be "Manley" instead of "Henry." I only mention it to make sure you consider the right person. [Laughter.]

Senator DECONCINI. I don't know, with Mr. Brooks, maybe he is trying to get two judges on there, I don't know. [Laughter.]

**QUESTIONING BY SENATOR DE CONCINI**

Senator DECONCINI. Thank you very much.

Judge Motz, let me pursue some questions, if I can. One issue that is always of great concern to me is judicial temperament. You have been on the bench and you have demonstrated your acumen and your understanding of judicial temperament, I think, but I can't help but ask the question, and I will probably ask it to every nominee here, what do you do as a judge, particularly now as a Federal judge, if confirmed for a lifetime appointment, to maintain your level of balance so that there is not a feeling, either within yourself or expressed on the bench, that you are above those who appear before you?

Judge MOTZ. Mr. Chairman, I think you are absolutely right. Maybe it is as important as anything else. We talk about learning and we talk about experience, but judicial temperament is perhaps as important as any other quality for a judge.

What I have tried to do and what I hope I have done is to, of course, treat people fairly and courteously, but I think at least an equal dimension of a fair and good demeanor is to be prepared and to be intelligently prepared so that you can ask intelligent questions.

I was for a long time, as perhaps you were, Senator, a trial lawyer and argued a number of cases in the appellate courts of our State. Some of the most difficult appellate arguments were those in which the judges didn't give me any indication of where they were.

So I made a promise to myself when I took the job I have now that when I was on the court, that if I did have a difficulty with an advocate's position, I would ask them a question, not a berating question, but that I would try to let them know what my problem was so that they could make their case.

I think that is a fair part of judicial temperament.

Senator DECONCINI. What do you do now as judge, and I presume you will do the same thing as a circuit judge for the fourth circuit you do now, when you have an attorney who is overzealous or rambunctious or nonjudicial within the court? How do you approach that lawyer in front of his client and in front of the court?

Judge MOTZ. I try to get lawyers to answer my questions, and ask them to do that. I am not a believer in berating people in public, and I don't do it.

The problems with lawyers acting out, if you will, acting inappropriately, I think are much less in the Federal appellate courts and in the State appellate courts. You are much more likely to have a lawyer making a position for his client, I think, in a trial court, because the client is much more likely to be there, so that I haven't really had an occasion where someone has acted improperly in front of me.

Senator DECONCINI. Do you have any opinion, Judge Motz, on a process to monitor Federal judges' conduct and a procedure to be set up to handle complaints from the public or the bar toward Federal judges, such as a judicial tenure court?

Judge MOTZ. This is, of course, why the appointment process is so important, and I don't think I have to emphasize that to you or Senator Simpson. I think that once someone becomes a Federal judge, that this is a trust and it is lifetime tenure, and that is why you want to get the very best people there to begin with. It is difficult for the public to complain.

I would be in favor for making that as open as possible, because—

Senator DECONCINI. Do you think that there should be some process for—

Judge MOTZ. I do. Yes, I do, Mr. Chairman.

Senator DECONCINI. For at least registering complaints, valid or not valid?

Judge MOTZ. Yes, sir.

Senator DECONCINI. Thank you.

Judge Parker, the same to you, judicial temperament. I don't know your background on judicial temperament. I do know, however, your background on expediting and innovative procedures in your court, not only from your record, but also from Judge Bilbey in the Tucson District Court who has attempted to work on some comparable approaches. However, he has not received the nickname "The Rocket Docket," as I understand that you have, and I compliment you for innovative approaches that demonstrate that judges can really be involved in expediting and perfecting the proc-

ess, and not just looking to Congress for more judges and more courtrooms.

But referring to judicial temperament, how do you handle problem lawyers, or how do you handle your own ego, your own self-esteem, once you are on the court and know that almost nothing can extract you from that court? How do you handle that, sir?

Judge PARKER. Mr. Chairman, my definition of judicial temperament includes simple courtesy, preparation, and the ability to listen to lawyers. I have never had a lawyer misbehave in my court in 15 years, so it has not been a problem. I would hope that the atmosphere created has contributed to their demeanor.

Senator DECONCINI. Let me give you a hypothetical. What if one does misbehave? What is the action you would take immediately as a judge?

Judge PARKER. I would hope to reason with the lawyer, and am confident that that would be effective.

Senator DECONCINI. Thank you.

Judge Parker, to get on the record regarding some club memberships that you belong to, I understand you were a member of the Pinecrest Country Club of Longview, TX, from 1984 through 1987, and a nonresident member from 1989 through 1992.

The Judiciary Committee passed a resolution expressing the committee's sense that it is inappropriate for judicial nominees to be members of clubs where business is conducted and those clubs discriminate on the basis of race, sex, or religion in their membership policies.

What is your view of the Judiciary Committee's resolution, and for the record, I understand you do not belong to those clubs now, is that correct?

Judge PARKER. That is correct, Senator.

I completely agree with the resolution. I rejoined Pinecrest in 1984, having been a member some years before. I rejoined after satisfying myself that there was an attitude change at the club. I served 1 year on the board. I initiated a discussion on the board relative to minority membership. I was pleased to see that there was unanimous support for minority members in the event an application was received.

Senator DECONCINI. Did the club change its rules for admission?

Judge PARKER. The rules explicitly were race neutral all along.

Senator DECONCINI. There just were no minorities?

Judge PARKER. That is correct.

Senator DECONCINI. Have they accepted any minorities, to your knowledge?

Judge PARKER. Senator, I don't have up-to-date information. I have observed minorities in the eating facilities, on the golf course, and the few times I have been a guest in recent years, but I am not advised that there are minority members, but I don't know for sure.

Senator DECONCINI. Thank you, Judge Parker. I have no further questions.

Senator Simpson.

#### QUESTIONING BY SENATOR SIMPSON

Senator SIMPSON. Thank you, Mr. Chairman and judges.

Let me ask, Judge Motz, as a court of appeals judge now, a new role, in a sense, at least you have been, of course, an associate judge on the Maryland Court of Special Appeals, as a court of appeals judge, you would be bound to follow precedent laid down by the Supreme Court and by your own court, and you will, of course, be faced with cases of first impression.

What principles will guide you, or what methods will you employ in deciding cases of first impression?

Judge MOTZ. Senator, I think that cases of first impression are sometimes the most difficult cases to decide, because as judges, what we do is usually look for precedent, and there wouldn't be precedent there.

I would think that I would do what I do now when I face a case of first impression, which is to look for an analogous case that would be in the circuit or in the Supreme Court. For example, if you had a question about what kind of due process was due and what kind of hearing was due and you didn't have the precise fact situation decided in the fourth circuit, I would look to see what had been appropriate in an analogous situation, or I would look at out-of-circuit law, which might have decided a very similar situation in another circuit, for example, the ninth circuit or the tenth circuit.

Senator SIMPSON. And then, of course, draw on your own personal experiences in life and your training?

Judge MOTZ. Absolutely. You look at the library and you see all of these books and you think that every single issue must have been decided somewhere by some court, and, of course, that is not true. There are inevitably cases that have not been decided anywhere by any court. You go to the restatement, the American Law Institute's restatement that they put out. You go to treatises, see what the McCormick or something like that has to say about it. You go to law review articles. But ultimately, it is sort of what your judgment is, what your experience is, having read all of these things, of course.

Senator SIMPSON. We always ask here, regardless of which party is involved in the majority or the minority, these issues of judicial activism are always, I think, there. We try to guard against that from both sides of the aisle, as to placing people on the bench who are "judicial activists," so those questions are often posed.

I have reviewed your decisions in the past. I just had one question about one, and I would ask you, this was the case of *Brown v. Ashton*. You ruled basically that an ordinance imposing a curfew on juveniles infringed the "fundamental rights of those juveniles," because of the difference of adults and juveniles. You ruled that all the defendants were immune.

How would you respond to the thought that that might have been activist on your part, to reach out to decide a question that was ultimately unnecessary in the resolution of the case? That would be the only one I would ask you, because you were speaking of the vulnerability of children and their inability to make critical decisions and the importance of parental role, but curfews are usually imposed because the parental role has totally failed. In fact, it is a very dramatic thing. That ordinance might rather support rather than subvert the parental role and put some teeth in a parent's insistence of curfew.

How do you respond to that, in your own thoughts for me, please?

Judge MOTZ. Senator, I think you have accurately characterized the case. I am very impressed, frankly, with how much of the case you seem to really have mastered. It took me quite a while.

Senator SIMPSON. Don't believe it.

Judge MOTZ. I guess the issue there, I thought, was a difficult one.

Senator SIMPSON. Sure.

Judge MOTZ. The ordinance there, if you will remember, imposed a curfew on all those under the age of 18, so it seemed to me it wasn't just young children, 12-year-olds, it was fairly—and, in fact, the plaintiffs that brought the case were over 16 years of age.

The ordinance had been on the books—this was the city of Frederick up here, about an hour away from us—had been on the books of the city of Frederick for 12 years at the time it was enforced. It had never been enforced before. All of a sudden, when a minority organization got together and had some dances downtown and there were some teenagers around at night, there was a decision to enforce the ordinance.

The ordinance was enforced, as I say, for the first time after not having been enforced for 12 years, and it seemed to me, when you looked at the cases around the country, and as you will remember from that case, I didn't decide it in a vacuum. I tried to canvass the waterfront, and there were cases from all over the country.

Most of those cases said that when you had an ordinance of this sort, because it wasn't very specifically grounded for a specific situation or a very young group of children, you had that kind of ordinance, you were talking about fundamental rights. As you know, Senator, once you start talking about fundamental rights, when you put restrictions on those rights, you have a very difficult burden in justifying them.

I think I made clear in the case, and indeed, used an example of another Maryland case, if you had a different kind of curfew, for example, just a curfew over Labor Day weekend in Ocean City, Memorial Day weekend, a beach weekend where you had made a record that there might indeed be problems and you were not using this as some sort of subterfuge, that the ordinance might be fairly constitutional.

I hope that answers your question. I know it is a long answer.

Senator SIMPSON. No, it helps. No, that helps, indeed, because it gives me the knowledge that you will pursue those things on a case-by-case basis with common sense.

Judge MOTZ. Yes, sir.

Senator SIMPSON. I believe that, from everything I know. I just wanted to ask you about that because I was an old city attorney. I remember those curfew cases.

Judge MOTZ. I thought it was a difficult case, I did. I have to tell you that the court of appeals has been considering it for 2 years, so I am interested in hearing what they will say. We have a certiorari court above me.

Senator SIMPSON. Thank you very much.

Judge MOTZ. Thank you, sir.



Senator SIMPSON. Judge Parker, I was reviewing your materials prior to the hearing, and in your question in response to the committee questionnaire, the eternal question on judicial activism, your response gave me recollection of many Supreme Court nominees' response to questions on such issues as constitutional right to privacy, on matters of reproductive choice, and other issues which might require a nominee to disclose how he or she would decide on a particular issue.

I am pro-choice in my own personal life about the issue of reproductive rights and abortion, which, of course, with the nomination coming before us soon, I notice that groups on both sides apparently are going to exhaust themselves asking questions on that. I hope they do, on both sides, exhaust themselves and fall flat on their faces somewhere along the line so that we don't have to just spend days on that issue, which is such a deeply personal decision.

But nevertheless, I ask you, it seemed to me it was not quite a direct response on the issue of judicial activism. I think it is essential to the rule of law that judges not act politically.

Do we have your commitment that you will be deciding cases based on the law and the facts and not let political considerations influence your judgment?

Judge PARKER. Absolutely.

Senator SIMPSON. Without any qualification?

Judge PARKER. None.

Senator SIMPSON. As I say, that came only because I reviewed your answer about your record, containing opinions I am sure some would consider "activist" and opinions that some would criticize as exercising too much "judicial restraint." You found that in public life, which is what you are involved in, you have been accused of everything by now.

Judge PARKER. My definition of activism, Senator, involves one permitting political or personal agendas to creep into the decision-making process. I think it has no role in the decisionmaking process.

Senator SIMPSON. And personal bias?

Judge PARKER. Absolutely.

Senator SIMPSON. Thank you very much.

I thank you, Mr. Chairman.

Senator DECONCINI. Thank you.

Judge Motz, what do you do when your husband's opinion is on appeal?

Judge MOTZ. My husband is usually right, Senator. [Laughter.] He doesn't get appeal.

Senator DECONCINI. I am not going to ask any more questions after that one. [Laughter.]

Senator DECONCINI. Thank you.

Judge MOTZ. I would, of course, recuse myself.

Senator DECONCINI. That is what I wanted for the record.

Judge MOTZ. I won't be hearing any of his appeals, no sir.

Senator DECONCINI. Well, we know who wears the pants in that house now. [Laughter.]

Thank you very much, judge.

Judge MOTZ. Thank you.

Senator DECONCINI. Thank you, judge.

Judge PARKER. I thank the Chair and Senator Simpson.

Judge MOTZ. I do, too. Thank you both.

Senator DECONCINI. We will now ask for Mr. Downes, Mr. Friedman, Ms. Hood, Judge Paez, and Judge Urbina to all come forward, please. If you would remain standing and raise your right hand.

Do you solemnly swear the testimony you are about to give the committee is the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. DOWNES. I do.

Mr. FRIEDMAN. I do.

Judge HOOD. I do.

Judge PAEZ. I do.

Judge URBINA. I do.

#### QUESTIONING BY SENATOR DECONCINI

Senator DECONCINI. Please be seated.

I will pose questions here to all of you and start with Judge Urbina, but it will be the same question for all of you.

If confirmed to the district court, you very well may be faced with applying a court of appeals or a Supreme Court decision that has already been decided and affirmed, and it may be different than your personal view or perhaps your interpretation of what the law might be interpreted, if you were sitting on the court of appeals or the Supreme Court.

Would you personally have any difficulties, if you would each respond to this, in applying precedent established by circuit courts or the Supreme Court of the United States, even though the case is one with which you might personally disagree?

Judge Urbina.

Judge URBINA. Mr. Chairman, the answer to the question is no, and the reason for the answer is that it has always been my firm belief that the law must maintain continuity, predictability, and stability, and the only way to achieve those goals in the application of the law is to apply precedent.

Senator DECONCINI. Thank you.

Judge Paez.

Judge PAEZ. Senator DeConcini, if I am fortunate enough to be confirmed, I can assure you that I will have no difficulty in following established precedent in my circuit.

Senator DECONCINI. Judge Hood.

Judge HOOD. Mr. Chairman, I would also have no problem following the precedent of my circuit and that of the Supreme Court.

Senator DECONCINI. Mr. Friedman.

Mr. FRIEDMAN. Mr. Chairman, the judge I clerked for, R.B. Robinson, once told me that the district court judge has a lot less power than people think and the main reason is that he is bound by what Congress writes and he is bound by what the circuit has said and what the Supreme Court has said. I will have no problem applying the law.

Senator DECONCINI. Mr. Downes.

Mr. DOWNES. Mr. Chairman, the obligation of every Federal district judge is to follow judicial precedent, and I cannot conceive of a situation in which I would not do that, sir.

Senator DECONCINI. Thank you.

I apologize for not letting each of you make an opening statement, and make any introductions. I will go back to that right now.

Judge Urbina, do you have any statement you care to make or any introductions you care to make?

**TESTIMONY OF RICARDO M. URBINA, WASHINGTON, DC, TO BE  
U.S. DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA**

Judge URBINA. I have no opening statement, but I would like to acknowledge the presence of a number of people who have come to support me and have been supporting me.

Senator DECONCINI. Please do so.

Judge URBINA. Of course, first is my wife, Coreen Urbina, if she would stand, who is present, and also my son, who is in the back of the room, Ian Urbina. My mother is sitting beside him. She is in a wheelchair, but at 84, she gets around and is still the matriarch of the family. My good friend, Michael Gardner, is standing right behind my mother.

My law clerks, Ms. Von-Pervieux and Mr. Nuterangelo, are also standing in the back of the room. Also present here is Prof. Warner Lawson, a colleague of mine from my time on the Howard University Law School faculty. Chief Judge Eugene Hamilton, I believe, is here, the chief judge of my court, and the executive officer, Mr. Ulysses Hammond.

Also present is Judge Rufus King, a judge of my court, and also present is my trusty and valued courtroom clerk, Ms. Melody Hemby, who has taken time out of her day to come here and accompany me as well.

I am sure I am missing people who have come here to assist me in my hour of need, but those are the ones I can see.

Senator DECONCINI. All who support Judge Urbina, would you like to stand up, please? [Laughter.]

We welcome you here, and I know it is a very proud moment for all of you, particularly family.

Judge URBINA. May I add one more name? I see that Maria Hollerin Rivera, former president of the Hispanic Bar Association, has also come.

Senator DECONCINI. We welcome all of you and we thank you for being here.

Judge Paez.

**TESTIMONY OF RICHARD A. PAEZ, LOS ANGELES, CA, TO BE  
U.S. DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALI-  
FORNIA**

Judge PAEZ. Thank you, Senator DeConcini.

I know Senator Boxer already acknowledged my family, but I would like to do it again. My wife, Diane Erickson, is here with me today. She has been my confidant and companion for the past 21 years. My daughter, Lisa, who was up here earlier taking photographs, is with us. She is in the fourth grade. My son, David, who is checking in and out with us throughout this proceeding, is with my wife.

My mother, Paula Paez, was able to be here today. My father is here with me in spirit. He was unable to be here because of some health problems, but his good words and advice are with me today.

My sister, Daphne Giesecking, is here from Los Angeles, and her husband and my brother-in-law, Darrell Giesecking, is also here.

I also have a very good friend who is here, Mark Stienberg, and he was assisting us by letting David sleep on his shoulder just a few minutes ago.

Thank you.

Senator DECONCINI. Thank you. We welcome all of you here. We know it is a very proud moment.

Judge Hood.

**TESTIMONY OF DENISE PAGE HOOD, DETROIT, MI, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN**

Judge HOOD. Mr. Chairman, I thank you.

I would like to have my family stand. They are Rev. Nicholas Hood III—well, he can't, because my son, Noah, who is 7, is asleep on his lap; my son, Nathan Hood; my father and mother, Richard and Nancy Page from Columbus, OH; my sister, Teri Page, who is with them; my father-in-law and mother-in-law, Rev. Nicholas Hood, Sr., and his wife, Doris; his son, Stephen Hood; her son, Victor Chenault; my cousin, Joyce Penn, who came from Toronto where she is in a seminar.

I also have a lot of my family and my church family and friend family are here, and I am going to say their names real fast: David Grummett and his sister, Dorothy Grummett; Annett Sewell; Terri Conerway, my godson Henry Conerway, Garnet Conerway—

Senator DECONCINI. Please stand up.

Judge HOOD. They are not standing up, are they? Lullamae Lee; Charlene Revels is my secretary; Leroy Walton, who drove our bus from our church; Denise Goodrich and Harold Sullinger, who are my friends from junior high; Shirley Robinson Hall, who is from Washington; Bernice Powell Jackson, who is the executive director of the United Church of Christ Commission for Racial Justice; Eugene Chaires and his daughter and son-in-law, Bennell and Charles Mosby; Golden Britt; Joy Crawford; Gina Orton; Cris Dinwiddie; Doreen Mitchum; my cousin, Haron Battle; Rubin Tinday from the United Church of Christ; Shirley Stone, Emanuel Blow; Elizabeth Glover; William Robertson; June and Betty Jeffries, who were once of Detroit but are now of Washington; Curtis Scott, and I think that is all, although I would also like to claim Ulysses Hammond, who used to be in the State of Michigan.

I appreciate you indulging me.

Senator DECONCINI. Judge Hood, thank you. Do you run for office? [Laughter.]

Judge HOOD. Hopefully, if I am fortunate to be confirmed, I won't have to do that again.

Senator DECONCINI. We welcome all your friends and relatives here.

Mr. Friedman.

**TESTIMONY OF PAUL L. FRIEDMAN, WASHINGTON, DC, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA**

Mr. FRIEDMAN. My list is a little shorter, Mr. Chairman. Delegate Norton has already introduced my wife and my very best

friend, Liz. It is a happy day for us today because in addition to being here, it is our 19th wedding anniversary.

Senator DECONCINI. Congratulations.

Mr. FRIEDMAN. My secretary and strong right arm, Marissa Ahari, is here. My cousin's daughter, who has always been like a niece to us, Lisa Fine, is here. She is a legal assistant in a Washington law firm, and her father was best man at that wedding 19 years ago.

My very good friend, Rick Cys, he and I were sworn in together to the U.S. attorney's office on the very same day 24 years ago. His wife, Karen Cys, who went to college with Liz and who was maid of honor 19 years ago today, is here.

Several of my colleagues from White & Case, my partner, Carolyn Lamm; my partner, Jack McAvoy; my colleague, Anne Smith, who has worked with me on so many cases; former colleague Jim Hackney may be here. The president-elect of our bar, Pauline Schneider, said she would try to be here. Myles Lynk, who worked with me on the Civil Justice Reform Act, said he would try to be here. My friend, chief judge Eugene Hamilton, is here, and my friend Frank Nebokur, the Chief Judge of the Court of Veterans Appeals, was here a little earlier.

Thank you.

Senator DECONCINI. Thank you, Mr. Friedman.

Mr. Downes.

#### **TESTIMONY OF WILLIAM F. DOWNES, CASPER, WY, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF WYOMING**

Mr. DOWNES. Mr. Chairman, thank you. I only have a few people here, but they are very dear to me. My wife, Cathy, who was introduced to you earlier. My daughters, Jill and Dawn, are 21 years old. They are in Wyoming and couldn't come here today. My son, Ryan, is running in a track meet today in Casper, and that took precedence, Mr. Chairman, in his mind, at least.

I would like to introduce also my brother, Bob. Bob is a retired Army lieutenant colonel, and until last year was on the staff of the Chairman of the Joint Chiefs and served with distinction there and with the Army for 23 years. Also, a good friend of mine, Scott Ferris. Scott is administrative assistant to Gov. Mike Sullivan of Wyoming.

Senator DECONCINI. Thank you, Mr. Downes.

Now, proceeding back to the questions, my apologies for jumping the gun there.

As you witnessed, I am very interested in the issue of judicial temperament, as many of us on the committee are, and I think in this body. We have a responsibility to advise and to consent and to confirm or not confirm. We only have you before us on one occasion, and that is going to be for the next 5 or 10 or 20 minutes.

I would like to know from each of you, given your unique background, three of you having been on the bench before and two practicing lawyers, and some of you practicing lawyers before going on the bench, I would appreciate your thoughts on the significance of what judicial temperament means to you and which elements of this temperament you consider to be the most important in your job that you have been nominated to.

We will start with you, Judge Urbina.

Judge URBINA. Mr. Chairman, judicial temperament is something I have paid a lot of attention to over the course of my tenure as a superior court judge for the last 13 years. I have found not only is it an important ingredient to me internally, in terms of being able to function in an objective, calm, and centered fashion, but just as important is the fact that judicial temperament—appropriate judicial temperament—creates an environment in the courtroom, an environment of respect and an environment of calm and one in which deliberation can take place in an appropriate fashion.

What I do along those lines, Mr. Chairman and Senator Simpson, is that I make sure that I address every party that comes before the court, whether that party is represented by counsel or whether the party is not. I say good morning or good afternoon or whatever the case may be. I make sure I maintain eye contact, but most importantly, I make sure that the parties, as well as the lawyers who represent them, understand and know that I am listening to them.

I recall that as a lawyer, at times, one of the most frustrating parts of being an attorney was having a judge who I was not convinced had listened to me. Losing or not prevailing, I think, is a much more tolerable experience if you can be assured that you have a judge that has listened to you.

Senator DECONCINI. Thank you.

Judge Paez.

Judge PAEZ. Senator DeConcini, I come from a large metropolitan court. Over the years, I have had to deal with both pro se litigants and lawyers as well, and I have learned, one of the things that has served me well, is patience, being patient and respectful to those who appear in front of me, to be prepared, and to be courteous to all the litigants and the lawyers that appear in front of me.

I value those items very much, and I will try and continue to carry them forward with me when I move to the Federal bench, if I move to the Federal bench.

Senator DECONCINI. As a Federal judge—I just ask this of you because I don't know that any of you will comment on it or not, you can if you like, and I may ask you specifically, but as a Federal judge, let us say you are confirmed, you now have a lifetime appointment. How do you keep a level head? How do you keep from thinking that, what you say here goes and there is nobody who can do anything about it unless you break the law or do something where the ninth circuit—you are in the ninth circuit—might take some disciplinary action?

Judge PAEZ. Senator, I have always tried to view my role as a judge. I have always been very respectful for my role as a judge. I personally don't take myself too serious in the way I deal with people. I always try to be respectful and acknowledge the role and the importance that each person has in the courtroom.

That has served me well, and I think that I will try my very best to carry that forward if and when I make it to the Federal bench.

Senator DECONCINI. Thank you, Judge.

Judge Hood.

Judge HOOD. I think judicial temperament is very important, too, and I would agree with all the things, courtesy, manners, knowledge of the law, preparedness.

I also try to remember, though, that even though I am sitting at the bench and hear cases day in and day out, that for the people that are out there on the other side of the bar, this may be the only time they come to court. I may be the only judge they see, and what they think about all the rest of the judges in my community is by what I do there and how I treat people, including the lawyers, the litigants, the witnesses, and on down to the—well, not down to, but up to, probably—the jurors and the staff people.

If you keep that in mind, I think you will remember that you need to have all the things that we have said here today and treat people fairly and equally when they come in your courtroom.

Senator DECONCINI. Mr. Friedman, can you respond, please?

Mr. FRIEDMAN. Yes, Mr. Chairman. I have been before a lot of judges in my time and I have seen people with different kinds of temperament. I think that courtesy, patience, listening to all sides, treating people fairly and decently, appearing to treat people fairly as well as actually doing so, communicating with people.

I had occasion recently to be called for jury duty. I was not selected, but I spent 2 days going from courtroom to courtroom being stricken from juries because I had been both a prosecutor and a defense lawyer, and I watched how different judges dealt with juries.

To pick up on what both Judge Hood and Judge Urbina have said, I saw some judges really look each juror in the eye and communicate with the jurors and explain to them the importance of the system and use real English, not legalese, and make the jurors, as well as witnesses, who come into that courtroom realize that they are important and that the system is important and that they are an important part of it.

I would try to do that, and I think that based upon what I have done as a lawyer, the way I have treated people, that I am capable of doing that and that I will do it.

Senator DECONCINI. Mr. Downes.

Mr. DOWNES. Mr. Chairman, I was fortunate when I started my practice in Wyoming to practice before the Honorable Ewing T. Kerr, who, ironically now, the Federal courthouse in which I may serve, if you see fit, is named.

I think Senator Simpson would attest to the fact that all of us who have practiced in Wyoming and who aspire to be judges were mentored by a truly great man who died last year at the age of 93. The hallmark of this man, and I would hope the hallmark of my tenure as a judge, was his compassion and his decency, his thorough decency toward people. No one that I know of who ever went into his court thought that they were given short shrift or treated with disrespect or discourtesy.

I think that is a hallmark of any Federal judge, and if I can live up to the legacy that Judge Kerr left for Judge Johnson and Judge Brimmer and now me, it would be what I aspire to.

Senator DECONCINI. Mr. Downes, just hypothetically, or not hypothetically, in reality, almost, you are going to be confirmed, I think, and now you are a judge. You are sitting there with a lifetime appointment. Someone comes before you that you never liked

in the bar and you thought may have been taking the wrong position, as well as maybe, in your judgment, not conducting himself properly.

How do you discipline yourself to be just what you said you intend to be, following this mentor?

Mr. DOWNES. That training for me started many years ago with my mom and dad. My mom is in a nursing home in Massachusetts today, and my father has passed away, but they taught me tolerance. I think I have learned that it is important to have that tolerance. I have tried not to be judgmental as a lawyer. I have tried to stand back and be perceptive.

I think that is important, that I would undertake to conduct myself in that fashion as a Federal judge. I know it is essential that I do that, and I would have to put aside my own feelings about personalities to make sure that I did my job appropriately.

Senator DECONCINI. Thank you.

Let me also address each of you a question that Senator Simpson asked in the last round. I don't want to take any of his questions, but that deals with judicial activism from the court.

I would appreciate the benefits of your views as to what is judicial activism and what is legislating from the bench, in your opinion, and what do you think, if any, is the proper way to conduct yourself, presuming you do not support that?

Judge Urbina.

Judge URBINA. Yes, Mr. Chairman, your presumption is correct. Judicial activism, as I understand it, is an attitude that impels a judge to have a result-oriented approach toward the litigation, toward the controversy that is before him or her. That is to say that the judge may take a view before the trial begins or while the trial is still in progress and then attempt to have that view become the outcome of the case.

That, in my view, is inappropriate. What dictates the outcome of the case in every case is the evidence and the law. A judge should discipline him or herself in the appropriate fashion, which is to eliminate the biases, the prejudices, or the other predispositions that may conflict with that judge's ability to view the law, make fair applications of it, and, when appropriate, find the facts and find them in a neutral, objective, and appropriate fashion.

In that fashion and in that way, I believe judicial activism is eliminated and the true purpose of a judge is accomplished.

Senator DECONCINI. Thank you.

Judge Paez.

Judge PAEZ. Senator DeConcini, I share your views on judicial activism. I also would like to echo what Judge Parker said, which was his view of judicial activism was a personal agenda or personal bias that one might have.

Each case that I have decided over the years, I have always tried to decide on the merits, on the facts, and on the law. If I am confirmed as a Federal district court judge, I will approach each case the same way. I have no agenda, no biases that I have that I am aware of, and each case will be handled on the merits, on the law and commonsense.

Senator DECONCINI. Thank you.

Judge Hood.



Judge HOOD. I agree with both of what I hope will be my colleagues, if we are all so fortunate to be confirmed.

I think judicial activism is also deciding something beyond what the case requires you to decide, to resolve it on the merits of the case and the law that applies to those facts. I agree that there is a limit to what the judge should do in any case, and what the judge should do is to follow the law and apply that law to the facts. If you do that, which is what we every day tell our jurors to do, you won't be involved in that kind of activity.

Senator DECONCINI. Mr. Friedman.

Mr. FRIEDMAN. Mr. Chairman, I agree with all that has been said by my three colleagues, all of whom have been judges.

I think the role of the judge is to apply the law, to interpret the law when it is not clear, but to look for the clarity in the statute, if it is there, to follow the precedents, if they are there. It is not the job of the judge to legislate or to make policy or to try to achieve a certain result. The result ought to be dictated by the facts found by the judge or by the jury and by the law as it is written by the legislature or by the precedents of the higher courts.

Senator DECONCINI. Thank you.

In some instances, Mr. Friedman, the Congress has actually directed the court to be a legislative body by laws where they, in my State of Arizona, directed the district court there to divide two Indian reservations. How do you address that, if that is the mandate?

Mr. FRIEDMAN. I think that a judge has to follow the law, and if the law is to act in a way that is not normally the judicial process but quasi-judicial or almost legislative, if that is what the Congress were to tell a Federal district judge, I guess that is what would have to be.

There was a time in the District of Columbia when the Federal district judges chose the school board. Now that may not have made much sense, but that was the law.

Senator DECONCINI. That was the law, thank you.

Mr. Downes.

Mr. DOWNES. I agree with my colleagues here at the witness table, Mr. Chairman. Any trial lawyer who has been the victim of judicial activism, the sting stays long after the event. I have had that experience. I have walked into a courtroom and I have known that that judge had his mind made up before I could ever get a word out of my mouth.

I would hope that, having had the benefit of that experience, I will never victimize anybody else in that fashion.

Senator DECONCINI. Thank you.

Senator Simpson, let me insert in the record at this moment a letter from the Governor of your fine State, Mike Sullivan, in support of Mr. Downes.

[The letter from Governor Sullivan follows:]

STATE OF WYOMING,  
OFFICE OF THE GOVERNOR,  
Cheyenne, WY, May 25, 1994.

Hon. JOSEPH R. BIDEN, Jr.,  
Chairman, U.S. Senate Judiciary Committee, Washington, DC.

DEAR SENATOR BIDEN: We are sorry our schedules do not permit us to testify in person this afternoon as your committee takes up the nomination of William F.

Downes as U.S. District judge for Wyoming, but we hope you will incorporate this letter into the record.

It is with great pleasure that we offer our wholehearted and enthusiastic support for Mr. Downes and urge the members of your committee to recommend Mr. Downes for confirmation by the Senate.

We were proud to recommend Bill's name to President Clinton, for we truly believe he has the legal abilities and judicial temperament to be recognized as one of the President's most outstanding judicial appointments.

We are equally proud to recommend Bill Downes to this committee today. Bill is regarded with high esteem in Wyoming's legal community and is widely admired for both his intellect and his integrity—even by those who disagree with him on certain issues.

We believe that Bill Downes will uphold the law of the land in all areas before the court and apply that law with fairness, wisdom and common sense. We look forward to his service to the people of the United States in the federal judiciary.

With best regards, we are

Very truly yours,

MIKE SULLIVAN,  
*Governor.*

KATHY KARPAN,  
*Secretary of State.*

Senator DECONCINI. Senator Simpson.

#### QUESTIONING BY SENATOR SIMPSON

Senator SIMPSON. Mr. Chairman, I thank you.

I have just a few questions, in no particular order.

Mr. Friedman, I might ask, as a district court judge, you, of course, would be bound to follow precedent laid down by the Supreme Court and the court of appeals on which you sit. You, too, will be faced with cases of first impression. What principles would guide you, or what methods would you employ in deciding cases of first impression?

Mr. FRIEDMAN. I think you do begin with precedents, even if they are not directly on point. Hopefully, there are some that provide guidance, that provide analogies. In the due process area, for example, there may not be a case that talks about what processes do in a particular factual context but one that seems so close that the Supreme Court has spoken to or the circuit has spoken to that you could try to apply that same logic.

If your own court of appeals hasn't spoken, obviously you look to other courts of appeals or the persuasive authority of other district courts. One ought not to try to divine the result out of whole cloth, but rather to look to if the legislature has spoken or if other courts have spoken.

In the end, I guess I agree with what Judge Motz said earlier, that if it is truly first impression, after you have done all the reading and all of the thinking you can do, then you bring to bear in the context of the teachings that exist your best judgment, and judges do bring judgment to their jobs, I would hope.

Senator SIMPSON. I might note, Judge Urbina, I was very impressed with your remarks about listening, and yours, Judge Paez, about patience. I think those are very important. I know that Senator DeConcini and I have both practiced law in the real world. I was always appalled at some judges who just were sitting, looking right through you with a 2,000-mile stare. You know the kind, don't you? It was not Judge Kerr of Wyoming, I can tell you, who

was a magnificent, masterful man, who listened and was patient and took the cases into his heart.

That is very important to me, to listen, because I think it is the same in politics. I would never vote for a person who looked like he never was listening to what was being said. Sometimes people plead with us and think, are they paying attention to us, and that is why there is so much discord in the country with politicians. They think we don't listen, but we do, some to greater degrees than others, obviously with you in your experience.

Obviously, you would have to follow Supreme Court precedent faithfully and give it full faith and force, and you would do that even if you personally disagreed with that precedent, would you?

Judge URBINA. Yes, sir.

Senator SIMPSON. Are you committed to following the law of the circuit in which you would sit?

Judge URBINA. I am so committed, Senator Simpson.

Senator SIMPSON. What would you do if what the Constitution and what the laws require conflicts with what you think the law ought to be?

Judge URBINA. My function as a judge is to follow precedent, not to follow my personal inclinations in the resolution of disputes that come before me.

Senator SIMPSON. Judge Hood, are you also committed to following the precedent of the Supreme Court and the court in which you would sit, the appeals court, giving it full force even if you personally disagreed strongly with that precedent?

Judge HOOD. Yes, Senator Simpson.

Senator SIMPSON. You could do that?

Judge HOOD. I would do that.

Senator SIMPSON. If the constitutional laws conflict with what you think the law ought to be, you would carry out what the Constitution and the laws require?

Judge HOOD. Yes, I would.

Senator SIMPSON. One of the things that has come up through the years in the committee, and I am going to ask it of Mr. Downes, too, with regard to clubs, I note that there are various clubs listed with all of you.

Are any of these clubs discriminatory by gender or by race, these various clubs? I see women's clubs and black judges' clubs. This comes up on a regular basis, at least such a regular basis we even did a resolution on it once. In fact, they even said the Masons were racist, so I had to retool my thinking on that, but that wouldn't be the first time.

Do any of the clubs that you mention here, any of you, are they discriminatory in any way?

Judge URBINA. I would start, since I am first in line, and the answer is no, none of the clubs I belong to are discriminatory in any fashion that I am aware of.

Judge PAEZ. Senator Simpson, I have never belonged to any clubs. I am a member of a few bar associations, and none of them are discriminatory in any manner, in any way.

Judge HOOD. None of the organizations or clubs that I belong to discriminate, either.

Senator SIMPSON. By gender?

Judge HOOD. No. I do belong to a club that is a mothers' club, but I am sure that we would welcome any father who wanted to belong. [Laughter.]

Senator SIMPSON. That is what the League of Women Voters did, too, years ago, and that is all right with me. But there are no women-only clubs that you belong to?

Judge HOOD. There are none that discriminate against men. There are some in which there are only women members, but not because they discriminate against men.

Senator SIMPSON. See, that is the funny part about all of that. People choose to associate, and I have sat here for 15 years and watched men's clubs receive criticism and women's clubs receive criticism just because they chose to associate, and that is what you are saying you do.

Judge HOOD. As I said, I am sure if a father came through and wanted to be a member, we would be happy to have him. The nature of the organization that I am referring to is that it is a group of women who do activities for their children and other children, kind of a community service group and also a service to our own children.

We haven't had a circumstance yet where there were some children in the club, which is really for them, who, for some unfortunate reason, no longer had a mother. I think in that instance, we would very much welcome their father to participate. Really, in the scheme of things, it is a club for families. We encourage the fathers to go on the outings that are planned for the children.

Senator SIMPSON. We have been in so many of those with regard to the issue of invidious discrimination, which is much different than sometimes innocent association, and we have to deal with that regularly. It is an appalling exercise.

Judge HOOD. I don't think any of these are clubs that discriminate against the men.

You mentioned a black judges' association. I was the president of it once, and it also had some non-African-American members, including at least one Hispanic and one Caucasian, at least, that I am aware of at the time I was president.

Senator SIMPSON. Judge Friedman.

Mr. FRIEDMAN. Mr. Friedman. If I am lucky enough, it will be Judge Friedman. [Laughter.]

Senator SIMPSON. They are all judges. Keep going. We accept you and Bill. We may catch you up.

Mr. FRIEDMAN. Senator, in response to your question, I do not belong to any clubs that discriminate in any way. I have consistently declined membership in clubs that discriminate.

With respect to bar associations, I have the same answer. In fact, I am a member, among others, and have been for a long time, of the Women's Bar Association of the District of Columbia, and as Judge Urbina knows, of the Hispanic Bar Association of the District of Columbia.

Senator SIMPSON. Bill, go ahead.

Mr. DOWNES. Senator Simpson, I wouldn't mind if you wanted to call me "Judge." [Laughter.]

I am a member of a number of clubs, none of whom now engage in invidious discrimination. One of the clubs of which I am a mem-

ber did have discriminatory policies with respect to women. I played, I think, an instrumental role in changing that policy so that women have full voting rights and tee times, and if you are a golfer, Senator, you know that that is almost more important than voting rights. That club has bylaws now which give women equal access to all facilities and voting rights.

Senator SIMPSON. Indeed, I think that was just recently out here in this part of the country, something about women were finally granted tee times in a certain club here in this area, so we were obviously way ahead of them in Wyoming, the Equality State, the first State to give women the right to vote in the Western World. We must add that. Did you know that, in 1869?

Senator DECONCINI. And the first State to give women's tee times, too? [Laughter.]

Senator SIMPSON. I think that was Arizona, that did that.

I think Senator DeConcini really touches on one which is very real, that we have seen, not a great many, but in all administrations, all philosophies, certain judges who with lifetime prowess on the bench, much like professors sometimes who confuse tenure with divinity, and they get on the bench and they say, here I am for life. So what?

It is very difficult, and it is anguishing for us to go through impeachment. It is tedious and terrible. None of us enjoy that, and so difficult.

If you were to come to the bench and have this lifetime appointment, you intend to remain with the same attributes of sensitivity and humanness that you have demonstrated to us here today, is that correct?

Judge URBINA. Yes.

Judge PAEZ. Yes.

Judge HOOD. Yes.

Mr. FRIEDMAN. Yes.

Mr. DOWNES. Yes.

Senator SIMPSON. Forever and ever? Get your hand up again. [Laughter.]

I think those attributes of patience and listening and tolerance will get you far. I think that is really the extent of my questions.

I will just ask Mr. Downes, you are going to preside over a very mixed bag of trials, from civil to criminal, and your greatest part of your legal experience was in the area of civil law and an ace litigator. Do you feel prepared to preside over criminal cases and all the rest of the array of litigation?

Mr. DOWNES. It has been a while. I did some prosecution for the Marine Corps and I did some in my earlier days as a lawyer in Green River, WY, but I admit to you, Senator, that my skills as a person knowledgeable in criminal law is somewhat wanting. I intend to rectify that, and, in fact, have already talked to the chief judge of my district, Judge Johnson and Judge Brimmer. I have also been given some good advice by Judge Battey of Rapid City and also our appellate court judges. I am going to take full advantage of what the administrative offices of the U.S. courts offer with respect to education.

I am hopeful that I can tell you honestly that I will be fully prepared to discharge my duties in a criminal arena as well as I can, I think, in the civil arena.

Senator SIMPSON. You feel that you will be exercising judicial temperament and not engaging in judicial activism?

Mr. DOWNES. I think I have already addressed that issue of judicial activism. Personally, I find that offensive.

With respect to temperament, I think, Senator, most of my colleagues, including significantly, for me, at least, significantly, most of the lawyers who have opposed me in a courtroom have come forward to support my nomination. I have tried, as a lawyer, never to use my law license as a license to abuse any human being. If I can fulfill that responsibility as a lawyer, I hope to be able to do that as a judge.

Senator SIMPSON. Mr. Chairman, this is an impressive group. You and I have done many of these together over the years.

Finally, one of the things, of course, that confronts us in the country in all Federal courts is this difficulty in keeping up with the workload. Backlogs and delay have become the hallmarks of the legal system in many courts. I hope that you feel your work habits are of such that you are ready to attack that problem and ensure that justice is not delayed for these people who wait, and there are many in this country, because of delays through the last administration and this administration for various reasons.

You are ready to attack that problem, are you?

Judge URBINA. Yes.

Judge PAEZ. Yes.

Judge HOOD. Yes.

Mr. FRIEDMAN. Yes.

Mr. DOWNES. Yes.

Senator SIMPSON. Thank you, Mr. Chairman.

Senator DECONCINI. Thank you, Senator Simpson.

Judges and lawyers, thank you for your testimony. You have been most forthcoming, and this Senator appreciates that. Your true responses, at least my interpretation of them, is extremely helpful in our deliberations. We thank you and compliment you on the fine records that you bring with you before this committee for consideration for confirmation.

The committee will stand in recess, subject to the call of the Chair.

[Whereupon, at 4:11 p.m., the committee adjourned, subject to the call of the Chair.]

[Submissions for the record follow:]

## SUBMISSIONS FOR THE RECORD

UNITED STATES SENATE

## I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (including any former names used.)  
Diana Gribbon Motz, nee Diana Jane Gribbon.
  
2. Address: List current place of residence and office address(es).  
  

|                           |                           |
|---------------------------|---------------------------|
| 626 B Courthouse East     | 123 St. Dunstan's Road    |
| 111 N. Calvert Street     | Baltimore, Maryland 21212 |
| Baltimore, Maryland 21202 |                           |
  
3. Date and place of birth.  
July 15, 1943. Washington, D.C.
  
4. Marital Status (including maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).  
  

|         |                                    |
|---------|------------------------------------|
| Spouse: | John Frederick Motz                |
|         | United States District Court Judge |
|         | District of Maryland               |
|         | 101 Lombard Street                 |
|         | Baltimore, Maryland 21201          |

|           |               |
|-----------|---------------|
| Employer: | United States |
|-----------|---------------|
  
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.  
  
Vassar College, 1961-1965; B.A. in 1965.  
  
University of Virginia Law School, 1965-1968; J.D. in 1968.
  
6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Summer 1965 United States Justice Department,  
 Civil Rights Division, intern

Summer 1967 Carter Ledyard & Milburn (law firm), summer  
 associate

1968-1971 Piper & Marbury (law firm), associate

1971-1976 YWCA of Greater Baltimore (non-profit), Board  
 of Directors

1974-1976 Junior League of Baltimore (non-profit), Board  
 of Directors

1971-1985 Maryland Attorney General's Office, Assistant  
 Attorney General

1975-1991 Union Memorial Hospital (non-profit), Board of  
 Directors

1976-1978 Guilford Association (non-profit neighborhood  
 association), Board of Directors

1980-1984 Maryland Hospital Laundry, Inc. (non-  
 profit adjunct to a number of Maryland  
 hospitals), Board of Directors, 1980-84;  
 President, 1983-1984.

1986-1991 Frank, Bernstein, Conaway & Goldman, partner

1986 Fraskop Partnership (less than 1% ownership of  
 portion of law offices building,  
 law firm defunct)

1986 American Bar Foundation (non-profit), Fellow

1986 American Law Institute (non-profit), Fellow

1987-1991 Legal Mutual Society (non-profit), Board of  
 Directors

1987-1988 Wranglers Law Club (non-profit), President

1988 Maryland Bar Foundation (non-profit), Board of  
 Directors

1991-present State of Maryland, Judiciary, Associate Judge,  
 Court of Special Appeals

1993 Young Victorian Theatre, Inc. (non-profit),  
 Board of Directors

1993 Johns Hopkins Hospital (non-profit), Board of  
 Directors



7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Federal Courts Study Committee, 1988-1990

I was appointed by Chief Justice Rehnquist to a 15 member committee created by Congress to make recommendations as to the future and jurisdiction of the federal courts. The Committee was composed of two Senators, two Congressmen, five federal judges, the Chief Justice of the Supreme Court of Washington, a former solicitor general, the Chief of the Criminal Division of the United States Department of Justice, the Chief of a State Public Defender Program, a former president of the American Bar Association, and me. After fifteen months of study, including thirteen public hearings all over the United States - i.e., from Boston to Salt Lake City to Seattle to Atlanta - the Committee issued a 200-page report containing more than 100 recommendations. Some of those recommendations have now been incorporated in proposed federal legislation.

American Law Institute

Fellow, American Bar Foundation

Fellow, Maryland Bar Foundation

Who's Who in American Law

Who's Who of American Women

Graduated from Vassar College, cum laude, and from the University of Virginia Law School with honors

Editorial Board of University of Virginia Law Review, 1967-1968.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

American Law Institute, 1986 -

- American Bar Foundation, 1986 -
- Maryland Bar Foundation, 1988 -
- American Bar Association, 1969 -
- Maryland Bar Association, 1969 -  
     Chairman, Appellate Practice Committee, 1993 -  
     and 1982-1984  
     Member, Litigation Council, 1986-1991
- Bar Association of Baltimore City, 1969 -
- Women's Bar Association of Maryland, 1990 -
- Member, Maryland Judicial Conference, Executive  
     Committee, 1992 -
- Panelist, State of Maryland Judicial Conference  
     May, 1992 (Moderated and participated in a program on  
     Sanctions under Md. Rule 1-341.)
- Member, Program Committee for Fourth Circuit Judicial  
     Conference, 1985-1991
- Panelist, Judicial Conference of the United States Court  
     of Appeals for the Fourth Circuit, June, 1990  
     "Federal Courts Study Committee" (Panel discussion  
     of the Committee's recommendations)
- Panelist, Judicial Conference of the United States Court  
     of Appeals for the Fifth Circuit, May, 1990,  
     "Federal Courts Study Committee" (Panel discussion  
     of the Committee's recommendations)
- Panelist, Judicial Conference of the United States Court  
     of Appeals for the Fourth Circuit, June, 1983, "Attorneys  
     ees as an Item of Expense." (My portion dealt with some  
     proposals as to § 1988 fees).

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

The only organizations to which I belong that have ever lobbied are the American Bar Association and the Johns Hopkins Hospital; I have never participated in any lobbying efforts.

- Johns Hopkins Hospital  
     Board of Directors, 1993 -
- Young Victorian Theatre  
     Board of Directors, 1993 -

Task Force on the Feasibility of Future Consolidation of State  
Psychiatric Hospitals, 1993 -

Round Table Law Club, 1986 -

Wranglers Law Club, 1982 -  
Pooh-Bah (President) 1987

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

|  |   |      |
|--|---|------|
| The Supreme Court of the United States                       | - | 1980 |
| United States Court of Appeals for the<br>Fourth Circuit     | - | 1973 |
| United States District Court for the<br>District of Maryland | - | 1969 |
| Court of Appeals of Maryland                                 | - | 1969 |

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

I have contributed to various continuing legal education outlines on administrative law, media access to the courts, motions practice, appellate practice, federal, and state injunctive practice. These were not published. A representative list of seminars for which these outlines were prepared is set forth in answer to question 31.

The only article that I have published since law school is: Motz and Baida, "The Due Process Rights of Post Judgment Debtors and Child Support Obligor," 45 Md. Law Rev. 61 (1986), which I co-wrote with Andrew Baida. A copy of that article is attached. I have also attached a short essay I recently wrote at the request of Paul Mark Sandler and Andrew Levy, who are editing a book on appellate practice. My understanding is that the book will be published within the year and that my essay, titled "Appellate Argument" will be included in the book.

Finally, I often give speeches to bar groups, law students, women's groups, etc. but inevitably those speeches are designed to educate (discussion of appellate practice, statutory construction, motion's practice, administrative procedure act, etc.) or entertain (anecdotes) or to encourage public service. I generally speak extemporaneously or from notes, which I do not retain. These speeches do not involve constitutional law or "legal policy" in the sense that it is used here. To my knowledge, there has never been any press report of any of my speeches.

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent. December, 1993.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I presently serve as an Associate Judge, Court of Special Appeals of Maryland; it is the only judicial office I have ever held. I was appointed by the Governor in May, 1991, after being recommended by a Judicial Nominating Commission; I was "retained" by the voters in the 1992 General Election. The Court of Special Appeals is the state's intermediate appellate court. We hear all appeals - civil and criminal - from the trial courts of general jurisdiction, except cases in which the death penalty has been imposed, certain election law cases, and certain appeals from orders of a court in a savings and loan conservatorship. We also can, but need not, hear i.e., exercise a kind of certiorari jurisdiction over, cases originating in the Maryland District Courts (trial courts of limited jurisdiction), which already have been appealed to a circuit court (trial court of general jurisdiction). Approximately 2,000 appeals are filed with us each year. Some appeals are dismissed, some are consolidated, and some are settled, so that each of the thirteen judges writes approximately 120 opinions a year.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings

on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

a. Citations for the ten most significant opinions that I have written are as follows:

1. O'Hara v. Kovens, 92 Md. 9, 606 A.2d 286, cert. denied, 328 Md. 93 (1992), cert. denied, \_\_\_ U.S. \_\_\_, 113 S.Ct. 1282 (1993).
2. Brown v. Ashton, 93 Md. App. 25, 611 A.2d 599, cert. granted, 328 Md. 462 (1992).
3. Board of School Commissioners v. James, 96 Md. App. 401, 625 A.2d 361, cert. denied, 332 Md. 381 (1993).
4. Keene Corp. v. Hall, 96 Md. App. 644, 626 A.2d 997 (1993).
5. Stevenson v. State, 94 Md. App. 715, 619 A.2d 155 (1993).
6. Mattingly v. Mattingly, 92 Md. App. 248, 607 A.2d 575 (1992).
7. Parker v. Columbia Bank, 91 Md. App. 346, 604 A.2d 521, cert. denied, 327 Md. 524 (1992).
8. Allen v. State, 89 Md. App. 25, 597 A.2d 489 (1991), cert. denied, 325 Md. 396 (1992).
9. Fowler v. Printers II, Inc., 89 Md. App. 448, 598 A.2d 794 (1991), cert. denied, 325 Md. 619 (1992).
10. Esslinger v. Baltimore City, 95 Md. App. 607, 622 A.2d 774, cert. denied, 331 Md. 479 (1993).

b. I am not aware of any case in which I have been affirmed in which my substantive or procedural rulings were criticized. Those cases in which my opinions have been reversed or vacated are as follows:

1. Coe v. Hayes, 328 Md. 350, 614 A.2d 576 (1992), vacating Hayes v. Coe, 88 Md. App. 491, 595 A.2d 484 (1991). The case raised the question of whether equitable conversion could be applied to proceeds from the sale of real estate, which a decedent contracted to sell before this death, but which was not sold until after his death. The trial court held the doctrine of equitable conversion was not applicable. Our court, in my opinion, held it was and reversed. The Court of Appeals agreed that the doctrine was applicable, but

concluded it was unclear, on this record, whether the doctrine should be applied because it was unclear whether the decedent had entered into a specifically enforceable contract to sell the property before his death. Accordingly, the Court of Appeals vacated our judgment and remanded to the circuit court for further findings.

2. Nolt v. USF&G, 329 Md. 51, 617 A.2d 578 (1993), reversing, USF&G v. United States Fire Co., 90 Md. App. 327, 600 A.2d 1178 (1992). Two insurance companies battled to determine which was responsible for coverage for damages arising from an accident caused by a truck driver, who regularly drove for an interstate carrier, insured by one company, but, who, on the day of the accident, was driving for an interstate carrier, insured by the other company. The trial court concluded both insurers were equally liable. Our court reversed. In my opinion, I reasoned that it was undisputed that at the time of the accident the driver was operating under the bill of lading for Shirk, hauling cargo for Shirk, pursuant to Shirk's instruction, and that there was simply no evidence that the driver was in any way acting on behalf of the other carrier, Summers. I followed federal precedent and concluded that in such circumstances, the insurer of the carrier whose ICC authority was implicated, *i.e.*, Shirk's insurer, was the primary insurer. The Court of Appeals did not disagree with my conclusions as to the facts, or my reading of federal precedent, but decided that it would not follow the federal precedent because it led to an "uncertain" result. Rather, it held that since both insurers provided primary coverage to their respective insureds, they must equally share liability.

3. Harris v. State, 331 Md. 137, 626 A.2d (1993), reversing, Rich v. State, 93 Md. App. 142 (1992), vacating and remanding, Jones v. State (unreported) (copy attached). In Harris, the Court of Appeals rejected most federal precedent to hold that "use" in a State statute making it a crime for a person to use a firearm during, and in relation to, a drug trafficking crime means more than possession of a firearm. In Rich, written by another judge on my Court, we had held, relying on the federal precedent, to the contrary. In an unreported opinion, Jones v. State, I authored, we relied on Rich; Jones was vacated and remanded for reconsideration in light of Harris.

4. Medical Mutual Liability Ins. Society of Maryland v. B. Dixon Evander & Associates, 331 Md. 301, 628 A.2d 170 (1993), dismissing appeal in 92 Md. App. 551, 609 A.2d 353, cert. denied, 328 Md. 447, 614 (1992). This was an appeal from a jury verdict finding that Medical Mutual had tortiously interfered with Evander's business relationships and awarding Evander \$1.725 million in compensatory damages and \$7 million in punitive damages. The jury failed to reach a verdict on the defamation count and a mistrial was declared as to it. The trial court then, at the request of all parties, certified the judgment as final. On appeal, we affirmed in all respects, except that we remanded for the trial court to make some factual findings as to the punitive damages. 92 Md. App. 551, 609 A.2d 353. Medical Mutual petitioned for certiorari, which was denied. 328 Md. 447. After findings were made on remand, Medical Mutual again petitioned for certiorari, which was then granted. The Court of Appeals concluded that the case had been improperly certified by the trial court and the judgment was not final, and so, dismissed the appeal.

5. State v. Sanders, 331 Md. 378, 628 A.2d 209 (1993) reversing an unreported opinion, Sanders v. State (copy attached). A trial court agreed to a plea agreement and then refused to honor it and also refused to permit the defendant to withdraw his guilty plea. We concluded that this result was wrong. The record was unclear but it seemed to our court, in an opinion I authored, that a fair reading of the record was that the trial judge had originally stated he would honor the agreement if the defendant truthfully disclosed prior criminal offenses and the defendant believed he had done this, but was confused because he only served one prison term for two offenses. Accordingly, we remanded so that the defendant could be sentenced pursuant to the plea agreement. The Court of Appeals agreed that the result reached by the trial court was wrong; it held, however, that the trial court could reject the plea agreement but then had to permit the defendant to withdraw his guilty plea.

6. Epps v. State, 333 Md. 121, 634 A.2d 20 (1993) reversing an unreported opinion, Epps v. State (copy attached). When a prisoner was convicted of common law battery for throwing an unknown liquid on a prison guard, the trial court sentenced him to twenty years imprisonment. This sentence followed a sentence of ten years imprisonment imposed only two months earlier for another battery on a prison guard, an attack with a sharp piece of coat hanger. The prisoner challenged the sentence as cruel and unusual punishment violative of the Eighth Amendment. Our court, in an opinion written by me, found this was not the sort of rare case in which the

Supreme Court has indicated that a sentence can be inferred to be grossly disproportionate. The Court of Appeals reversed, with two judges dissenting.

7. Brantley v. Fallston General Hospital, Inc., \_\_\_ Md. \_\_\_, \_\_\_ A.2d \_\_\_ (1994) (copy attached) reversing an unreported opinion, Brantley v. Fallston General Hospital, Inc. (copy attached). This case involved an appeal from a dismissal of an action for lack of prosecution on the ground, inter alia, that contrary to the Maryland rules no hearing was held prior to the dismissal. We affirmed in an opinion authored by me. As to this issue, we rejected the appellees' sole argument that failure to hold the hearing was harmless error but concluded that there was no error in not holding a hearing because no party, only plaintiff's attorney, requested one. This was so because the plaintiff had died fifteen months before the case was dismissed and no heir or successor in interest was substituted for him until after the case was appealed. The Court of Appeals vacated on the basis of "a new question" raised by the appellees "based on part of the rationale" of our decision, i.e., there could be no appeal at all without a live party pursuing the case. The effect of this decision is the same as ours - to leave intact the trial court's dismissal of the action.

8. Holmes v. State, \_\_\_ Md. \_\_\_, \_\_\_ A.2d \_\_\_ (1994) (copy attached) reversing an unreported opinion, Holmes v. State (copy attached). A criminal defendant, representing himself, stated at trial that although he did not want to testify he did want to say "a few things in [his] behalf." He was permitted to do this, after the trial court had found him guilty of certain of the offenses. On appeal, the defendant claimed he had been denied an opportunity for closing argument. Our court, in an opinion authored by me, concluded that because the defendant's remarks were more in the nature of allocution than closing argument, and because he never protested any denial of closing argument to the trial court, the record did not "clearly disclose" either his waiver or denial of closing argument. In such circumstances, the Court of Appeals had previously held the proper course is to affirm the judgment and "leave open" a defendant's right to seek post conviction relief, and so that is what we did. The Court of Appeals reversed, holding that the defendant had tried to give a closing argument and been denied that right, and so ordered reversal of the convictions.



c. Citations of significant opinions of mine on federal or state constitutional issues and citations of later appellate rulings on these cases are as follows:

1. Baltimore Sun v. Thanos, 92 Md. App. 227, 607 A.2d 565 (1992).
2. Brown v. Ashton, 93 Md. App. 25, 611 A.2d 599, cert. granted, 328 Md. 462 (1992).
3. Keene Corp. Inc. v. Abate, 92 Md. App. 362 (1992).
4. Market Tavern v. Bowen, 92 Md. App. 622, 610 A.2d 295, cert. denied, 328 Md. 238 (1992).
5. O'Hara v. Kovens, 92 Md. App. 9, 606 A.2d 286, cert. denied, 328 Md. 93 (1992), cert. denied, \_\_\_ U.S. \_\_\_, 113 S.Ct. 1282 (1993).
6. Epps v. State, unreported (copy attached in response to question 15b), reversed, 333 Md. 121, 634 A.2d 20 (1993).

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None.

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:
  1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;
  2. whether you practiced alone, and if so, the addresses and dates;

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

I never clerked for a judge or practiced alone; instead, I began work at Piper & Marbury immediately after my graduation from law school in 1968.

1968-1971

Associate, Piper & Marbury  
100 Charles Center South  
36 South Charles Street  
Baltimore, Maryland 21201

1972-1986

Office of the Attorney General of Maryland  
200 St. Paul Place  
Baltimore, Maryland 21202

Assistant Attorney General, 1972-1980  
Principal Counsel, Appellate Litigation, 1980-1982  
Chief of Litigation, 1982-1986

1986-1991

Partner, Frank, Bernstein, Conaway & Goldman  
300 East Lombard Street  
Baltimore, Maryland 21202

1991-Present

Associate Judge  
Court of Special Appeals of Maryland  
626 B Courthouse East  
111 N. Calvert Street  
Baltimore, Maryland 21202

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

Throughout my career, I have appeared in court regularly. A LEXIS search indicates that I have been involved, as an

attorney, in more than seventy cases, with reported opinions, including five in the Supreme Court; about 40% of these cases were in the federal courts and 60% were in the state courts. In all of these cases, I wrote all, or a substantial part, of the memoranda or briefs and in fifty of them, I also tried the case or gave the oral argument. The LEXIS list is, of course, incomplete as LEXIS does not seem to pick up most unreported opinions. A representative list of cases with reported opinions, in which I not only wrote the briefs or memoranda, but also tried and/or gave the oral argument, is attached hereto.

From April, 1986, until my appointment to the Maryland Court of Special Appeals in May, 1991, I worked as a litigation partner in a large Baltimore law firm. Most of my cases were commercial disputes involving claims of substantial money damages, lengthy discovery and complex legal issues, e.g., what determines the validity of a letter of credit, the Federal Reserve Bank's obligations when honoring a draft, who constitutes a consumer for purposes of the Consumer Protection Act or the Magnuson-Moss Act, the disclosure obligations of limited partners to other partners, etc. Typically, my clients were banking institutions, insurance companies, small to medium sized corporations, and individuals.

However, I also handled a substantial amount of public interest litigation. For example, I represented Citizens Against Saturday Night Specials and obtained for them an emergency injunction against certain illegal election practices during a hotly contested referendum campaign. I also represented a citizens' group in Talbot County in litigation challenging the initiative provision in the County Charter. My most interesting public law case was one in which I represented a sheriff in a very complicated § 1983 suit. A sixteen-year-old boy was shot and severely brain damaged when deputies attempted to apprehend a reckless driver. Numerous constitutional claims were made under the Fourth and Fourteenth Amendments. The case involved more than twenty depositions of fact and expert witnesses, and after discovery and very full briefing, we prevailed in the district court, and that decision was affirmed by the Fourth Circuit.

Between 1982 and 1986, I served as Chief of Litigation in the Maryland Attorney General's Office. My practice involved supervising all trial and appellate civil litigation in the Office of 200+ lawyers. I decided what cases should be brought, what defenses made, how cases should be staffed, what cases should be appealed, when certiorari should be sought, whether settlement was appropriate, and reviewed (and sometimes substantially rewrote) every important appellate brief filed by the Office. For the two years prior to that, I served as Principal Counsel for Appellate Litigation in the Attorney General's Office and my practice was similar. My decision-making, however, was confined to appellate matters. In addition, throughout my time in the Attorney General's

Office, I personally represented the State in numerous civil and criminal cases in the State and federal courts.

From 1972 to 1981, I was an Assistant Attorney General. For most of that period, I had small children and worked only three days per week. From 1976 to 1980, I worked in the Civil Division doing general trial litigation and represented the State Election Board in various election contests. From 1972 until 1975, I represented the Department of Human Resources and handled most of its litigation. From 1968 to 1971, I was an associate at Piper & Marbury and there worked largely on tax and estate planning.

2. What percentage of these appearances was in:

|                            |     |
|----------------------------|-----|
| (a) federal courts         | 40% |
| (b) state courts of record | 60% |
| (c) other courts           | 0%  |

3. What percentage of your litigation was:

|              |     |
|--------------|-----|
| (a) civil    | 90% |
| (b) criminal | 10% |

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

In addition to settling most matters, I have also prevailed on pre-trial motions (often after extensive discovery) in numerous cases and so obtained judgments as to them. However, I have only participated in trials of ten cases that I can remember clearly; in three of these, I was sole counsel; in three, I was chief counsel, usually assisted by a young associate; and in the rest, I was associate counsel. I have also participated in a number of trial-like administrative hearings. In addition, I have been specially assigned as a trial judge for a few weeks in the summer and have presided over a number of jury trials then.

5. What percentage of these trials was:

|              |      |
|--------------|------|
| (a) jury     | 0%   |
| (b) non-jury | 100% |

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) The individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. Agnew v. State, 51 Md. App. 614, 446 A.2d 425, cert. denied, 294 Md. 441 (1982). I was co-counsel at trial in this case, representing the State of Maryland. The State claimed that former Vice President Agnew should be required to refund to the State the money he received as bribes while Governor, because, as Governor, he was a trustee for the people of the State and, therefore, held this money in constructive trust for them. In addition to establishing the validity of the constructive trust theory in this context, this case established new Maryland law on numerous difficult evidentiary questions involving declarations against interest, past recollection recorded, admissions and attorney-client privilege. After years of discovery and trial, Judge Williams granted judgment for the State. In addition to my work at trial and pre-trial, I wrote the entire brief for the State and argued the case on appeal; the taxpayers filed a separate brief and argued for a very short period. The Court of Special Appeals affirmed in a lengthy opinion, the Court of Appeals denied certiorari, and Agnew paid the judgment.

a. 1980 - 1982.

b. Judge Bruce Williams  
Circuit Court for Anne Arundel County

c. Counsel for taxpayers: Co-counsel:

David L. Scull  
8401 Connecticut Avenue  
Chevy Chase, Maryland  
(301) 951-0100

Michael Millemann  
13009 Bottom Road  
Hydes, Maryland  
(410) 706-8340

## Opposing counsel:

T. Rogers Harrison  
 Jefferson Building  
 Suite 300  
 105 W. Chesapeake Avenue  
 Towson, Maryland  
 (410) 828-1335

2. Anderson v. Morris, 636 F.2d 55 (4th Cir. 1980) and 500 F.Supp. 1095 (D.Md. 1980) vacated and remanded, 658 F.2d 246 (4th Cir. 1981). Both in the trial court and on appeal, I, with co-counsel, represented the State Administrator of Elections, Willard Morris, and various other state officials in this challenge to the constitutionality of a Maryland filing deadline for independent candidates. Congressman John Anderson, after running for seventeen months as a Republican presidential candidate in numerous primary elections, decided to become an independent candidate. The deadline by which candidates must file a certificate of candidacy and necessary petition signatures had passed in six states - including Maryland. It was critical to Mr. Anderson's independent candidacy that he appear as a candidate on the ballots of all fifty states. Accordingly, he brought a § 1983 action in each state with an early filing deadline, asserting that the state statute violated the First and Fourteenth Amendments. Maryland's statute, like that of the other five states, was ultimately declared unconstitutional by a district court. That decision was affirmed by the Fourth Circuit. 636 F.2d 55 (1980).

Mr. Anderson's lawyers then requested \$80,000+ in attorneys' fees, which we vigorously opposed. The district court found only a \$10,000 fee was warranted, 500 F.Supp. 1075 (1980) but the Fourth Circuit reversed, 688 F.2d 246 (1981); the fee dispute was ultimately settled at appreciably less than the amount requested. On the merits, I did approximately half of the work on this case in the trial and appellate courts. On the attorney's fees issue, I did most of the work in both the trial and appellate courts.

- a. Spring, 1980 - Fall, 1981.
- b. Judge Joseph Young  
 United States District Court for the District of  
 Maryland
- c. Co-counsel:

Robert A. Zarnoch  
 Counsel to the General Assembly  
 90 State Circle  
 Room 104  
 Annapolis, Maryland 21401  
 (410) 841-3889

Opposing counsel:

Henry R. Lord  
 Piper & Marbury  
 100 Charles Center South  
 36 South Charles Street  
 Baltimore, Maryland 21201  
 (410) 539-2530

3. Consumer Protection Division v. Consumer Publishing Co., 304 Md. 731, 501 A.2d 48 (1985). The Consumer Protection Division of the Maryland Attorney General's Office found that the advertisements of a diet pill company, Consumer Publishing Co., were false and misleading in violation of Maryland's Consumer Protection Act (similar to FTC Act) and ordered the company to cease such advertisements and pay restitution to injured consumers. The company appealed and the Circuit Court for Baltimore City vacated this order, finding, inter alia, the company's constitutional rights under the First and Fourteenth Amendments were violated by the order, the Consumer Protection Division engaged in selective enforcement, the Division improperly tried to adjudicate where it should have issued a regulation, and the Attorney General of Maryland poisoned the administrative proceedings, for his own political gain, by issuing an inflammatory press release. I did not handle any portion of the case prior to issuance of the trial court's opinion and order. At that point, the Attorney General asked me to prepare a petition for certiorari and represent the Consumer Protection Division on appeal, which I did. The Court of Appeals granted certiorari and reversed the trial court in all respects. The case was one of the earliest Consumer Protection Division enforcement cases and virtually established that Division's powers. Moreover, in it we managed to persuade the Court of Appeals to permit the Division to appeal, in spite of a long established state administrative law doctrine that an agency could not appeal from a trial court reversal of its decision; this ultimately led to an amendment of the State's administrative procedure act.

- a. 1984 - 1985.
- b. Judge Thomas Ward  
 Circuit Court for Baltimore City
- c. Opposing counsel:

Henry R. Lord  
 Piper & Marbury  
 100 Charles Center South  
 36 South Charles Street  
 Baltimore, Maryland 21201  
 (410) 539-2530

4. In re Legislative Districting, 299 Md. 658, 475 A.2d 428 (1984). I was lead counsel in these ten cases, heading a five person state team, in defending the 1982 legislative districting plan. These cases were consolidated for trial before Judge Albert Menchine, serving as a special master for the Court of Appeals, which, under the Maryland Constitution, had original jurisdiction over such challenges. The plaintiffs challenged the constitutionality of the State's legislative districting plan on numerous grounds, e.g., racial discrimination, failure to give due regard to political subdivisions, unlawful favoring of incumbents and lack of compactness. Judge Menchine upheld the plan except for two districts in Baltimore City. All plaintiffs appealed. The Court of Appeals found the plan constitutional in all respects, even those disapproved by Judge Menchine; it issued a per curiam order in 1982, immediately after argument, and a published opinion explaining that order in 1984. I led the effort before the Master, wrote substantial portions of the memoranda before him and the briefs in the appellate court, and presented a substantial amount of the argument in both forums.

- a. February, 1982 - June, 1982.
- b. Judge Albert Menchine  
Retired from Court of Special Appeals (sitting as a Special Master)
- c. Principal co-counsel:

Robert A. Zarnoch  
Counsel for the General Assembly  
90 State Circle  
Room 104  
Annapolis, Maryland 21401  
(410) 841-3889

- d. Principal opposing counsel:

M. Albert Figinski  
Weinberg & Green  
100 South Charles Street  
Baltimore, Maryland 21201  
(410) 332-8634

Roger W. Titus  
Venable, Baetjer & Howard  
Suite 500  
1 Church Street  
Rockville, Maryland 20850  
(301) 217-5600



5. Mercantile-Safe Deposit & Trust v. Baltimore County, 309 Md. 668, 526 A.2d 591 (1987). The trial court held that the bank had wrongfully dishonored a draft, presented pursuant to a letter of credit. Another law firm handled the case at trial; after losing there, the bank, Mercantile Safe-Deposit & Trust Co., asked my firm to represent it on appeal. I prepared the petition for certiorari, which the Court of Appeals granted. I then briefed and argued the case on appeal. The appellate court reversed holding that a beneficiary's demand for payment must comply strictly, rather than substantially, with the terms of the letter of credit. The case was extremely important to the commercial community because it established, for the first time, the strict compliance test in Maryland; the holding has, I understand, been discussed and praised in periodicals in the field.

- a. 1986 - 1987.
- b. Judge Edward A. DeWaters  
Circuit Court for Baltimore County
- c. Opposing counsel:

Michael J. McMahon  
302 Five Farms Lane  
Lutherville, Maryland 21093  
(410) 494-4420

6. Ollman v. Toll, 516 F.Supp. 1196 (D.Md. 1981), aff'd, 704 F.2d 139 (4th Cir. 1983). I was co-counsel at trial in this case, representing the President of the University of Maryland, John Toll, and other officers of the University. We tried the case for four weeks, before Chief Judge Harvey, in the United States District Court for the District of Maryland. Ollman, a Marxist, contended that the University of Maryland unlawfully discriminated against him by refusing, because of his political beliefs, to accept a search committee's recommendation that he be appointed Chairman of the Government Department. Ollman brought suit under 42 U.S.C. § 1983 and asked for appointment to the position, back pay, substantial damages, and attorneys fees. The case was important to the State for its precedential and psychological value; it was a cause celebre at the time. Refusal to appoint Prof. Ollman was one of President Toll's first acts on becoming president of the University and he believed that prevailing in the case was crucial to a successful term as president. Judge Harvey, in a lengthy and well reasoned opinion, found that there was no improper motivation in the failure to select Ollman and granted judgment to defendants. 516 F. Supp. 1196. Ollman appealed and the case was affirmed by the Fourth Circuit. 704 F.2d 139. In addition to my work at trial, I wrote the vast bulk of the appellate brief, but did not argue the case on appeal.

- a. 1981 - 1983.
- b. Judge Alexander Harvey, II  
United States District Court for the District  
of Maryland
- c. Co-counsel for Toll:

Paul F. Strain  
Venable, Baetjer & Howard  
2 Hopkins Plaza  
1800 Mercantile Bank & Trust Building  
Baltimore, Maryland 21201  
(410) 244-7400

Opposing Counsel:

David Bonderman  
Richard Ewing  
Arnold & Porter  
Thurman Arnold Building  
1200 New Hampshire Avenue, N.W.  
Washington, D.C. 20036-6885  
(202) 872-6700

7. Reigh v. Schleigh, 595 F.Supp. 1535 (D.Md. 1984), vacated and remanded, 784 F.2d 1191 (4th Cir.), cert. denied, 479 U.S. 847 (1986). Judgment debtors brought suit challenging the constitutionality of a rule of the Maryland District Court (not federal court - but Maryland's equivalent to a small claims court) governing postjudgment attachment. The district court held the rule failed to provide a judgment debtor adequate notice of available claims of exemption and to assure resolution of such claims within a reasonable time. I was not involved in the case until the district court issued its opinion and order. State judges and the State Rules Committee were extremely upset by this result because it meant that complicated procedures would have to be imposed on the "small claims" courts, without any seeming need or benefit. It also meant that a rule adopted by the Court of Appeals, at the recommendation of the Rules Committee, was, only months later, held unconstitutional by a federal court. I briefed and argued the case on appeal, on behalf of Charles Schleigh and other State officials. There was a split in the circuits on the issues raised in the case and a legitimate position on both sides. We prevailed in the Fourth Circuit, however, and the district court's judgment was vacated. I became very interested in the issues raised in the case and co-authored a law review article discussing the problems presented by such rules. See Motz and Baida, "The Due Process Rights of Post Judgment Debtors and Child Support Obligors," 45 Md. L. Rev. 61 (1986) (attached in answer to question 12).

- a. 1985 - 1986.
- b. Judge James R. Miller  
United States District Court  
for the District of Maryland

- c. Opposing counsel:

Elizabeth Renuart  
714 E. Pratt Street  
Baltimore, Maryland 21202  
(410) 539-5350

8. Secretary of State of Maryland v. Joseph H. Munson Co., Inc., 467 U.S. 947, 104 S.Ct. 2839, 81 L.Ed.2d 786 (1984). In this case a trial court upheld the constitutionality of a Maryland statute imposing a percentage limitation on the amount a charity could pay for fundraising expenses; the intermediate appellate court affirmed. Maryland's highest court, however, reversed and held the statute violated the First Amendment. I did not personally handle the case in any of the State court proceedings. Some alleged charities were spending as much as 90% on fundraising expenses and the Secretary of the State believed the statute was extremely important to effective regulation of charities and so I was asked to try to obtain review in the Supreme Court and represent the Secretary of State there. I prepared the petition for certiorari; the Court granted certiorari. Then I wrote, in substantial part, the Supreme Court briefs and argued the case in that Court in October, 1983. Eight months later the Court issued its opinion, affirming the Court of Appeals and finding the statute unconstitutional by a five to four vote.

- a. 1983 - 1984.
- b. Judge Eugene Lerner  
Circuit Court for Anne Arundel County
- c. Counsel for the State below:

James G. Klair  
Administrative Law Judge  
10753 Falls Road  
Lutherville, Maryland  
(410) 321-3993

Opposing Counsel:

Yale L. Goldberg  
Suite 900 N  
4550 Montgomery Avenue  
Bethesda, Maryland 20814  
(301) 718-8860

9. State of Maryland, ex. rel. Attorney General v. Burning Tree Club, Inc., 301 Md. 9, 481 A.2d 785 (1984). On behalf of the State and the Attorney General, with co-counsel, I filed a petition for declaratory judgment in the circuit court challenging the constitutionality of a Maryland statute that conferred preferential property tax treatment on country clubs. The statute granted a country club a lower tax assessment if it agreed to preserve open space and to refrain from engaging in discrimination in its guest and membership policies, except that with regard to the latter, it permitted a club to "serve or benefit members of a single sex." On behalf of the State and Attorney General, we asserted that the provision violated the Maryland Equal Rights Amendment and equal protection guarantees in the Maryland Constitution. The country club maintained that the State and Attorney General had no right to challenge the constitutionality of a State statute. The trial court agreed and the Court of Appeals affirmed. We lost this battle, but ultimately won the war when several citizens, who we assisted, later persuaded the court that the statute was unconstitutional. Burning Tree Club, Inc. v. Bainum, 305 Md. 53, 507 A.2d 817 (1985). I did approximately half of the work on this case at trial and on appeal.

- a. 1984 - 1985.
- b. Judge Calvin R. Sanders  
Circuit Court for Montgomery County
- c. Co-counsel:

Robert A. Zarnoch  
Counsel to the General Assembly  
90 State Circle  
Room 104  
Annapolis, Maryland 21401  
(410) 841-3889

Opposing counsel:

Benjamin R. Civiletti  
Venable, Baetjer & Howard  
2 Hopkins Plaza  
1800 Mercantile Bank & Trust Building  
Baltimore, Maryland 21201  
(410) 244-7400

10. Stone v. University of Maryland Medical System Corp., 855 F.2d 167 and 855 F.2d 178 (4th Cir. 1988), on certification, The Baltimore Sun Co. v. University of Maryland Medical System, 321 Md. 659, 584 A.2d 683 (1991). I represented the University of Maryland Medical System Corp.

(the hospital), a private corporation, and certain of its officers who, with the University of Maryland Medical School and some of its officers, represented by the Attorney General's Office, were sued by Dr. Harlan Stone. In 1986, several highly publicized malpractice actions were filed against the hospital, other doctors, and Stone, who, at that time, was Chief of the Division of General Surgery at the hospital and a Professor of Surgery at the medical school. After an internal and external peer review, Stone, without a lawyer, met with the individual defendants, some of whom were in-house counsel, and then signed short letters resigning his positions at the hospital and medical school. Five months later, he brought this § 1983 action, asserting that defendants had forced him to resign in violation of his due process rights. We engaged in arduous discovery and eventually obtained summary judgment in the district court; the Fourth Circuit affirmed in a scholarly opinion. 855 F.2d 167.

During the litigation, the parties had jointly requested that the entire record be sealed; the district court granted that request, but without giving notice or making any findings. The Fourth Circuit remanded with instructions that the trial court give the required notice and opportunity for a hearing prior to issuing any seal order and make the required findings justifying the order. 855 F.2d 178. On remand, the defendants agreed that most portions of the file should be public but requested that certain exhibits be kept confidential. The district court, after giving notice, etc., did precisely as the defendants requested. The Baltimore Sun then appealed. After hearing argument, the Fourth Circuit certified the question of whether a Maryland statute relied on by the district court "bars press access to the records at issue in this case." The Court of Appeals held it did not, 321 Md. 659, but three members of the seven member court specially concurred stating that the statute did express a compelling governmental interest in keeping medical records confidential. The Fourth Circuit ultimately held, apparently in an unreported opinion, that the records could not be sealed.

Both aspects of the case are of some significance. On the merits, the case provided the Fourth Circuit with the opportunity to clarify the law with regard to substantive and procedural due process rights in employment situations. The principles established in the Court of Appeals' decision in regard to the interests in protecting confidentiality of medical records were important and have, I believe, been followed as a guide in forming legislation in other states. I did approximately half of the work on the case on the merits and most of the work on the seal order issue.

- a. 1987 - 1991.
- b. Judge John Hargrove  
United States District Court for  
the District of Maryland
- c. Co-counsel:

Ralph S. Tyler  
Deputy Attorney General  
200 St. Paul Place  
Baltimore, Maryland 21202  
(410) 576-6342

Opposing counsel on the merits  
(i.e., Dr. Stone's counsel):

N. Roy Grutman  
Grutman, Greene & Humphrey  
505 Park Avenue  
New York, New York 10022-1155  
(212) 888-1900

Opposing counsel on the seal order  
(i.e., Counsel for the Sunpapers):

Mary Craig  
Doyle & Craig, P.A.  
Suite 1910  
25 South Charles Street  
Baltimore, Maryland 21201  
(410) 332-6520

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

My most significant non-litigation related experience as a practicing lawyer was the opportunity to work on the Congressionally created fifteen member Federal Courts Study Committee. Work with Committee members, who included Senators Heflin and Grassley and Congressmen Kastenmeir and Morehead,

as well as some very distinguished judges, professors, and practicing lawyers, and travelling around the country to obtain the views of the 200+ persons who testified at hearings before us was an incredible education for me. I not only learned a great deal about the problems, workings, and talents of the federal courts, but I also learned much about the diversity of our country and the challenges that diversity creates for the federal courts.

My years as an appellate judge have been probably my single most significant legal activity. Service as an appellate judge is something I have aspired to ever since I gave my first appellate argument, more than twenty years ago. Being an appellate judge has been one of those rare life experiences in which reality exceeds expectations. I have worked harder than ever before in my life, but with a real sense that I am contributing to the public good, that the clearer, more intelligent, more intellectually honest I can be in my opinions, the better the law will ultimately be.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I received all deferred income, etc. from my former law firm two years ago. That firm, which I left in 1991 to become a judge, has since been dissolved. It had a pension plan; my assets in the plan are valued at approximately \$60,000.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I do not anticipate any conflicts of interest, except, of course, I would not sit on any cases in which husband had been involved. I will continue to look for guidance and follow the Code of Judicial Conduct in determining if a case presents any conflicts of interest.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

Attached please find a copy of the financial disclosure report required by the Ethics in Government Act of 1978.

5. Please complete the attached financial net worth statement in detail. (Add schedules as called for).



Attached please find a copy of my financial net worth statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I was Vice Chairman of the Committee to re-elect the Sitting Judges of the Circuit Court for Baltimore City. The circuit court judges (trial judges) are appointed by the Governor and then must run in an election against anyone who wishes to file and run against them. I worked on the Committee to Re-elect Judges Ellen Heller, Roger Brown, and John Prevas - I believe it was the 1986 election. I helped to brainstorm ideas; ultimately, the judges ran unopposed.

40-10  
Rev. 1/91

## FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics  
Reform Act of 1989, Pub. L. No.  
101-194, November 30, 1989  
(5 U.S.C.A. App. 6, 101-112)

|  |  |                              |
|--|--|------------------------------|
| 1. Person Reporting (Last name, first, middle initial)<br>MOTZ, JOHN F.  | 2. Court or Organization<br>U.S. DISTRICT COURT - MARYLAND   | 3. Date of Report<br>5/14/93 |
| 4. Title (Article III judges indicate active or senior status; Magistrate judges indicate full- or part-time)<br>U.S. DISTRICT JUDGE   | 5. Report Type (check appropriate type)<br>— Nomination, Date ___/___/___<br>— Initial <input checked="" type="checkbox"/> Annual <input type="checkbox"/> Final | 6. Reporting Period<br>1992  |
| 7. Chambers or Office Address<br>U.S. COURTHOUSE - ROOM 510<br>101 WEST LOMBARD STREET<br>BALTIMORE, MARYLAND 21201  |  |                              |
| IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on last page. |  |                              |

## I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

| POSITION  | NAME OF ORGANIZATION/ENTITY     |
|---|---------------------------------|
| <input type="checkbox"/> NONE (No reportable positions) |                                 |
| Trustee   | Sheppard & Enoch Pratt Hospital |
|   |                                 |
|   |                                 |

## II. AGREEMENTS. (Reporting individual only; see pp. 8-9 of Instructions.)

| DATE  | PARTIES AND TERMS   |
|---|---|
| <input checked="" type="checkbox"/> NONE (No reportable agreements) |   |
|   | (Venable, Baetjer and Howard pension plan previously reported was distributed and securities were purchased with its proceeds - see schedule VII) |

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

| DATE (Nonaugust only)  | SOURCE AND TYPE | GROSS INCOME (Yours, not spouse's) |
|--|-----------------|------------------------------------|
| <input checked="" type="checkbox"/> NONE (No reportable non-investment income) |                 |                                    |
| 1  |                 | \$ _____                           |
| 2  |                 | \$ _____                           |
| 3  |                 | \$ _____                           |
| 4  |                 | \$ _____                           |
| 5  |                 | \$ _____                           |

FINANCIAL DISCLOSURE REPORT (cont'd)

|   |                           |
|---|---------------------------|
| Name of Person Reporting<br>NOIZ, JOHN F. | Date of Report<br>5/14/93 |
|---|---------------------------|

**IV. REIMBURSEMENTS and GIFTS -- transportation, lodging, food, entertainment.**

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp. 12-14 of Instructions.)

|                                     | <u>SOURCE</u>                                     | <u>DESCRIPTION</u> |
|-------------------------------------|---|--------------------|
| <input checked="" type="checkbox"/> | NONE (No such reportable reimbursements or gifts) |                    |
| 1                                   |   |                    |
| 2                                   |   |                    |
| 3                                   |   |                    |
| 4                                   |   |                    |
| 5                                   |   |                    |
| 6                                   |   |                    |
| 7                                   |   |                    |

**V. OTHER GIFTS.** (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp. 15-16 of Instructions.)

|                                     | <u>SOURCE</u>                   | <u>DESCRIPTION</u> | <u>VALUE</u> |
|-------------------------------------|---------------------------------|--------------------|--------------|
| <input checked="" type="checkbox"/> | NONE (No such reportable gifts) |                    |              |
| 1                                   |                                 | \$                 |              |
| 2                                   |                                 | \$                 |              |
| 3                                   |                                 | \$                 |              |
| 4                                   |                                 | \$                 |              |

**VI. LIABILITIES.** (Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 16-17 of Instructions.)

|                                     | <u>CREDITOR</u>                  | <u>DESCRIPTION</u> | <u>VALUE CODE*</u> |
|-------------------------------------|----------------------------------|--------------------|--------------------|
| <input checked="" type="checkbox"/> | NONE (No reportable liabilities) |                    |                    |
| 1                                   |                                  |                    |                    |
| 2                                   |                                  |                    |                    |
| 3                                   |                                  |                    |                    |
| 4                                   |                                  |                    |                    |
| 5                                   |                                  |                    |                    |
| 6                                   |                                  |                    |                    |
| 7                                   |                                  |                    |                    |

\* VALUE CODES: J = \$15,000 or less    K = \$15,001 - \$50,000    L = \$50,001 - \$100,000    M = \$100,001 to \$250,000  
 W = \$250,001 or more    G = \$250,001 - \$1,000,000    H = More than \$1,000,000

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

012, JOHN F.

Date of Report

5/14/93

**VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions** (Includes those of spouse and dependent children; See pp. 18-26 of Instructions.)

| A.<br>Description of Assets<br>(including trust assets)<br><small>Indicate where applicable, owner of the asset by using 1= parenthetical "(J)" for joint ownership of reporting individual and spouse, "S" for separate ownership by spouse, "DC" for ownership by dependent child.<br/>Place "(X)" after each asset exempt from prior disclosure.</small> | B.<br>Income during reporting period           |  | C.<br>Gross value at end of reporting period         |                                | D.<br>Transactions during reporting period         |                        |  |                        |  |
|---|--|--|--|--------------------------------|--|------------------------|--|------------------------|--|
|   | (1)<br>Amt. 1 Code (A-R)                       | (2)<br>Type (e.g., Div, rent, or int.) | (1)<br>Value Code (J-P)                              | (2)<br>Value Method Code (Q-W) | If not exempt from disclosure                      |                        |  |                        |  |
|   |  |  |  |                                | (1)<br>Type (e.g., buy, sell, merger, redemption)  | (2)<br>Date: Month-Day | (3)<br>Value 2 Code (J-P)                        | (4)<br>Gain Code (A-R) | (5)<br>Identity of Buyer/Seller (if private transaction) |
| <input type="checkbox"/> NONE (No reportable income, assets, or transactions)   |  |  |  |                                |  |                        |  |                        |  |
| 1 Exxon (S)   | B  | DIV                                    | K  | T                              |  |                        |  |                        |  |
| 2 IBM(S)  | A  | DIV                                    | K  | T                              |  |                        |  |                        |  |
| 3 Kemper Inv. Port. Gov't Plus  |  |  |  |                                |  |                        |  |                        |  |
| 4 (DC)  | A  | INT                                    | J  | T                              |  |                        |  |                        |  |
| 5 Maryland Community Dev. Bond(S)   | A  | INT                                    | J  | T                              |  |                        |  |                        |  |
| 6 Mercantile Safe Deposit - C.D.  |  |  |  |                                |  |                        |  |                        |  |
| 7 (DC)  | A  | INT                                    | K  | T                              | REDE   | 3/15                   |  |                        |  |
| 8 Mercantile Safe Deposit - C.D.  |  |  |  |                                |  |                        |  |                        |  |
| 9 (IRA)   | A  | INT                                    | J  | T                              |  |                        |  |                        |  |
| 10 Mercantile Safe Deposit - C.D.   |  |  |  |                                |  |                        |  |                        |  |
| 11 (IRA-S)  | A  | INT                                    | J  | T                              |  |                        |  |                        |  |
| 12 (IRA-S)  | A  | INT                                    | J  | T                              |  |                        |  |                        |  |
| 13 T. Rowe Price-Growth Stock (J)   | A  | DIV                                    | J  | T                              |  |                        |  |                        |  |
| 14 T. Rowe Price - Prime Reserve  |  |  |  |                                |  |                        |  |                        |  |
| 15 (DC)   | A  | INT                                    | J  | T                              |  |                        |  |                        |  |
| 16 Borden (DC)  | A  | DIV                                    | J  | T                              |  |                        |  |                        |  |
| 17 Borden (DC)  | A  | DIV                                    | J  | T                              |  |                        |  |                        |  |
| 18 International Banknote (S)   | A  | DIV                                    | J  | T                              | REDE   |                        |  |                        |  |
| 1 Income/Gain Codes: (See Col. B1 & B2)   | A=\$1,000 or less<br>E=\$15,001 to \$50,000    |  | B=\$1,001 to \$2,500<br>F=\$50,001 to \$100,000      |                                | C=\$2,501 to \$5,000<br>G=\$100,001 to \$1,000,000 |                        | D=\$5,001 to \$15,000<br>H=more than \$1,000,000 |                        |  |
| 2 Value Codes: (See Col. C1 & C3)   | J=\$15,000 or less<br>N=\$250,001 to \$500,000 |  | K=\$15,001 to \$50,000<br>O=\$500,001 to \$1,000,000 |                                | L=\$50,001 to \$100,000<br>P=More than \$1,000,000 |                        | M=\$100,001 to \$250,000                         |                        |  |
| 3 Value Method Codes: (See Col. C2)   | Q=Appraisal<br>U=Book Value                    |  | R=Cost (real estate only)<br>V=Other                 |                                | S=Assessment<br>W=Estimated                        |                        | T=Cash/Market                                    |                        |  |

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

NOTZ, JOHN F.

Date of Report

5/14/93

**VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions** (Includes those of spouse and dependent children; See pp. 18-26 of Instructions.)

| A.<br>Description of Assets<br>(including trust assets)<br>Indicate where applicable owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.<br>Place "(X)" after each asset exempt from prior disclosure. | B.<br>Income during reporting period         |                                 | C.<br>Gross value at end of reporting period       |                         | D.<br>Transactions during reporting period         |                               |  |   |     |
|---|--|---------------------------------|--|-------------------------|--|-------------------------------|--|---|-----|
|   | (1)  | (2)                             | (1)  | (2)                     | (1) Type (e.g., buy, sell, merger, redemption)     | If not exempt from disclosure |  |   |     |
|   | Am't. Code (A-W)                             | Type (e.g., div., rent or int.) | Value Code (J-P)                                   | Value Method Code (Q-V) | Date: Month/Day                                    | (2) Value1 Code (J-P)         | (3) Gain1 Code (A-W)                             | (4) Identity of buyer/seller (if private transaction) | (5) |
| <input type="checkbox"/> NONE (No reportable income, asset(s), or transactions)   |  |                                 |  |                         |  |                               |  |   |     |
| 19 Mercantile Safe Deposit Co.  |  |                                 |  |                         |  |                               |  |   |     |
| 20 C.D. (IRA)   | A  | INT                             | J  | T                       |  |                               |  |   |     |
| 21 T. Rowe Price - Intl. Stock(J)   | A  | DIV                             | J  | T                       |  |                               |  |   |     |
| 22 T. Rowe Price - Tax Exempt(J)  | C  | INT                             | C  | T                       |  |                               |  |   |     |
| 23 Alex Brown (S)   | A  | DIV                             | J  | T                       |  |                               |  |   |     |
| 24 T. Rowe Price (S)  | A  | DIV                             | J  | T                       |  |                               |  |   |     |
| 25 Sare Lee (S)   | A  | DIV                             | J  | T                       |  |                               |  |   |     |
| 26 Nicholas Fund (J)  | A  | DIV                             | J  | T                       |  |                               |  |   |     |
| 27 Nicholas Fund (DC)   | A  | DIV                             | J  | T                       |  |                               |  |   |     |
| 28 Nicholas Fund (DC)   | A  | DIV                             | J  | T                       |  |                               |  |   |     |
| 29 T. Rowe Price Equity Income Fund (J)   | A  | DIV                             | J  | T                       |  |                               |  |   |     |
| 30 T. Rowe Price Equity Income Fund (DC)  | A  | DIV                             | J  | T                       |  |                               |  |   |     |
| 31 T. Rowe Price Equity Income Fund (DC)  | A  | DIV                             | J  | T                       |  |                               |  |   |     |
| 32 T. Rowe Price Equity Income Fund (DC)  | A  | DIV                             | J  | T                       |  |                               |  |   |     |
| 33 T. Rowe Price Equity Income Fund (DC)  | A  | DIV                             | J  | T                       |  |                               |  |   |     |
| 34 T. Rowe Price-New Horizons (J)   | A  | DIV                             | J  | T                       |  |                               |  |   |     |
| 35 T. Rowe Price Intl Bond (DC)   | A  | INT                             | J  | T                       |  |                               |  |   |     |
| 1 Income/Gain Codes: (See Col. B1 & D4)   | A=\$1,000 or less<br>E=\$15,001 to \$50,000  |                                 | B=\$1,001 to \$2,500<br>F=\$50,001 to \$100,000    |                         | C=\$2,501 to \$5,000<br>G=\$100,001 to \$1,000,000 |                               | D=\$5,001 to \$15,000<br>H=More than \$1,000,000 |   |     |
| 2 Value Codes: (See Col. E1 & D3)   | J=\$15,000 or less<br>K=\$15,001 to \$50,000 |                                 | L=\$2,501 to \$50,000<br>O=\$50,001 to \$1,000,000 |                         | P=\$50,001 to \$100,000<br>Q=More than \$1,000,000 |                               | R=\$100,001 to \$250,000                         |   |     |
| 3 Value Method Codes: (See Col. C2)   | O=Appraisal<br>U=Book Value                  |                                 | R=Cost (real estate only)<br>V=Other               |                         | S=Assessment<br>W=Estimated                        |                               | T=Cash/Market                                    |   |     |

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting  
OIZ, JOHN F.Date of Report  
5/14/93

## VII. Page 3 INVESTMENTS and TRUSTS - income, value, transactions (Includes those of spouse and dependent children; See pp. 18-26 of Instructions.)

| A.<br>Description of Assets<br>(including trust assets)<br><small>Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.<br/>Place "(X)" after each asset exempt from prior disclosure.</small> | B.<br>Income during reporting period           |                              | C.<br>Gross value at end of reporting period        |                                | D.<br>Transactions during reporting period         |                               |  |                        |  |
|--|--|------------------------------|---|--------------------------------|--|-------------------------------|--|------------------------|--|
|  | (1)<br>Amt. 1 Code (A-M)                       | (2)<br>Type (S-D, Div, Int.) | (1)<br>Value Code (J-P)                             | (2)<br>Value Method Code (O-W) | (1)<br>Type (e.g. buy, sell, merger, redemption)   | If not exempt from disclosure |  |                        |  |
|  |  |                              |   |                                |  | (2)<br>Date: Month-Day        | (3)<br>Value 2 Code (J-P)                        | (4)<br>Gain Code (A-M) | (5)<br>Identity of Buyer/Seller (i.e. private transaction) |
| <input type="checkbox"/> NONE (No reportable income, assets, or transactions)  |  |                              |   |                                |  |                               |  |                        |  |
| 37 T. Rowe Price Int'l Bond (DC)   | A  | INT                          | J   | T                              |  |                               |  |                        |  |
| 38 Putnam Emerging Growth Fund   | A  | DIV                          | K   | T                              |  |                               |  |                        |  |
| 39 Putnam Emerging Growth Fund   |  |                              |   |                                |  |                               |  |                        |  |
| 40 (S)   | A  | DIV                          | K   | T                              |  |                               |  |                        |  |
| 41 Pru-Bache Municipal Series  |  |                              |   |                                |  |                               |  |                        |  |
| 42 (MD) (DC)   | A  | INT                          | J   | T                              |  |                               |  |                        |  |
| 43 Maryland Nat'l Bank - C.D. (J)  | A  | INT                          | J   | T                              |  |                               |  |                        |  |
| 44 T. Rowe Price - Growth Stock  |  |                              |   |                                |  |                               |  |                        |  |
| 45 (DC)  | A  | DIV                          | J   | T                              |  |                               |  |                        |  |
| 46 T. Rowe Price - Growth Stock  |  |                              |   |                                |  |                               |  |                        |  |
| 47 (DC)  | A  | DIV                          | J   | T                              |  |                               |  |                        |  |
| 48 Howard County, Maryland Bnds(J)   | A  | INT                          | K   | T                              |  |                               |  |                        |  |
| 49 T. Rowe Price - Int'l Bonds(J)  | B  | INT                          | J   | T                              |  |                               |  |                        |  |
| 50 Pru-Bache Money market (J)  | A  | INT                          | J   | T                              |  |                               |  |                        |  |
| 51 T. Rowe Price - Tax Exempt  |  |                              |   |                                |  |                               |  |                        |  |
| 52 (DC)  | B  | INT                          | K   | T                              |  |                               |  |                        |  |
| 53 Md. Comm. Dev. Bond (DC)  | A  | INT                          | J   | T                              |  |                               |  |                        |  |
| 54 Md. Health Bond (DC)  | A  | INT                          | J   | T                              |  |                               |  |                        |  |
| 1 Income/Gain Codes:<br>(See Col. B1 & B4)   | A=\$1,000 or less<br>E=\$15,001 to \$50,000    |                              | B=\$1,001 to \$2,500<br>F=\$50,001 to \$100,000     |                                | C=\$2,501 to \$5,000<br>G=\$100,001 to \$1,000,000 |                               | D=\$5,001 to \$15,000<br>H=More than \$1,000,000 |                        |  |
| 2 Value Codes:<br>(See Col. C1 & C3)   | J=\$15,000 or less<br>N=\$250,001 to \$500,000 |                              | E=\$5,001 to \$20,000<br>O=\$500,001 to \$1,000,000 |                                | L=\$50,001 to \$100,000<br>P=More than \$1,000,000 |                               | M=\$100,001 to \$250,000                         |                        |  |
| 3 Value Method Codes:<br>(See Col. C2)   | Q=Appraisal<br>U=Book Value                    |                              | R=Capt(real estate only)<br>V=Other                 |                                | S=Assessment<br>W=Estimated                        |                               | T=Cash/Market                                    |                        |  |

FINANCIAL DISCLOSURE REPORT (cont'd)

|   |                           |
|---|---------------------------|
| Name of Person Reporting<br>NOTZ, JOHN F. | Date of Report<br>5/14/93 |
|---|---------------------------|

VII. Page 4 INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; See pp. 18-26 of Instructions.)

| A.<br>Description of Assets<br>(including trust assets)<br><small>Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.<br/>Place "(X)" after each asset exempt from prior disclosure.</small> | B.<br>Income during reporting period           |                                 | C.<br>Gross value at end of reporting period         |                         | D.<br>Transactions during reporting period         |                     |  |                       |   |
|--|--|---------------------------------|--|-------------------------|--|---------------------|--|-----------------------|---|
|  | (1)  | (2)                             | (1)  | (2)                     | If not exempt from disclosure                      |                     |  |                       |   |
|  | Amt. 1 Code (A-N)                              | Type (e.g., div., rent or int.) | Value Code (J-F)                                     | Value Method Code (0-U) | (1) Type (e.g., buy, sell, merger, redemption)     | (2) Date: Month-Day | (3) Value 2 Code (J-P)                           | (4) Gain 1 Code (A-N) | (5) Identity of buyer/seller (if private transaction) |
| <input type="checkbox"/> NONE (No reportable income, assets, or transactions)  |  |                                 |  |                         |  |                     |  |                       |   |
| 55 Insaco (S)  | A  | DIV                             | J  | T                       |  |                     |  |                       |   |
| 56 Univ. of MD Bond (DC)   | A  | INT                             | J  | T                       |  |                     |  |                       |   |
| 57 Univ of MD Bond (S)   | A  | INT                             | J  | T                       |  |                     |  |                       |   |
| 58 Univ. of MD Bond (S)  | A  | INT                             | J  | T                       |  |                     |  |                       |   |
| 59 Realty Parking LP (J)   | A  | DIV                             | J  | T                       |  |                     |  |                       |   |
| 60 Realty Parking LP (DC)  | A  | DIV                             | J  | T                       |  |                     |  |                       |   |
| 61 Realty Parking LP (DC)  | A  | DIV                             | J  | T                       |  |                     |  |                       |   |
| 62 Campbell Soup (S)   | A  | DIV                             | J  | T                       |  |                     |  |                       |   |
| 63 MD. Health Bond (S)   | A  | DIV                             | J  | T                       |  |                     |  |                       |   |
| 64 MD. Health Bond (DC)  | A  | INT                             | J  | T                       |  |                     |  |                       |   |
| 65 MD. Health Bond (DC)  | A  | INT                             | J  | T                       |  |                     |  |                       |   |
| 66 T. Rowe Price - New Asia (J)  | A  | DIV                             | J  | T                       |  |                     |  |                       |   |
| 67 T. Rowe Price - New Asia (DC)   | A  | DIV                             | J  | T                       |  |                     |  |                       |   |
| 68 T. Rowe Price - New Asia (DC)   | A  | DIV                             | J  | T                       |  |                     |  |                       |   |
| 69 AIM-Weingarten (S-IRA)  | A  | DIV                             | J  | T                       |  |                     |  |                       |   |
| 70 AIM-Weingarten (DC)   | A  | DIV                             | J  | T                       |  |                     |  |                       |   |
| 71 AIM-Weingarten (DC)   | A  | DIV                             | J  | T                       |  |                     |  |                       |   |
| 72 Putnam Health (DC)  | A  | DIV                             | J  | T                       |  |                     |  |                       |   |
| 1 Income/Gain Codes:<br>(See Col. B1 & D4)   | A=\$1,000 or less<br>E=\$15,001 to \$50,000    |                                 | B=\$1,001 to \$2,500<br>F=\$50,001 to \$100,000      |                         | C=\$2,501 to \$5,000<br>G=\$100,001 to \$1,000,000 |                     | D=\$5,001 to \$15,000<br>H=more than \$1,000,000 |                       |   |
| 2 Value Codes:<br>(See Col. C1 & D3)   | J=\$15,000 or less<br>N=\$250,001 to \$500,000 |                                 | E=\$15,001 to \$50,000<br>D=\$500,001 to \$1,000,000 |                         | L=\$50,001 to \$100,000<br>P=More than \$1,000,000 |                     | M=\$100,001 to \$250,000                         |                       |   |
| 3 Value Method Codes:<br>(See Col. C2)   | O=Appraisal<br>U=Book Value                    |                                 | R=Cop (free estate only)<br>V=Other                  |                         | S=Assessment<br>W=Estimated                        |                     | T=Cash/Market                                    |                       |   |

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

NOIZ, JOHN F.

Date of Report

5/14/93

**VII. Page 5 INVESTMENTS and TRUSTS — income, value, transactions** (Includes those of spouse and dependent children; See pp. 18-26 of Instructions.)

| A.<br>Description of Assets<br>(including trust assets)<br>Indicate where applicable owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.<br>Place "(X)" after each asset exempt from prior disclosure. | B.<br>Income during reporting period           |   | C.<br>Gross value at end of reporting period         |                                | D.<br>Transactions during reporting period         |                        |  |                          |  |
|---|--|---|--|--------------------------------|--|------------------------|--|--------------------------|--|
|   | (1)<br>Amt. 1 Code (A-N)                       | (2)<br>Type (e.g., div., rent, or int.) | (1)<br>Value Code (J-P)                              | (2)<br>Value Method Code (0-U) | If not exempt from disclosure                      |                        |  |                          |  |
|   |  |   |  |                                | (1)<br>Type (e.g., buy, sell, merger, redemption)  | (2)<br>Date: Month/Day | (3)<br>Value2 Code (J-P)                         | (4)<br>Gain Code (A-N)   | (5)<br>Identity of buyer/seller (if private transaction) |
| <input type="checkbox"/> NONE (No reportable income, assets, or transactions)   |  |   |  |                                |  |                        |  |                          |  |
| 73 Putnam Health (DC)   | A  | DIV                                     | J  | T                              |  |                        |  |                          |  |
| 74 U.S. Govt. Bonds   | A  | INT                                     | J  | T                              | BUY  | See section VIII       |  |                          |  |
| 75 Bellsouth (J)  | A  | DIV                                     | J  | T                              |  |                        |  |                          |  |
| 76 Gen'l Elec (J)   | A  | DIV                                     | J  | T                              |  |                        |  |                          |  |
| 77 Quaker Oats (J)  | A  | DIV                                     | J  | T                              |  |                        |  |                          |  |
| 78 P.G. Cty Bond (DC)   | A  | INT                                     | J  | T                              |  |                        |  |                          |  |
| 79 P.G. Cty Bond (DC)   | A  | INT                                     | J  | T                              |  |                        |  |                          |  |
| 80 Gillette (DC)  | A  | DIV                                     | J  | T                              |  |                        |  |                          |  |
| 81 Gillette (DC)  | A  | DIV                                     | J  | T                              |  |                        |  |                          |  |
| 82 Pepsico (DC)   | A  | DIV                                     | J  | T                              |  |                        |  |                          |  |
| 83 Pepsico (DC)   | A  | DIV                                     | J  | T                              |  |                        |  |                          |  |
| 84 RPM, INC. (S)  | A  | DIV                                     | J  | T                              | BUY  | 10/2                   | J  |                          |  |
| 85 DuPont DeMour & Co. (J)  | A  | DIV                                     | J  | T                              | BUY  | 5/22                   | J  |                          |  |
| 86 LG&E Energy Corp. (J)  | A  | DIV                                     | J  | T                              | BUY  | 5/22                   | J  |                          |  |
| 87 Long Island Ltg. Co. (J)   | A  | DIV                                     | J  | T                              | BUY  | 5/22                   | J  |                          |  |
| 88 MD. State Gen'l (J)  | A  | INT                                     | J  | T                              | BUY  | 11/3                   | J  |                          |  |
| 89 MD. State Loc. Facs. (J)   | A  | INT                                     | K  | T                              | BUY  | 5/20                   | K  |                          |  |
| 90 Montgomery County Gen'l (J)  | A  | INT                                     | J  | T                              | BUY  | 7/9                    | J  |                          |  |
| 1 Income/Gain Codes:<br>(See Col. B1 & D4)  | A=\$1,000 or less<br>E=\$15,001 to \$50,000    |   | B=\$1,001 to \$2,500<br>F=\$50,001 to \$100,000      |                                | C=\$2,501 to \$5,000<br>G=\$100,001 to \$1,000,000 |                        | D=\$5,001 to \$15,000<br>H=more than \$1,000,000 |                          |  |
| 2 Value Codes:<br>(See Col. C1 & D3)  | J=\$15,000 or less<br>W=\$250,001 to \$500,000 |   | K=\$15,001 to \$50,000<br>O=\$500,001 to \$1,000,000 |                                | L=\$50,001 to \$100,000<br>P=more than \$1,000,000 |                        |  | N=\$100,001 to \$250,000 |  |
| 3 Value Method Codes:<br>(See Col. C2)  | O=appraisal<br>U=Book Value                    |   | R=Cost (real estate only)<br>V=Other                 |                                | S=Assessment<br>W=Estimated                        |                        |  | T=Cash/Market            |  |



|                                      |                          |         |                |
|--------------------------------------|--------------------------|---------|----------------|
| FINANCIAL DISCLOSURE REPORT (cont'd) | Name of Person Reporting |         | Date of Report |
|                                      | 01Z,                     | JOHN T. | 5/14/93        |

VII. Page 6 INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; See pp. 18-26 of Instructions.)

| A.<br>Description of Assets<br>(including trust assets)<br><small>Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.<br/>Place "(E)" after each asset exempt from prior disclosure.</small> | B.<br>Income during reporting period |                                 | C.<br>Gross value at end of reporting period |                         | D.<br>Transactions during reporting period       |                     |                      |                     |   |
|--|--------------------------------------|---------------------------------|--|-------------------------|--|---------------------|----------------------|---------------------|---|
|  | (1)                                  | (2)                             | (1)  | (2)                     | If not exempt from disclosure                    |                     |                      |                     |   |
|  | Amt. Code (A-W)                      | Type (e.g., div., rent or int.) | Value Code (J-P)                             | Value Method Code (Q-U) | (1) Type (e.g., Buy, Sell, Transfer, redemption) | (2) Date: Month-Day | (3) Value Code (J-P) | (4) Gain Code (A-W) | (5) Identity of buyer/seller (if private transaction) |
| <input type="checkbox"/> NONE (No reportable income, assets, or transactions)  |                                      |                                 |  |                         |  |                     |                      |                     |   |
| 91 Atlantic Energy Inc.  | A                                    | DIV                             | J  | T                       | BUY  | 3/26                | J                    |                     |   |
| 92 Coca Cola Co.   | A                                    | DIV                             | J  | T                       | BUY  | 3/26                | J                    |                     |   |
| 93 Merck and Co.   | A                                    | DIV                             | J  | T                       | BUY  | 3/26                | J                    |                     |   |
| 94 Mobil Corp.   | A                                    | DIV                             | J  | T                       | BUY  | 3/26                | J                    |                     |   |
| 95 Prudential Short Term Global  | A                                    | DIV                             | K  | T                       | BUY  | 3/26                | K                    |                     |   |
| 96 Texas Utilities Co.   | A                                    | DIV                             | J  | T                       | BUY  | 3/26                | J                    |                     |   |
| 97 U.S. Treasury Strip Int.  | A                                    | INT                             | K  | T                       | BUY  | 3/26                | K                    |                     |   |
| 98 Zweig Appreciation fund   | A                                    | DIV                             | K  | T                       | BUY  | 3/26                | J                    |                     |   |
| 99 Mobil Corp. (DC)  | A                                    | DIV                             | J  | T                       | BUY  | 5/22                | J                    |                     |   |
| 100 Mobil Corp. (DC)   | A                                    | DIV                             | J  | T                       | BUY  | 5/22                | J                    |                     |   |
| 101 Potomac Elec. Power Co. (DC)   | A                                    | DIV                             | J  | T                       | BUY  | 5/22                | J                    |                     |   |
| 102 Potomac Elec. Power Co. (DC)   | A                                    | DIV                             | J  | T                       | BUY  | 5/22                | J                    |                     |   |
| 103 RPM Inc. Ohio (DC)   | A                                    | DIV                             | J  | T                       | BUY  | 10/09               | J                    |                     |   |
| 104 RPM Inc. Ohio (DC)   | A                                    | DIV                             | J  | T                       | BUY  | 10/09               | J                    |                     |   |
| 105 American Express Co. (DC)  | A                                    | DIV                             | J  | T                       | BUY  | 5/22                | J                    |                     |   |
| 106 American Express Co. (DC)  | A                                    | DIV                             | J  | T                       | BUY  | 5/22                | J                    |                     |   |
| 107 Walt Disney Co. (DC)   | A                                    | DIV                             | J  | T                       | BUY  | 5/22                | J                    |                     |   |
| 108 Walt Disney Co. (DC)   | A                                    | DIV                             | J  | T                       | BUY  | 5/22                | J                    |                     |   |

1 Income/Gain Codes: A=\$1,000 or less (See Col. B1 & B2) E=\$15,001 to \$50,000 I=\$1,001 to \$2,500 F=\$50,001 to \$100,000 C=\$2,501 to \$5,000 G=\$100,001 to \$1,000,000 D=\$5,001 to \$15,000 H=\$100,001 to \$250,000

2 Value Codes: (See Col. C1 & C3) J=\$15,000 or less N=\$250,001 to \$500,000 K=\$15,001 to \$50,000 O=\$500,001 to \$1,000,000 L=\$50,001 to \$100,000 P=More than \$1,000,000 M=\$100,001 to \$250,000

3 Value Method Codes: (See Col. C2) Q=Appraisal U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market

FINANCIAL DISCLOSURE REPORT (cont'd)

|   |                           |
|---|---------------------------|
| Name of Person Reporting<br>NOTZ, JOHN F. | Date of Report<br>5/14/93 |
|---|---------------------------|

VII. Page 7 INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; See pp. 18-26 of Instructions.)

| A.<br>Description of Assets<br>(including trust assets)<br><br>Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.<br><br>Place "(X)" after each asset exempt from prior disclosure. | B.<br>Income during reporting period           |  | C.<br>Gross value at end of reporting period       |  | D.<br>Transactions during reporting period        |                               |                           |                        |  |  |
|--|--|--|--|--|---|-------------------------------|---------------------------|------------------------|--|--|
|  | (1)<br>Amt. 1 Code (A-W)                       | (2)<br>Type (e.g., div., rent, int.)                 | (1)<br>Value Code (J-P)                            | (2)<br>Value Method Code (U-W)                   | (1)<br>Type (e.g., buy, sell, merger, redemption) | If not exempt from disclosure |                           |                        |  | (5)<br>Identity of buyer/seller (if private transaction) |
|  |  |  |  |  |   | (2)<br>Date: Month-Day        | (3)<br>Value 2 Code (J-P) | (4)<br>Gain/Code (A-R) |  |  |
| <input type="checkbox"/> NONE (No reportable income, assets, or transactions)  |  |  |  |  |   |                               |                           |                        |  |  |
| 109 FPL Group Inc. (DC)  | A  | DIV  | J  | T  | BUY   | 5/22                          | J                         |                        |  |  |
| 110 FPL Group Inc. (DC)  | A  | DIV  | J  | T  | BUY   | 5/22                          | J                         |                        |  |  |
| 111 Johnson and Johnson (DC)   | A  | DIV  | J  | T  | BUY   | 5/22                          | J                         |                        |  |  |
| 112 Johnson and Johnson (DC)   | A  | DIV  | J  | T  | BUY   | 5/22                          | J                         |                        |  |  |
| 113 MD. State Transit Auth. (DC)   | A  | INT  | J  | T  | BUY   | 9/03                          | J                         |                        |  |  |
| 114 MD. State Transit Auth. (DC)   | A  | INT  | J  | T  | BUY   | 9/03                          | J                         |                        |  |  |
| 115  |  |  |  |  |   |                               |                           |                        |  |  |
| 116  |  |  |  |  |   |                               |                           |                        |  |  |
| 117  |  |  |  |  |   |                               |                           |                        |  |  |
| 118  |  |  |  |  |   |                               |                           |                        |  |  |
| 119  |  |  |  |  |   |                               |                           |                        |  |  |
| 120  |  |  |  |  |   |                               |                           |                        |  |  |
| 121  |  |  |  |  |   |                               |                           |                        |  |  |
| 122  |  |  |  |  |   |                               |                           |                        |  |  |
| 123  |  |  |  |  |   |                               |                           |                        |  |  |
| 124  |  |  |  |  |   |                               |                           |                        |  |  |
| 125  |  |  |  |  |   |                               |                           |                        |  |  |
| 126  |  |  |  |  |   |                               |                           |                        |  |  |
| 1 Income/Price Codes (See Col. B1 & D2)  | A=\$1,000 or less<br>E=\$15,001 to \$50,000    | B=\$1,001 to \$2,500<br>F=\$50,001 to \$100,000      | C=\$2,501 to \$5,000<br>G=\$100,001 to \$1,000,000 | D=\$5,001 to \$15,000<br>H=more than \$1,000,000 |   |                               |                           |                        |  |  |
| 2 Value Codes (See Col. C1 & D3)   | J=\$15,000 or less<br>N=\$250,001 to \$500,000 | K=\$15,001 to \$50,000<br>O=\$500,001 to \$1,000,000 | L=\$50,001 to \$100,000<br>P=more than \$1,000,000 | M=\$100,001 to \$250,000                         |   |                               |                           |                        |  |  |
| 3 Value Method Codes (See Col. C2)   | Q=Appraisal<br>U=Book Value                    | R=Cop (real estate only)<br>V=Other                  | S=Assessment<br>W=Estimated                        | T=Cash/Market                                    |   |                               |                           |                        |  |  |

FINANCIAL DISCLOSURE REPORT (cont'd)

|   |                           |
|---|---------------------------|
| Name of Person Reporting<br>NOTZ, JOHN F. | Date of Report<br>5/14/93 |
|---|---------------------------|

VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

Line 74 - Purchased every month from salary withholding

Lines 91-98 - Purchased from retirement account rolled over from  
pension account with former law firm.

|                                      |                          |                |
|--------------------------------------|--------------------------|----------------|
| FINANCIAL DISCLOSURE REPORT (cont'd) | Name of Person Reporting | Date of Report |
|                                      | NOTZ, JOHN F.            | 5/14/93        |

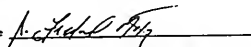
## IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature


Date May 19, 1993

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, 104, AND 18 U.S.C. 1001.)

## FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Judicial Ethics Committee  
Administrative Office of the  
United States Courts  
Washington, D.C. 20544

## FINANCIAL STATEMENT

### NET WORTH

DIANA G. MOTZ

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debt mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

| ASSETS                                      |                  |           |  | LIABILITIES                                      |                  |           |  |
|---|------------------|-----------|--|--|------------------|-----------|--|
| Cash on hand and in banks                   | 90,000           | 00        |  | Notes payable to banks—secured                   | No               | --        |  |
| U.S. Government securities—add schedule     | No               | --        |  | Notes payable to banks—unsecured                 | No               | --        |  |
| Listed securities—add schedule A            | 554,244          | 14        |  | Notes payable to relatives                       | No               | --        |  |
| Unlisted securities—add schedule            | No               | --        |  | Notes payable to others                          | No               | --        |  |
| Accounts and notes receivable:              |                  |           |  | Accounts and bills due                           | No               | --        |  |
| Due from relatives and friends              | No               | --        |  | Unpaid income tax                                | No               | --        |  |
| Due from others                             | No               | --        |  | Other unpaid tax and interest                    | No               | --        |  |
| Doubtful                                    | No               | --        |  | Real estate mortgages payable—add schedule B     | 31,300           | 00        |  |
| Real estate owned—add schedule B            | 300,000          | 00        |  | Chattel mortgages and other liens payable        | No               | --        |  |
| Real estate mortgages receivable            | No               | --        |  | Other debts—itemize:                             | No               | --        |  |
| Autos and other personal property           | 50,000           | 00        |  |  |                  |           |  |
| Cash value—life insurance                   | 4,592            | 00        |  |  |                  |           |  |
| Other assets—itemize:                       |                  |           |  |  |                  |           |  |
| FBC&G Pension—value                         | 60,000           | 00        |  |  |                  |           |  |
| Assets of Children<br>(see Schedules C & D) | 457,664          | 00        |  |  |                  |           |  |
| State Pension—value                         | 12,217           | 00        |  |  |                  |           |  |
| <b>Total assets</b>                         | <b>1,528,717</b> | <b>00</b> |  | <b>Total liabilities</b>                         | <b>31,300</b>    | <b>00</b> |  |
|   |                  |           |  | <b>Net worth</b>                                 | <b>1,497,417</b> | <b>00</b> |  |
|   |                  |           |  | <b>Total liabilities and net worth</b>           | <b>1,528,717</b> | <b>00</b> |  |
|   |                  |           |  |  |                  |           |  |
| CONTINGENT LIABILITIES                      |                  |           |  | GENERAL INFORMATION                              |                  |           |  |
| As endorser, comaker or guarantor           | No               | --        |  | Are any assets pledged? (Add schedule.)          | No               | --        |  |
| On leases or contracts                      | No               | --        |  | Are you defendant in any suits or legal actions? | No               | --        |  |
| Legal Claims                                | No               | --        |  | Have you ever taken bankruptcy?                  | No               | --        |  |
| Provision for Federal Income Tax            | No               | --        |  |  |                  |           |  |
| Other special debt                          | No               | --        |  |  |                  |           |  |

SCHEDULE ALISTED SECURITIES - DIANA G. AND J. FREDERICK MOTZStocks

|                                 |    |                |
|---------------------------------|----|----------------|
| 300 shares Alex Brown           | \$ | 8,850          |
| 100 shares Apple Computer       |    | 2,238          |
| 100 shares Bell South           |    | 6,050          |
| 100 shares Campbell Soup        |    | 3,850          |
| 100 shares Dupont               |    | 4,650          |
| 100 shares Exxon                |    | 65,500         |
| 100 shares General Electric     |    | 9,588          |
| 150 shares IBM                  |    | 7,481          |
| 100 shares LG&E Energy          |    | 4,175          |
| 100 shares Long Island Lighting |    | 2,725          |
| 200 shares T. Rowe Price        |    | 12,275         |
| 100 shares Quaker Oats          |    | 6,700          |
| 300 shares RPM, Inc.            |    | 5,363          |
| 100 shares Sara Lee             |    | 2,363          |
| 100 shares Texaco               |    | 6,775          |
| 293 shares US Banknote          |    | 2,051          |
| Total - Stocks                  |    | <u>150,634</u> |

|  |  |       |
|--|--|-------|
| Alex Brown Ltd. Partnership Realty Parking |  | 4,900 |
|--|--|-------|

Mutual Funds

|                                  |    |                |
|----------------------------------|----|----------------|
| Aim Weingarten (Diana Motz -IRA) | \$ | 8,368          |
| Fed'l Gov't - F Fund             |    | 17,219         |
| Nicholas Fund                    |    | 19,585         |
| T. Rowe Price - Equity Income    |    | 10,580         |
| T. Rowe Price - Growth Stock     |    | 6,484          |
| T. Rowe Price - Int'l Bond       |    | 18,830         |
| T. Rowe Price - Int'l Stock      |    | 13,628         |
| T. Rowe Price - New Asia         |    | 17,273         |
| T. Rowe Price - New Horizons     |    | 9,827          |
| Putnam OTC Emerging Growth       |    | 52,448         |
| Total - Mutual Funds             |    | <u>174,243</u> |

Bonds

|                        |    |                |
|------------------------|----|----------------|
| Howard County          | \$ | 9,062          |
| Howard County          |    | 9,983          |
| Md. State              |    | 11,980         |
| Md. State              |    | 10,865         |
| Md. State              |    | 16,370         |
| Md. State              |    | 10,390         |
| Md. State              |    | 5,000          |
| Montgomery County      |    | 10,787         |
| University of Maryland |    | 13,611         |
| University of Maryland |    | 6,839          |
| Total - Bonds          |    | <u>104,887</u> |

|                                  |                      |
|----------------------------------|----------------------|
| <u>IRA - J. F. Motz</u>          |                      |
| 400 shares Atlantic Energy Inc.  | \$ 8,950.00          |
| 200 shares Coca Cola Co.         | 8,675.00             |
| GT Investment Funds Inc.         | 5,297.18             |
| 100 shares Georgia Pacific Corp. | 6,425.00             |
| Units Government Securities      |                      |
| Equity & Trust Series 6          | 23,841.14            |
| 50 shares Merck                  | 1,606.25             |
| 100 shares Mobil                 | 8,150.00             |
| Prudential Utility Fund: Class B | 20,632.78            |
| 200 Texas Utilities Co.          | 9,000.00             |
| Zweig Appreciation Fund: Class B | 23,987.79            |
| Prudential Moneymart Assets Fund | 3,016.00             |
| <br>                             |                      |
| Total - J. F. Motz IRA           | <u>119,581.14</u>    |
| <br>                             |                      |
| Grand Total - Listed Securities  | \$ <u>554,244.14</u> |

SCHEDULE BREAL ESTATE - DIANA G. AND J. FREDERICK MOTZ

Residence: 123 St. Dunstan's Road  
Baltimore, Maryland  
Held as Tenants by the Entirety with John  
Frederick Motz

Purchase Price: November 1977 - \$120,000

Purchased From: Ann and E. DeWitt Battams

Estimate Current  
Fair Market Value: \$300,000

Mortgage Provident Savings Bank  
8 3/4%

Principal Balance: \$31,300



SCHEDULE C  
CASH AND LISTED SECURITIES OF CATHERINE J. MOTZ

Cash

|                       |    |           |        |
|-----------------------|----|-----------|--------|
| Alexander Brown, Inc. | \$ | 1,793.00  |        |
| T. Rowe Price         |    | 36,698.00 |        |
| Prudential            |    | 6,664.00  |        |
| Total Cash            |    |           | 45,155 |

Stocks

|                        |    |       |        |
|------------------------|----|-------|--------|
| 300 shares Borden      | \$ | 5,325 |        |
| 100 shares Citicorp    |    | 3,813 |        |
| 100 shares Walt Disney |    | 3,775 |        |
| 200 shares FPL Group   |    | 7,875 |        |
| 100 shares Mobil       |    | 8,163 |        |
| 200 shares Pepsico     |    | 7,850 |        |
| 150 shares RPM         |    | 2,681 |        |
| Total Stocks           |    |       | 39,482 |

Mutual Funds

|                                    |    |        |         |
|------------------------------------|----|--------|---------|
| AIM Equity                         | \$ | 5,597  |         |
| Kemper - Govt. Portfolio           |    | 18,385 |         |
| National Equity Utilities          |    | 10,249 |         |
| Nicholas Fund                      |    | 14,689 |         |
| Premier State - Municipals         |    | 10,329 |         |
| T. Rowe Price-Equity Income        |    | 10,097 |         |
| T. Rowe Price - Growth Stock       |    | 2,820  |         |
| T. Rowe Price - New Asia           |    | 17,273 |         |
| T. Rowe Price - International Bond |    | 10,031 |         |
| Putnam Health                      |    | 4,193  |         |
| Total Mutual Funds                 |    |        | 103,663 |

Bonds

|                          |    |        |        |
|--------------------------|----|--------|--------|
| Md. State Community      | \$ | 5,075  |        |
| Md. State Health         |    | 11,981 |        |
| Md. State Transportation |    | 6,378  |        |
| Prince George's County   |    | 7,305  |        |
| Washington County        |    | 10,313 |        |
| Total Bonds              |    |        | 41,052 |

Other

|  |    |       |         |
|--|----|-------|---------|
| Alex Brown Ltd Partnership<br>Realty Parking | \$ | 4,955 |         |
| Total  |    |       | 4,955   |
| GRAND TOTAL                                  | \$ |       | 234,307 |

SCHEDULE D  
CASH AND LISTED SECURITIES OF DANIEL G. MOTZ

|                                    |                   |
|------------------------------------|-------------------|
| <u>Cash</u>                        |                   |
| Alexander Brown, Inc.              | \$ 1,793          |
| T. Rowe Price                      | 22,089            |
| Prudential                         | 6,500             |
| Total Cash                         | <u>30,382</u>     |
| <u>Stocks</u>                      |                   |
| 300 shares Borden                  | \$ 5,325          |
| 100 shares Citicorp                | 3,813             |
| 100 shares Walt Disney             | 3,775             |
| 200 shares FPL Group               | 7,875             |
| 100 shares Mobil                   | 8,163             |
| 200 shares Pepsico                 | 7,850             |
| 150 shares RPM                     | 2,681             |
| Total Stocks                       | <u>39,482</u>     |
| <u>Mutual Funds</u>                |                   |
| AIM Equity                         | \$ 5,597          |
| National Equity                    | 10,249            |
| Prudential Municipal Fund          | 7,888             |
| Nicholas Fund                      | 14,689            |
| Premier State - Municipals         | 10,329            |
| T. Rowe Price-Equity Income        | 10,097            |
| T. Rowe Price - Growth Stock       | 2,820             |
| T. Rowe Price - New Asia           | 17,273            |
| T. Rowe Price - International Bond | 10,031            |
| Putnam Health                      | 4,193             |
| Total Mutual Funds                 | <u>93,166</u>     |
| <u>Bonds</u>                       |                   |
| Md. State Health                   | \$ 11,981         |
| Md. State Health                   | 5,784             |
| Md. State Transportation           | 6,378             |
| Prince George's County             | 7,305             |
| University of Maryland             | 13,611            |
| Washington County                  | 10,313            |
| Total Bonds                        | <u>55,372</u>     |
| <u>Other</u>                       |                   |
| Alex Brown Ltd. Partnership        |                   |
| Realty Parking                     | \$ 4,955          |
| Total                              | <u>4,955</u>      |
| GRAND TOTAL                        | <u>\$ 223,357</u> |

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Over the years, I have worked for and served as a volunteer in a number of community boards. These include the YWCA of Greater Baltimore, the Junior League of Baltimore, and the Union Memorial Hospital. At present, I serve on the Board of Directors of the Johns Hopkins Hospital and a task force requested by the Maryland legislature to examine the feasibility of closing or consolidating the State's mental institutions. In addition, I try to spend a few hours each week as a "hands on" volunteer at the Mt. Washington Pediatric Hospital, playing with and cuddling very sick or abused babies and toddlers.

While in private practice, from 1986 to 1991, I spent at least 25% of my time on pro-bono activities. I represented a number of persons unable to pay for representation. The most significant of these matters are detailed in response to an answer in Part I, question 17 b.1. I have also provided free advice: (1) to countless persons who have sought help in understanding Maryland's arcane election laws and (2) to various non-profit institutions on miscellaneous legal questions, e.g., how a school can obtain a new kind of certification from the state, how to obtain tax free status from the Internal Revenue Service, etc.

When I worked in the Attorney General's Office, there was an office policy prohibiting pro bono representation (then thought to be a conflict with representation of State) but teaching, lecturing, etc. pro bono was permitted. Accordingly, I made it a rule, which I still follow, to try to make myself available to lecture, instruct, moot court, etc. pro bono, any group that asked me. Thus, I have served as a moot court judge on several occasions, e.g., last year at the University of Notre Dame School of Law and the University of Maryland School of Law and in 1986 for the National Association of Attorneys General in preparation for the Supreme Court argument of the Attorney General of North Carolina and I have participated in hundreds of formal and informal talks, panel discussions, conferences, etc. Among these are the following:

Keynote Address, Mandatory Seminar on Professionalism  
for Attorneys Seeking Admission to the Maryland Bar,  
December 3, 1993

- Moderator, "Nuts and Bolts of Appellate Practice," Program for Baltimore County Bar Association, October, 1993
- Instructor, Judicial Institute, "First Amendment Access to Courts," September 9, 1993
- Panelist, "New Administrative Procedure Act and How It Affects OAH Practice," June, 1993
- Panelist, "Nuts and Bolts of Appellate Practice," Program for Frederick County Bar Association, Spring 1992
- Panelist, Maryland Bar Association, Annual Meeting 1992, Appellate Moot Court; "Sanctions" (two different programs.)
- Panelist, Maryland Bar Association, Annual Meeting, 1990, "Appellate Practice" (appellate practice "pointers" - my portion of the program dealt with brief writing)
- Panelist, Maryland Bar Association, January, 1990 Mid-Winter Meeting, "Recent Decisions of the Court of Appeals" (comment on significant recent decisions - my part of the program involved constitutional cases)
- Instructor, University of Virginia Trial Advocacy Institute, 1990, 1988 (seven day session each time) (teaching trial practice - I taught closing argument and direct and cross examination)
- Lecturer, Maryland Institute for Continuing Professional Education of Lawyers, "Effective Appellate Practice," May 24, 1988 (appellate practice "pointers" - my portion dealt with brief writing, appellate argument, and cert. petitions)
- Lecturer, Maryland Institute for Continuing Professional Education of Lawyers, "Practice Tactics of Successful Motion Practice," 1987 (my portion dealt with summary judgment motions)
- Instructor, Baltimore City Bar Association, "Federal Civil Rights Claims," 1986
- Panelist, Maryland Bar Association, Annual Meeting - 1985, Section on Delivery of Legal Services, "Use of Constitutional Claims for Attorneys' Fees in State Court"
- Instructor, Judicial Institute of Maryland, "Civil Rights Litigation," April 19, 1985 (bringing \$ 1983 claims in State court)

Panelist, Maryland Bar Association, Annual Meeting -  
1984, Section of State and Local Government,  
"Distinctions Between State and Federal  
Constitutional Law"

Lecturer, Maryland Institute for Continuing  
Professional Education of Lawyers, "Injunctive,  
Emergency and Expedited Practice - Federal and  
State Court Injunctive Practice," December 9, 1983  
and December 16, 1983. (my portion dealt with  
injunctions).

2. The American Bar Association's Commentary to its Code of Judicial conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

I do not belong and never have belonged to any discriminatory organization.

3. If there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

There is no selection commission in my jurisdiction to recommend candidates for appointment to the Fourth Circuit. I know very little about the judicial selection process. I did not know I was under serious consideration for nomination to the Fourth Circuit until I received a telephone call from Mr. Bernard Nussbaum informing me that I was and that I would shortly be sent some forms that should be answered accurately and fully - and as soon as possible. I completed my written answers and returned them to the White House Counsel's Office. Subsequently, I was interviewed by representatives of that office, and members of the FBI and American Bar Association. The FBI and ABA conducted investigations of me; after several weeks, those investigations were completed. On January 27, 1994, Mr. Nussbaum telephoned me to tell me that President Clinton had sent my name to the Senate to nominate me for appointment to the Fourth Circuit.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

I am not generally a believer in "judicial activism." It is not the job of the courts to formulate new law. The legislature is to legislate; the judiciary is, when asked, to interpret the legislation and, very importantly, to determine if it is constitutional. Both roles are important but they are hardly identical. This is, of course, a principle that provides the bedrock of our democracy. It has generally worked well for 200 years; it should be followed.

Moreover, a case presents an opportunity to resolve legal questions within a finite factual situation; a judge should try to resolve those questions, fully, fairly and with the greatest intellectual honesty. That often becomes impossible

if one uses the case to pronounce general principles, i.e., the issues in the case get lost in the mighty rhetoric and do not receive the attention they need and deserve. Conversely, in my experience, the loose dicta that passes for enunciation of general principles does not really help litigants in future cases. In our system of precedent, only holdings are binding. A party can, of course, use a similar case to argue by analogy, but that is possible without any enunciation of general all-encompassing principles. Moreover, often dicta simply confuses litigants and less sophisticated lawyers into following a course, that, ultimately, when given the opportunity, a court may well find ill conceived.

In summary, being a judge presents enormous challenges without adding that of administering a school, prison, etc. or enunciating general policy, which is almost inevitably is based on little empirical research or knowledge. "Getting it right," clearly, simply, and intelligently in the individual case is hard enough; accordingly, this task should be what the judge concentrates on, not making "new law" or taking over governmental institutions.

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Robert Manley Parker

2. Address: List current place of residence and office address(es).

Residence:

12426 Greenbriar Lake Road  
Tyler, Texas 75709

Office:

United States Courthouse  
221 West Ferguson, Suite 100  
Tyler, Texas 75702

3. Date and place of birth.

October 19, 1937  
Longview, Texas

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Frieda Helen White

Homemaker



5. **Education:** List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

|  |                           |
|--|---------------------------|
| Kilgore Junior College, Kilgore, TX        | 7/56-5/57                 |
| U.S. Naval Academy, Annapolis, MD          | 6/57-1/58                 |
| East Texas Baptist College, Marshall, TX   | 6/58-1/59                 |
| Abilene Christian College, Abilene, TX     | 1/59-1/60                 |
| University of Texas, Austin, TX            | 1/60-8/61<br>B.B.A.       |
| University of Texas Law School, Austin, TX | 9/61-1/64<br>L.L.B.(J.D.) |

6. **Employment Record:** List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Associate Attorney with Law Firm of Parish & Parker, Gilmer, Texas (March 1964-1965)

Associate Attorney with Law Firm of Kenley-Boyland, Longview, Texas (January 1965-August 1965)

Administrative Assistant for U.S. Congressman Ray Roberts, Washington, D.C. (August 1965-August 1966)

Partner in Law Firm of Smead, Roberts, Harbour, Smith, Harris, French & Parker (originally Law Firm of Roberts, Smith & Parker until merger with Law Firm of Smead, Harbour, Harris & French), Longview, Texas (August 1966-1971)

Partner in Law Firm of Rutledge & Parker, Fort Worth, Texas (May 1971-1972)

Partner in Law Firm of Nichols and Parker (originally Law Firm of Ritter, Nichols, Parker & Thibodeaux until death of Mr. Thibodeaux and departure of Mr. Ritter from firm), Longview, Texas (June 1972-April 1979)

7. **Military Service:** Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

None.

9. **Bar Associations:** List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

American Bar Association - former member

State Bar of Texas

Gregg County Bar Association, President - 1978-79

Harrison County Bar Association

Northeast Texas Bar Association

10. **Other Memberships:** List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Federal Judges Association

The organizations show below are not engaged in lobbying.

Tyler Petroleum Club

Local club where I occasionally eat lunch.

Greenbriar Lake Club

Organization that controls fishing in the small lake where I reside.

11. **Court Admission:** List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

|  |                  |
|--|------------------|
| Supreme Court of Texas                           | April 27, 1964   |
| Eastern District of Texas                        | March 1, 1965    |
| Northern District of Texas                       | June 16, 1971    |
| United States Supreme Court                      | April 1, 1969    |
| United States Court of Appeals,<br>Fifth Circuit | February 5, 1979 |

12. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

*A 1986 Constitutional Convention?* 48 TEX. Bar J. 896, September 1985

Co-author: Price Ainsworth  
Fisher, Gallagher & Lewis  
70th Floor, 1000 Louisiana Street  
Houston, Texas 77002  
(713) 654-4433

Mr. Ainsworth was a law clerk at the time. He contributed most of the research, and we shared the writing of the article.

*Streamlining Complex Cases*, U.T. REV.LITIG., Vol.10, No. 2 (1991)

*"ADR" Techniques in the Reformation Model of Civil Dispute Resolution*, 46 S.M.U. L.Rev. 1905 (1993)

Co-author: Leslie J. Hagin

Ms. Hagin is on my staff as a law clerk. She contributed most of the research of the article. The substantive content is entirely mine, and I contributed the major portions of the writing.

I have frequently addressed bar associations, circuit judicial conferences, and local groups. However, I do not read prepared speeches and therefore, do not have copies of any of my speeches. The most frequent topic has been judicial administration which broadly falls within legal policy. To my knowledge, none of my speeches has attracted the attention of the press.

13. **Health:** What is the present state of your health? List the date of your last physical examination.

Good.

September 16, 1993

14. **Judicial Office:** State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

United States District Judge

15. **Citations:** If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citation for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

In Chronological Order:

1. Dean v. Timpson Independent School District, 486 F. Supp. 302 (E.D. Tex. 1979);
2. United States v. Texas Education Agency (South Park I.S.D.), Civil Action No. B-6819-CA (E.D. Tex. (Beaumont), Aug. 5, 1981) (unpublished -- enclosed);

3. State of Texas v. Secretary of the Interior, 580 F. Supp. 1197 (E.D. Tex. 1984);
4. Jenkins v. Raymark Industries, Inc., 109 F.R.D. 269 (E.D. Tex. 1985);
5. Frisco v. Blackburn, 782 F.2d 1353 (5th Cir. 1986) (sitting by designation, opinion for the court);
6. Sierra Club v. Lyng, 694 F. Supp. 1260 (E.D. Tex. 1988);
7. Claude Cimino v. Raymark Industries, Inc., 751 F. Supp. 649 (E.D. Tex. 1990);
8. Beets v. Collins, Civil Action No. 6:90cv575 (E.D. Tex. (Tyler), Apr. 29, 1991) (unpublished opinion -- enclosed);
9. United States v. Melancon, 972 F.2d 566 (5th Cir. 1992) (sitting by designation, special concurring opinion);
10. Sierra Club v. Espy, 822 F. Supp. 356 (E.D. Tex. 1993);

See Attached for answer to Subpart (2) of this question.

(I do not recall and have not found any cases where rulings were criticized that are not included in the answer to 15(2).)

See Attached for answer to Subpart (3) of this question.

16. **Public Office:** State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None.

17. **Legal Career:**

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

No.

2. whether you practiced alone, and if so, the addresses and dates;

No.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

Associate Attorney with Law Firm of Parish & Parker, Gilmer, Texas (March 1964-January 1965)

Associate Attorney with Law Firm of Kenley-Boylard, Longview, Texas (January 1965-August 1965)

Administrative Assistant for U.S. Congressman Ray Roberts, Washington, D.C.  
(August 1965-August 1966)

Partner in Law Firm of Smead, Roberts, Harbour, Smith, Harris, French & Parker (originally Law Firm of Roberts, Smith & Parker until merger with Law Firm of Smead, Harbour, Harris & French), Longview, Texas (August 1966-May 1971)

Partner in Law Firm of Rutledge & Parker, Fort Worth, Texas  
(May 1971-May 1972)

Partner in Law Firm of Nichols and Parker (originally Law Firm of Ritter, Nichols, Parker & Thibodeaux until death of Mr. Thibodeaux and departure of Mr. Ritter from firm), Longview, Texas  
(June 1972-April 1979)

- b. 1. **What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?**

In my early years, I had a people practice. I enjoyed a type law practice that has largely passed from the scene. I had a steady stream of individual clients with individual problems. It was a typical country lawyer - general practice. I tried their civil cases, defended their criminal cases, drew their deeds and wills, probated their estates, attempted to talk them out of getting divorces, and in general stood between them and the government. My fee arrangements were contingent on success or for a negotiated flat fee. When they could pay, they did; when they couldn't, I did the work anyway.

My practice then evolved into more of a civil trial specialty. While I continued to represent individuals on a contingent basis in personal injury actions, I also represented a number of insurance companies on the defense side of personal injury cases.

The last five years of my practice involved a greater concentration of product liability and medical malpractice defense while at the same time I handled some plaintiff personal injury, contingent cases. I also began trying more oil and gas and other commercial cases. At the time of my appointment to the district bench, my partner and I represented one bank, the local newspaper, our city hospital authority, and various corporate clients, in addition to our regular insurance company clients.

I found divorce cases unpleasant and stopped taking them fairly early in my career with the exception of cases involving close friends that I could not avoid. I continued also to try the occasional criminal case throughout my career.

2. **Describe your typical former clients, and mention the areas, if any, in which you have specialized.**

See above.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearance in court varied, describe each such variance, giving dates.

Frequently.

2. What percentage of these appearances was in:

(a) federal court; - 10%

(b) state courts of record; - 85%

(c) other courts. - 5%

3. What percentage of your litigation was:

(a) civil; - 98%

(b) criminal. - 2%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

At the time I prepared the Questionnaire in 1978, I was able to verify fifty-one cases tried to verdict over the five years preceding my appointment. Eleven were as chief counsel, thirty-seven as sole counsel, and three as associate counsel. Our office did not maintain these type records so the numbers are low to some extent. I have no way of accurately reporting the number of cases tried prior to 1974.

5. What percentage of these trials was:

(a) jury; - 90%

(b) non-jury. - 10%



18. **Litigation:** Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) The individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

I can only attach information I provided to the Senate Judiciary Committee in 1979. My law firm's records have long since been destroyed and memory has faded. In reviewing the information I provided in 1979, it occurs to me that these cases are not, in fact, significant but are simply the run-of-the-mill business handled by a civil trial lawyer in rural east Texas.

To assist in verification, attached to each case are current addresses of surviving judges and opposing counsel that I was able to update.

19. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

None

**II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)**

1. **List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

My brother and I sold our parents' homeplace after their deaths and share equally in the proceeds of a Promissory Note from Henry H. and Dawn B. Leggett of Hallsville, Texas dated February 13, 1992 in the amount of \$60,000.00, with interest from that date at the rate of 8.00% per annum, principal and interest payable annually in three equal installments of \$20,000.00 plus interest. These proceeds are then divided between my brother and me.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

The procedure utilized in the Fifth Circuit Court of Appeals involves a process whereby the identity of interested parties is provided to the members of an appellate panel when cases are assigned to that panel. If there is a conflict of interest, I recuse myself.

The conflicts of interest I would have as a judge on the court of appeals are the same as those I have now. They are suits involving banks with which I do business, the gas production company I have invested with, and the law firms where my daughter practices and son-in-law is practicing.

3. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See Attached Financial Disclosure Report.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See Attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I served as Gregg County Campaign Chairman for Congressman Ray Roberts in each of his contested elections between the time I served as his Administrative Assistant and the time of my confirmation to the district court.

I was active in each of Senator Lloyd Bentsen's campaigns in all respects of the campaign. I do not recall whether I ever had a title.

I participated in fund raising activities for Bob Krueger in his 1978 Senate race. I was also generally active in local politics.

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I accepted criminal appointments without fee.

I also provided legal services on a regular basis without fee.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

Pinecrest Country Club  
 P. O. Drawer 991  
 Longview, Texas 75606  
 (903) 758-5566  
 September 8, 1967 - June 23, 1978  
 May 25, 1984 - September 30, 1987  
 June 1, 1989 - July 31, 1992 (non-resident member)

Pinecrest Country Club was implicitly discriminatory from its inception in the 1930s until the mid-1970s. I am advised it has never been explicitly discriminatory. Today Hispanics and Asians are members of the club; blacks frequent the club as guests, but there are no black members. I am told that a black has never applied for membership. Prior attitudes probably have had a chilling effect on the willingness of blacks to apply for membership. I am confident that no impediment exists today for blacks and that a qualified applicant would be welcomed into the club.

I was a member of the Board of Directors for one year (1986). I initiated a board discussion relative to minority membership in the club. I was pleased to find that the Board had an appreciation of the problem and was quite willing to rectify past attitudes by admitting any qualified black. I must say that my only lingering criticism of the club is that it has never actively recruited blacks for membership.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

There is no selection commission to recommend candidates for nomination to the court of appeals.

I received a Questionnaire from Senator Bentsen which was made available to Senator Krueger when Senator Bentsen joined the Cabinet. In response to their inquiry, I have provided Senators Gramm and Hutchison with copies of that Questionnaire. In January 1994 I was interviewed by White House counsel Ron Klain. I then met with Bernie Nussbaum, but I would not characterize that visit as an interview.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

- c. **A tendency by the judiciary to impose broad, affirmative duties upon governments and society;**
- d. **A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and**
- e. **A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.**

I will attempt to answer this question in a manner that acknowledges the Senate's right to consider all available information about a judicial candidate, including the candidate's personal, political and legal views so long as the inquiry stops short of seeking a commitment from the candidate regarding how he or she might rule on future cases.

I find myself in a position similar to an incumbent politician running for re-election. I have a record created by fourteen and one-half years on the district bench. The published portion of that record is available to Senators to inform their decision on my confirmation. It contains opinions that I am sure some would consider "activist" and opinions that some would criticize as exercising too much "judicial restraint."

The controversy surrounding judicial review did not stop with Marbury v. Madison. The remedies ordered in voting rights, desegregation, and prisoner cases in recent years have again focused the controversy. Today the level of deference the courts should afford governmental agency decision making or legislative action can pose very difficult problems for the federal courts. These problems are best solved, in my view, by restricting judicial review to the facts of the actual controversy before the court in the particular case and by leaving policy making to the legislative branch. My experience has been that each of these cases is intensively fact specific. As a general rule, I believe that unconstitutional legislative action should be corrected by legislative bodies. Likewise, executive decision making, if found to be in violation of Statutes or the Constitution, should not be replaced by judicial decision making in the areas of responsibility and expertise assigned to the governmental agency. The courts are ill-equipped to run governmental agencies or political subdivisions through the appointment of special masters, administrators, or otherwise. However, on those rare occasions when intransigence is encountered and initial deference has failed to correct deprivation of statutory, fundamental, or Constitutional rights more far-reaching remedies can be justified.

I view the concept of separation of powers to impose on the judiciary the duty to guard as jealously the prerogatives of the executive and legislative branches as the judiciary guards its own.

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

## ASSETS

## Cash on hand and in banks

|                                      |                     |
|--------------------------------------|---------------------|
| Texas National Bank                  |                     |
| Longview, Texas (903) 759-3828       |                     |
| Robert M. Parker - Account #6-5136-2 | \$ 35,939.28        |
| 1/2 interest in Parker Estate        |                     |
| Account #6-5148-6 (\$798.63)         | \$ 399.31           |
|                                      | .                   |
| Southside State Bank                 |                     |
| Tyler, Texas (903) 531-7111          |                     |
| Robert M. Parker - Account #4148835  | \$ 721.38           |
| Robert or Frieda Parker              |                     |
| Account #4017234                     | \$ 7,023.12         |
| Total:                               | <u>\$ 44,083.09</u> |

U.S. Government Securities None

Listed Securities None

Unlisted Securities None

## Accounts and Notes Receivable:

Due from Relatives and Friends None

Due from Others -

One-half interest in Promissory Note from  
Henry H. and Dawn B. Leggett of Hallsville,  
Texas, dated February 13, 1992 in the amount



# 1021

of \$60,000.00 with interest from that date at the rate of 8.00% per annum, principal and interest payable annually in three equal installments of \$20,000.00 plus interest.

This was Note give to my brother and me upon sale of our parents' home (after their death). Proceeds from Note are divided equally between my brother and me. Two installments have been paid and there is one remaining. My one-half will be \$10,000.00 plus interest.

\$ 10,000.00

Doubtful

None

## Real Estate Owned

376 8 acres located in Harrison County, Texas. The property is valued at \$1,000.00 per acre.

\$ 376,800.00

One-half interest in 6 acres, Harrison County, Texas (\$21,000.00 - total)

\$ 10,500.00

Home on Greenbriar Lake Road

\$ 350,000.00

## Autos and Other Personal Property

1993 Grand Cherokee Jeep

\$ 29,000.00

1992 GMC Suburban

\$ 17,500.00

1987 Lincoln Towncar

\$ 4,500.00

Farm Equipment

\$ 25,000.00

Boats

\$ 20,000.00

Cash Value - Life Insurance

None

## Other Assets - Itemize

The value of the various small working and royalty interest with Winchester Production Company fluctuate with the price of natural gas. The value attached is at current prices and does not reflect any value for undeveloped reserves. A list of the leases and wells involved is part of my Financial Disclosure attached to the Senate Judiciary Committee Questionnaire. I will provide a schedule of these assets if desired.

\$ 250,000.00

**TOTAL ASSETS**\$ 1,137,383.09**CONTINGENT LIABILITIES**

## As Endorser, Comaker or Guarantor

Southside State Bank  
Loan securing car for  
Cecil and Dorothy Taylor

\$ 4,818.30

Southside State Bank  
Loan securing truck for Cecil  
Taylor

\$ 1,816.76

On Leases or Contracts

None

Provision for Federal Income Tax

None

Other Special Debt

None

**LIABILITIES**

## Notes Payable to Banks - Secured

Southside State Bank - Tyler, Texas  
1992 GMC Suburban

\$ 11,000.00

|   |                       |
|---|-----------------------|
| Texas National Bank - Longview, Texas<br>1993 Grand Cherokee Jeep   | \$ 20,000.00          |
| Texas National Bank - Longview, Texas<br>Acreage in Harrison County, Texas  | \$ 180,000.00         |
| <b>Notes to Banks - Unsecured</b>   |                       |
| Texas National Bank - Longview, Texas<br>Parker Estate (Total amount of note - \$500.00)<br>my one-half interest owed<br>(This is a line of credit in the amount of \$25,000.00 -<br>we have purposely left a \$500.00 balance to leave it open.) | \$ 250.00             |
| Southside State Bank<br>Tyler, Texas<br>(This is a line of credit in the amount of \$25,000.00 with<br>a \$16,000.00 balance.)  | \$ 16,000.00          |
| Notes Payable to Relatives  | None                  |
| Notes to Others   | None                  |
| Accounts and Bills Due (Estimated)  | \$ 3,000.00           |
| Unpaid Income Tax   | None                  |
| Other Unpaid Tax and Interest   | None                  |
| <b>Real Estate Mortgages payable</b>  |                       |
| Tyler Bank and Trust Company<br>Tyler, Texas - Mortgage on Home   | \$ 23,104.38          |
| Chattel Mortgages and Other Liens Payable   | None                  |
| Other Debts - Itemize:  | None                  |
| <b>TOTAL LIABILITIES</b>  | <u>\$ 259,989.44</u>  |
| <b>NET WORTH</b>  | <b>\$ 877,393.65</b>  |
| <b>TOTAL LIABILITIES AND NET WORTH</b>  | <b>\$1,137,383.09</b> |

**GENERAL INFORMATION**

GENERAL INFORMATION

Are any assets pledged?

1992 GMC Suburban pledged to Southside State Bank, Tyler, Texas to secure note.

1993 Grand Cherokee Jeep pledged to Texas National Bank - Longview to secure note.

House at 12426 Greenbriar Lake Road is mortgaged at Tyler Bank & Trust Company, Tyler, Texas

Are you defendant in any suits or legal actions? No.

Have you ever taken bankruptcy? No.

ADDITIONAL INFORMATION:

I have not listed household furnishings, paintings, library, gun collection or various other items of personal property, but can if it is needed.

I, Robert M. Parker, certify that to the best of my knowledge and belief, the above and foregoing is a true and accurate statement of my financial condition on February 1, 1994.

A handwritten signature in black ink, appearing to read 'Robert M. Parker', written over a horizontal line.

ROBERT M. PARKER

AC-10  
Rev. 1/93

## FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics  
Reform Act of 1989, Pub. L. No.  
101-594, November 30, 1989  
(5 D.S.C.A. App. 6, §§101-112)

|  |   |   |
|--|---|---|
| 1. Person Reporting (Last name, first, middle initial.)<br><br>PARKER, ROBERT M.   | 2. Court or Organization<br>U.S. DISTRICT COURT<br>EASTERN DISTRICT OF TEXAS  | 3. Date of Report<br><br>1/24/94        |
| 4. Title (Article III Judges indicate active or senior status; Magistrate Judges indicate full- or part-time)<br><br>CHIEF U.S. DISTRICT JUDGE | 5. Report Type (check appropriate type)<br>____ Nomination, Date _____<br>____ Initial <input checked="" type="checkbox"/> Annual    ____ Final                                     | 6. Reporting Period<br><br>AMENDED 1992 |
| 7. Chambers or Office Address<br><br>221 WEST FERGUSON, SUITE 100<br>TYLER, TEXAS 75702  | 8. On the basis of the information contained in this Report, it is, in my opinion, in compliance with applicable laws and regulations ____<br><br>Reviewing Officer Signature _____ |   |

**IMPORTANT NOTES:** The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on last page.

## I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

POSITIONNAME OF ORGANIZATION/ENTITY
 NONE (No reportable positions)

EXECUTOR

ESTATE OF IDA LURA PARKER - DECEASED

EXECUTOR

ESTATE OF ROSS M. PARKER - DECEASED

## II. AGREEMENTS. (Reporting individual only; see p. 8-9 of Instructions.)

DATEPARTIES AND TERMS
 NONE (No reportable agreements)

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

DATESOURCE AND TYPEGROSS INCOME  
(yours, not spouse)

(Honoraria only)

 NONE (No reportable non-investment income)

|              |  |              |
|--------------|--|--------------|
| 1<br>2/13/93 | Sale of parents' home and 51 acres in Hallsville, TX | \$ 75,000.00 |
| 2            |  | \$ _____     |
| 3            |  | \$ _____     |
| 4            |  | \$ _____     |
| 5            |  | \$ _____     |

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

ROBERT M. PARKER

Date of Report

1/24/94

AMENDED 1992

## IV. REIMBURSEMENTS and GIFTS - transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

## SOURCE

## DESCRIPTION

| <input type="checkbox"/> NONE (No such reportable reimbursements or gifts) |   |
|--|---|
| 1  | Association of American Law Schools Reimbursement of travel expenses to San Antonio and |
| 2  | Return -- Speaker on Program; January 6, 1992 -- \$199 (                                |
| 3  | State Bar of Texas -- Advanced  |
| 4  | Personal Injury Law Seminar Reimbursement of travel expenses to Houston, Texas          |
| 5  | and Return -- Speaker on Program; July 18, 1992 --                                      |
| 6  | \$180.26  |
| 7  |   |
| 8  |   |

## V. OTHER GIFTS.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp.15-16 of Instructions.)

## SOURCE

## DESCRIPTION

## VALUE

| <input checked="" type="checkbox"/> NONE (No such reportable gifts) |  |          |
|---|--|----------|
| 1   |  | \$ _____ |
| 2   |  | \$ _____ |
| 3   |  | \$ _____ |
| 4   |  | \$ _____ |

## VI. LIABILITIES.

(Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp.16-18 of Instructions.)

## CREDITOR

## DESCRIPTION

## VALUE CODE\*

| <input type="checkbox"/> NONE (No reportable liabilities) |                                    |                               |   |
|---|------------------------------------|-------------------------------|---|
| 1   | Texas Commerce Bank - Longview, TX | Loan No. 9007                 | K |
| 2   | Texas National Bank - Longview, TX | Loan No. 30264                | M |
| 3   | Texas National Bank - Longview, TX | Loan No. 47580                | K |
| 4   | Southside State Bank - Tyler, TX   | Loan No. D1L35877 -- 1992 GMC |   |
| 5   |                                    | Suburban                      | K |
| 6   |                                    |                               |   |
| 7   |                                    |                               |   |

\* VALUE CODES: J = \$15,000 or less    K = \$15,001 to \$50,000    L = \$50,001 to \$100,000    M = \$100,001 to \$250,000  
 N = \$250,001 to \$500,000    O = \$500,001 to \$1,000,000    P = More than \$1,000,000

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

ROBERT M. PARKER

Date of Report

1/24/94  
AMENDED 1992

VII. INVESTMENTS and TRUSTS - income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

| A.<br>Description of Assets<br>(Including trust assets)<br><small>Indicate, where applicable, owner of the asset by using the parenthetical (J) for joint ownership of reporting individual and spouse, (S) for separate ownership by spouse, (D) for ownership by dependent child.<br/>Place "(X)" after each asset exempt from prior disclosure.</small> | B.<br>Income during reporting period |                                 | C.<br>Gross value at end of reporting period |                         | D.<br>Transactions during reporting period  |              |                            |                 |   |
|--|--------------------------------------|---------------------------------|--|-------------------------|---|--------------|----------------------------|-----------------|---|
|  | (1)                                  | (2)                             | (3)  | (4)                     | If not exempt from disclosure   |              |                            |                 |   |
|  | Am. Code (A-B)                       | Type (e.g., Div., Int. or Int.) | Value Code (J-P)                             | Value Method Code (W-V) | Type Code (S-D)   | Date (MM/YY) | Value Code (J-P)           | Gain Code (A-B) | Identity of Buyer/Seller (if private transaction) |
| <input type="checkbox"/> NONE (No reportable income, assets, or transactions)  |                                      |                                 |  |                         |   |              |                            |                 |   |
| 1 One-half interest in   |                                      |                                 |  |                         |   |              |                            |                 |   |
| 2 approximately 774 Acres  |                                      |                                 |  |                         |   |              |                            |                 |   |
| 3 in Harrison County, TX   |                                      |                                 |  | O W                     |   |              |                            |                 |   |
| 4 Sale of Rock from Acreage  | D                                    | purchase                        |  |                         | sell  | 9/92         |                            |                 | Judge Parker                                      |
| 5  |                                      | price of rock                   |  |                         | and   | 3/92         | D                          |                 | rock to H & H<br>Crushed Rock                     |
| 6 MAXWELL OIL & GAS  | B                                    | WI                              | J  | W                       | Sell  | 9/92         | J                          | C               | Judge Parker                                      |
| 7 Calvin, Jr., #1  | A                                    | WI                              | J  | W                       | All of the Working Interest owned by Judge Parker in the wells listed here in Lines 7, 8, 9, and was sold to Maxwell Oil & Gas, the |              |                            |                 |   |
| 8 D.J. Lehmann #1  | A                                    | WI                              | J  | W                       |   |              |                            |                 |   |
| 9 Holmes #1  | A                                    | WI                              | J  | W                       |   |              |                            |                 |   |
| 10 Holmes #2   | A                                    | WI                              | J  | W                       |   |              |                            |                 |   |
| 11   |                                      |                                 |  |                         |   |              |                            |                 |   |
| 12 Plano Petroleum/Operated  |                                      |                                 |  |                         |   |              |                            |                 |   |
| 13 by Jim Emerson  | D                                    | WI                              | K  | W                       |   |              |                            |                 |   |
| 14 Schiepel #2   | D                                    | WI                              | K  | W                       |   |              |                            |                 |   |
| 15   |                                      |                                 |  |                         |   |              |                            |                 |   |
| 16   |                                      |                                 |  |                         |   |              |                            |                 |   |
| 17   |                                      |                                 |  |                         |   |              |                            |                 |   |
| 18   |                                      |                                 |  |                         |   |              |                            |                 |   |
| 19   |                                      |                                 |  |                         |   |              |                            |                 |   |
| 20   |                                      |                                 |  |                         |   |              |                            |                 |   |
| 1 Income/Gain Codes:<br>(See Col. B1 & B4)   | A=\$1,000 or less                    |                                 | B=\$1,001 to \$2,500                         |                         | C=\$2,501 to 5,000  |              | D=\$5,001 to \$15,000      |                 |   |
| 2 Value Codes:<br>(See Col. C1 & C3)   | F=\$15,000 to \$50,000               |                                 | G=\$50,001 to \$100,000                      |                         | H=\$100,001 to \$150,000  |              | I=\$150,001 to \$1,000,000 |                 | J=more than \$1,000,000                           |
| 3 Value Method Codes:<br>(See Col. C2)   | U=Book Value                         |                                 | R=Cost (Real estate only)                    |                         | S=Assessment  |              | T=Cash/Market              |                 | V=Other   |

FINANCIAL DISCLOSURE REPORT (cont'd)

|   |   |
|---|---|
| Name of Person Reporting<br><b>ROBERT M. PARKER</b> | Date of Report<br>1/24/94<br>AMENDED 1992 |
|---|---|

VII. INVESTMENTS and TRUSTS – income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

| A.<br>Description of Assets<br>(Including trust assets)<br><br>Indicate, where applicable, owner of the asset by using the parentheticals: "(S)" for "sole ownership of reporting individual and spouse," "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.<br><br>Place "(X)" after each asset exempt from prior disclosure. | B.<br>Income during reporting period |  | C.<br>Gross value at end of reporting period |                                | D.<br>Transactions during reporting period         |                       |                         |                        |  |
|--|--------------------------------------|--|--|--------------------------------|--|-----------------------|-------------------------|------------------------|--|
|  | (1)<br>Amt. Code (A-B)               | (2)<br>Type (e.g., div., rent or int.) | (1)<br>Value Code (J-P)                      | (2)<br>Value Method Code (A-W) | If not exempt from disclosure                      |                       |                         |                        |  |
|  |                                      |  |  |                                | (1)<br>Type (e.g., div., rent, interest, dividend) | (2)<br>Date Month Day | (3)<br>Value Code (J-P) | (4)<br>Gain Code (A-B) | (5)<br>Identity of buyer/seller (if private transaction) |
| <input type="checkbox"/> NONE (No reportable income, assets, or transactions)  |                                      |  |  |                                |  |                       |                         |                        |  |
| 1 WINCHESTER PRODUCTION  | G                                    | WI                                     | N  | W                              |  |                       |                         |                        |  |
| 2 Carr 1   | C                                    | WI                                     | J  | W                              |  |                       |                         |                        |  |
| 3 Carr 2T  | A                                    | WI                                     | J  | W                              |  |                       |                         |                        |  |
| 4 J. W. Coney  | A                                    | WI                                     | J  | W                              | Plugged and  | Abandoned             | 10/15/92                |                        |  |
| 5 Jonesville 1   | B                                    | WI                                     | J  | W                              |  |                       |                         |                        |  |
| 6 Jonesville 4   | C                                    | WI                                     | J  | W                              |  |                       |                         |                        |  |
| 7 Jonesville 7   | B                                    | WI                                     | J  | W                              |  |                       |                         |                        |  |
| 8 Jonesville 7A  | A                                    | WI                                     | J  | W                              |  |                       |                         |                        |  |
| 9 Jonesville 8C  | B                                    | WI                                     | J  | W                              |  |                       |                         |                        |  |
| 10 Jonesville 8T   | B                                    | WI                                     | J  | W                              |  |                       |                         |                        |  |
| 11 Jonesville 2  | C                                    | WI                                     | J  | W                              |  |                       |                         |                        |  |
| 12 Jonesville 5  | D                                    | WI                                     | K  | W                              |  |                       |                         |                        |  |
| 13 Jonesville 10   | E                                    | WI                                     | L  | W                              |  |                       |                         |                        |  |
| 14 Jonesville 11   | C                                    | WI                                     | J  | W                              |  |                       |                         |                        |  |
| 15 Jonesville 14   | D                                    | WI                                     | K  | W                              |  |                       |                         |                        |  |
| 16 Jonesville 15   | A                                    | WI                                     | J  | W                              |  |                       |                         |                        |  |
| 17 Jonesville 16   | B                                    | WI                                     | J  | W                              |  |                       |                         |                        |  |
| 18 Jonesville 17   | B                                    | WI                                     | J  | W                              |  |                       |                         |                        |  |
| 19 Jonesville 18   | A                                    | WI                                     | J  | W                              |  |                       |                         |                        |  |
| 20   |                                      |  |  |                                |  |                       |                         |                        |  |

|  |  |  |   |   |
|--|--|--|---|---|
| 1 Income/Gain Codes:<br>(See Col. B1 & D4) | A=\$1,000 or less<br>F=\$15,001 to \$50,000    | B=\$1,001 to \$2,500<br>G=\$50,001 to \$100,000      | C=\$2,501 to 5,000<br>D=\$150,001 to \$1,000,000        | E=\$5,001 to \$15,000<br>F=\$150,001 to \$1,000,000       |
| 2 Value Codes:<br>(See Col. C1 & C3)       | J=\$15,000 or less<br>K=\$250,001 to \$500,000 | L=\$15,001 to \$50,000<br>M=\$500,001 to \$1,000,000 | N=\$50,001 to \$100,000<br>O=\$1,000,001 to \$5,000,000 | P=\$100,001 to \$250,000<br>Q=Assessment<br>R=Cash/Market |
| 3 Value Method Codes:<br>(See Col. C2)     | U=Book Value                                   | V=Appraised  | W=Cost (real estate only)                               | X=Other<br>Y=Estimated                                    |



FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting:  
ROBERT M. PARKER

Date of Report  
1/24/94  
Amended 1992

VII. INVESTMENTS and TRUSTS -- income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

| A.<br>Description of Assets<br>(including trust assets)<br><br>Indicate, where applicable, owner of the asset by using the parenthetical "(S)" for joint ownership of reporting individual and spouse, "(SI)" for separate ownership by spouse, "(DC)" for ownership by dependent child.<br><br>Place "(X)" after each asset exempt from prior disclosure. | B.<br>Income during reporting period |                                  | C.<br>Gross value at end of reporting period |                         | D.<br>Transactions during reporting period                                    |          |         |                      |                     |   |
|--|--------------------------------------|----------------------------------|--|-------------------------|---|----------|---------|----------------------|---------------------|---|
|  | (1)                                  | (2)                              | (3)  | (4)                     | If not exempt from disclosure   |          |         |                      |                     |   |
|  | Art. Code (A-B)                      | Type (e.g., div., trust or int.) | Value Code (C-1)                             | Value Method Code (C-2) | Type (e.g., by sale, gift, redemption)  | (1) Date | (2) Key | (3) Value Code (D-1) | (4) Gain Code (A-B) | (5) Identity of buyer/seller (if private transaction) |
| <input type="checkbox"/> NONE (No reportable income, assets, or transactions)  |                                      |                                  |  |                         |   |          |         |                      |                     |   |
| 1 Lavada Church  | A                                    | WI                               | J  | W                       |   |          |         |                      |                     |   |
| 2 Narramore 2  | A                                    | WI                               | J  | W                       |   |          |         |                      |                     |   |
| 3 Trammel 1  | A                                    | WI                               | J  | W                       |   |          |         |                      |                     |   |
| 4 Trammel 2  | A                                    | WI                               | J  | W                       |   |          |         |                      |                     |   |
| 5 Trammel 3  | A                                    | WI                               | J  | W                       |   |          |         |                      |                     |   |
| 6 Trammel 4  | A                                    | WI                               | J  | W                       |   |          |         |                      |                     |   |
| 7 N. Jonesville 1  | B                                    | WI                               | J  | W                       |   |          |         |                      |                     |   |
| 8 N. Jonesville 2  | A                                    | WI                               | J  | W                       |   |          |         |                      |                     |   |
| 9 N. Jonesville 4  | A                                    | WI                               | J  | W                       |   |          |         |                      |                     |   |
| 10 N. Jonesville 6   | A                                    | WI                               | J  | W                       |   |          |         |                      |                     |   |
| 11 N. Jonesville 7   | A                                    | WI                               | J  | W                       | We have been advised by Winchester 100 N. Jonesville 7 has now been purchased |          |         |                      |                     |   |
| 12 Texas   | B                                    | WI                               | J  | W                       | Abandoned (1)   |          |         |                      |                     |   |
| 13 Knighton 1  | A                                    | WI                               | J  | W                       |   |          |         |                      |                     |   |
| 14 Knighton 2  | A                                    | WI                               | J  | W                       |   |          |         |                      |                     |   |
| 15 Knighton 8  | A                                    | WI                               | J  | W                       |   |          |         |                      |                     |   |
| 16 Lucille 1   | D                                    | WI                               | K  | W                       |   |          |         |                      |                     |   |
| 17 Jonesville #21  | C                                    | WI                               | J  | W                       |   |          |         |                      |                     |   |
| 18 Steele #1   | C                                    | WI                               | J  | W                       |   |          |         |                      |                     |   |
| 19 Steele #2   | B                                    | WI                               | J  | W                       |   |          |         |                      |                     |   |
| 20   |                                      |                                  |  |                         |   |          |         |                      |                     |   |

1 Income/Gain Codes: A=\$1,000 or less (See Col. B1 & D4) F=\$15,001 to \$50,000 B=\$51,001 to \$100,000 C=\$2,001 to 5,000 D=\$5,001 to \$15,000 E=\$15,001 to \$50,000 F=\$50,001 to \$100,000 G=\$100,001 to \$500,000 H=\$500,001 to \$1,000,000 I=\$1,000,001 to \$5,000,000 J=\$5,000,001 to \$100,000,000 K=More than \$100,000,000 L=More than \$1,000,000,000 M=\$100,001 to \$750,000 N=\$750,001 to \$1,000,000 O=\$1,000,001 to \$5,000,000 P=\$5,000,001 to \$10,000,000 Q=Assessed R=Cost (FSA, estate only) S=Assessment T=Case/Market U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT (cont'd)

|   |   |
|---|---|
| Name of Person Reporting<br><b>ROBERT M. PARKER</b> | Date of Report<br>1/24/94<br>Amended 1992 |
|---|---|

VII. INVESTMENTS and TRUSTS - income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

| A.<br>Description of Assets<br>(including trust assets)<br><br>Indicate, where applicable, owner of the asset by using the parenthetical "(S)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.<br><br>Place "(X)" after each asset exempt from prior disclosure. | B.<br>Income during reporting period |  | C.<br>Gross value at end of reporting period |                                | D.<br>Transactions during reporting period                     |                      |                         |                        |  |
|---|--------------------------------------|--|--|--------------------------------|--|----------------------|-------------------------|------------------------|--|
|   | (1)<br>Ast. Code (A-B)               | (2)<br>Type (S-U, div., trust or int.) | (1)<br>Value Code (J-P)                      | (2)<br>Value Method Code (Q-W) | If not exempt from disclosure                                  |                      |                         |                        |  |
|   |                                      |  |  |                                | (1)<br>Type (A-G, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z) | (2)<br>Date Acquired | (3)<br>Value Code (J-P) | (4)<br>Gain Code (A-B) | (5)<br>Identity of Buyer/Seller (if private transaction) |
| <input type="checkbox"/> NONE (No reportable income, assets, or transactions)   |                                      |  |  |                                |  |                      |                         |                        |  |
| 1 Steele #3   | A                                    | WI                                     | J  | W                              |  |                      |                         |                        |  |
| 2 Steele #4   | D                                    | WI                                     | K  | W                              |  |                      |                         |                        |  |
| 3 Steele #5   | C                                    | WI                                     | J  | W                              |  |                      |                         |                        |  |
| 4 Coleman #1  | A                                    | WI                                     | J  | W                              |  |                      |                         |                        |  |
| 5 Jonesville #19  | A                                    | WI                                     | J  | W                              |  |                      |                         |                        |  |
| 6 Jonesville #20  | A                                    | WI                                     | J  | W                              |  |                      |                         |                        |  |
| 7 Jobe #1   | C                                    | WI                                     | J  | W                              |  |                      |                         |                        |  |
| 8 Jobe #2   | C                                    | WI                                     | J  | W                              |  |                      |                         |                        |  |
| 9 Jobe #3   | D                                    | WI                                     | K  | W                              |  |                      |                         |                        |  |
| 10 Jobe #4  | D                                    | WI                                     | K  | W                              |  |                      |                         |                        |  |
| 11 Jobe #5  | E                                    | WI                                     | K  | W                              |  |                      |                         |                        |  |
| 12 Jobe #6  | E                                    | WI                                     | L  | W                              |  |                      |                         |                        |  |
| 13 Jobe #8  | A                                    | WI                                     | J  | W                              |  |                      |                         |                        |  |
| 14 Knighton #7  | A                                    | WI                                     | J  | W                              |  |                      |                         |                        |  |
| 15  |                                      |  |  |                                |  |                      |                         |                        |  |
| 16  |                                      |  |  |                                |  |                      |                         |                        |  |
| 17  |                                      |  |  |                                |  |                      |                         |                        |  |
| 18  |                                      |  |  |                                |  |                      |                         |                        |  |
| 19  |                                      |  |  |                                |  |                      |                         |                        |  |
| 20  |                                      |  |  |                                |  |                      |                         |                        |  |

1 Income/Gain Codes: A=\$1,000 or less B=\$1,001 to \$1,500 C=\$1,501 to 5,000 D=\$5,001 to \$15,000  
 (See Col. E1 & E4) E=\$15,001 to \$50,000 F=\$50,001 to \$100,000 G=\$100,001 to \$1,000,000 H=more than \$1,000,000  
 2 Value Codes: J=\$15,000 or less K=\$15,001 to \$50,000 L=\$50,001 to \$100,000 M=\$100,001 to \$250,000  
 (See Col. C1 & C3) N=\$250,001 to \$500,000 O=\$500,001 to \$1,000,000 P=more than \$1,000,000  
 3 Value Method Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market  
 (See Col. C2) U=Book Value V=Other W=Securitized

FINANCIAL DISCLOSURE REPORT (cont'd)

|                          |                         |
|--------------------------|-------------------------|
| Name of Person Reporting | Date of Report          |
| ROBERT M. PARKER         | 1/24/94<br>Amended 1002 |

VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

I receive no compensation for serving as Executor of the Estates of my parents.

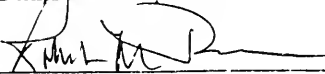
IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent child had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, § 501 et seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature



Date January 24, 1994

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, § 104, AND 18 U.S.C. § 1001.)

FILED INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Judicial Ethics Committee  
Administrative Office of the  
United States Courts  
Washington, DC 20544

AG-10  
Rev. 1/93

## FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics  
Reform Act of 1989, Pub. L. No.  
101-194, November 30, 1989  
(5 U.S.C.A. App. 6, §§101-112)

|  |  |                                       |
|--|--|---------------------------------------|
| 1. Person Reporting (Last name, first, middle initial)<br><br>PARKER, ROBERT M.  | 2. Court or Organization<br>U.S. DISTRICT COURT<br>EASTERN DISTRICT OF TEXAS   | 3. Date of Report<br>January 28, 1993 |
| 4. Title (Article III Judges indicate active or senior status; Magistrate Judges indicate full- or part-time)<br><br>CHIEF U.S. DISTRICT JUDGE | 5. Report Type (check appropriate type)<br>____ Nomination, Date _____<br>____ Initial <input checked="" type="checkbox"/> Annual _____ Final _____                              | 6. Reporting Period<br><br>1993       |
| 7. Chambers or Office Address<br>221 WEST FERGUSON, SUITE 100<br>TYLER, TEXAS 75702  | 8. On the basis of the information contained in this report, it is, in my opinion, in compliance with applicable laws and regulations _____<br>Reviewing Officer Signature _____ |                                       |

**IMPORTANT NOTES:** The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on last page.

## I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

| <input type="checkbox"/> NONE (No reportable positions) | POSITION | NAME OF ORGANIZATION/ENTITY          |
|---|----------|--------------------------------------|
| <input type="checkbox"/>                                | EXECUTOR | ESTATE OF IDA LURA PARKER - DECEASED |
| <input type="checkbox"/>                                | EXECUTOR | ESTATE OF ROSS M. PARKER - DECEASED  |

## II. AGREEMENTS. (Reporting individual only; see p. 8-9 of Instructions.)

| <input type="checkbox"/> NONE (No reportable agreements) | DATE | PARTIES AND TERMS |
|--|------|-------------------|
| <input checked="" type="checkbox"/>                      |      |                   |

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

| <input type="checkbox"/> NONE (No reportable non-investment income) | DATE<br>(Honoraria only) | SOURCE AND TYPE | GROSS INCOME:<br>(yours, not spouse's) |
|---|--------------------------|-----------------|--|
| <input checked="" type="checkbox"/>                                 |                          |                 |  |
|   | 1                        |                 | \$ _____                               |
|   | 2                        |                 | \$ _____                               |
|   | 3                        |                 | \$ _____                               |
|   | 4                        |                 | \$ _____                               |
|   | 5                        |                 | \$ _____                               |

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

ROBERT M. PARKER

Date of Report

January 28, 1964

**IV. REIMBURSEMENTS and GIFTS** - transportation, lodging, food, entertainment.  
 (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

SOURCEDESCRIPTION

| <input checked="" type="checkbox"/> | NONE (No such reportable reimbursements or gifts) |  |  |
|-------------------------------------|---|--|--|
| 1                                   |   |  |  |
| 2                                   |   |  |  |
| 3                                   |   |  |  |
| 4                                   |   |  |  |
| 5                                   |   |  |  |
| 6                                   |   |  |  |
| 7                                   |   |  |  |
| 8                                   |   |  |  |

**V. OTHER GIFTS.** (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp.15-16 of Instructions.)

SOURCEDESCRIPTIONVALUE

| <input checked="" type="checkbox"/> | NONE (No such reportable gifts) |  |          |
|-------------------------------------|---------------------------------|--|----------|
| 1                                   |                                 |  | \$ _____ |
| 2                                   |                                 |  | \$ _____ |
| 3                                   |                                 |  | \$ _____ |
| 4                                   |                                 |  | \$ _____ |

**VI. LIABILITIES.** (Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp.16-18 of Instructions.)

CREDITORDESCRIPTIONVALUE CODE\*

| <input type="checkbox"/> | NONE (No reportable liabilities)   |   |   |
|--------------------------|------------------------------------|---|---|
| 1                        | TEXAS NATIONAL BANK - Longview, TX | Loan No. 51350                          | L |
| 2                        | TEXAS NATIONAL BANK - Longview, TX | Loan No. 50370 (Parker Estate)          | J |
| 3                        | SOUTHSIDE STATE BANK - Tyler, TX   | Loan No. 41917                          | K |
| 4                        | SOUTHSIDE STATE BANK - Tyler, TX   | Loan NO. D1135877 - 1992 GMC<br>SUV/UTV | K |
| 5                        |                                    |   |   |
| 6                        |                                    |   |   |
| 7                        |                                    |   |   |

\* VALUE CODES: J = \$15,000 or less    K = \$15,001 to \$50,000    L = \$50,001 to \$100,000    M = \$100,001 to \$250,000  
 N = \$250,001 to \$500,000    O = \$500,001 to \$1,000,000    P = More than \$1,000,000



FINANCIAL DISCLOSURE REPORT (cont'd)

|   |   |
|---|---|
| Name of Person Reporting<br><b>ROBERT M. PARKER</b> | Date of Report<br><b>January 28, 19</b> |
|---|---|

VII. INVESTMENTS and TRUSTS - income, value, transactions. (Includes those of spouse and dependent children: see pp. 18-27 of Instructions.)

| A.<br>Description of Assets<br>(including trust assets)<br><br>Indicate, where applicable, owner of the asset by using the parenthetical "(S)" for joint ownership or reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.<br><br>Place "X" after each asset exempt from prior disclosure. | B.<br>Income during reporting period |                    | C.<br>Gross value at end of reporting period |                         | D.<br>Transactions during reporting period |      |       |     |                  |                 |   |
|---|--------------------------------------|--------------------|--|-------------------------|--|------|-------|-----|------------------|-----------------|---|
|   | (1)                                  | (2)                | (1)  | (2)                     | IF NOT EXEMPT FROM DISCLOSURE              |      |       |     |                  |                 |   |
|   | Amt. Code (A-F)                      | Type (S, DC, etc.) | Value Code (A-F)                             | Value Method Code (A-W) | Type (S, DC, etc.)                         | DATE | MONTH | DAY | Value Code (A-F) | Gain Code (A-W) | (3) Identity of buyer/seller (if private transaction) |
| <input type="checkbox"/> NONE (No reportable income, assets, or transactions)   |                                      |                    |  |                         |  |      |       |     |                  |                 |   |
| 1 WINCHESTER PRODUCTION   | G                                    | WI                 | N  | W                       |  |      |       |     |                  |                 |   |
| 2 Carr 1  |                                      |                    |  |                         |  |      |       |     |                  |                 |   |
| 3 Carr 22   |                                      |                    |  |                         |  |      |       |     |                  |                 |   |
| 4 Jonesville 1  |                                      |                    |  |                         |  |      |       |     |                  |                 |   |
| 5 Jonesville 4  |                                      |                    |  |                         |  |      |       |     |                  |                 |   |
| 6 Jonesville 7  |                                      |                    |  |                         |  |      |       |     |                  |                 |   |
| 7 Jonesville 7A   |                                      |                    |  |                         |  |      |       |     |                  |                 |   |
| 8 Jonesville 8C   |                                      |                    |  |                         |  |      |       |     |                  |                 |   |
| 9 Jonesville 8T   |                                      |                    |  |                         |  |      |       |     |                  |                 |   |
| 10 Jonesville 2   |                                      |                    |  |                         |  |      |       |     |                  |                 |   |
| 11 Jonesville 5   |                                      |                    |  |                         |  |      |       |     |                  |                 |   |
| 12 Jonesville 10  |                                      |                    |  |                         |  |      |       |     |                  |                 |   |
| 13 Jonesville 11  |                                      |                    |  |                         |  |      |       |     |                  |                 |   |
| 14 Jonesville 14  |                                      |                    |  |                         |  |      |       |     |                  |                 |   |
| 15 Jonesville 15  |                                      |                    |  |                         |  |      |       |     |                  |                 |   |
| 16 Jonesville 16  |                                      |                    |  |                         |  |      |       |     |                  |                 |   |
| 17 Jonesville 17  |                                      |                    |  |                         |  |      |       |     |                  |                 |   |
| 18 Jonesville 18  |                                      |                    |  |                         |  |      |       |     |                  |                 |   |
| 19  |                                      |                    |  |                         |  |      |       |     |                  |                 |   |
| 20  |                                      |                    |  |                         |  |      |       |     |                  |                 |   |

1 Income/Gain Codes: A=\$1,000 or less B=\$1,001 to \$2,500 C=\$2,501 to 5,000 D=\$5,001 to \$15,000  
 (See Col. B1 & G1) E=\$15,001 to \$50,000 F=\$50,001 to \$100,000 G=\$100,001 to \$250,000 H=\$250,001 to \$500,000 I=\$500,001 to \$1,000,000 J=\$1,000,001 to \$250,000,000 K=\$250,001 to \$500,000 L=\$500,001 to \$1,000,000 M=\$1,000,001 to \$250,000,000 N=\$250,001 to \$500,000 O=\$500,001 to \$1,000,000 P=\$1,000,001 to \$250,000,000 Q=\$250,001 to \$500,000 R=\$500,001 to \$1,000,000 S=\$1,000,001 to \$250,000,000 T=Cash/Market  
 2 Value Codes: U=Stock Value V=Other  
 3 Value Method Codes: A=Cost (Real estate only) B=Assessment C=Estimated

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting  
ROBERT M. PARKER

Date of Report  
January 28, 19

VII. INVESTMENTS and TRUSTS - income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

| A.<br>Description of Assets<br>(Including trust assets)<br><br>Indicate, where applicable, ownership of the asset by using the parentheticals: "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.<br><br>Place "(X)" after each asset exempt from prior disclosure. | B.<br>Income during reporting period |  | C.<br>Gross value at end of reporting period |                                | D.<br>Transactions during reporting period |             |                         |                        |  |
|---|--------------------------------------|--|--|--------------------------------|--|-------------|-------------------------|------------------------|--|
|   | (1)<br>Amt. Code (A-B)               | (2)<br>Type (e.g., div., rent or int.) | (1)<br>Value Code (J-F)                      | (2)<br>Value Method Code (1-4) | If not exempt from disclosure              |             |                         |                        |  |
|   |                                      |  |  |                                | (1)<br>Type (buy, sell, gift, etc.)        | (2)<br>Date | (3)<br>Value Code (J-F) | (4)<br>Gain Code (A-B) | (5)<br>Identity of buyer/seller (if private transaction) |
| <input type="checkbox"/> NONE (No reportable income, assets, or transactions)   |                                      |  |  |                                |  |             |                         |                        |  |
| 1 Lavada Church   |                                      |  |  |                                |  |             |                         |                        |  |
| 2 Narramore 2   |                                      |  |  |                                |  |             |                         |                        |  |
| 3 Trammel 1   |                                      |  |  |                                |  |             |                         |                        |  |
| 4 Trammel 2   |                                      |  |  |                                |  |             |                         |                        |  |
| 5 Trammel 3   |                                      |  |  |                                |  |             |                         |                        |  |
| 6 Trammel 4   |                                      |  |  |                                |  |             |                         |                        |  |
| 7 N. Jonesville 1   |                                      |  |  |                                |  |             |                         |                        |  |
| 8 N. Jonesville 2   |                                      |  |  |                                |  |             |                         |                        |  |
| 9 N. Jonesville 4   |                                      |  |  |                                |  |             |                         |                        |  |
| 10 N. Jonesville 6  |                                      |  |  |                                |  |             |                         |                        |  |
| 11 Texas  |                                      |  |  |                                |  |             |                         |                        |  |
| 12 Knighton 1   |                                      |  |  |                                |  |             |                         |                        |  |
| 13 Knighton 2   |                                      |  |  |                                |  |             |                         |                        |  |
| 14 Knighton 8   |                                      |  |  |                                |  |             |                         |                        |  |
| 15 Lucille 1  |                                      |  |  |                                |  |             |                         |                        |  |
| 16 Jonesville #21   |                                      |  |  |                                |  |             |                         |                        |  |
| 17 Steele #1  |                                      |  |  |                                |  |             |                         |                        |  |
| 18 Steele #2  |                                      |  |  |                                |  |             |                         |                        |  |
| 19  |                                      |  |  |                                |  |             |                         |                        |  |
| 20  |                                      |  |  |                                |  |             |                         |                        |  |

|                       |  |   |  |  |
|-----------------------|--|---|--|--|
| 1 Income/Gain Codes:  | A=\$1,000 or less<br>(See Col. B1 & B4)  | B=\$1,001 to \$2,500<br>F=\$20,001 to \$250,000 | C=\$2,501 to 5,000<br>G=\$5,001 to \$1,000,000 | D=\$5,001 to \$15,000<br>H=More than \$1,000,000   |
| 2 Value Codes:        | I=\$15,000 or less<br>(See Col. C1 & D3) | J=\$15,001 to \$500,000                         | K=\$500,001 to \$1,000,000                     | L=More than \$1,000,000<br>M=More than \$1,000,000 |
| 3 Value Method Codes: | C=Appraisal<br>(See Col. C2)             | U=Book Value                                    | R=Cost (real estate only)<br>V=Other           | S=Assessment<br>W=Estimated<br>T=Cash/Market       |



FINANCIAL DISCLOSURE REPORT (cont'd)

|   |                                    |
|---|------------------------------------|
| Name of Person Reporting<br><b>ROBERT M. PARKER</b> | Date of Report<br>January 28, 1978 |
|---|------------------------------------|

VII. INVESTMENTS and TRUSTS - income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

| A.<br>Description of Assets<br>(Including trust assets)<br><small>Indicate, where applicable, owner of the asset by using the parenthetical "(1)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child. Place "(X)" after each asset exempt from prior disclosure.</small> | B.<br>Income<br>during<br>reporting<br>period |                                 | C.<br>Gross value<br>at end of<br>reporting<br>period |                         | D.<br>Transactions during reporting period |                 |                  |                 |   |
|---|---|---------------------------------|---|-------------------------|--|-----------------|------------------|-----------------|---|
|   | (1)   | (2)                             | (1)   | (2)                     | If not exempt from disclosure              |                 |                  |                 |   |
|   | Ass. Code (A-2)                               | Type (e.g., div., rent or int.) | Value Code (J-P)                                      | Value Method Code (Q-U) | Type (e.g., buy, sell, parcel, redeem)     | Date: Month Day | Value Code (J-P) | Cost Code (A-S) | Identity of Buyer/Seller (if private transaction) |
| <input type="checkbox"/> NONE (No reportable income, assets, or transactions)   |   |                                 |   |                         |  |                 |                  |                 |   |
| 1 Steele #3   |   |                                 |   |                         |  |                 |                  |                 |   |
| 2 Steele #4   |   |                                 |   |                         |  |                 |                  |                 |   |
| 3 Steele #5   |   |                                 |   |                         |  |                 |                  |                 |   |
| 4 Coleman #1  |   |                                 |   |                         |  |                 |                  |                 |   |
| 5 Jonesville #19  |   |                                 |   |                         |  |                 |                  |                 |   |
| 6 Jonesville #20  |   |                                 |   |                         |  |                 |                  |                 |   |
| 7 Jobe #1   |   |                                 |   |                         |  |                 |                  |                 |   |
| 8 Jobe #2   |   |                                 |   |                         |  |                 |                  |                 |   |
| 9 Jobe #3   |   |                                 |   |                         |  |                 |                  |                 |   |
| 10 Jobe #4  |   |                                 |   |                         |  |                 |                  |                 |   |
| 11 Jobe #5  |   |                                 |   |                         |  |                 |                  |                 |   |
| 12 Jobe #6  |   |                                 |   |                         |  |                 |                  |                 |   |
| 13 Jobe #8  |   |                                 |   |                         |  |                 |                  |                 |   |
| 14 Knighton #7  |   |                                 |   |                         |  |                 |                  |                 |   |
| 15  |   |                                 |   |                         |  |                 |                  |                 |   |
| 16  |   |                                 |   |                         |  |                 |                  |                 |   |
| 17  |   |                                 |   |                         |  |                 |                  |                 |   |
| 18  |   |                                 |   |                         |  |                 |                  |                 |   |
| 19  |   |                                 |   |                         |  |                 |                  |                 |   |
| 20  |   |                                 |   |                         |  |                 |                  |                 |   |

1 Income/Gain Codes: A=\$1,000 or less B=\$1,001 to \$2,500 C=\$2,501 to 5,000 D=\$5,001 to \$15,000 E=\$15,001 to \$50,000 F=\$50,001 to \$100,000 G=\$100,001 to \$1,000,000 H=More than \$1,000,000  
 2 Value Codes: J=\$15,000 or less K=\$15,001 to \$50,000 L=\$50,001 to \$100,000 M=\$100,001 to \$1,000,000 N=More than \$1,000,000  
 3 Value Method Codes: C=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

ROBERT M. PARKER

Date of Report

January 28, 1994

## VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

I have no remaining beneficial interest in my parents' estates for the reason that the assets have been distributed. I have continued to disclose the fact that I am Executor of my parents' estates each year because the estate have not been closed. I anticipate that they will be closed in 1994.

Income and value codes reported on Page 4, Line 1 under Part III, is applicable to the entire group of oil and gas interests and reflects the best information available to me at this time. It is my assumption that while these wells are being depleted annually, the income and value codes reported in the Amended 1992 Financial Disclosure Report should be about the same for 1993. Once again, when my 1993 Income Tax Return is prepared and the individual Working Interest amounts are broken down by well name the Oilmen furnish these amounts.

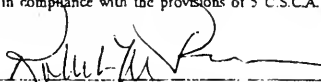
## IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, § 501 et seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature



Date January 28, 1994

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP 6, § 104, AND 18 U.S.C. § 1001.)

## FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Judicial Ethics Committee  
Administrative Office of the  
United States Courts  
Washington, DC 20544

UNITED STATES SENATE  
QUESTIONNAIRE FOR JUDICIAL NOMINEES

**BIOGRAPHICAL INFORMATION (PUBLIC)**

1. **Full Name:** Ricardo M. Urbina
2. **Address:** List current place of residence and office address(es).

Office: H. Carl Moultrie, I  
Courthouse of the District of Columbia  
500 Indiana Ave., N.W.,  
Washington, D.C. 20001

Residence: 5017 13th Street, N.W.  
Washington, D.C. 20011

3. **Date and place of birth.**

January 31, 1946; New York City, N.Y.

4. **Marital Status:** (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Married to Coreen Marie Saxe who has a self-owned business which she operates out of the home at the above-referenced address.

5. **Education:** List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Georgetown University Law Center:

Washington, D.C.  
Juris Doctor Degree  
August 1967 to May 1970  
Degree granted on: May '70

Georgetown University:

Washington, D.C.  
Bachelor of Arts Degree  
September 1963 to May 1967  
Degree granted on: May '67

6. **Employment Record:** List (by year) all business or professional corporations, companies, firms, or other enterprises partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

**JUDICIAL**

April 1981 to present D.C. Superior Court: Associate Judge

**ACADEMIC**

August-December 1993 The George Washington University (The National Law Center)  
Adjunct Professor

August 1982-December 1982 Georgetown University Law Center:  
Adjunct Professor,

January 1974-March 1981 Howard University School of Law:  
Professor of Law and Director of Criminal Justice Program

1976 & 1978 National Institute of Trial Advocacy:  
Instructor

1976 Antioch School of Law: Adjunct Professor

**LEGAL PRACTICE**

August 1973-January 1974 Urbina: Solo practitioner

July 1972-July 1973 Urbina & Libby: Partner

May 1970-June 1972 Public Defender Service for the District of Columbia: Trial Attorney

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

I attended Georgetown University (C '67) on a full four year scholar-athlete scholarship in my capacity as a track and field athlete.

9. Bar Associations: List all bar association, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates

of any offices which you have held in such groups.

**LEGAL**

**Membership in:**

**American Bar Association:**

Special Committee on Youth Education for Citizenship  
 Commission on Public Understanding About the Law  
 Hispanic National Bar Association  
 D.C. Hispanic Bar Association  
 National Bar Association  
 Washington Bar Association  
 Bar Association of the District of Columbia  
 (Board of Directors 1974-1975)  
 Women's Bar Association  
 Fahy Inns of Court (Emeritus)  
 The Counsellors of Washington, D.C.  
 Council for Court Excellence (Board Member)  
 Phi Delta Phi Legal Fraternity

**COMMITTEES**

Member: D.C. Superior Court Clerk of the Court  
 Selection Committee (December 1993-  
 January 1994);

Chairman: D.C. Superior Court Spanish Language  
 Education Committee (1992-present);

Chairman: D.C. Superior Court Criminal Justice Act  
 Disciplinary Committee (1990-present);

Chairman: Access to Justice Committee for panel  
 presentation in 1992 D.C. Courts Judicial  
 Conference;

Chairman: D.C. Courts Racial Ethnic Task Force  
 Court Personnel Subcommittee (1991-92);

Chairman: Child Support Guideline Committee  
 (July 1985-February 1988)

10. **Other Memberships:** List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

None

11. **Court Admission:** List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same

information for administrative bodies which require special admission to practice.

| <u>Courts</u>  | <u>Date</u>   |
|--|---------------|
| United States Supreme Court  | April 1980    |
| District of Columbia Court of Appeals                                  | April 1972    |
| United States District Court<br>for the District of Columbia           | January 1971  |
| United States Court Military Appeals                                   | December 1970 |
| United States Court of Appeals for the<br>District of Columbia Circuit | December 1970 |

I HAVE NOT ACTIVELY PRACTICED LAW SINCE FEBRUARY 1981.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

I co-authored an article with Margaret Beyer, Ph.D., entitled "An Emerging Judicial Role in Family Court" (copy appended) published by the American Bar Association. (ATTACHMENT #1)

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent. My last physical examination was in December, 1993.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I am currently an Associate Judge in the Superior Court for the District of Columbia, a position to which I was presidentially appointed in April, 1981. This court exercises trial court jurisdiction over D.C. Code criminal, civil and family matters.

I sat as a judge of the D.C. Court of Appeals by special designation and authored the appellate decision in Abbey v. Jackson, et al. 483 A.2d, 330, 1984.

The Chief Judge appointed me to serve as Presiding (Chief

Administrative) Judge of the Family Division for the District of Columbia Superior Court from July 1985 to February 1988. In this capacity, I assisted the Chief Judge's formation of policy within the division, ministered to the management needs of the judges and commissioners handling family cases, chaired the committee which formulated the Child Support Guidelines for the District of Columbia and dealt with other branches of government as the representative of the Chief Judge in an effort to provide cooperative interaction when needed.

15. **Citations:** If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions. (ATTACHMENT #2)

| (1) | <u>Name of Case</u>   | <u>Citation No.</u>               |
|-----|---|-----------------------------------|
| 1a. | <u>Abbey v. Jackson</u>   | 483 A.2d 330<br>(D.C. App. 1984)  |
| 1b. | <u>In Re O. B.</u>  | 542 A.2d 1216<br>(D.C. App. 1988) |
| 1c. | <u>In Re Jerry M.<br/>Orders J, K &amp; P</u>   | 580 A.2d 1270<br>(D.C. App. 1990) |
| 1d. | <u>Norman v. Sabaco, Inc.<br/>et. at. v. Kim et. al.,</u>   | 90-CA-14345                       |
| 1e. | <u>Habib v. Thurston</u>  | L&T 77391-83                      |
| 1f. | <u>U.S. v. Alston</u>   | 580 A.2d 587<br>(D.C. App. 1990)  |
| 1g. | <u>Martin v. Gennet,<br/>et. al.,</u>   | 89-CA-10268                       |
| 1h. | <u>The 2800 Wisconsin Ave. Condominium Unit Owner's<br/>Association v. Brisk Waterproofing Company,<br/>Inc. et. al.,</u> | 90-CA-6670                        |
| 1i. | <u>Winston v. Zeitz,</u>  | PS No.3060-91f                    |

(2) Citations and summaries on cases where the trial court's decision was reversed and remanded<sup>1</sup>:

2a. Aronoff v. The Lenkin Company and Lerner Enterprises Limited Partnership,  
618 A.2d 669 (D.C. App. 1992):

The Superior Court upheld cancellation of a contract for the purchase and sale of a D.C. limited partnership and ordered that a one million dollar deposit (originally in the form of a letter of credit) be returned to the purchasers. The trial judge ruled that by failing to tender insurable title to the limited partnership's realty, the sellers had not complied with an express condition precedent both to the purchasers' duty to perform at closing and to the sellers' own right to declare the deposit forfeit; therefore, they had no legal authority to draw down on the letter of credit. The Court of Appeals rejected the sellers' insurability argument in its broad form, but held that the trial judge did not address adequately a provision of the contract permitting the sellers, at closing, to arrange for fulfillment of any unsatisfied condition--such as insurable title--to the "reasonable satisfaction" of the purchasers. The Court of Appeals also held that the judge must consider further whether the purchasers prevented the performance of the condition precedent.

2b. Faulkner v. Government Employees Insurance Company (GEICO),

618 A.2d 181 (D.C. App. 1992):

The appeal involved the application of res judicata to two temporally separated events. The first was an automobile accident in which appellant was injured. He subsequently brought suit on his no-fault insurance policy against his insurer, appellee, Government Employees Insurance Company ("GEICO"). The second was GEICO's cancellation of appellant's insurance policy in alleged retaliation against appellant for bringing the litigation. Following the cancellation of his policy, appellant brought suit against GEICO seeking damages and reinstatement of the policy. With this claim the appellant coupled two other counts involving matters relating to the prior litigation. The trial court dismissed all three counts as barred by res judicata. The Court of Appeals affirmed the dismissal of the latter two counts, but reversed

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<sup>1</sup> Cases denoted with an asterisk (\*) were remanded but not reversed from the Court of Appeals.



with respect to the count of alleged wrongful cancellation of the policy. The case was remanded for further proceedings on the claim of wrongful cancellation of the policy.

- 2c. Shaff v. Skahill, 617 A.2d 960 (D.C. App. 1992): Having participated in consensual, binding arbitration proceedings, appellant contended that the trial court erred by denying confirmation of the arbitrator's award of damages in his favor in the absence of legally sufficient grounds to vacate the award. The Court of Appeals agreed, and accordingly remanded the trial court's order for the entry of an order confirming the arbitrator's award.
- 2d. Johnson v. United States, 613 A.2d 1381 (D.C. App. 1992): Appellant Johnson was convicted by a jury of seventeen counts of forgery and seventeen counts of uttering forged checks, and one count of first degree theft. On appeal, he contended principally that there was a constructive amendment of the indictment counts charging forgery, and that he was deprived of his right to a fair trial because repeated references to his exercise of his right to remain silent. The Court of Appeals agreed that because the indictment was constructively amended, appellant's forgery convictions were reversed, but otherwise found appellant's contentions unpersuasive.
- 2e. Smith v. United States, 602 A.2d 1080 (D.C. App. 1992): Appellant was charged with armed robbery of Ui Suk Chu; assault while armed of Myong Chu, with intent to rob Ui Suk Chu; and assault while armed of Ronald Ziegel, with intent to rob Ui Suk Chu. The jury found Smith guilty on all counts. Smith was sentenced to six to eighteen years for armed robbery, and four to twelve years on each count of assault while armed, all sentences to be served consecutively. On appeal, Smith claims that evidence produced at trial was insufficient to support the two convictions for assault while armed. The jury was given the standard assault instruction, which encompasses attempted battery assault only. Though the government's evidence could support an assault conviction on an intent-to-frighten theory, the jury received no such instruction. Therefore, Smith argued, his assault convictions must be reversed for insufficiency of

the evidence, and that the Double Jeopardy Clause of the Fifth Amendment bars retrial. The Court of Appeals reversed and remanded to the Superior Court with directions to enter judgement of acquittal on the two assault while armed counts. The case was remanded for resentencing.

- 2f. \* Short v. United States,  
No. 90-744 (D.C. App. 1992):  
A jury convicted appellant of assault with a dangerous weapon, a lesser included offense of assault with intent to kill while armed, mayhem while armed, and carrying a pistol without a license. Appellant contended that he was prejudiced because: (1) two government witnesses failed to testify after the prosecutor indicated they would in her opening statements; (2) a government witness refused to testify after claiming his Fifth Amendment privilege to remain silent and expressing his fear of reprisal in front of the jury; (3) during the defense's cross-examination of the complaining witness, the jury learned that the witness who subsequently refused to testify had also previously identified appellant as the assailant. Appellant also argued that the trial court abused its discretion when it allowed the government to introduce into evidence the complaining witness' redacted medical records. The Court of Appeals affirmed the judgement, but remanded the case for resentencing to account for the merger of the conviction for mayhem and for assault with a dangerous weapon.

- 2g. Guadaloupe v. United States,  
585 A.2d 1348 (D.C. App. 1991)  
DISSENTING: J. BELSON  
Appellant Guadaloupe appealed from his conviction of possession of cocaine with intent to distribute on the ground that the drugs were obtained by an unconstitutional search and seizure. The trial judge denied appellant's motion to suppress, concluding that the police had not violated appellant's Fourth Amendment rights during the course of two successive confrontations during a twenty-five to thirty minute period as appellant and a male were leaving Union Station after arriving on a train from New York City. The judge also found that the appellant had voluntarily consented to the body search. The Court of Appeals found that as a reasonable person in appellant's circumstances would not have felt free to leave when confronted for a second time to allow a body

search after having allowed a baggage search, there was not a consensual search and in the absence of articulable suspicion of criminal wrongdoing, the seizure of appellant violated the Fourth Amendment and the judgement must be reversed.

- 2h. United States v. Alston,  
580 A.2d 587 (D.C. App. 1990):  
The issue on appeal was whether the Council of the District of Columbia had authority under the D.C. Self-Government and Governmental Recognition Act (Home Rule Act), to pass successive, substantially identical emergency acts to preserve the status quo while identical legislation enacted by the Council after two readings was pending before Congress for review. Appellee Alston was charged in two separate multi-count indictments with possession with intent to distribute cocaine while armed, and possession of a firearm during the commission of a dangerous offense. In granting his motion to dismiss these charges of the indictments, the trial judge ruled, relying on the decision of the Court of Appeals in District of Columbia v. Washington Home Ownership Council, Inc., 415 A.2d 1349 (D.C. 1980), that upon the expiration of the "Law Enforcement Emergency Amendment Act of 1989" the D.C. Council was without authority to pass a second substantially identical emergency act and to maintain the status quo until an identical temporary act took effect following congressional review. The Court of Appeals held that the federal savings provision of 1 U.S. Code Section 109 applies to emergency acts of the D.C. Council and preserved appellee's prosecution for offenses under the First Emergency Act. The cases in the appeal were remanded to the trial court with instructions to reinstate the dismissed charges in accordance with the Court of Appeals decision.
- 2i. District of Columbia v. Jerry M. et. al.,  
580 A.2d 1270 (D.C. App. 1990):  
In this appeal, the District of Columbia contends that the judge erred in ordering (1) five secure decentralized facilities that would replace existing secure institutions, (2) a cap of 60 on the number of juveniles in residential placements outside the District, where there is no representative plaintiff and the question had not been at issue in the case, (3) a case management system that is the functional equivalent of a system previously agreed upon by the parties, and (4) broad-ranging management reforms in YSA. It

further contended that the judge abused his discretion by ordering caps on the number of securely detained juveniles recommended by the Panel, but rejecting the Panel's recommendation for judicial reforms necessary to achieve the caps. The Court of Appeals concluded that the part of the trial court's order regarding the provisions for out of state placements, decentralization of secure facilities, and management controls of YSA exceeded its authority according to the consent decree. The Court of Appeals upheld the trial court in all other aspects. Accordingly, it affirmed in part and reversed in part.

- 2j.\* District of Columbia, et. al. v. Jerry M. et. al., 500 A.2d 1270 (D.C. App. 1990):  
The case was on appeal from the trial court's award of \$63,497.58 in attorney fees to Donna Wulkan for her work between June 8, 1988 and June 29, 1989, in enforcing the District of Columbia's compliance with a consent decree in the matter of the complex and lengthy "Jerry M." litigation. The Court of Appeals held that Ms. Wulkan's services were fully compensable, but vacated the award in part and remanded to the trial court for further findings as to the reasonableness of the fee award.
- 2k. Williams v. United States, 551 A.2d 1353 (D.C. App. 1989):  
Defendant was found in criminal contempt during his trial for assault and later conviction of assault by jury before the Superior Court, and defendant appealed. The Court of Appeals held that: (1) defendant could be held in contempt for actions occurring outside court's presence; (2) witness' testimony during contempt hearing was not unsworn and incompetent; (3) trial court's failure to mention civil contempt until end of contempt hearing was plain error; and (4) lack of unanimity jury instruction during assault trial was not erroneous. Affirmed in part and reversed in part.
21. Gooding v. United States, 529 A.2d 301 (D.C. App. 1987):  
DISSENTING: J. FERREN  
The Court of Appeals reviewed the denial, after a hearing, of the appellant's Rule 32(e) motion to withdraw his plea of guilty to kidnapping. In the trial court, appellant argued that his plea was involuntarily entered and that it was fair and just that it be withdrawn. On the record, the Court of Appeals concluded that withdrawal of the plea

should have been permitted as fair and just under the circumstances, and also that the plea was accepted without an adequate inquiry pursuant to Rule 11. The Court of Appeals reversed and remanded on these independent grounds.

- 2m. Hawkins v. Lynnhill Condominium Unit Owners Association, 513 A.2d 242 (D.C. App. 1986):  
The Lynnhill Condominium Unit Owners Association sued applicant Hawkins for overdue condominium fees, and obtained a default judgement against her. Hawkins appealed from an order denying her motion to set aside the default judgement. The Court of Appeals found that further inquiry was required as to an unresolved factual dispute over whether Hawkins was served with notice of the claim against her; accordingly the case was reversed and remanded for further proceedings.
- 2n. Charles v. Charles, 499 A.2d 451 (D.C. App. 1986):  
Court-appointed defense counsel in this case contended that, absent an applicable statute or court rule, the trial court erred in assessing attorney's fees against him personally for failure to comply with court orders to respond to plaintiff's complaint. Based on Roadway Express, Inc. v. Piper, 447 U.S. 752 (1980), the Court of Appeals concluded the trial court had inherent power to impose this sanction, provided the court found counsel had acted in bad faith. Because the court did not make such a finding, the Court of Appeals affirmed in part and reversed in part.
- 2o. United States v. Evans, No. 85-986 (1/28/86)  
(ATTACHMENT #3) Judgment Order:  
The judgement of the trial court from which the appeal was taken was reversed in accordance with Gonzalez v. United States, 498 A.2d 1172 (D.C. 1985), and the cause was remanded for further proceedings consistent therewith.
- 2p.\* Shelton Joyner v. United States,  
No. 83-1226 (D.C. App. 1986):  
On appeal from his convictions for assault with a dangerous weapon and unlawful possession of a pistol, appellant contended that the trial court committed constitutional error in not granting his counsel the right to examine the psychiatric records of two complaining witnesses for the purpose of cross-examining as to credibility. He also argued that two remarks by the prosecutor in closing argument were improper and thus warranted a

mistrial. The Court of Appeals affirmed as to those grounds, but remanded for vacation of one of appellant's assault convictions due to the fact that the evidence established that only one assault occurred.

- 2q. Habib v. Thurston, 517 A.2d 1 (D.C. App. 1985):  
A landlord appealed from three orders of the motions court: (1) granting summary judgement for the tenant in the action for possession, on the ground that the landlord, by accepting rent for the month after the notice to quit had expired, thereby waived his right to demand possession; (2) awarding the tenant attorney's fees and expenses pursuant to Superior Court Rule 37(a)(4), without a hearing, in connection with the tenant's motion to compel answers to interrogatories; and (3) releasing to the tenant funds which she had paid into the court registry under a protective order. The Court of Appeals affirmed as to the first two orders but reversed and remanded as to the third.
- 2r. Adkins, et. al. v. Morton, et. al.,  
494 A.2d 652 (D.C. App. 1985):  
A physician and hospital appealed from a medical malpractice judgement. They challenged the trial court's rulings excluding certain testimony from two treating physicians whom appellants did not list during the discovery process as expert witnesses. The Court of Appeals held that the testimony comprising facts and opinions one physician acquired as an "actor or viewer" should have been admitted on the issue of damages. They further held that opinion testimony from the other physician on the question of causation was cumulative of the evidence presented on that question and therefore was properly excluded. Accordingly, the Court of Appeals affirmed as to liability but reversed the award of damages and remanded for a new trial on that issue.
- 2s. Bulls v. United States,  
490 A.2d 197 (D.C. App. 1985):  
A jury convicted appellant of assault with a dangerous weapon, and sentenced him to 40 to 120 months imprisonment. He claimed on appeal that the trial court erred in seating an alternate juror after the jury had retired to deliberate. The Court of Appeals found that the trial court's error was prejudicial and reversed appellant's conviction and remanded for a new trial.

- 2t. A.C. Jamison v. S & H Associates,  
487 A.2d 619 (D.C. App. 1985):  
Landlord sued tenant for possession of apartment after tenant failed to pay rent for seven months. The trial court entered judgement in favor of the landlord, and the tenant appealed. The Court of Appeals held that the landlord was not entitled to judgement of possession, regardless of tenant's failure to comply with protective order, where the landlord did not affirmatively prove that the tenant waived his right to notice to quit or that notice had been served. Reversed.
- 2u. Taylor, et. al. v. Eureka Investment Corp.,  
482 A.2d 354 (D.C. App. 1984):  
Owners of condominium units brought declaratory judgement action against owners, developers, and manager of adjacent condominium, contending that they were entitled to park without charge in underground garage of adjacent condominium. The trial court entered judgement in favor of defendants, and condominium owners appealed. The Court of Appeals held that condominium owners were entitled to park without charge in garage of adjacent condominium under the terms of "accessory parking covenant" which had granted such parking privileges in exchange for zoning exception. Reversed and remanded.
- 2v.\* Stephen Butler v. United States,  
No. 83-1012 (D.C. App. 1984):  
After a jury trial appellant was found guilty of taking indecent liberties with a minor child, sodomy, and assault with intent to commit sodomy. Appellant was sentenced to consecutive prison terms of five to fifteen years for sodomy, and eighteen to forty-four months for assault with intent to commit sodomy. On appeal, appellant asserted, with regard to the sodomy charge, that the court erred in admitting, as excited utterances, the hearsay statements of the three year-old complainant, and that there was insufficient corroborating evidence to convict him of sodomy. Appellant also perceived that the government engaged in prosecutorial misconduct. Lastly, it is urged that the trial judge erred in the course of sentencing, by not making an express finding of "no benefit" under the Federal Youth Corrections Act (FYCA). The Court of Appeals agreed that the trial judge did not make an express "no benefit" finding in sentencing, but found appellant's other contentions to be without merit. The case was remanded to Judge Urbina for

sentencing in compliance with the requirements of the FYCA.

2w.\* Hinton v. Community Services, Inc.,  
No. 82-1480 (D.C. App. 1983):

The appeal stemmed from a suit for possession based on non-payment of rent brought by appellee-landlord against appellant-tenant. Appellant filed a motion for summary judgement and the trial court found that appellant was no longer in possession of the premises, dismissed appellee's suit for possession and ordered a hearing to be held to determine the disbursement of funds which appellant deposited into the registry of the court pursuant to a protective order. Appellant appealed claiming that a judgement should have been entered for her and that she should have been awarded (1) return of rents which she paid into the registry of the court pursuant to a protective order and (2) a return of a pre-lease deposit, with interest, which she made at the beginning of her tenancy. The Court of Appeals affirmed the dismissal of the suit for possession, dismissed all other claims on appeal for lack of jurisdiction and remanded the case for further proceedings on appellant's counterclaim.

(3) Citations for significant opinions on federal or state constitutional issues:

3a. United States v. Alston,  
580 A.2d 587 (D.C. App. 1990)

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

N/A



2. whether you practiced alone, and if so, the addresses and dates;
- 2a. August 1973 - January 1974  
Urbina  
1629 K Street, N.W.,  
Washington, D.C.
3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;
- 3a. January 1974 - March 1981  
Howard University School of Law  
2900 Van Ness Street, N.W.  
Washington, D.C. 20008  
Professor of Law; Director of  
Criminal Justice Program
- 3b. July 1972 - July 1973  
Urbina & Libby  
1819 H Street, N.W.  
Washington, D.C.  
Partner
- 3c. May 1970 - June 1972  
Public Defender Service for the  
District of Columbia  
451 Indiana Ave., N.W.  
Washington, D.C. 20001  
Trial Attorney
- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years.

February 1974 to February 1981:

Approximately seventy percent civil and twenty-five percent criminal (this does not include criminal cases I vicariously managed through my supervision of Criminal Justice Clinic students).

July 1972 to January 1974:

Even distribution between criminal and civil cases.

June 1970 to June 1972:

Public Defender Service - all criminal practice.

My civil practice consisted largely in contract, real estate and personal injury work. I also represented police officers before the District of Columbia Metropolitan Police Department Trial Board.

2. **Describe your typical former clients, and mention the areas, if any, in which you have specialized.**

My typical civil clients were persons usually of medium income who were in need of counseling regarding contracts relating to the sale or purchase of real estate; or persons who had suffered personal injuries and desired redress for damages.

My typical criminal client was usually an indigent person charged with a felony offense or an individual who was the subject of some grand jury probe.

In addition to the criminal area, contracts and personal injury were my areas of specialization.

- C. 1. **Did you appear in court frequently, occasionally or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.**

Yes, I had appeared in court regularly both in connection with my supervision of Howard Law School Criminal Justice students and in connection with cases I had handled privately.

2. **What percentage of these appearances was in:**

(a) **federal courts:** About ten percent (10%) of these appearances were in the United States District Court for the District of Columbia.

(b) **state courts of record:** About eighty-five (85%) of these

appearances were in the Superior Court of the District of Columbia.

(c) other courts: About five percent (5%) were in administrative courts, specifically, the District of Columbia Metropolitan Police Trial Board, the Alcoholic Beverage Commission and Bureau of Motor Vehicles.

3. What percentage of your litigation was:

(a) civil: Approximately seventy percent (70%) of my litigation had been civil.

(b) criminal: Approximately twenty-five percent (25%) of my litigation had been criminal (not taking into account criminal cases I vicariously manage through my supervision of Criminal Justice Clinic students).

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

To the best of my recollection, I tried twelve (12) cases to verdict or judgment. In four (4) of these case I acted as chief counsel; in seven (7) of these cases I acted as sole counsel; in one (1) of these cases I acted as associate counsel. In addition, I supervised ten (10) trials to verdict or judgment.

5. What percentage of these trials was:

(a) jury: Fifty percent (50%) of these trials were jury.

(b) Non-jury: Fifty percent (50%) were non-jury.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or

parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

I do not have a data base or a sufficient memory from which to retrieve the ten most significant cases I litigated before taking the bench. However, I can furnish the requested information for five of the most significant cases I have tried during my career. They are as follows:

United States v. Wallace Smith, Robert Schoop & Wayne E. Purcell. Criminal No. 1299-70

Presiding Judge: Joseph Waddy, United States District Court for the District of Columbia.

Charge: Assault on a Police Officer (one count on each defendant).

Opposing counsel: Philip Kellogg, A.U.S.A., presently located at 1776 "F" Street, N.W., Washington, D.C., tel: 202-898-0722.

Counsel for Co-defendants: Landon G. Dowdey (on behalf of Schoop), 2000 L Street, N.W., Washington, D.C. 20036; tel: 202-416-1626.

Wilfred Milofsky (on behalf of Wallace), 1025 Vermont Avenue, N.W., Washington, D.C., tel: 301-530-9161

Trial Date Period: June 22 to June 27, 1972.

Final Disposition: Not Guilty

The case arose out of charges lodged before the Court Reorganization Act and involved three defendants alleged to be members of the Black Panther Party. I represented one of the defendants, Wayne E. Purcell. The events which gave rise to the charges took place outside what was then the local Black Panther Headquarters located in Washington, D.C. All three defendants claimed self-defense. The government put on a very strong case producing more than a dozen police witnesses to the events. In addition to the three defendants, the defense put on a variety of witnesses who observed the incidents of police brutality which precipitated the fracas. The case was highly publicized with daily progress reports presented to the public in the print and broadcast media.

It became clear early in the proceedings that counsel had

very divergent views about how the trial should proceed. During the government's presentation, one counsel did not attempt to restrain his client from launching into political outbursts in the jury's presence. Another lawyer conducted himself in such a disinterested fashion as to give me concern about how his performance might affect the success of my client's case. As the government's case unfolded, the defendants became openly more belligerent towards the prosecution, the court and, to some extent, their counsel. Before the defense began its case, I prevailed on my co-counsel to work more as a team and to discourage their clients from further disruptive behavior during trial. The result was that as the defense came to light the real events surrounding the violent confrontations surfaced, and an effective complement of closing arguments moved the jury to a prompt acquittal on all counts for each defendant.

Since then, the lessons of that trial have helped me convey important lessons to the students I have trained in the defense of criminal cases. As a judge I have thought back many times in review of how Judge Waddy handled this highly inflammatory case, and what I would do if confronted with a similar challenge. The whole experience stands out as one of the most instructive of my career on the handling of volatile people and issues during a high profile case.

James E. McCall v. C.L. Swain, Superintendent, Lorton Reformatory, et al. Habeas Corpus No. 37-73.

Presiding Judge: Gerhard Gesell, United States District Court for the District of Columbia.

Opposing Counsel: John Suda, Assistant Corporation Counsel (now D.C. Superior Court Judge); H. Carl Moultrie, I, Courthouse of the District of Columbia, Washington, D.C. 20001; tel: 202-879-4873.

Trial Date: July 17, 1973.

Final Disposition: Petitioner's request for a writ of habeas GRANTED.

Case upheld on appeal: McCall v. Swain, 166 U.S. App. DC 214, 510 F.2d 167.

The petitioner, James Elliot McCall, while represented by previous counsel, was tried and convicted on charges of armed robbery before Judge Gesell. Subsequent thereto, Judge Gesell reduced Mr. McCall's previously imposed sentence pursuant to my Motion for Reduction of Sentence. After several months Mr. McCall, a man of the Muslim faith, claimed that he was deprived of the right to practice his beliefs within the Lorton institutional setting. This deprivation became the subject of the petition for habeas corpus I filed on behalf of Mr.

McCall. The petition was opposed by the District of Columbia and challenged on jurisdictional grounds, and Chief Judge Sirica issued an Order to Show Cause why the petition should not be granted. The hearing on the petition focused on the underlying factual and overriding jurisdictional issues.

This case provided my first close association with a Black Muslim. I admired Mr. McCall's religious convictions and developed an appreciation for his outrage at the institution's refusal to permit him the use of the simple accessories of his faith - a prayer rug, robe and the daily opportunity to pray in his own fashion.

In light of the law which appeared to support the respondent's position which challenged the jurisdiction of the United States District Court over the matter, the petitioner would have had to urge a precedent-making interpretation of existing statutory authority in order to prevail.

The petitioner and the judge each impressed me with their views of the basic human rights involved. Mr. McCall never wavered in his belief that practicing his religion during his period of incarceration was a right guaranteed to him under the law. Judge Gesell untangled the complexities of the controversy, went right to the heart of the factual and jurisdictional issues and promptly issued a decision which in granting the petition evinced compassion and his profound respect for constitutional protection.

United States v. Ernest White. Criminal Nos. 44482-73; 56927-73.

Charge: Second Degree Murder.

Presiding Judge: James Washington, Superior Court of D.C.

Opposing Counsel: Charles Flynn, A.U.S.A., United States Attorney's Office, Judiciary Center, 555 4th Street, N.W., Washington, D.C. 20001, tel: 202-514-7188.

Trial Period: July 1974 for five full days of trial.

Final Disposition: NOT GUILTY.

Mr. White was charged with second degree murder alleged to have been perpetrated in the course of an altercation with a long-time associate. The defenses of self-defense and defense of others were impaired by the uncontested fact that the physical altercation had, to some degree, subsided when the defendant re-emerged from his nearby habitation with a knife which he plunged into the deceased's heart. I was appointed to represent Mr. White.

The rigors of this trial brought into play a multitude of evidentiary issues and tactical decisions. The government presented several witnesses which it ultimately sought to impeach. Hearsay evidence abounded. Mr. White had a lengthy criminal record making it impractical for him to testify. Mr. Flynn, then head of his office's grand jury section, retained the case personally after securing the indictment. In the end, the jury would need to be convinced that the defendant's continued retreat, because of prevailing conditions, would have rendered him more likely to be the immediate victim of serious bodily injury or death at the hands of his assailant, the deceased. Engineering the evidence and the advocacy toward this end proved one of the most challenging tests of my career as a trial attorney.

Pamela Whitman v. William Cardinal Baum, et al. Civil Action No. 0760-77. Action for Preliminary and Permanent Injunction under 42 U.S.C. 1981.

Presiding Judge: Gerhard Gesell, United States District Court for the District of Columbia.

Opposing Counsel: Daniel V. McEvily, Esq., (whereabouts unknown).

Trial Date: June 21, 1977.

Final Disposition: Settled During Trial; Dismissed with Prejudice.

I brought this action on behalf of a nine year old African-American child attending a Catholic school in Maryland. Due to problems encountered in meeting tuitional obligations, the child's mother, my secretary, was advised that her child would not be permitted to continue at the school despite the fact that payment, though late, had been tendered. My investigation of the facts revealed that Mrs. Whitman's past tuition payment record was unmarred, and that other children similarly situated due to late or defaulted tuition payment had not been terminated. The factor distinguishing those children from Mrs. Whitman's child was race. Efforts at conciliation were flatly rejected by Reverend Kidd, the principal of the school, who stated to me that his decision to terminate the Whitman child was irrevocable. The action was brought. After I called one witness, Mrs. Whitman, the defense moved for a recess and during that period settled the matter by agreeing to readmit the child.

This case has special significance to me because, based on the facts, I determined Mrs. Whitman and her child to be the victims of subtly applied racial discrimination. The fact that the institution involved was the Catholic Church made the transgression worse in my view. As a

Catholic educated in parochial schools, the outcome gave me great personal satisfaction.

Gwendolyn Hemphill v. Daniel McDonald, District of Columbia, et al. Civil Action No. 4375-77. Personal injury and Loss of Consortium. Action Based on Negligence, Assault & Battery (multiple counts).

Presiding Judge: Paul R. Webber III, Superior Court of the District of Columbia.

Opposing Counsel: William Earl, Esq., Assistant to the Corporation Counsel, District Building, Washington, D.C. 20004, tel: 202-727-9350; and John Suda (now D.C. Superior Court Judge) 500 Indiana Ave., N.W., Washington, D.C. 20001, tel: 202-879-4873; Gerald D. Stoltz, Esq. 700 14th Street, N.W., Washington, D.C. 20005, tel: 202-244-4250; and James W. Pressler, Jr., Esq., 1225 19th Street, N.W., Suite #850, Washington, D.C. 20036, tel: 202-822-8384; on behalf of Daniel McDonald. Elliot Adler, Esq., 1001 Pennsylvania Avenue, N.W., 6th Floor, Washington, D.C. 20004, tel: 202-624-7265; on behalf of John Wilson. John E. Scheuermann, Esq., 700 "E" Street, S.E., Washington, D.C. 20003, tel: 202-547-9180; on behalf of Alverta Munlyn. Co-Counsel for Plaintiff: David Schreiber, Esq., 4550 Montgomery Ave., Suite #760N, Bethesda, MD 20814, tel: 301-951-1530.

Trial Period: September 11 to 21, 1978.

Final Disposition: Settlement After Plaintiff's Judgment of \$75,000 Was Set Aside.

Co-Counsel David Schreiber and I represented the plaintiff in this personal injury case. The plaintiff received injuries at the hands of a police officer of the D.C. Metropolitan Police Department who, upon reporting to the site of city council voting activities, was told by an "informer" that the plaintiff was in possession of a gun. The plaintiff and informer were working in support of their respective candidates at the time. The police officer approached the plaintiff and applied force in the course of conducting a search which revealed no gun. The police officer, the District of Columbia, Councilman Jerry Wilson and the informer as his alleged agent were all charged with liability for the injuries under various theories of assault, battery and negligence. After eight days of trial the case was delivered to the jury who, after more than two days of deliberation, returned a verdict against the police officer and the District of Columbia in the amount of seventy-five thousand dollars on counts charging assault and battery.

During the course of the trial the plaintiff introduced evidence on the issue of the police officer's



intoxication during the incident. Upon consideration of a Motion for New Trial, wherein the defendants alleged that this evidence had been admitted improperly, the judge confessed error in admitting this evidence and granted defendants motion. Due to the financial problems experienced by the plaintiff, we accepted a settlement offer made by the District of Columbia.

This longest and most complex of my civil trials afforded me an intensive learning experience. Issues of damages and proximate cause threatened the success of the plaintiff's case at every stage. Counsel for the District of Columbia raised every defense possible. But it was the conduct of the judge in managing the rigors of the trial that prompted me to consider seriously a career on the bench. As I look back, it is clear to me that Judge Webber's patience and painstaking effort to treat the parties fairly and conduct the trial with dignity and efficiency provided me with a model which I to this day emulate.

Among the lawyers who may be able to express an opinion on the quality of my judicial service by virtue of their criminal, civil or family law practice before me in recent years are:

Marna S. Tucker, Esq.  
Feldsman, Tucker, Leifer, Fidell & Bank  
Tel: (202) 466-8960

Donna L. Wulkan, Esq.  
Tel: (202) 682-3909

Betty Hunter, Esq.  
Former President of Superior Court  
Trial Lawyers Association  
Tel: (202) 783-7870

Rita Bank, Esq.  
Feldsman, Tucker, Leifer, Fidell & Bank  
Tel: (202) 466-8960

Cynthia McKnight, Esq.  
MacLeay, Linch, Gregg & Linch  
Tel: (202) 785-0123

Patricia Riley, Esq.  
United States Attorney's Office  
Sex Offense Unit  
Tel: (202) 514-0495

James F. Jordan, Esq.  
Jordan, Coyne, Savits & Lopata  
Tel: (202) 371-1800

J. Gordon Forester, Jr.  
Greenstein, DeLorme & Luchs  
Tel: (202) 452-1400

Heather Shaner, Esq.  
Tel: (202) 265-8210

Valinda Jones, Esq.  
Assistant United States Attorney  
Felony Trial Division  
Tel: (202) 514-7494

Robert Spelke, Esq.  
Assistant United States Attorney  
Violent Crimes Unit  
Tel: (202) 514-7436

Stephen Anthony, Esq.  
Assistant United States Attorney  
Felony Trial Division  
Tel: (202) 514-7454

Douglas Evans, Esq.  
Tel: (202) 399-5112

Ronald A. Goodbread, Esq.  
Tel: (202) 966-4063

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

19a. As Presiding Judge of the court's Family Division, I chaired a committee made up of lawyers, commissioners and judges charged with the responsibility of devising a child support guideline to be applied in all cases involving the determination of how much a noncustodial parent should pay for the support of his\her child\children. The committee's membership consisted of highly motivated individuals devoted to the notion that child support awards should attempt to put the child in a financial situation

comparable to that which the child would have enjoyed had the child lived within the intact family unit. After two and a half years of determined effort by the committee and a declaration by the D.C. Court of Appeals that our final product could not be promulgated as a court rule, the District of Columbia City Council adopted our work and its product by enacting a practically unaltered version of our Child Support Guideline in the form of an statute which now governs the law of child support in the District of Columbia.

Despite some initial resistance to its implementation, the law is now broadly recognized by the bar and public as a very positive development in the attempt to build more predictability into domestic relations litigation and to ensure the protection of children's entitlement to financial support from their parents.

I am proud of my committee's accomplishment and consider my work with the project as perhaps one of the most significant activities of my judicial career.

- 19b. In 1986 the D.C. Superior Court established a permanent Office of Interpreter Services devised to serve hearing impaired and non-English speaking litigants by providing interpreters for them in all court proceeding. My participation in the effort to provide this resource included making the Court aware of the issue, defining the need to address it and working with the Chief Judge, Court Executive and bar associations to design its implementation.
- 19c. In 1991-1992 I chaired the District of Columbia Courts Racial Ethnic Task Force Court Personnel Subcommittee whose investigation and report materially assisted the Task Force mission by identifying practices perceived by court employees to constitute discrimination of a racial or ethnic nature.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

As a member of the D.C. Retirement Fund I have the option to cash in my current vested retirement annuity or to wait until age 60 before beginning to receive my retirement annuity monthly installments.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I do not have any deferred income arrangement, stock, options, uncompleted contracts or other future benefits which I expect to derive from previous business arrangements, professional services, etc. Therefore, I cannot anticipate any potential conflict-of-interest during my initial service as a federal judge.

If I perceive a problem of potential conflict of interest, I will follow the directives of the Code of Judicial Conduct for United States Judges.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

It is possible that, if it meets with the approval of the Chief Judge, I would seek to continue teaching trial practice at one of the local law schools.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

SEE FINANCIAL DISCLOSURE REPORT

FD-10  
 Rev. 1/93

## FINANCIAL DISCLOSURE REPORT

 Report Required by the Ethics  
 Reform Act of 1989, Pub. L. No.  
 101-194, November 30, 1989  
 (5 U.S.C.A. App. 6, §§101-112)

|  |  |  |
|--|--|--|
| 1. Person Reporting (Last name, first, middle initial)<br><br>URBINA, RICARDO M.   | 2. Court or Organization<br><br>Superior Court for the District<br>of Columbia   | 3. Date of Report<br><br>3-25-94                       |
| 4. Title (Article III judges indicate active or<br>senior status; Magistrate judges indicate<br>full- or part-time)<br><br>Associate Judge   | 5. Report Type (check appropriate type)<br><br><input checked="" type="checkbox"/> Nomination, Date <u>3-23-94</u><br><input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final            | 6. Reporting Period<br><br>1992-1993<br>1994 (3/15/94) |
| 7. Chambers or Office Address<br><br>500 Indiana Ave., N.W.<br>Chambers #3520<br>Washington, D.C. 20001  | 8. On the basis of the information contained in this Report, it<br>is, in my opinion, in compliance with applicable laws and<br>regulations <input type="checkbox"/><br><br>Reviewing Officer Signature <u>Ricardo M. Urbina</u> |  |
| <b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts,<br>checking the NONE box for each section where you have no reportable information. Sign on last page. |  |  |

## I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

POSITION

NAME OF ORGANIZATION/ENTITY

|                          |  |
|--------------------------|--|
| <input type="checkbox"/> | NONE (No reportable positions)                                 |
| Board Member             | Georgetown University College Advisory Board of Directors      |
| Board Member             | After School Kids (A.S.K.) Program Advisory Board of Directors |
| Board Member             | Eugene and Agnes Meyer Foundation                              |
| Board Member             | Mary's Center for Maternal and Child Care, Inc.                |

## II. AGREEMENTS. (Reporting individual only; see p. 8-9 of Instructions.)

DATE

PARTIES AND TERMS

|   |                                 |
|---|---------------------------------|
| <input type="checkbox"/>  | NONE (No reportable agreements) |
| As a member of the District of Columbia Retirement Fund, I am entitled to collect |                                 |
| a lump sum on accrued retirement to date, or I may defer collecting retirement    |                                 |
| annuity installment payments until I reach age 60.                                |                                 |

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

DATE

SOURCE AND TYPE

GROSS INCOME

(Honoraria only)

(yours, not spouse's)

|                          |   |  |
|--------------------------|---|--|
| <input type="checkbox"/> | NONE (No reportable non-investment income)                  |  |
| 1<br>1993-1994           | Income from rental apartment in home                        | \$4,000 - 1993<br>\$ 800 - 1994                                  |
| 2<br>1992-1993-1994      | Superior Court of D.C. - Salary                             | \$129,297.28 - 1992<br>\$133,377.76 - 1993<br>\$30,830.40 - 1994 |
| 3<br>1993                | George Washington University Law Center - Teaching Position | \$ 2,500.00  |
| 4<br>1992-1993-1994      | Salary as employee of Fitness Company owned by spouse       | \$ (S)   |
| 5                        |   | \$   |

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

URBINA, RICARDO M.

Date of Report

3-25-94

**IV. REIMBURSEMENTS and GIFTS - transportation, lodging, food, entertainment.**  
 (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

SOURCEDESCRIPTION

| <input checked="" type="checkbox"/> X | NONE (No such reportable reimbursements or gifts) |  |
|---------------------------------------|---|--|
| 1                                     |   |  |
| 2                                     |   |  |
| 3                                     |   |  |
| 4                                     |   |  |
| 5                                     |   |  |
| 6                                     |   |  |
| 7                                     |   |  |
| 8                                     |   |  |

**V. OTHER GIFTS.** (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp.15-16 of Instructions.)

SOURCEDESCRIPTIONVALUE

| <input checked="" type="checkbox"/> X | NONE (No such reportable gifts) |  |    |
|---------------------------------------|---------------------------------|--|----|
| 1                                     |                                 |  | \$ |
| 2                                     |                                 |  | \$ |
| 3                                     |                                 |  | \$ |
| 4                                     |                                 |  | \$ |

**VI. LIABILITIES.** (Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp.16-18 of Instructions.)

CREDITORDESCRIPTIONVALUE CODE\*

| <input type="checkbox"/> | NONE (No reportable liabilities)                          |  |   |
|--------------------------|---|--|---|
| 1                        | Bank of Baltimore (J)                                     | Home Equity Line of Credit                                       | K |
| 2                        | Conserv Loan Program<br>(Eduser Winston Salem N.C.) (J)   | Educational Loan (son's college education)                       | J |
| 3                        | Atlantic Residential Mortgage (J)<br>Corp. Baltimore, Md. | Home Mortgage  | M |
| 4                        | Conserv Loan Program<br>(Eduser Winston Salem N.C.) (J)   | Educational loan (son's college education)<br>(paid off in 7/93) | K |
| 5                        | Va. 1st Savings Bank - Petersburg, Va (J)                 | Home Mortgage - paid off in 6/93                                 | N |
| 6                        | First Va. Bank - Falls Church, Va. (J)                    | Auto Loan  | J |
| 7                        | Maryland Natl. Bank - Balt., Md. (J)                      | Educational Loan - paid off 10/93                                | J |

\* VALUE CODES: J = \$15,000 or less    K = \$15,001 to \$50,000    L = \$50,001 to \$100,000    M = \$100,001 to \$250,000  
 N = \$250,001 to \$500,000    O = \$500,001 to \$1,000,000    P = More than \$1,000,000

FINANCIAL DISCLOSURE REPORT (cont'd)

|  |                           |
|--|---------------------------|
| Name of Person Reporting<br>URBINA, RICARDO M. | Date of Report<br>3-25-94 |
|--|---------------------------|

VII. INVESTMENTS and TRUSTS -- income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

| A.<br>Description of Assets<br>(including trust assets)<br><br>Indicate, where applicable, owner of the asset by using the parenthetical "(S)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.<br><br>Place "(X)" after each asset exempt from prior disclosure. | B.<br>Income during reporting period           |  | C.<br>Gross value at end of reporting period       |  | D.<br>Transactions during reporting period       |                        |                         |                        |  |
|---|--|--|--|--|--|------------------------|-------------------------|------------------------|--|
|   | (1)<br>Ast. Code (B-8)                         | (2)<br>Type (S-P, rent or int.)                      | (1)<br>Value (J-F)                                 | (2)<br>Value Method Code (Q-W)                   | If not exempt from disclosure                    |                        |                         |                        |  |
|   |  |  |  |  | (1)<br>Type (e.g. buy, sell, margin, redemption) | (2)<br>Date: Month Day | (3)<br>Value Code (J-F) | (4)<br>Sale Code (B-8) | (5)<br>Identity of buyer/seller (if private transaction) |
| <input type="checkbox"/> NONE (No reportable income, assets, or transactions)   |  |  |  |  |  |                        |                         |                        |  |
| 1 (J)<br>Riggs National Bank-Money Market   | A  | int.   | K  | T  |  |                        |                         |                        |  |
| 2 (J)<br>Riggs National Bank-Savings Acct   | A  | int.   | K  | T  |  |                        |                         |                        |  |
| 3<br>Apartment (J) - in home  | C  | rent   | K  | R  |  |                        |                         |                        |  |
| 4   |  |  |  |  |  |                        |                         |                        |  |
| 5   |  |  |  |  |  |                        |                         |                        |  |
| 6   |  |  |  |  |  |                        |                         |                        |  |
| 7   |  |  |  |  |  |                        |                         |                        |  |
| 8   |  |  |  |  |  |                        |                         |                        |  |
| 9   |  |  |  |  |  |                        |                         |                        |  |
| 10  |  |  |  |  |  |                        |                         |                        |  |
| 11  |  |  |  |  |  |                        |                         |                        |  |
| 12  |  |  |  |  |  |                        |                         |                        |  |
| 13  |  |  |  |  |  |                        |                         |                        |  |
| 14  |  |  |  |  |  |                        |                         |                        |  |
| 15  |  |  |  |  |  |                        |                         |                        |  |
| 16  |  |  |  |  |  |                        |                         |                        |  |
| 17  |  |  |  |  |  |                        |                         |                        |  |
| 18  |  |  |  |  |  |                        |                         |                        |  |
| 19  |  |  |  |  |  |                        |                         |                        |  |
| 20  |  |  |  |  |  |                        |                         |                        |  |
| 1 Income/Gain Codes:<br>(See Col. B1 & D4)  | A=\$1,000 or less<br>E=\$15,001 to \$50,000    | B=\$1,001 to \$2,500<br>F=\$50,001 to \$100,000      | C=\$2,501 to 5,000<br>G=\$100,001 to \$1,000,000   | D=\$1,001 to \$15,000<br>H=more than \$1,000,000 |  |                        |                         |                        |  |
| 2 Value Codes:<br>(See Col. C1 & D3)  | J=\$15,000 or less<br>N=\$250,001 to \$500,000 | F=\$15,001 to \$50,000<br>O=\$500,001 to \$1,000,000 | L=\$50,001 to \$100,000<br>P=more than \$1,000,000 |  |  |                        |                         |                        |  |
| 3 Value Method Codes:<br>(See Col. C2)  | Q-Appraisal<br>U-Book Value                    | R-Cost (incl. estate tax)<br>V-Other                 | S-Assessment<br>W-Estimated                        | T-Cash/Market                                    |  |                        |                         |                        |  |

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

URBINA, RICARDO M.

Date of Report

3-25-94

## VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

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## IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature

*Ricardo M. Urbina*

Date

3-25-94

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, § 104, AND 18 U.S.C. § 1001.)

## FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Judicial Ethics Committee  
 Administrative Office of the  
 United States Courts  
 Washington, DC 20544



5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

SEE ATTACHMENT #4

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No.

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

My efforts at serving the disadvantaged have focused on our troubled youth and the foreign-born.

In April of 1987 I helped to affect a merger between Georgetown University and the D.C. Superior Court's Juvenile Probation Department which took the form of the A.S.K. Program which consists of Georgetown University college students who dedicate their time and energy to working with high risk juvenile offenders. The program has prospered in size and efficacy to the extent that it has become an institutional adjunct to the court's probation department which has recently recorded the fact that over 80% of the youths in the A.S.K. Program do not get rearrested while on probation.

I am an active participant in the D.C. Public School Adopt-A-Class Program which links me directly with a class who visits me at the courthouse, spends the morning watching court proceedings and then spends a brown bag lunch period (usually in my jury room) asking me questions and making observations about the morning's proceedings. Once during the semester I spend a few hours in the classroom addressing a topic and answering questions prepared for me by the class in advance of my arrival.

On an average of once every six week, classes from other public and private schools also visit and engage me in a question and answer sessions when time permits.

I have provided three years of active participation during conferences of the National Symposium on Child Victimization.

I serve on the board of directors of the Eugene and Agnes Meyer Foundation which is a D.C. based philanthropic organization which awards grants to deserving community programs often addressing the needs of the underprivileged.

In order to address the needs of the foreign-born and the

hearing impaired, I worked with the D.C. Hispanic Bar Association and others to bring into existence the Office of Interpreter Services in the D.C. Superior Court. Its specific function is to provide interpreter services for the foreign-born and hearing impaired at every court proceeding in which a witness or litigant is communication impaired. The service has been very successful and has led to a heightened interest on the part of court personnel to learn Spanish. As chair of the Spanish Language Education Committee I am pleased to observe that more than a hundred court employees have recently started classes held at the courthouse and geared to enable non-Spanish speakers to acquire a functional ability to use the language when servicing the community engaged in court related business.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

No.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Delegate Eleanor Holmes Norton assembled a very diverse and distinguished cross section of members from the bar and the community at large to form a Federal Judicial Nominations Commission. Its seventeen members reviewed the voluminous responses of each applicant to the Commission's questionnaire and then interviewed nearly forty interested members of the bar and bench for the four judicial vacancies on the United States District Court for the District of Columbia, and from the array, the Commission advanced eight names to Ms. Norton who, after interviewing the prospects, then selected four individuals whose names she recommended to the President for nomination.

On December 22, 1993 a select committee of the United

States Department of Justice interviewed me for two hours on matters related to my judicial candidacy.

On February 10, 1994 the Circuit Representative of the American Bar Association Standing Committee on Federal Judiciary met with me in furtherance of developing an evaluation of me as a judicial candidate.

On March- 23, 1994 President Clinton referred my nomination to the United States Senate.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

It is the judge's function to administer justice. Vague as the notion of "justice" may be, the judicial task is circumscribed by a process which should not vary from case to case. The rule requires that the judge look to the law - the Constitution, statutes, legislative history and decisional precedents, as the universe containing the material from which a just result may be fashioned. The parties are entitled to believe that the judge will follow this rule rather than the dictates of what might impress someone as a just cause. Thus litigants may reliably anticipate the core considerations from which the controversy at issue will be resolved.

It is worth noting that some perceptions of courts' overreaching evolve from the enforcement of consent decrees. Many of these decrees are currently in effect nationwide because of the class action trend in litigation which involves local, state or federal institutions as the defendants. As a contract, a consent decree when breached invokes the court's specific enforcement of the rule of law which at times takes the form of coercive procedures and directives for the monitoring of institutions. This is an often unpopular task beyond the expertise of any court. Such involvement may create the appearance of unwarranted judicial micro-management.

The court should interpret and apply the law as created or illuminated by authority and precedent. In this manner predictability, continuity and stability become the staples for the administration of justice.

## FINANCIAL STATEMENT

### NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

| ASSETS                                  |            |               | LIABILITIES                                      |            |               |
|---|------------|---------------|--|------------|---------------|
| Cash on hand and in banks               | 23         | 000 00        | Notes payable to banks—secured                   |            |               |
| U.S. Government securities—add schedule |            |               | Notes payable to banks—unsecured                 | 9          | 800 00        |
| Listed securities—add schedule          |            |               | Notes payable to relatives (auto)                |            |               |
| Unlisted securities—add schedule        |            |               | Notes payable to others                          |            |               |
| Accounts and notes receivable:          |            |               | Accounts and bills due                           |            | 500 00        |
| Due from relatives and friends          |            |               | Unpaid income tax                                |            |               |
| Due from others                         |            |               | Other unpaid tax and interest                    |            |               |
| Doubtful                                |            |               | Real estate mortgages payable—add schedule       | * (1) 24   | 300 00        |
| Real estate owned—add schedule          | 260        | 000 00        | Chattel mortgages and other liens payable        | * (2) 186  | 500 00        |
| Real estate mortgages receivable        |            |               | Other debts—itemize:                             |            |               |
| Autos and other personal property       |            |               | student loan for dependant child                 | 10         | 000 00        |
| Cash value—life insurance               |            |               |  |            |               |
| Other assets—itemize:                   |            |               |  |            |               |
| IRA accounts                            | 1          | 674 00        |  |            |               |
| automobiles                             | 16         | 000 00        |  |            |               |
| personal property                       | 75         | 000 00        |  |            |               |
|   |            |               |  |            |               |
| <b>Total assets</b>                     | <b>375</b> | <b>674 00</b> | <b>Total liabilities</b>                         | <b>231</b> | <b>000 00</b> |
|   |            |               | <b>Net worth</b>                                 | <b>144</b> | <b>574 00</b> |
|   |            |               | <b>Total liabilities and net worth</b>           | <b>375</b> | <b>674 00</b> |
|   |            |               |  |            |               |
| CONTINGENT LIABILITIES                  |            |               | GENERAL INFORMATION                              |            |               |
| As endorser, comaker or guarantor       |            |               | Are any assets pledged? (Add schedule)           | NO         |               |
| On leases or contracts                  |            |               | Are you defendant in any suits or legal actions? | NO         |               |
| Legal Claims                            |            |               | Have you ever taken bankruptcy?                  | NO         |               |
| Provision for Federal Income Tax        |            |               |  |            |               |
| Other special debt                      |            |               |  |            |               |

\*(1) Home Equity Line of Credit  
Bank of Baltimore  
P.O. Box 896  
Baltimore, MD 21298-9852  
Account # 7299036

\*(2) Atlantic Residential  
Mortgage Corporation  
P.O. Box 17207  
Baltimore, MD 21203  
Account # 092909

(line of credit and mortgage are on the same property)

**SENATE JUDICIARY COMMITTEE QUESTIONNAIRE**

**I. BIOGRAPHICAL INFORMATION (PUBLIC)**

1. **FULL NAME:** (Include any former names used.)

Richard Anthony Paez

2. **ADDRESS:** List current place of residence and office address(es).

2534 Ivanhoe Drive  
Los Angeles, CA 90039

Los Angeles Municipal Court  
Division 15  
110 N. Grand Avenue  
Los Angeles, CA 90012

3. **DATE AND PLACE OF BIRTH:**

May 5, 1947  
Salt Lake City, UT

4. **MARITAL STATUS:** (Include maiden name of wife, or husband's name.) List spouse's occupation, employer's name and business address(es).

Married  
Diane M. Erickson

International Business Machines  
355 S. Grand Avenue  
Los Angeles, CA 90071

Human Resources Advisor

5. **EDUCATION:** List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

**COLLEGE:**

Brigham Young University  
 Provo, UT  
 September 1965 - June 1967 and  
 September 1968 - June 1969  
 Bachelor of Arts (Economics) - June, 1969

University of California at Irvine  
 Irvine, CA  
 September 1967 - June 1968

**LAW SCHOOL:**

University of California at Berkeley (Boalt Hall)  
 Berkeley, CA  
 September 1969 - June 1972  
 Juris Doctor - June, 1972

6. **EMPLOYMENT RECORD:** List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

- A. California Rural Legal Assistance  
 629 Main Street  
 Delano, CA 93215

Staff Attorney--August, 1972 - January, 1974

- B. Western Center on Law and Poverty  
 3701 Wilshire Blvd.  
 Los Angeles, CA 90010

Staff Attorney--January, 1974 - October, 1976

- C. Legal Aid Foundation of Los Angeles  
 1550 W. Eight St.  
 Los Angeles, CA 90017

Senior Counsel--October, 1976 - January, 1978

Director of Litigation--January, 1978 - December, 1980

Acting Executive Director and Director of Litigation--  
 January, 1981 - May, 1981



D. Los Angeles Municipal Court  
110 N. Grand Avenue  
Los Angeles, CA 90012

Judge--May, 1981 to present

7. **MILITARY SERVICE:** Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. **HONORS AND AWARDS:** List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

None.

9. **BAR ASSOCIATIONS:** List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

A. Bar Associations

California State Bar Association  
December, 1972 to present

Los Angeles County Bar Association  
1978 to present

Over the years, I have served on the following Los Angeles County Bar committees:

- ▶ Economical Litigation Committee, 1983 - 1984
- ▶ Municipal Courts Committee, 1986 - 1987
- ▶ Special Committee on California Rape Laws, 1978
- ▶ State Courts Committee, 1988 to present

Mexican-American Bar Association of Los Angeles County  
1976 to present  
Member, Board of Trustees, 1981

B. Judicial-Related Committees

- Member, California Judicial Council. Appointed by Chief Justice Malcolm Lucas for a two-year term beginning January 1, 1991.

Reappointed by the Chief Justice to a second two-year term beginning February 1, 1993. The State Judicial Council is the policy-making body for the California judiciary. It is chaired by the Chief Justice.

As a member of the Council, I have served on its Municipal Court, Court Management, Strategic Planning and Executive Committees. Presently, I am a member of its Rules and Forms Committee.

- Presiding Judge, Los Angeles Municipal Court. As Presiding Judge, I chaired the Court's Executive Committee in 1988.
- Member, Los Angeles Municipal Court's Executive Committee, 1984, 1986 - 1989.
- Elected Chair, Los Angeles County Municipal Courts Judges' Association (MCJA), 1990 - 1991.

The MCJA is a statutorily-established association of Los Angeles County Municipal Court judges. It is through this association that the 188 municipal court judges in Los Angeles County's 24 separate judicial districts work together on issues of common concern.

- Chair, Judicial Council Advisory Committee on the eight-person Municipal Court Civil Jury Project, 1987 and 1988. Appointed by Chief Justice Malcolm Lucas.
- Member, Judicial Council Advisory Committee on State Trial Court Funding, 1990. Appointed by Chief Justice Malcolm Lucas.
- Member, Judicial Council Advisory Committee on Trial Court Improvement Fund, 1988. Appointed by Chief Justice Malcolm Lucas.
- Chair, Los Angeles County Municipal Court's Marshal's Committee, 1986 - 1988.
- Member, California Center for Judicial Education and Research, New Judge Education Planning Committee, 1988 - 1991.
- Member, California Center for Judicial Education and Research, Civil Proceedings Bench Book Planning Committee, 1990 to date.

10. **OTHER MEMBERSHIPS:** List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

The State Judicial Council, the Los Angeles County Bar Association, the Los Angeles County Municipal Court Judges' Association and the Mexican-American Bar Association all engage in lobbying activities before the California Legislature and other public bodies.

I belong to the following additional organizations:

Hollywood-Los Feliz Jewish Community Center  
1110 Bates Avenue  
Los Angeles, CA 90027  
Member, Board of Directors, 1992 to present

Los Angeles County Bar Association  
Alternative Dispute Resolution Services, Inc.  
617 S. Olive Street  
Los Angeles, CA 90014  
Member, Board of Directors, 1993 to present

Public Counsel  
3535 W. 6th Street  
Los Angeles, CA 90020  
Member, Board of Directors, 1984 - 1987

11. **COURT ADMISSION:** List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

California State Bar  
California Supreme Court  
December 1972

United States Supreme Court  
May 1977

United States Court of Appeals for the Ninth Circuit  
December 1975

United States District Court  
 Eastern District of California  
 1972  
 Central District of California  
 1973

12. **PUBLISHED WRITINGS:** List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

I have not published any articles or books. I have not made any speeches involving constitutional law or legal policy.

13. **HEALTH:** What is the present state of your health? List the date of your last physical examination.

Excellent

Last physical examination: September, 1993

14. **JUDICIAL OFFICE:** State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Judge

Los Angeles Municipal Court

Appointed April, 1981 by Governor Edmund G. Brown, Jr.

Elected June, 1982

Elected June, 1988

(Next election June, 1994)

The Municipal Court is a court of limited jurisdiction. It has jurisdiction over all misdemeanor crimes and civil cases where the amount in controversy does not exceed \$25,000. The Municipal Court also handles all the preliminary hearings for Superior Court felony cases.

15. **CITATIONS:** If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions were not officially reported, please provide copies of the opinions.

(1) **OPINIONS**

- [1] Pacifica Corporation v. City of Camarillo (1983) 149 Cal.App.3d 168
- [2] Carter v. Municipal Court (1983) 149 Cal.App.3d 184
- [3] J. Paul Getty Museum v. County of Los Angeles (1983) 148 Cal.App.3d 600
- [4] Civil Service Commission v. County of Los Angeles (1983) 2d Civ. No. 67619 (unpublished)
- [5] Samuel G. Perry v. City of Santa Monica (1983) 2d Civ. No. 67882 (unpublished)
- [6] Berger v. Benton (1983) 2d Civ. No. 67423 (unpublished)
- [7] People v. Hayden Steel Fisher, III (September 1986) Crim. No. 31254661 (unpublished)
- [8] People v. Equitable Life (1989) Crim. Case No. 89R.22311 (unpublished)
- [9] Woody Chevrolet, Inc. v. Orange County Salvage Sales (1983) Civ. No. 89K42540 (unpublished)
- [10] Castillo v. Friedman, Civ. Case No. 63948; affirmed and reversed 197 Cal.App.3d Supp. 6 (1986)

Copies of the unpublished opinions are attached.

(2) **REVERSALS**

Judgments and orders of Los Angeles Municipal Court judges are reviewed by the Los Angeles County Superior Court Appellate Department. Since the Appellate Department does not publish many opinions, I have not kept a record of every judgment or order I have rendered where one of the parties sought appellate review. The following is a list of cases where my decision was reversed.

- [1] L.A.M. Construction, Inc. v. KRIZ (1993) 14 Cal.App. 4th Supp. 1

In this action, I granted a motion for summary judgment ruling that an action to enforce a \$23,999 mechanic's lien which had been filed originally in the Superior Court and later transferred to the Municipal Court had not been filed timely in the proper court as required by California Civil Code § 3144. The Appellate Department reversed, holding that the action was filed timely under Civil Code § 3144 and Code of Civil Procedure § 396.

- [2] Vanitzian v. Shugar, L.A.M.C. #89 K47115; L.A.S.C. #BV18980 (1993)

This action involved a claim by the plaintiff for unpaid overtime pay. I found for the plaintiff and entered judgment. On appeal, the Appellate Department affirmed the substantive findings and rulings I made, but reversed with instructions to recalculate the amount of damages due plaintiff.

- [3] Senator v. Southern Pacific Equipment Leasing, L.A.M.C. #91 K13877, L.A.S.C. #BV19221 (1993)

In this case, I sustained a demurrer to plaintiff's allegations of fraud and conspiracy against several of the defendants without leave to amend. The plaintiff appealed, and the Appellate Department reversed, holding that plaintiff's fraud and conspiracy allegations were sufficient to state a claim for relief.

- [4] Galvez v. Los Angeles Unified School District L.A.M.C. #F3065, L.A.S.C. #A16305 (1985)

In this personal injury action, I granted a motion for summary judgment finding that plaintiff's action was barred by the applicable statute of limitations. The Appellate Department reversed, finding there was a triable issue of material fact regarding the timeliness of plaintiff's action.

- [5] Rogers v. Kelsey, L.A.M.C. #F32052, L.A.S.C. #A16031 (1984)

In this action to recover unpaid attorney's fees, I granted plaintiff's motion for summary judgment. In granting the plaintiff's motion, I did not consider the defendant's opposition papers which had not been filed timely as required by local court rules. The Appellate Department reversed, finding that I erred in not considering the defendant's opposition papers.

- [6] Vivas v. Southern California Rapid Transit District, L.A.M.C. #F2562, L.A.S.C. #A16264 (1985)

In this personal injury action, I granted the defendant's motion for summary judgment ruling that as a matter of law, the defendant bus company was not negligent. The Appellate Department reversed finding there were material triable issues of fact regarding defendant's negligence.

- [7] Vega v. Olivarez, L.A.M.C. #F31314; L.A.S.C. #A15813 (1983)

In this action, I denied defendant's motion to vacate a default judgment. On appeal, the Appellate Department reversed, finding that the circumstances which led to defendant's default constituted excusable neglect within the meaning of California Code of Civil Procedure § 473.

- [8] Castillo v. Friedman (1986) 197 Cal.App.3d Supp. 6

This case involved a claim by a former tenant that she was wrongfully evicted by her former landlord. She alleged her eviction was obtained through a fraudulent misrepresentation and that her eviction violated the Los Angeles City Rent Stabilization Ordinance. I found for the plaintiff, and the defendant appealed. The Appellate Department affirmed on the liability issue and reversed on the measure of damages.

Copies of the unpublished opinions are attached.

**(3) OPINIONS ON FEDERAL OR STATE CONSTITUTIONAL ISSUES**

None

16. **PUBLIC OFFICE:** State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None.

**17. LEGAL CAREER:**

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

Following graduation from law school, I did not serve as a law clerk to any judge.

2. whether you practiced alone, and if so, the addresses and dates;

I never practiced law as a solo practitioner.

3. the dates, names and addresses of law firms or offices, companies or government agencies with which you have been connected, and the nature of your connection with each;

- **August 1972 - January 1974**

California Rural Legal Assistance  
Delano/McFarland Regional Office  
629 Main Street  
Delano, CA. 93215  
Staff Attorney

- **February 1974 - October 1976**

Western Center on Law and Poverty  
3701 Wilshire Blvd., Suite 208  
Los Angeles, CA 90010  
(213) 487-7211  
Staff Attorney

- **October 1976 - May 1981**

Legal Aid Foundation of Los Angeles  
1550 W. Eighth Street  
Los Angeles, CA. 90017  
(213) 487-3320

Senior Counsel, October 1976 - January 1978

Director of Litigation, January 1978 - December 1980

Acting Executive Director and  
Director of Litigation, December 1980 - May 1981

- **May 1981 - to date**

Judge, Los Angeles Municipal Court  
110 N. Grand Avenue  
Los Angeles, CA. 90012  
(213) 974-6227



- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

Following my graduation from law school in 1972, I was hired by California Rural Legal Assistance (CRLA), a federally funded rural legal services program. I worked as a staff attorney in CRLA's McFarland/Delano office which was located in Kern County in California's San Joaquin Valley.

While at CRLA, I represented low-income individuals (many of whom were non-English speaking farm workers) in a variety of civil matters before state and federal courts, and administrative bodies. I also worked with various community groups in our local service area.

In January 1974, I left CRLA and relocated in Los Angeles, California. At that time, I began working for the Western Center on Law and Poverty, a federally funded legal services support center for southern California. I was employed as a staff attorney. While at the Western Center, I continued to work on poverty law issues in cooperation with attorneys from neighborhood legal services offices. I provided advice and counsel on substantive legal questions; technical assistance on litigation matters; co-counsel assistance on civil cases in state and federal courts at both the trial and appellate court levels; and I litigated cases on my own that were referred by attorneys from local legal services programs.

In 1977, I left the Western Center to work for the Legal Aid Foundation of Los Angeles as a Senior Counsel. As a Senior Counsel, my responsibilities were similar to those I performed at the Western Center. The principal difference was that I worked directly for a local legal services program that employed 40 attorneys in branch offices throughout the City of Los Angeles. In 1978, I became the Director of Litigation for the Legal Aid Foundation of Los Angeles. In this capacity, I assumed responsibility for the Foundation's overall litigation efforts. I was also responsible for supervising the program's senior and managing attorneys. Throughout these years, I continued to litigate cases involving complex legal and procedural issues, both on my own and as co-counsel with other Foundation attorneys.

In January, 1981, I was appointed Acting Executive Director by the Foundation's Board of Directors. As Executive Director, I was responsible for the overall administration of the program. I remained in this position until my appointment to the Municipal Court in May, 1981.

As a Municipal Court Judge, I have served in full-time criminal, civil, and administrative assignments. In the 13 years that I have been a judge, I have handled hundreds of criminal and civil trials, both jury and nonjury. In 1983, I served on assignment with the California Court of Appeal, Second District, Division 7. Since June, 1993, I have served on cross-assignment with the Los Angeles Superior Court hearing civil jury trials.

- b. 2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

The typical clients I represented while working for federally funded legal services programs were low-income individuals with incomes below the federally established poverty guidelines. Many of the clients I represented were African American, Hispanic, and non-English speaking individuals.

I did not specialize in any one area of the law. My primary interest was complex civil litigation in state and federal courts at the trial and appellate court levels.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I appeared in court regularly until I became Executive Director of the Legal Aid Foundation of Los Angeles. While Executive Director, I made occasional court appearances.

2. What percentage of these appearances was in:

- (a) federal courts; 30%
- (b) state courts of record; 70%
- (c) other courts

3. What percentage of your litigation was

- (a) civil 100%
- (b) criminal 0%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Approximately 10 cases as associate counsel and 15 cases as sole counsel.

5. What percentage of these trials was:

- (a) jury; 0%  
 (b) non-jury. 100%

18. **LITIGATION:** Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation  
 (b) the name of the court and the name of the judge or judges before whom the case was litigated; and  
 (c) the individual names, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

- (1) Chavez-Salido v. Cabell, Civ. No. 76-9541-IH (3-Judge Court), 427 F.Supp. 158 (1977); vacated and remanded 436 U.S. 901, 98 Sup. Ct. 2228 (1978); 490 F.Supp. 984 (1980) (Opinion on remand); reserved 454 U.S. 432 (1982)

In this action, the plaintiffs, all of who were lawful resident aliens, were denied employment as deputy Los Angeles County probation officers because they were not United States citizens. At the time citizenship was a statutory requirement for this position.

This action involved an equal protection challenge to the statutory citizenship requirement -- California Government Code § 1041(a). Although the three-Judge Federal District Court declared the statute unconstitutional as a violation of the Fourteenth Amendment, the United States Supreme Court reversed. Subsequently, the relevant state statutes were amended to allow resident aliens who have applied for United States citizenship to be employed as deputy probation officers.

In this action, I represented the three plaintiffs. I was the sole counsel throughout all proceedings except the final argument before the United States Supreme Court. (I did not argue this case before the U.S. Supreme Court because at the time of oral argument, I was a municipal court judge.)

**Judge:**

Senior U.S. District Judge Irving Hill  
Central District of California

**Defendant's Attorney:**

Hon. Phillip H. Hickok  
Los Angeles Superior Court  
Dept. T  
12720 Norwalk Blvd.  
Norwalk, CA 90650-3188  
(310) 603-7211

- (2) **Rank v. Nimmo**, Civ. No. 76-3265-LEW, 460 F. Supp. 920 (C.D. Cal.1978), reversed 677 F.2d 692 (1982)

The plaintiff in this case was a Korean War veteran who had financed the purchase of his home with a VA guaranteed home loan. When he was laid off from work in the early seventies, he was unable to make his mortgage payments. The lender foreclosed and initiated eviction proceedings. He then sought help from a local legal services program.

In essence, this case involved the obligation of the Veterans Administration to service the plaintiff's VA-guaranteed home loan so that he could avoid foreclosure and retain his home. The District Court held that the VA failed to meet its statutory obligation and set aside the foreclosure sale of the veteran's home. The Ninth Circuit reversed finding the plaintiff could not state a private cause of action under the applicable statutes and regulations. (I did not argue this case before the Ninth Circuit because at the time of oral argument, I was a municipal court judge.)

I represented the plaintiff in this action. I filed the action and acted as lead counsel until I left the Western Center on Law and Poverty. Thereafter, I co-counseled the case with Richard Rothschild.

**Judge:**

Senior U.S. District Judge Laughlin Waters  
Central District of California

**Defendant's Attorney:**

Barry Trilling  
 Assistant U.S. Attorney  
 U.S. Department of Justice  
 Washington, D.C.

**Co-Counsel:**

Richard Rothschild  
 3701 Wilshire Blvd., Suite 208  
 Los Angeles, CA 90010  
 (213) 487-7211, Ext. 24

**(3) Murgia v. Municipal Court (1975) 15 Cal.3d 286**

This case, which arose out of the 1973-74 farm workers' strike in the San Joaquin Valley, firmly established the right of a defendant to raise the defense of discriminatory enforcement of the law.

In this consolidated criminal action, we represented a number of individuals who were charged with minor misdemeanor offenses while participating in a farm workers' strike in Kern County, California. We argued that the defendants were arrested solely because of their involvement in the strike and sought to raise the affirmative defense of discriminatory enforcement of the law. The trial court found that the defendants made a prima facie showing of discriminatory enforcement of the law, but ruled that the defendants could not raise this defense. The Court of Appeal and the California Supreme Court reversed. Following the California Supreme Court's decision, the Kern County District Attorney's office dismissed the charges against all the defendants. I handled this case through the Court of Appeal proceedings with co-counsel Ken Rice and Miguel Garcia.

We represented the defendants in this action. I co-counseled this case with Ken Rice and Miguel Garcia.

**Judge:**

Hon. Judge Gerald Davies, Ret'd.  
 Kern County Superior Court

**Co-Counsel:**

Ken Rice  
 215 North Lincoln Street  
 Box 520  
 Santa Maria, CA 93456  
 (805) 925-2611

Miguel Garcia  
5842 E. Beverly Blvd.  
Los Angeles, CA 90022-2824  
(213) 723-1890

**People's Attorney:**  
Kern County District Attorney's Office  
1215 Truxtun Avenue  
Bakersfield, CA 93301

- (4) Civil Service Comm. v. Superior Court (Price) (1977) 63  
Cal.App.3d 627

The plaintiff in this action had been employed by the County of Los Angeles. The County terminated him for misconduct. He appealed his termination to the Los Angeles County Civil Service Commission. Following an evidentiary hearing, his termination was affirmed. He then sought judicial review. He could not, however, afford the cost of the administrative hearing transcript.

Because the termination of plaintiff's employment involved a vested right under California law and independent judicial review, the trial court upon plaintiff's motion ordered the Civil Service Commission to prepare a transcript of the hearing at its own expense. The Commission then sought appellate review. The Court of Appeal reversed.

Although the Court of Appeal denied relief, the Legislature ultimately amended Code of Civil Procedure section 1094.5 to require an administrative agency to furnish the trial court with a copy of the administrative record at its expense.

I represented the plaintiff in the superior and appellate courts. I co-counseled this case with Georgia Franklin.

**Judge:**  
Hon. Norman Dowds, Ret'd  
Los Angeles Superior Court

**Defendant's Counsel:**  
David L. Muir  
Principal Deputy County Counsel  
500 W. Temple Street, Suite 648  
Los Angeles, CA 90012  
(213) 974-1876

**Co-Counsel:**

Georgia Franklin  
 944 15th Street, #2  
 Santa Monica, CA 90403  
 (310) 394-3936

- (5) Ponce v. City of Tulare, Tulare County Superior Court, Civ. No. 74-581 (filed 1/29/83)

This was a 42 U.S.C. section 1981 employment discrimination case. It was filed on behalf of African-Americans and Mexican-Americans against the City of Tulare and challenged the hiring and promotional practices of the City. In April 1978, in the first phase of the trial, the Superior Court held that the City of Tulare intentionally discriminated against African-American and Mexican American applicants and employees in its hiring and promotional practices. In the second phase, the trial court awarded damages to the named plaintiffs and class members. The trial court also awarded attorney's fees under 42 U.S.C. section 1988.

**Trial Judge:**

Hon. Leonard Ginsberg, Ret'd.  
 Tulare County Superior Court

**Defendant's Attorneys:**

John Berryhill (deceased)  
 Tulare, California

Louie La Rose (deceased)  
 Visalia, California

**Co-Counsel:**

David Bryson (phase I)  
 National Housing Law Project  
 2201 Broadway, #815  
 Oakland, CA 94612  
 (510) 251-9400

Tomas Olmos (phase I)  
 Legal Aid Foundation of Los Angeles  
 1550 W. Eighth Street  
 Los Angeles, CA 90017  
 (213) 252-3922

Dan Stormer (phase II)  
 Attorney at Law  
 1280 N. Fair Oaks Avenue  
 Pasadena, CA 91103  
 (818) 585-9600

- (6) Tongol v. Usery, Civ. No. 76-100-WTS (N.D. Cal., judgment entered 2/1/77) (601 F.2d 1091 (9th Cir. 1979))

This was a nationwide class action under the Emergency Unemployment Compensation Act of 1975 which challenged 20 C.F.R. § 618.15 (a) and (f). This regulation prohibited states from applying their unemployment insurance waiver of overpayment provisions to overpayments of Federal Supplement Benefits (FSB). The District Court entered judgment on behalf of the plaintiffs declaring the regulations inconsistent with the federal statute. The District Court denied plaintiffs' request for attorney's fees under 42 U.S.C. § 1988 on the grounds that plaintiffs' action did not state a claim for relief under 42 U.S.C. § 1983. On appeal, the Ninth Circuit affirmed the judgment on the merits and reversed the District Court's denial of attorney's fees. On the attorney's fees issue, the Ninth Circuit held that a deprivation of rights secured by federal statutory law could be enforced under 42 U.S.C. § 1983.

We represented the plaintiffs. I co-counseled this action with Richard M. Pearl. I was responsible for the class certification proceedings of this case.

**Judge:**

U.S. District Court Judge William Orrick  
 Northern District of California

**Defendant's Attorney:**

William T. McGivern, Jr.  
 Assistant U.S. Attorney  
 San Francisco, CA  
 (415) 556-5718

**Co-Counsel:**

Richard M. Pearl  
 Attorney at Law  
 685 Market Street, #690  
 San Francisco, CA 94105  
 (415) 243-9912



- (7) **Ponce v. Housing Authority of Tulare County**, 389 F.Supp. 625 (E.D. Cal.1973)

In this case, we represented tenants who opposed the imposition of a rent increase in a Farmers Home Administration low income housing project.

This case established the due process right of low-income tenants residing in Farmers Home Administration-financed housing projects to receive prior notice and an opportunity to be heard before the imposition of project-wide rent increases.

We represented individual tenants as well as a tenants' union in their efforts to secure meaningful participation in the decision to increase rents.

I co-counseled this case with Richard M. Pearl.

**Trial Judge:**

Senior U.S. District Judge Thomas J. McBride  
Eastern District of California

**Co-Counsel:**

Richard M. Pearl  
Attorney at Law  
685 Market Street, #690  
San Francisco, CA 94105  
(415) 243-9912

**Defendant's Attorney:**

Lloyd L. Hicks  
119 S. Church Street  
Box 350  
Tulare, CA 93279  
(209) 733-1065

- (8) **Johnson v. Marshall**, Civ. No. 76-4015-F (C.D. Cal., partial consent judgment entered 7/20/78, final judgment entered 3/21/79)

In this action, the plaintiff was a participant in Los Angeles County's Comprehensive Employment and Training Act program. When she was summarily terminated from the program, she was denied any opportunity to contest her termination.

This case sought to compel Los Angeles County to implement a grievance procedure for persons employed by the County as required by the Comprehensive Employment and Training Act of 1976 (CETA). The class action aspects of this case were resolved by a partial consent decree whereby the County agreed to implement the required grievance procedures, and to provide discharged CETA participants with the opportunity to request a hearing to contest their termination. The additional claims of the named plaintiff as well as her request for an award of attorney's fees under 42 U.S.C. § 1988 were rejected by the District Court.

Plaintiff appealed the denial of her claim and the attorney's fees issues to the Ninth Circuit. The Ninth Circuit affirmed the denial of the plaintiff's individual claims but remanded the case to the District Court for consideration of plaintiff's motion for an award of attorneys' fees under 42 U.S.C. § 1988, for the work performed in connection with the consent decree. Subsequently, the District Court awarded plaintiff's counsel attorney's fees under 42 U.S.C. § 1988.

We represented the plaintiff. I co-counseled this action with Sandra Pettit and Michael Wine.

**Judge:**

Senior U.S. District Court Judge Warren J. Ferguson  
Central District of California

**Defendant's Attorneys:**

Kathy Tooks  
(former) Assistant U.S. Attorney  
Los Angeles, CA

Joe Ben Hudgens  
Deputy County Counsel  
500 W. Temple St., #648  
Los Angeles, CA 90012  
(213) 526-6158

**Co-Counsel:**

Sandra Pettit  
Attorney at Law  
2800 28th Street, #315  
Santa Monica, CA 90405-6205  
(310) 450-9582

Michael Wine  
 Attorney at Law  
 P.O. Box 91564  
 City of Industry, CA 91715-1564  
 (818) 333-7029

(9) **Mayorquin-Cedaño v. Fink**, Civ. No. 78-1429-LEW (filed 4/13/78)

This action challenged the constitutionality of former 19 U.S.C. § 1594 which allowed U.S. Customs officials to seize vehicles as security for payment of a penalty assessed under 19. U.S.C. § 1549 and 1460 without notice and an opportunity to be heard. Shortly after this case was filed, the U.S. Customs Service changed its procedures to provide for notice and a prompt opportunity to contest the seizure of a vehicle. The District Court denied class certification. Thereafter, the case settled, whereby plaintiff Cedaño received his car and \$500, and plaintiff Hiraes received \$900. Although this case settled for nominal amounts, it was significant because it was one of the precipitating factors that led the U.S. Customs Service to change its regulations to ensure due process safeguards for owners of seized vehicles.

I represented the plaintiffs.

**Trial Judge:**

Laughlin Waters  
 Senior U.S. District Court Judge  
 Central District of California

**Defendant's Attorney:**

Hon. Stephen D. Petersen  
 Los Angeles Superior Court  
 Department X  
 6230 Sylmar Avenue  
 Van Nuys, CA 91401  
 (818) 374-3112

(10) **Fair v. Hills**, Civ. No. 75-2455-DWW (filed 7/18/75, dismissed 12/76)

This action involved a challenge to the bulk sale of 160 FHA repossessed homes in San Bernardino, California, by the United States Department of Housing and Urban Development. The District Court enjoined the private developers from rehabilitating, selling, or in any way disposing of the 160 homes without taking certain steps to ensure the viability of the proposed development. The

plaintiffs in this case were nearby homeowners who were affected by the proposed development. This case was significant because the 160 repossessed homes were located in a low-income neighborhood in San Bernardino. The plaintiffs sought to compel HUD to impose certain conditions on the bulk sale that would ensure the success of the private redevelopment project. After the District Court's ruling on the preliminary injunction, the case settled.

We represented the plaintiffs in this case. I co-counseled this action with Mary Burdick.

**Trial Judge:**

David Williams  
Senior U.S. District Court Judge  
Central District of California

**Defendant's Attorney:**

Leland Stark  
9454 Wilshire Blvd., #900  
Beverly Hills, CA 90212  
(310) 278-6750

**Co-Counsel:**

Mary S. Burdick  
3701 Wilshire Blvd., Ste 208  
Los Angeles, CA 90010  
(213) 487-7211, Ext. 27

In addition to the above-referenced attorneys, the following is a list of attorneys and judges who are familiar with my judicial work:

1. Lara Bloomquist  
Deputy City Attorney  
City Hall East  
200 N. Main Street, Rm. 1600  
Los Angeles, CA 90012  
(213) 485-6370
2. Robert Brodney  
Deputy District Attorney  
Hall of Records  
320 West Temple, Ste. 348-10  
Los Angeles, CA 90012  
(213) 974-3611

3. **Mario Diaz**  
6255 Sunset Blvd., Ste. 612  
Hollywood, CA 90028  
(213) 469-6293
4. **Carole Miller**  
Deputy City Attorney  
14724 Ventura Blvd.  
Sherman Oaks, CA 91403  
(818) 908-4062
5. **Thomas Dempsey**  
1880 Century Park E  
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Los Angeles, CA 90067  
(310) 552-7868
6. **John Vandavelde**  
655 South Hope Street  
13th Floor  
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(213) 622-4750
7. **Michael Stern**  
445 S. Figueroa, Ste. 2222  
Los Angeles, CA 90012  
(213) 624-2969
8. **Valerie Vanaman**  
14001 Ventura Blvd.  
Sherman Oaks, CA 91423  
(818) 990-7722
9. **Hon. Aviva K. Bobb**  
Past Presiding Judge  
Los Angeles Municipal Court  
Division 13  
110 North Grand Avenue  
Los Angeles, CA 90012  
(213) 974-6223
10. **Hon. Edward Ferns**  
Los Angeles Superior Court  
Department 133  
210 West Temple Street  
Los Angeles, CA 90012  
(213) 974-5783

11. Beth Jay  
Legal Director  
Chief Justice's Staff  
303 2nd Street  
San Francisco, CA 94107-1317  
(415) 396-9414
  
12. Justice Earl Johnson  
California Court of Appeal  
Division 7  
300 S. Spring Street  
Los Angeles, CA 90013-1213  
(213) 897-2433

19. **LEGAL ACTIVITIES:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question; please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

During the years I worked in legal services, my "legal activities" primarily involved civil litigation. Many of the cases I worked on settled prior to trial, and several of the more significant ones are described above. Litigating cases, however, was not the only legal activity I pursued. As Director of Litigation, it was my responsibility to provide overall direction for the Legal Aid Foundation's legal work. This involved setting program priorities in consultation with the client community and program staff, and then insuring that the Foundation's resources were devoted to implementing the established priorities.

As a result of this priority-setting, the Foundation pursued a number of successful housing law-related projects. The Foundation's attorneys and legislative lobbyist obtained legislative protection for homeowners in South Central Los Angeles who were threatened with the loss of their homes by tax lien sales and equity "rip-off" artists; Foundation attorneys litigated cases against governmental agencies for failing to inspect and cite apartment owners who maintained their property in substandard conditions; and the Foundation took steps through a tenants' counseling center to ensure that low-income tenants threatened with eviction understood the judicial process so that, if they desired, they could represent themselves in court. Although I did not assume direct responsibility for these projects, it was my task to encourage, and provide direction and support to the staff attorneys who successfully pursued many of these projects.

In the years that I have been a judge, I have worked on a number of issues to improve the administration of justice. As Presiding Judge of the Los Angeles Municipal Court in 1988, I started the Court's attempt to implement a criminal trial delay reduction program. I also developed a program to improve the Court's use of Temporary Judges (attorneys appointed to act as a temporary judge for a limited time) by requiring training, supervision and monitoring of their work. I also supported a number of projects that sought to achieve greater judicial cooperation between the Municipal and Superior Courts in Los Angeles County.

As Chair of the Los Angeles Municipal Court Judges' Association (MCJA), I testified before the Legislature in support of legislation that required greater cooperation and joint utilization of resources between the Municipal and Superior Courts.

As Supervising Judge of the Los Angeles Municipal Court's civil judges, I instituted a civil trial court delay reduction project. This resulted in a major change in the way the Court calendars civil cases. We converted our master calendar system to a direct "federal style" system; established an arbitration and settlement conference program; and implemented a computerized tracking system for all general civil cases. As a result of this program, we have eliminated considerable delay in the time it takes to resolve a case in our Court.

In addition to my direct involvement in judicial administration, I have also been active in judicial education with the California Center for Judicial Education and Research (CJER). I have taught civil law and procedure to many judges throughout the state at numerous judicial education programs sponsored by CJER. Through my involvement with CJER, I have sought to share my experience and knowledge with other less experienced judges as well as improve my legal knowledge and judicial abilities.

Finally, for the past three years, I have had the opportunity to serve on the State Judicial Council, the policy-making body for the California judiciary. I have served at a time when significant change is taking place within California's trial court system. I have been an active participant in the Council and supported such court reform measures as trial court delay reduction programs, unification and consolidation of the trial courts, state trial court funding, and greater planning by the Council to address the future needs of the California judiciary and the state's increasingly diverse population.

## **II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)**

List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or

customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

As a member of the California judiciary, I am a member of the California Judges Retirement System. To date, I have contributed approximately \$78,000 to this retirement system. When I leave my current judicial position, I will withdraw all of my contributions.

As a Los Angeles County Municipal Court Judge, I have been allowed to participate in the County's Tax Deferred Savings Plan (401K) and Deferred Compensation programs. I will withdraw all of my contributions to these programs and, if possible, all funds will be deposited directly into my individual retirement account.

The current market value of my savings plan is approximately \$55,000, and my deferred compensation is valued at approximately \$28,000. Because I make monthly contributions to these savings plans and the nature of the investment, diversified stock mutual funds, their values fluctuate daily.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

All of my financial investments are in stock mutual funds managed by Fidelity Investments. Accordingly, I do not anticipate any conflict-of-interest problems. The only possible conflict of interest would be if I were assigned a case where IBM is a party to the action. If this happened, I would disclose that my spouse is an IBM employee, the nature of her employment, and disqualify myself from the case unless the litigants and their attorneys signed written waivers of any potential conflict of interest. In the event of any potential conflict of interest, however, I would follow the guidelines for the Code of Judicial Conduct for the federal judiciary.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more. (If you prefer to do so, copies of the financial disclosure report required by the Ethics in Government Act of 1978 may be substituted here.)



A copy of my initial Financial Disclosure Report is attached.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See attached form with schedules.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your titles and responsibilities.

No.

### III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I fully appreciate the ethical consideration set forth in Canon 2 in the ABA's Code of Professional Responsibility. As my response to Question No. 17 indicates from the time I graduated from law school until my appointment to the municipal court, I represented disadvantaged individuals. I sought to provide quality representation to low income individuals who could not afford to hire private attorneys.

As a judge, I have sought to demystify the state judicial system by explaining how the system works to unrepresented litigants, jurors and those who visit the courthouse. I have also spoken to school children at local schools and to law students who visit the courthouse.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?

No.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Yes. Senator Barbara Boxer established a Judicial Nominating Committee to advise her on judicial nominations. This committee recommended my name to Senator Boxer.

In February, 1993, I read in the Los Angeles Daily Journal that Senator Boxer had established a Judicial Nominating Committee for the Central District of California to advise her on judicial nominations. In response to this article, I contacted Senator Boxer's office and requested information on the selection process. I was told that I would have to complete a Personal Data Questionnaire and provide several letters of reference. Thereafter, Senator Boxer's office sent me the questionnaire.

I completed the questionnaire (which was similar to this form) and returned it to Senator Boxer's office. Shortly thereafter, the Chair of the Judicial Nominating Committee notified me that she had received my Personal Data Questionnaire and that the Committee would be conducting an evaluation of my qualifications to serve on the Federal District Court.

Sometime thereafter a member of the Committee notified me that she and another Committee member had been assigned the initial task of evaluating my qualifications. She explained that this would involve sending questionnaires to lawyers and judges who were familiar with my work. I then provided this subcommittee with a list of names of lawyers who had tried cases before me and judges who were familiar with my work and reputation.

In May, the subcommittee called me for an interview. At this meeting, I answered questions regarding my judicial experience and cases I litigated as an attorney. I was also given an opportunity to explain why I believed I was qualified to serve on the Federal District Court.

In June, 1993, the Chair of the Judicial Nominating Committee called me for an interview with the entire Committee. This interview was similar to the first one but covered all aspects of my professional career. I was also asked to assess my judicial temperament and how a lifetime appointment might affect my judicial demeanor. This interview lasted approximately 1/2 hour.

In July, I received a telephone call from Senator Boxer's Chief of Staff informing me that I had received a unanimous exceptionally well qualified rating from the Judicial Nominating Committee and that it was Senator Boxer's intention to recommend my name to President Clinton for nomination to the Federal District Court in Los Angeles. We then discussed a mutually convenient date that I could meet with Senator Boxer when she returned from Washington, D.C. for the summer legislative recess.

On August 9, 1993, I met with Senator Boxer in San Francisco. We had a brief discussion of the selection process and the rating I received from her Committee. She informed me that she intended to recommend my name to President Clinton. She then reviewed the confirmation process with me and explained that it would take four to six months before I would be confirmed.

On August 13, 1993, Senator Boxer publicly announced that she was recommending my name to President Clinton for nomination to the Federal District Court.

In September, 1993, the White House sent me a number of forms and questionnaires to complete. After completing those documents, I returned them to the White House.

In early November, 1993, I was contacted by a representative from the Department of Justice. I was invited to meet with Assistant Attorney General Eleanor D. Acheson along with other representatives from the Department of Justice. In mid-November, I met with these individuals at the Department of Justice. During that meeting, we reviewed my professional experience, both as a lawyer and judge, my extra judicial activities in judicial administration and education. I was also asked to assess my judicial demeanor and how a lifetime appointment would affect my judicial temperament.

In early December, 1993, I was contacted by an agent from the Federal Bureau of Investigation to inform me that he would be conducting a background investigation. I was asked to gather certain information that would be needed at a personal interview. Several days later, I was interviewed by this agent for approximately two hours regarding all aspects of my personal background and professional experience. I provided all the information requested.

In late December, 1993, I was contacted by a representative from the American Bar Association Standing Committee on the Federal Judiciary. I was asked to prepare an additional list of professional references in addition to the names I supplied in my responses to the ABA's Personal Data Questionnaire. We scheduled a date and time for an interview. Subsequently, I met with the ABA representative for approximately two hours. We reviewed my professional career and judicial experience.

On March 9, 1994, I was contacted by Victoria Radd from the White House and informed that President Clinton had formally nominated me to the Federal District Court in Los Angeles. Later that day, I was contacted by a representative from the Department of Justice and advised to file my initial Financial Disclosure Report with the Judicial Ethics Committee. I filed that report on March 11, 1994.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Although it has been many years since I litigated cases in the federal courts, my litigation and judicial experience suggest that charges of "judicial activism" depend on how one is affected by or whether one agrees or disagrees with a particular court decision. The federal courts and courts in general do not reach out to decide cases or issues. Litigants who seek redress of their grievances

bring disputes before the courts for resolution. Indeed, it has been my experience as a judge that the routine business of the courts is the resolution of genuine grievances by individuals or entities. I have every reason to believe that the same situation confronts Federal District Court judges.

Individuals and entities utilize the courts to settle their particular grievances and not to solve societal problems. Similarly, trial court judges, whether they are state or federal judges, resolve the dispute between the litigants. When the dispute involves novel issues or many people, the trial court's decision may affect individuals and entities not before the court. The courts, however, cannot reject a case or decline to decide it simply because it may affect others who are not directly involved in the litigation.

Broad class-wide relief is not easily available. It is appropriate only when the trial court determines that the requirements for such relief under Rule 23 of the Federal Rules of Civil Procedure have been satisfied. Although class relief may affect many individuals, it is a procedural remedy that is designed to facilitate more efficient use of limited judicial resources.

In some controversial instances, judges have imposed broad orders against government and other institutions. This, however, is not the norm. Judges, for the most part, are reluctant to impose broad relief. Yet, when courts grant relief and governments or other institutions fail or refuse to comply with a court's judgment, then the courts have no choice but to enforce their orders. This does not mean that a judge should or needs to take on the role of a program administrator; what it does mean is the court should employ reasonable means to ensure that its orders and judgments will be implemented and respected.

Finally, in the area of standing and private enforcement of statutory rights, the trend in the past decade has been to tighten standing requirements, and to limit the circumstances under which a plaintiff may maintain a private cause of action, where there is no express statutory authority. In this regard, some criticism suggests that standing requirements are too restrictive and deny individuals access to the courts.

Whether one agrees or disagrees with the above criticism of "judicial activism" is not the issue. What is important is how individual judges view their role. A trial court judge's primary task is to determine what the law is; determine the facts in an unbiased manner; and apply the law fairly to the facts to reach a just result. Having been a trial court judge for many years, I understand these responsibilities and will undertake them with appreciation of the significance of every decision I make.

AO-10  
Rev. 1/93

## FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics  
Reform Act of 1989, Pub. L. No.  
101-194, November 30, 1989  
(5 U.S.C.A. App. 6, §§101-112)

|   |   |  |
|---|---|--|
| 1. Person Reporting (Last name, first, middle initial)<br><br>PAEZ, RICHARD A.  | 2. Court or Organization<br><br>DISTRICT COURT<br>CENTRAL DISTRICT OF CALIFORNIA  | 3. Date of Report<br><br>3-10-94                           |
| 4. Title (Article III Judges indicate active or senior status; Magistrate Judges indicate full- or part-time)<br><br>U.S. DISTRICT COURT JUDGE  | 5. Report Type (check appropriate type)<br><input checked="" type="checkbox"/> Nomination, Date <u>3/9/94</u><br><input checked="" type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final | 6. Reporting Period<br><br>Jan. 1, 1993 -<br>March 9, 1994 |
| 7. Chambers or Office Address<br>Los Angeles Municipal Court, Div. 15<br>110 N. Grand Avenue<br>Los Angeles, CA 90012   | 8. On the basis of the information contained in this Report, it is, in my opinion, in compliance with applicable laws and regulations _____<br>Reviewing Officer Signature _____  |  |
| IMPORTANT NOTES: <i>The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on last page.</i> |   |  |

## I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

POSITIONNAME OF ORGANIZATION/ENTITY NONE (No reportable positions)

Member, Board of Directors      Los Angeles County BAR Dispute Resolution Serv. Inc.

Member, Board of Directors      Hollywood Los Feliz Jewish Community Center

Council Member      California Judicial Council

## II. AGREEMENTS. (Reporting individual only; see p. 8-9 of Instructions.)

DATEPARTIES AND TERMS NONE (No reportable agreements)

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

DATE  
(Honoraria only)SOURCE AND TYPEGROSS INCOME  
(yours, not spouse's) NONE (No reportable non-investment income)

|   |              |  |                |
|---|--------------|--|----------------|
| 1 | 1993         | Los Angeles County, Judicial Compensation  | \$ 104,700/yr. |
| 2 | 1994 (2 mos) | Los Angeles County, Judicial Compensation  | \$ 17,600      |
| 3 |              | State of California, Judicial Compensation | \$ 1,572       |
| 4 |              | IBM Corporation (S) Salary                 | \$             |
| 5 |              |  | \$             |

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

RICHARD A. PAEZ

Date of Report

3/10/94

## IV. REIMBURSEMENTS and GIFTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

SOURCEDESCRIPTION

| <input type="checkbox"/> NONE (No such reportable reimbursements or gifts) |        |
|--|--------|
| 1  | EXEMPT |
| 2  |        |
| 3  |        |
| 4  |        |
| 5  |        |
| 6  |        |
| 7  |        |
| 8  |        |

## V. OTHER GIFTS. (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp.15-16 of Instructions.)

SOURCEDESCRIPTIONVALUE

| <input type="checkbox"/> NONE (No such reportable gifts) |        |    |
|--|--------|----|
| 1  | EXEMPT | \$ |
| 2  |        | \$ |
| 3  |        | \$ |
| 4  |        | \$ |

## VI. LIABILITIES. (Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp.16-18 of Instructions.)

CREDITORDESCRIPTIONVALUE CODE\*

| <input type="checkbox"/> NONE (No reportable liabilities) |                              |                   |   |
|---|------------------------------|-------------------|---|
| 1   | IBM Corp. Tax Def. Sav. Plan | Loan (J)          | J |
| 2   | United States Savings Bank   | Mortgage Loan (J) | L |
| 3   |                              |                   |   |
| 4   |                              |                   |   |
| 5   |                              |                   |   |
| 6   |                              |                   |   |
| 7   |                              |                   |   |

\* VALUE CODES: J = \$15,000 or less    K = \$15,001 to \$50,000    L = \$50,001 to \$100,000    M = \$100,001 to \$250,000  
 N = \$250,001 to \$500,000    O = \$500,001 to \$1,000,000    P = More than \$1,000,000

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

RICHARD A. PAEZ

Date of Report

3/10/94

## VII. INVESTMENTS and TRUSTS - income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

| A.<br>Description of Assets<br>(Including trust assets)<br><small>Indicate, where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, and "(DC)" for ownership by dependent child.<br/>Place "(X)" after each asset exempt from prior disclosure.</small> | B.<br>Income during reporting period           |                       | C.<br>Gross value at end of reporting period         |                         | D.<br>Transactions during reporting period         |                    |  |                     |   |
|---|--|-----------------------|--|-------------------------|--|--------------------|--|---------------------|---|
|   | (1)  | (2)                   | (1)  | (2)                     | If not exempt from disclosure                      |                    |  |                     |   |
|   | Asset Code (A-W)                               | Type (S, J, DC, Int.) | Value Code (J-F)                                     | Value Method Code (Q-W) | (1) Type (S, J, DC, Int.)                          | (2) Date Month Day | (3) Value Code (J-F)                             | (4) Gain Code (A-W) | (5) Identity of Buyer/Seller (If private transaction) |
| <input type="checkbox"/> NONE (No reportable income, assets, or transactions)   |  |                       |  |                         |  |                    |  |                     |   |
| 1 Condominium (J)<br>Whatcom County, WA.  | NONE   |                       | L  | W                       |  |                    |  |                     |   |
| 2 IBM Corp Common STK. (J)  | A  | Div.                  | L  | T                       |  |                    |  |                     |   |
| 3 Fidelity Investments (J)<br>Mutual Funds  | C  | Div.                  | L  | T                       |  |                    |  |                     |   |
| 4 L.A. County Sav. Plan   | C  | Div.                  | L  | T                       |  |                    |  |                     |   |
| 5 L.A. County Deferred Comp.  | B  | Div.                  | K  | T                       |  |                    |  |                     |   |
| 6 Cal. Judges Retirement Plan   | NONE   |                       | L  | T                       |  |                    |  |                     |   |
| 7 IRA - Fidelity Invest.  | A  | Div.                  | J  | T                       |  |                    |  |                     |   |
| 8 IRA - Fidelity Invest. (S)  | A  | Div.                  | J  | J                       |  |                    |  |                     |   |
| 9 IBM Tax Deferred Sav. (S)   | C  | Div.                  | L  | T                       |  |                    |  |                     |   |
| 10  |  |                       |  |                         |  |                    |  |                     |   |
| 11  |  |                       |  |                         |  |                    |  |                     |   |
| 12  |  |                       |  |                         |  |                    |  |                     |   |
| 13  |  |                       |  |                         |  |                    |  |                     |   |
| 14  |  |                       |  |                         |  |                    |  |                     |   |
| 15  |  |                       |  |                         |  |                    |  |                     |   |
| 16  |  |                       |  |                         |  |                    |  |                     |   |
| 17  |  |                       |  |                         |  |                    |  |                     |   |
| 18  |  |                       |  |                         |  |                    |  |                     |   |
| 19  |  |                       |  |                         |  |                    |  |                     |   |
| 20  |  |                       |  |                         |  |                    |  |                     |   |
| 1 Income/Gain Codes:<br>(See Col. B1 & D8)  | A=\$1,000 or less<br>B=\$15,001 to \$50,000    |                       | B=\$1,001 to \$2,500<br>F=\$50,001 to \$100,000      |                         | C=\$2,501 to 5,000<br>G=\$100,001 to \$1,000,000   |                    | D=\$5,001 to \$15,000<br>H=More than \$1,000,000 |                     |   |
| 2 Value Codes:<br>(See Col. C1 & C3)  | J=\$15,000 or less<br>K=\$250,001 to \$500,000 |                       | F=\$15,001 to \$50,000<br>G=\$500,001 to \$1,000,000 |                         | L=\$50,001 to \$100,000<br>P=More than \$1,000,000 |                    |  |                     |   |
| 3 Value Method Codes:<br>(See Col. C2)  | Q=Appraisal<br>U=Book Value                    |                       | R=Cost (real estate only)<br>V=Other                 |                         | S=Assessment<br>W=Estimated                        |                    |  |                     | T=Cash/Market   |



FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

RICHARD A. PAEZ

Date of Report

3/10/94

## VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

All Fidelity investments and tax deferred savings and compensation investments

are invested in diversified mutual funds.

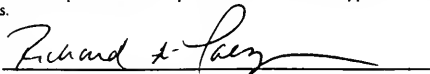
## IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature



Date

3-10-94

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, § 104, AND 18 U.S.C. § 1001.)

## FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Judicial Ethics Committee  
Administrative Office of the  
United States Courts  
Washington, DC 20544

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

| ASSETS                                  |        |      | LIABILITIES                                      |        |     |
|---|--------|------|--|--------|-----|
| Cash on hand and in banks               | \$ 3,  | 000  | Notes payable to banks—secured                   |        | 0   |
| U.S. Government securities—add schedule |        | 0    | Notes payable to banks—unsecured                 |        | 0   |
| Listed securities—add schedule          | 67,    | 000  | Notes payable to relatives                       |        | 0   |
| Unlisted securities—add schedule        |        | 0    | Notes payable to others                          |        | 0   |
| Accounts and notes receivable:          |        | 0    | Accounts and bills due                           | \$ 17, | 000 |
| Due from relatives and friends          |        | 0    | Unpaid income tax                                |        | 0   |
| Due from others                         |        |      | Other unpaid tax and interest                    |        | 0   |
| Doubtful                                |        |      | Real estate mortgages payable—add schedule       | 287,   | 000 |
| Real estate owned—add schedule          | 465,   | 000  | Chattel mortgages and other liens payable        |        | 0   |
| Real estate mortgages receivable        |        | 0    | Other debts—itemize:                             |        | 0   |
| Autos and other personal property       | 30,    | 000  |  |        |     |
| Cash value—life insurance               |        | 0    |  |        |     |
| Other assets—itemize:                   | 240,   | 000  |  |        |     |
| (See attached schedule.)                |        |      |  |        |     |
|   |        |      | Total liabilities                                | \$270, | 000 |
|   |        |      | Net Worth  | 501,   | 000 |
| Total Assets                            | \$805, | 000  | Total liabilities and net worth                  | \$771, | 000 |
| CONTINGENT LIABILITIES                  |        |      | GENERAL INFORMATION                              |        |     |
| As endorser, comaker or guarantor:      |        | None | Are any assets pledged? (Add schedule.)          | No     |     |
| On leases or contracts                  |        | None | Are you defendant in any suits or legal actions? | No     |     |
| Legal Claims                            |        | None | Have you ever taken bankruptcy?                  | No     |     |
| Provision for Federal Income Tax        |        | None |  |        |     |
| Other special debt:                     |        | None |  |        |     |

## ASSET SCHEDULE

Real Estate Owned

- |    |  |           |
|----|--|-----------|
| 1. | Single Family Residence<br>2534 Ivanhoe Drive<br>Los Angeles, CA |           |
|    | Market Value . . . . .   | \$375,000 |
| 2. | Condominium<br>7806 Birch Bay Drive<br>Blaine, WA                |           |
|    | Market Value . . . . .   | \$ 85,000 |

Listed Securities

|   |           |
|---|-----------|
| Fidelity Investments<br>Boston, MA<br>Stock & Bond Mutual Funds |           |
| Market Value . . . . .  | \$ 67,000 |

Other AssetsVested Interest In Retirement  
FundsRichard

|                                  |           |
|----------------------------------|-----------|
| L.A. County 401K Savings         | \$ 55,000 |
| L.A. County Deferred Comp.       | \$ 28,000 |
| State Judges' Retirement<br>Fund | \$ 78,000 |
| IRA (Fidelity Invest.)           | \$ 7,000  |

Diane

|                        |           |
|------------------------|-----------|
| IBM 401K Savings       | \$ 56,000 |
| IRA (Fidelity Invest.) | \$ 7,000  |
| IBM Retirement         | \$ 9,000  |

|             |           |
|-------------|-----------|
| Total Other | \$240,000 |
|-------------|-----------|

**LIABILITIES SCHEDULE****Real Estate Mortgages Payable**

|    |  |           |
|----|--|-----------|
| 1. | 2534 Ivanhoe Drive<br>Los Angeles, CA      |           |
|    | SFR Mortgage (30 yr.)                      | \$231,000 |
| 2. | 7806 Birch Bay Drive<br>#111<br>Blaine, WA |           |
|    | Condo. Mortgage                            | \$ 56,000 |
|    | TOTAL                                      | \$287,000 |

**QUESTIONNAIRE FOR JUDICIAL NOMINEES****I. BIOGRAPHICAL INFORMATION (PUBLIC)****1. Full name (include any former names used).**

Denise Page Hood  
 Denise Arlene-Page Hood  
 Denise Page-Hood  
 Denise A. Page

**2. Address: List current place of residence and office address(es).**

**Residence:** 375 Lodge Drive  
 Detroit, MI 48214

**Office:** Wayne County Circuit Court  
 1501 City-County Building  
 2 Woodward Avenue  
 Detroit, MI 48226

**3. Date and place of birth.**

February 21, 1952; Columbus, OH

**4. Marital Status: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

Married to Rev. Nicholas Hood, III  
 Occupation: Minister - Plymouth United Church of  
 Christ (Congregational),  
 600 E. Warren Avenue, Detroit, MI 48201

City Councilman - City of Detroit  
 1340 City-County Building  
 2 Woodward Avenue  
 Detroit, MI 48226

**5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**

**DENISE PAGE HOOD**

2

5. **Education:** List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Columbia University School of Law, J.D. 1977  
 attended September 1974 - May 1975 and  
 September 1975 May 1976

University of Michigan Law School - Visiting Student  
 attended September 1976 - May 1977

Yale University, Yale College, B.A. 1974  
 attended September - May 1970-1974

6. **Employment Record:** List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

**1/93 to Present**

**Judge**  
**Wayne County Circuit Court**  
 1501 City-County Building  
 2 Woodward Avenue  
 Detroit, MI 48226

**5/89 to 12/92**

**Judge**  
**Recorder's Court for the City of Detroit**  
 1441 St. Antoine, Detroit, MI 48226

**1/83 to 5/89**

**Judge**  
**36th District Court**  
 421 Madison Avenue, Detroit, MI 48226

**9/77 to 12/82**

**Assistant Corporation Counsel; Law Intern**  
**City of Detroit, Law Department**  
 1010 City-County Building  
 2 Woodward Avenue  
 Detroit, MI 48226

**6/77 to 8/77**

**Unemployed**

DENISE PAGE HOOD

3

**Summers of 1976,  
1975 and 1974**

**Summer Intern  
Detroit City Council**  
Councilman (Rev.) Nicholas Hood, Sr.  
1304 City-County Building  
2 Woodward Avenue  
Detroit, MI 48226

7. **Military Service:** Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge receive.

None.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

- . Detroit Bar Association-Chairperson of the Year Award -1988
- . Detroit Chapter-National Coalition of 100 Black Women - In Recognition of Outstanding Contributions in Law and Politics Award - 1992
- . Black Women Lawyers Association - Judicial Service Award - 1994

9. **Bar Associations:** List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

**American Bar Association**

**State Bar of Michigan**

Committee on Professionalism, 1992-93  
Task Force on Standards for  
Assigned Counsel, 1986-87  
Judicial Council, 1983-84

**Detroit Bar Association**

President, 1993-94 (Term ends May 1994)  
President-Elect, 1992-93  
Secretary/Treasurer, 1991-93  
Board Member, 1983-85; 1986-Present  
Detroit Barristers, 1982-85  
President, 1984-85  
President-Elect, 1983-84  
Secretary/Treasurer, 1982-83  
Volunteer Law Committee, 1985-1990  
Chair, 1985-1990  
Liberty Bell Committee, 1979-89

**Association of Black Judges of Michigan**

(Member since 1983)  
President, 1991-92  
President-Elect, 1990-91  
Secretary, 1989-90  
Board of Directors, 1988-89  
Mentor Program, Chair, 1988-89

**Michigan District Judge Association**

Board of Directors, 1985-87

**American Inns of Court, 1990-1993****Wolverine Bar Association (Member since 1977)**

Board of Directors, 1978 or 1979

**Women Lawyers Association of Michigan**

Gender Bias Committee, 1989-90

**Federal Bar Association**

Board of Directors, 1987-89

**National Association of Women Judges****National Bar Association Judicial Council****Michigan Supreme Court Committee on Pre Trial Release  
Rule, 1988-91****Recorder's Court, Committee on Assigned Counsel,  
1990-1993****Wayne County Circuit Court/Recorder's Court  
Administrative Committee, 1992****Michigan Judicial Institute**

Circuit Court Advisory Committee, Faculty

**Wayne County Neighborhood Legal Services,**

Board of Directors, 1979-81; Chair, 1980-81



DENISE PAGE HOOD

5

10. **Other Memberships:** List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.
- A. **15th District Democratic Party Organization (Michigan Democratic Party)**  
**Detroit NOW (National Organization for Women)**  
**United Church of Christ**  
**NAACP**
- B. **Plymouth United Church of Christ**  
**Greater Wayne County Chapter, The Links, Inc.**  
**Detroit Study Club (By-laws attached)**  
**Jack & Jill, Detroit Chapter**  
**Association of Municipal Professional Women (Former Member)**
11. **Court Admission:** List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.
- State Bar of Michigan, October 1977  
 U.S. District Court E.D., Michigan, October 1977
12. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.
- (1) Michigan Judicial Institute - Regional Seminar - Outline for Domestic Violence Presentation
- (2) Association of Black Judges of Michigan Newsletters
- (See Attached)
13. **Health:** What is the present state of your health? List the date of your last physical examination.

Excellent. September 1992.

14. **Judicial Office:** State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

**Wayne County Circuit Court, January 1993-Present**

Elected November 1992 to six year term  
General jurisdiction court, county-wide.

**Recorder's Court for the City of Detroit**

Appointed to an unexpired term, May 1989 by Governor James Blanchard  
Elected to a six year, November 1990  
City-wide criminal felony jurisdiction. Recorder's Court is administratively combined with Wayne County Circuit Court for the purpose of hearing criminal cases county-wide.

**36th District Court**

Elected to an eight-year term, November 1982  
City-wide limited jurisdiction court; civil actions under \$10,000; small claims; landlord-tenant; traffic and ordinance matters; preliminary examinations in criminal cases; misdemeanors.

15. **Citations:** If you are or have been a judge, provide:  
(1)citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.
- (1) a. **The People of the State of Michigan v Farod Mallory and Gary Goodwin**  
Recorder's Court Case No. 89-9426
- b. **The People of the State of Michigan v Anthony Steven Lynch**  
Recorder's Court Case No.'s 82-0329 & 82-1668

- c. **Robin L. Stamell and Julie B. Repitor v Masonic Temple Theatre, NED-MAS, Inc., Talent Coordinators of America, Inc., Centrax Security Services, Inc., and Orr Security Services, Inc., d/b/a Century Guard Service, jointly and severally**  
36th District Court Case No. 86 428 971 PS
  - d. **Robert C. Hawkins, DBA Robert C. Hawkins Realty v Clarence H. Smithson, a Non-Resident**  
36th District Court Case No. 4 792 539
  - e. **M.E. Arden Company v Quentin Eathorne**  
36th District Court Case No. 4 826 675
  - f. **North American Interstate, Inc. v Salvador Torres, d/b/a Mexican Vintage & Plenque Restaurant, jointly and severally**  
36th District Court Case No. 4 798 772
  - g. **Henry Ford Hospital v Theodore Kerney**  
36th District Court Case No. 4 796 875
  - h. **Phyllis Knox v Cadillac Insurance Company**  
36th District Court Case No. 4 734 665
  - i. **James Kimbrough, Jr. v Lewis Senior**  
36th District Court Case No. 86 438 260
  - j. **Gloria Utsler v Bank of the Commonwealth, a Michigan Corporation**  
36th District Court Case No. 82 227 295 CZ
- (2) a. **People v Katrina Neal**  
Recorder's Court Case No. 89-04127-02

The Court of Appeals reversed the decision of the trial court which found the Defendant guilty of Possession of Cocaine. Defendant was seen rising from a chair at a table covered with cocaine and paraphernalia used to cut and package crack and where several hundreds of dollars was on the floor. Defendant did not live on the premises. A Co-Defendant (also found guilty), Defendant's aunt, who lived on the premises, had fled the room and was attempting to hide or dispose of some crack.

The Court of Appeals found there was not sufficient evidence to show that Defendant was anything more than "merely present" and reversed.

- b. **People v Keith Simmons**  
Recorder's Court Case No. 88-012645

In this case, the Defendant was sentenced to a period of probation because the trial court felt that the circumstances of the crime and the probability of rehabilitation of the Defendant warranted probation. The trial court did not believe the statute clearly prohibited probation. The Court of Appeals vacated the sentence. At resentencing, the Defendant, then a veteran of Desert Storm, was sentenced to a period of incarceration in the custody of the Michigan Department of Corrections.

- c. **People v Mack Tiggart**  
Recorder's Court Case No. 89-014735

The Court sentenced on both Murder One and Murder Two. The Court in response to the Department of Corrections sent a letter amending the judgment, but the Defendant had already appealed. The Court vacated the Murder Two sentence and affirmed on Murder One.

- d. **People v Anthony Irvin**  
Recorder's Court Case No. 90-007965-02

In this case, the trial court suppressed the evidence based on the law and the credibility of the witnesses. The Court of Appeals reversed citing Terry v Ohio, 392 US 1; 88 S Ct 1868; 20 LEd 2d 889 (1968).

- e. **People v Michael Farrell**  
Recorder's Court Case No. 91-9521-01

In this case, the trial court suppressed evidence based on the law and the credibility of the witnesses. The Court of Appeals reversed citing California v Hodari, 499 US\_\_ ; 111 S Ct 1547; 113 LEd 2d 690 (1991).

- f. **People v Butris**  
Recorder's Court Case No. 91-003290

In this case, Defendant's store was searched in anticipation of a warrant. The officer claimed secondarily that the wife of the Defendant agreed to the search. An employee or former employee of the Defendant reported to chain store manager that the Defendant had goods stolen from the chain store. The chain store manager went to the police. The officer went to the store to verify the information before seeking a warrant. He claimed to have agreement of the person in charge or the authority under another statute or ordinance. After the search but before seizing the goods, he obtained a warrant. The Court of Appeals reversed and sent the case back for trial.

- g. **People v Marcus Louis Foushee**  
Recorder's Court Case No. 91-012921-02

The Court of Appeals reversed the trial court's ruling reducing Defendant's charge to Assault and Battery from Assault with Intent to Murder on a Motion to Quash. Defendant had pulled a State Trooper's hands away from a Co-Defendant who was shouting, "Get his gun... Shoot him!" and other things. Defendant was charged as an aider and abettor. The Court of Appeals reversed, finding there was sufficient evidence produced at the preliminary examination to bind Defendant over on Assault with Intent to Murder.

(3) **None.**

16. **Public Office:** State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None.

17. **Legal Career:**

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

No.

2. whether you practiced alone, and if so, the addresses and dates;

No.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

1977-1982 City of Detroit Law Department  
1010 City-County Building  
Detroit, MI 48226  
Assistant Corporation Counsel

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

1977-1982

- Worked in Labor Section, general labor relations work, including arbitrations, civil service hearing officer.
- Worked in Detroit Water and Sewage Section, advising Water and Sewage Department, contract compliance and review work.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Client-employees and departments of the City of Detroit.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearance in court varied, describe each such variance, giving dates.

Occasionally.

2. What percentage of these appearances was in:

(a) federal courts;

10%

(b) state courts of record;

90%

(c) other courts.

None. However, I did present numerous cases through mediation hearings, civil service hearings, and arbitrations.

3. What percentage of your litigation was:

(a) civil;

100%

(b) criminal.

0%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

One, sole counsel at trial. However, I did many arbitrations and civil service hearings.

5. What percentage of these trials were:

(a) jury;

100%

(b) non-jury.

0%

18. **Litigation:** Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the dates of representation;

(b) the name of the court and the name of the judge or judges before whom the case was litigated; and

(c) The individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

During my tenure as an Assistant Corporation Counsel, I was assigned to two sections: Labor, and Water and Sewerage. I handled predominantly labor arbitrations, civil service hearings (as an attorney and a hearing officer), and some lawsuits (including age and race discrimination). All the lawsuits were amicably settled. I prepared legislation for City Council and advised clients. I also assisted several other attorneys on a significant case, DPOA v City of Detroit, which involved the local police union suing the city over affirmative action. The suit arose around the time of the Bakke decision and was ultimately handled by NAACP Legal Defense Fund attorneys. In the Water and Sewerage Section, I advised the Water and Sewerage Department; participated in Board and staff meetings; did construction claims; advised and handled citizen complaints; prepared and reviewed contracts; assisted on compliance issues; participated in bid openings and orientations and did minor litigation. In a couple of emergency settings, I participated in negotiating and preparing preliminary agreements and contracts.



Listed below are persons who are familiar with my work as an attorney and as a judge.

- (1) Judge Anna Diggs Taylor  
U.S. District Court for the  
Eastern District of Michigan  
U.S. Courthouse  
231 Lafayette Blvd., Room #740  
Detroit, MI 48226  
(313) 226-3433
- (2) Darryl F. Alexander  
Assistant Corporation Counsel, Detroit  
1006 Water Board Building  
Detroit, MI 48226  
(313) 224-4752
- (3) Josephine A. Powell  
Josephine A. Powell, P.C.  
243 W. Congress, Suite 470  
Detroit, MI 48226  
(313) 961-7152
- (4) Judge Nancy M. Blount  
36th District Court  
421 Madison Avenue, #4070  
Detroit, MI 48226-2358  
(313) 965-8715
- (5) Frank W. Jackson  
Blue Cross/Blue Shield of Michigan  
600 E. Lafayette, #1922  
Detroit, MI 48226  
(313) 225-0802
- (6) Judge Pamela R. Harwood  
Wayne County Circuit Court  
1007 City-County Building  
2 Woodward Avenue  
Detroit, MI 48226  
(313) 224-5436

- (7) Judge Dalton A. Roberson  
Recorder's Court  
1441 St. Antoine Street, #801  
Detroit, MI 48226-2302  
(313) 224-2444
- (8) Judge Robert L. Evans  
Recorder's Court  
1441 St. Antoine Street, #701  
Detroit, MI 48226-2302  
(313) 224-2464
- (9) Carole L. Chiamp  
3610 Cadillac Tower  
Detroit, MI 48226  
(313) 961-5660
- (10) Cornelius Pitts  
3650 Penobscot Building  
Detroit, MI 48226-4218  
(313) 964-0066
- (11) Roger L. Wolcott  
One Detroit Center, #3400  
500 Woodward Avenue  
Detroit, MI 48226-3406  
(313) 962-5909
- (12) Jeffrey G. Collins  
Collins & Walton  
1642 First National Building  
Detroit, MI 48226  
(313) 963-5440

19. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

While in 36th District Court, I worked with Judge Pamela R. Harwood on a program called the Accelerated Case Disposition Program. This program effectively reduced the backlog of civil cases in the District Court at the time. Judge Harwood and I tried or

settled cases on our own joint docket which consisted of nearly all cases over two years old in the entire court made up of twenty-nine judges. We tried or settled cases set for trial by other judges that they could not try on the specified trial date. As part of the program, we consolidated, for docketing and trial setting, cases of attorneys with numerous old cases. Some cases were closed administratively which required locating and closing cases which were settled, had not progressed, or in which no order had been entered following trial. At the end of the program, approximately 43% fewer cases were pending in the court. Our program was recognized by our peers with a Certificate of Appreciation and noticed by the local legal press and the Supreme Court of Michigan. The State Court Administrative Office for our region reported a significant drop in complaints made about the court after this program.

In about 1988, I was asked to serve on a Supreme Court Committee to review and recommend a new Pre-trial Release Rule for Michigan. Judge Robert Evans of Recorder's Court was the Chairman of the Committee. The Committee reviewed the Michigan Constitution, the Michigan Court Rules, the Bail Reform Act, case law and a then new piece of Michigan legislation to prepare a recommendation that reflected the Constitution while still giving meaning to the new legislation. In the process of doing this, we reviewed a lot of material about pre-release rules, bond and bail. After several meetings, much research and several drafts, the Committee made a recommendation to the Supreme Court.

I have been a member of the Michigan Judicial Institute Advisory Committee which recommends programs for Regional education and training seminars for judges. As a result, I was selected to be part of a team that participated with the Family Violence Project of San Francisco, California by testing a pilot program on Domestic Violence to be used nationally. With the team from several states, I helped plan and teach a program through the regional seminars in Michigan. This program brought judges in Michigan some of the latest social science and legal information about Domestic Violence.

I have also served as President of the Detroit Bar Association and the Association of Black Judges of Michigan. I have, through these positions and as Chair of the Detroit Bar Association Volunteer Lawyer Committee and a member of the Women Lawyer's Association Gender Bias Committee, successfully helped lawyers understand more about issues affecting the profession. Hopefully, I have enhanced public opinion of the profession through these endeavors.

**II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)**

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

My only expected benefits are from the State Judicial Retirement, County retirement and my personal insurance.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I do not anticipate any conflicts. However, I would follow the procedures designated by the Code of Judicial Conduct and the process for disqualification if required.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No, except I would still want to be available for speaking engagements on a limited basis and consistent with the applicable rules. I am currently working on the outline of a book on civil procedure with two other people, but would not pursue this if prohibited.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

Please see Financial Disclosure Form.

**4.A. FINANCIAL INFORMATION**

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See attached Net Worth Statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Yes. In 1978, I volunteered in my husband's campaign for U.S. Congress. I have also volunteered generally in my father-in-law's campaigns for City Council prior to 1983.

**FINANCIAL STATEMENT**  
**NET WORTH**

18

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate securities, trusts, investments, and other financial holdings) all liabilities (including debt mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members your household.

| ASSETS (Approximate amounts)            |                   | LIABILITIES (Approximate amounts)                |                   |
|---|-------------------|--|-------------------|
| Cash on hand and in banks               | 8,500 00          | Notes payable to banks—secured                   | 0 00              |
| U.S. Government securities—add schedule | See below—        | Notes payable to banks—unsecured                 | 0 00              |
|   | Other Assets (1)  | Notes payable to relatives                       | 4,600 00          |
| Listed securities—add schedule          | 0 00              | Notes payable to others (See below—Other Debt)   | 0 00              |
| Unlisted securities—add schedule        | 0 00              | Accounts and bills due                           | 22,700 00         |
| Accounts and notes receivable:          |                   | Unpaid income tax                                | 0 00              |
| Due from relatives and friends          | 0 00              | Other unpaid tax and interest                    | 0 00              |
| Due from others                         | 0 00              | Real estate mortgages payable—add schedule       | 53,454 58         |
| Doubtful                                | 0 00              | Chattel mortgages and other liens payable        |                   |
| Real estate owned—add schedule          | 104,400 00 (2)    | Other debts—itemize:                             |                   |
| Real estate mortgages receivable        | 0 00              | Ford Motor Credit (Auto)                         | 13,550 79         |
| Autos and other personal property       | 25,000 00         | Yale Univ. Tuition Post-                         |                   |
| Cash value—life insurance               | 32,000 00         | ponement Option (Student                         |                   |
| Other assets—itemize:                   |                   | loan from College)                               | 3,000 00          |
| See below (*)                           | 127,762 30        |  |                   |
|   |                   | <b>Total liabilities</b>                         | <b>97,605 37</b>  |
|   |                   | <b>Net worth</b>                                 | <b>200,056 93</b> |
| <b>Total assets</b>                     | <b>297,662 30</b> | <b>Total liabilities and net worth</b>           | <b>297,662 30</b> |
| <b>CONTINGENT LIABILITIES</b>           |                   | <b>GENERAL INFORMATION</b>                       |                   |
| As endorser, maker or guarantor         | None              | Are any assets pledged? (Add schedule.)          | No                |
| On leases or contracts                  | None              | Are you defendant in any suits or legal actions? | No                |
| Legal Claims                            | None              | Have you ever taken bankruptcy?                  | No                |
| Provision for Federal Income Tax        | None              |  |                   |
| Other special debt                      | None              |  |                   |

## (1) Other Assets:

|  |             |
|--|-------------|
| State of Michigan Judges Retirement Contributions  | \$56,915.29 |
| Wayne County Retirement Contributions  | 12,449.69   |
| Provident National Assurance Company (Spouse's Pension Plan)                                   | 38,413.00   |
| Children's Custodial Accounts (Shearson Lehman-Mutual Funds, U.S. Government Zero Coupons) (1) | 19,675.00   |
| Equitable (11 shares at \$28.12 in connection with insurance policy)                           | 309.32      |

## (2) SEV - State Equalized Value x 2

**III. GENERAL (PUBLIC)**

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instance and the amount of time devoted to each.
  - A. I coordinated a 3-year school enrichment program through the Greater Wayne County Chapter, The Links, Inc. at Glazer Elementary School. Approximately 40 women adopted the school and one specific class for 3 years, 1989-1992. We endeavored to put on one program per month during the school year for students, teachers and parents. The groups also mentored one grade. I coordinated and helped plan monthly projects which included programs on: health; AIDS; Kwanza; breast cancer; art (tap dancing); international celebrations; and included camperships, art scholarships and educational field trips.
  - B. I served as Chairperson of the Volunteer Lawyer Committee of the Detroit Bar Association from 1988-1992. I had been a member of the Committee since its inception. The Volunteer Lawyer Program (VLP) is a pure pro bono program operated in conjunction with the Wayne County Neighborhood Legal Services (WCNLS) which provides funding for part of the program. The WCNLS also screens and sends cases to the VLP. The VLP then assigns the cases to pro bono attorneys from the Detroit Bar Association. During my tenure as Chair, the VLP regularly sponsored educational and training programs for the VLP panel attorneys and ; handled cases; decided to remain a "pure" pro bono program (you can only participate by giving your time to case or by doing intake); sponsored an "Ask the Lawyer" program for seniors in a neighborhood setting; produced a newsletter; and investigated and planned for expansion of the program to include: assistance with Spouse Abuse Injunctions in connection with a local battered women's shelter, My Sister's Place; management of the Federal Bar pro bono program. These programs are now part of the VLP.

During 1987, the VLP won the prestigious Harrison Tweed Award awarded by the American Bar Association. In 1988, I was awarded the Detroit Bar Association's Chairperson of the Year Award for my efforts with this program.

- C. Through another women's organization, I do community service once per year. In 1991-92, we donated mittens and worked in the kitchen of a women's homeless shelter. In 1992-93 and 1993-94, we provided various services to support the public vocational/technical school where we meet monthly.
- D. I have served on the Boards of the following agencies:
1. **The Lula Belle Stewart Center** is a program for teen parents. Most of the programs are geared to teen mothers, but Lula Belle Stewart Center has a viable teen father and peer program. Educational, training services, child care, and parenting skills classes are available to teen mothers. Other services include: referrals for prenatal care and financial assistance; foster care for teen mom and infant; adoption services; a transmittal living program (a group home, Mother and Infant House); and a substance abuse program. I served on the board for two non-consecutive six year terms. During my first term, I was active in the Personnel Committee. During my second term, the Board continued long term and strategic planning and engaged in efforts toward financial development.
  2. **The Cyprian Center** is a program for the developmentally disabled founded around 1974 and closely related to the Plymouth United Church of Christ. It is named after my sister-in-law who is severely retarded. In response to her condition, my father-in-law dedicated a portion of his time and talent to creating better community facilities for the developmentally disabled. The Cyprian Center has several programs. The Cyprian Center Partial Day Program is for developmentally disabled adults, including adults who are physically disabled. It has educational, living and personal skills and work/training programs, including sheltered workshops. Other programs include: a respite



care facility; a community living facility; adult intermediate services facilities; a program for developmentally disabled adult females with behavioral problems; and supported independence programs. Most of the Cyprian facilities are located in the Medical Center area. The Board of Directors is a small Board and operates generally as a Committee of the Whole with an Executive Committee. It is a policy making board. I have been on the Board for about ten years.

3. **Interim House** is a shelter for battered women and their children affiliated with the YWCA. At the time I was on the Board, the shelter provided housing, some transportation, child care and other services designed to help battered women and their children protect themselves. I believe the shelter was the only one in Detroit proper at the time. The shelter generally provided assistance to women no longer able to live in their homes. I served on the Board for one term.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list with dates of membership. What have you done to try to change these policies?

No.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Yes, the Citizens Merit Selection Committee. I received a questionnaire and completed it. I was interviewed by a panel from the Citizens Merit Selection Committee for less than one hour. I was one of ten prospective nominees recommended by the Committee.

I was then interviewed by Senators Donald Reigle and Carl Levin. Following that, I completed questionnaires for the American Bar

Association, the Office of the Attorney General, the FBI and the United States Senate. I was interviewed by several lawyers from the Department of Justice. After that, an FBI agent interviewed me. I provided additional information to the FBI agent. The American Bar Association's Sixth Circuit representative also interviewed me. I completed and filed the Financial Disclosure Statement.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The judiciary is involved in the business of dispute resolution. Dispute resolution may be viewed as the solving of problems that have reached such serious proportions that the parties are no longer able to resolve their claims except through the legal process. The trial court manages grievance resolution through effective case disposition. The citizenry is most interested in having a fair, impartial and timely proceeding when they come into the judicial process.

The judiciary is responsible for applying the law of the land in a fair, impartial and efficient manner. Judges must apply the Constitution and the laws enacted by the legislature and follow precedent where it has already been set. In the oaths taken across the nation, judges swear to uphold first the Constitution of the United States, then the Constitution of their own state and to support the laws of their particular state. In doing so, they promise to set aside their personal opinions and biases in favor of the objectivity that should ultimately lead to justice.

In our system, the judiciary is seen as independent, yet accountable: accountable in the sense of commitment and attention to the requirements of the office and the role of the judiciary in relation to the two other branches of government; independent in the sense that neither the sway of public opinion nor personal bias should impact the decision making process.

**ATTACHMENTS**

- I. BIOGRAPHICAL INFORMATION**
  - A. 10(B) - OTHER MEMBERSHIPS**
  - B. 12(1) & (2) - PUBLISHED WRITINGS**
  - C. 15(1) - CITATIONS/OPINIONS**
  - D. 15(2) - CITATIONS/REVERSALS**
  
- II. FINANCIAL DATA AND CONFLICT OF INTEREST**
  - E. 4 - FINANCIAL DISCLOSURE FORM**

**AFFIDAVIT**

**(PUBLIC)**

I, DENISE PAGE HOOD, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

3/23/94  
(DATE)

Denise Page Hood  
(NAME)

Jerry L. Lorie  
(NOTARY)

23rd day of March, 1994  
County of Wayne, Exp: 9-30-97

PAUL L. FRIEDMAN

SENATE JUDICIARY COMMITTEE QUESTIONNAIRE  
FOR JUDICIAL NOMINEES

## I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)  
Paul Lawrence Friedman
  
2. Address: List current place of residence and office address(es).  
  
Residence: 3042 P Street, N.W.  
Washington, D.C. 20007  
  
Office: White & Case  
1747 Pennsylvania Avenue, N.W.  
Suite 500  
Washington, D.C. 20006
  
3. Date and place of birth.  
  
Birth date: February 20, 1944  
  
Place of birth: Buffalo, New York
  
4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).  
  
Married.  
  
Spouse: Elizabeth Ann Friedman  
(maiden name: Elizabeth Ann Zicherman)  
Executive Director  
Institute for Professional and Executive  
Development, Inc. (Peabody & Brown,  
previously Kelley, Drye & Warren)  
2300 M Street, N.W.  
Washington, D.C. 20037

5. **Education:** List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

**College:**

| <u>School</u>                          | <u>Dates</u> | <u>Degree</u>     |
|--|--------------|-------------------|
| Cornell University<br>Ithaca, New York | 1961-65      | B.A.<br>June 1965 |

**Law School:**

| <u>School</u>   | <u>Dates</u> | <u>Degree</u>    |
|---|--------------|------------------|
| New York University<br>School of Law  | 1965-66      | N/A              |
| School of Law, State<br>University of New<br>York at Buffalo<br>Buffalo, New York | 1966-68      | J.D.<br>May 1968 |

6. **Employment Record:** List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Summer, 1965 and Summer, 1966

Assistant, Mortgage Department  
Buffalo Savings Bank  
(later Golddome Bank)  
Buffalo, New York

Summer and Fall, 1967; Spring, 1968

Law Clerk  
Saperston, Wiltse, Duke, Day & Wilson  
(now Saperston & Day)  
Three Fountain Plaza  
Buffalo, New York 14203

August, 1968-July, 1969

Law Clerk to the Honorable Aubrey E. Robinson, Jr.  
United States District Court for the  
District of Columbia  
United States Courthouse  
333 Constitution Avenue, N.W.  
Washington, D.C. 20001

July, 1969 to August, 1970

Law Clerk to the Honorable Roger Robb (deceased)  
United States Court of Appeals  
for the District of Columbia Circuit  
United States Courthouse  
333 Constitution Avenue, N.W.  
Washington, D.C. 20001

October, 1970-August, 1974

Assistant United States Attorney  
Office of the United States Attorney  
for the District of Columbia  
555 4th Street, N.W.  
Washington, D.C. 20001

August, 1974-May, 1976

Assistant to the Solicitor General  
of the United States  
Office of the Solicitor General  
United States Department of Justice  
10th Street and Constitution Avenue, N.W.  
Washington, D.C. 20530

May, 1976-present

Associate, May, 1976-October, 1979  
Partner, October, 1979-present (Executive Partner,  
Washington Office, 1987-present)  
White & Case  
1747 Pennsylvania Avenue, N.W.  
Suite 500  
Washington, D.C. 20006



January 6, 1987-May 26, 1988 (on a partial leave of absence from White & Case)

Associate Independent Counsel  
Office of Independent Counsel/Iran-Contra  
Investigation  
1726 M Street, N.W.  
Suite 300  
Washington, D.C. 20036

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

I have not had any military service.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Cornell University  
President, Cornell Student Government  
President, Senior Men's Honorary Society (Quill and Dagger)

School of Law, State University of New York at Buffalo  
Graduated cum laude (fourth in class)  
Associate Editor, Buffalo Law Review  
Award for best written contribution to law review  
David Ruslander Award for Wills and Trusts  
Trial Lawyers Association Award

Fellow, American College of Trial Lawyers  
Member, American Law Institute  
Fellow, American Bar Foundation  
Member, American Academy of Appellate Lawyers  
Young Lawyer of the Year Award presented by The Bar Association of the District of Columbia (1977)

Listed in Who's Who In American Law  
Listed in Naifeh & Smith, The Best Lawyers in America

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

American Bar Association

State Delegate for the District of Columbia (1993-present)  
 Nominating Committee (1993-present)  
 House of Delegates (1985-present): Select Committee of the House (1992-present); Tellers Committee (1990-92)  
 Commission on Women in the Profession (1993-present)  
 Chair, Commission on Homelessness and Poverty (1991-1993)  
 Chair, Representation of the Homeless Project (1988-91)  
 Standing Committee on Legal Aid and Indigent Defendants (1989-91)  
 Standing Committee on Continuing Education of the Bar (1982-88)  
 Appellate Advocacy Committee, Appellate Judges' Conference, Judicial Administration Division (1982-85)  
 Vice Chair, Committee on the Trial of Complex Business Crimes, Litigation Section (1981-83) (member, 1977-83)  
 Fellow, American Bar Foundation (1984-present)

District of Columbia Bar

President (1986-87)  
 President-elect (1985-86)  
 Board of Governors (1978-81, 1985-88)  
 Executive Committee (1985-88)  
 Nominating Committee (1986-88)  
 Chair, Budget Committee (1985-86)  
 Chair, Long Range Planning Committee (1984-90)  
 Referendum Impact Committee (1984-86)  
 Continuing Legal Education Committee (1983-84)  
 Chair, Federal Practice Committee, Litigation Section (1982-84)  
 Chair, Committee to Study the Disciplinary System (1979-81)  
 Steering Committee, Division on Criminal Law and Individual Rights (1974-75)  
 Advisory Committee, D.C. Bar Foundation (1986-present)

## Bar Association of the District of Columbia

Annual Banquet Committee (1984)  
 Recipient, Young Lawyer of the Year Award (1977)  
 Vice Chair (1975-76) and Secretary (1976-77),  
 Young Lawyers Section

The Women's Bar Association of the District of  
 Columbia (1984-present)

The Federal Bar Association (1984-present)

The Hispanic Bar Association of the District of  
 Columbia (1985-present)

The Washington Bar Association (1985-present)

New York State Bar Association (1986-present)

American Law Institute (1984-present)

ALI-ABA Committee on Continuing Professional  
 Education (1988-1993)  
 Chair, Advisory Committee, Practice Evaluation  
 Project (1990-91)  
 Editorial Board, The Practical Litigator (1990-  
 present)

American College of Trial Lawyers (1984-present)

Regents Nominating Committee (1992)  
 D.C. State Committee (1991-present)  
 Committee on Special Problems in the  
 Administration of Justice (1990-present)

American Academy of Appellate Lawyers (1992-present)

American Judicature Society

Board of Directors (1990-1994)  
 Committee on Justice Reform (1992-1993)

Assistant United States Attorneys Association of the  
 District of Columbia

President (1976-77)  
 Vice President (1975-76)

Chair, Civil Justice Reform Act Advisory Group, United  
 States District Court for the District of Columbia  
 (1991-1994)

Chair, District of Columbia Judicial Nomination Commission (1992-present) and member of Commission (1990-present)

Board of Trustees, District of Columbia Public Defender Service (1989-92)

Grievance Committee, United States District Court for the District of Columbia (1981-87). Chair (1983-85).

Advisory Committee on Procedures, United States Court of Appeals for the District of Columbia Circuit (1982-88).

Judicial Conference of the District of Columbia Circuit (1976-present). Arrangements Committee (1980, 1990)

Judicial Conference of the District of Columbia (1979-present). Arrangements Committee (1982, 1986)

Founder, Board Member and Vice President, Washington Legal Clinic for the Homeless (1987-92)

Board Member, Frederick B. Abramson Memorial Foundation (1991-present). President (1991-February 1994)

Board of Directors, Stuart Stiller Memorial Foundation (1980-present)

Board of Directors, Washington Area Lawyers for the Arts (1988-92)

Steering Committee, Lawyers' Committee for the Performing Arts, Washington Performing Arts Society (1987-91)

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

To my knowledge, I do not belong to any organizations active in lobbying before public bodies. I do belong to the following clubs and organizations:

The Lawyers' Club of Washington  
 The Federal City Club  
 Cornell Club of New York  
 Jumby Bay Club

Council for Excellence in Government  
 Washington Performing Arts Society  
 Washington Project for the Arts  
 Citizens Association of Georgetown  
 2691 Club of WETA TV/FM

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

| <u>Court</u>  | <u>Date</u>  |
|---|--|
| United States Supreme Court   | October,<br>1974                                       |
| United States Court of Appeals<br>for the District of Columbia<br>Circuit | December,<br>1969                                      |
| United States District Court<br>for the District of Columbia              | November,<br>1969                                      |
| District of Columbia Court<br>of Appeals                                  | retro-<br>active to<br>November,<br>1969 <sup>1/</sup> |
| Superior Court of the<br>District of Columbia                             | October,<br>1970                                       |
| United States Court of Appeals<br>for the Federal Circuit                 | October,<br>1982                                       |
| United States Court of Appeals<br>for the Fourth Circuit                  | August,<br>1986  |
| United States Court of Appeals<br>for the Sixth Circuit                   | October,<br>1987                                       |
| United States Court of Appeals<br>for the Seventh Circuit                 | June,<br>1979  |
| United States Court of Appeals<br>for the Ninth Circuit                   | October,<br>1975                                       |

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<sup>1/</sup> Before court reorganization, the licensing authority was the U.S. District Court for the District of Columbia.

|  |                    |
|--|--------------------|
| United States Court of Appeals<br>for the Eleventh Circuit | September,<br>1986 |
| United States Claims Court                                 | January,<br>1977   |
| New York State Supreme Court                               | December,<br>1968  |

12. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

A. Published Writings<sup>2/</sup>

1. Final Report of the Civil Justice Reform Act Advisory Group for the United States District Court for the District of Columbia (with S.A. Saltzburg and E.H. Paret) (August 1993).
2. "Overhauling Discovery: Automatic Disclosure and Presumptive Limits Under the Proposed Amendments to Rules 26 Through 37," Rediscovering Discovery: Litigating Under the Revised Federal Rules of Civil Procedure (Legal Times, June 22, 1993).
3. "Speeding Up Justice at the District Court," Legal Times of Washington (Apr. 19, 1993).
4. "Appellate Advocacy: Basic Principles of Effective Brief Writing and Oral Argument," Appellate Advocacy in the District of Columbia (D.C. Bar, 1991).
5. Friedman & Currier, "Grand Jury Practice in Complex Corporate Criminal Investigations," Handling Government Investigations (Business Laws, 1990 Supp.).

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<sup>2/</sup> Copies of these writings are submitted herewith.

6. "Subpoenas to Defense Lawyers in Criminal Cases: A Part of the 'Assault on the Citadel'," Assault on the Citadel, ABA Litigation Section Fall Meeting (ABA, 1990).
7. "Problems and Opportunities in Parallel Civil and Criminal Proceedings: Protecting Your Client from Fire on All Sides," Banks Under Attack (ABA, 1989).
8. "Relations with the Government During Investigations and Particular Problems that Arise in Representing Foreign Corporations in Grand Jury Proceedings," Federal Enforcement 1988 (D.C. Bar/ABA, 1988).
9. "The Bork Vacancy: Why Not Someone from the District?," The Washington Post (Feb. 14, 1988).
10. "No Local Lawyers Need Apply: How About Some Home-Grown Judges On Our Highest Appeals Court?," The Washington Post (May 25, 1987).
11. "The Trouble With Lawyers -- Who's To Blame?," The National Law Journal (May 25, 1987).
12. "A Bully Pulpit -- And a Lot More," The Washington Lawyer (May/June 1987).
13. "Something 'Wrong' with the Legal Profession: Image or Reality?," The Washington Lawyer (March/April 1987).
14. "Alternative Dispute Resolution," The Washington Lawyer (January/February 1987).
15. "Pro Bono: The Ups and Downs," The Washington Lawyer (November/December 1986).
16. "Time to End A Tradition," The Washington Lawyer (September/October 1986).
17. "Renewed Purpose in Our Second Decade," District Lawyer (July/August 1986).
18. "Roger Robb: The Lessons of a Lawyer," District Lawyer (May/June 1986).

19. Friedman & Wilson, Representing Foreign Clients in Civil Discovery and Grand Jury Proceedings, 26 Virginia Journal of International Law 327 (1986).
20. "Debarment and Suspension: The Government's Most Powerful Weapons," Procurement Fraud Prosecutions and Debarments (ABA, 1986).<sup>3/</sup>
21. "The Law and Tactics of Global Settlements," Procurement Fraud Prosecutions & Debarments (ABA, 1986).<sup>3/</sup>
22. "Unique Problems Resulting from Parallel Criminal, Civil and Administrative Proceedings," Government Contracts: Investigation, Prosecution and Defense of Criminal and Civil Fraud Charges (ABA, 1985).<sup>3/</sup>
23. "Pre-Trial Discovery in Civil RICO Actions," RICO: The Second Stage (ABA, 1984).
24. "Grand Jury Secrecy After Sells and Baggett," Government Contracts: Investigation, Prosecution and Defense of Criminal and Civil Fraud Charges (ABA, 1985).
25. Friedman & Taylor, "Plea Negotiations in White Collar Crime Cases: Making the Best of a Bad Deal," Settlement and Plea Bargaining (Assoc. of Trial Lawyers of America, 1981).
26. Parallel Grand Jury and Administrative Agency Investigations (987 pages) (Editor with Neil A. Kaplan, Robert S. Bennett, Helen C. Trainor) (ABA, 1981).
27. "Freedom of Information Act Problems Under the Foreign Corrupt Practices Act Review Procedure," The New Review Procedure Under the Foreign Corrupt Practices Act II (Harcourt Brace, 1980).

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<sup>3/</sup> Earlier versions of these three articles also appeared in virtually identical form in Fraud in Government Contracting (Law & Business, Inc./Harcourt Brace Jovanovich, 1985).



28. "Meaning of the Term 'Corruptly' Under the Foreign Corrupt Practices Act of 1977" (with J. Sullivan and S. T. Pollack), The New Review Procedure Under the Foreign Corrupt Practices Act II (Harcourt Brace, 1980).
- B. Speeches on Issues Involving Constitutional Law or Legal Policy<sup>4/</sup>
1. Appellate Advocacy, October 29, 1993, Washington, D.C., D.C. Bar/George Washington University CLE Program, panelist. Topic: "From the Lectern: Appellate Argument." (See Published Writings, Tab 4).
  2. Rediscovering Discovery: Litigating Under the Revised Federal Rules of Civil Procedure, June 22, 1993, Washington, D.C., Legal Times Seminar. Topics: Discovery practice and procedures, mandatory disclosure, experts, sanctions. (See Published Writings, Tab 2). (comments also available on videotape).
  3. Pro Bono: Charting a Course to Justice, April 17, 1993, Baltimore, Maryland, American Bar Association Pro Bono Conference, moderator. Topics: Homeless programs and projects of various bar association groups around the country.
  4. Developments in Civil Justice Reform in Our Local and Federal Courts, February 23, 1993, Washington, D.C., D.C. Bar Winter Convention. Topics: Discovery and core disclosure, limits on depositions and interrogatories, case management, alternative dispute resolution.
  5. Civility: A Casualty of Modern Litigation, February 22, 1993, Washington, D.C., D.C. Bar Winter Convention. Topics: State of civility/incivility in civil litigation, causes

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<sup>4/</sup> Many of the speeches listed here were given as part of a panel discussion or other presentation at a continuing legal education program. Most of those were based upon the writings included in response to Question 12(A) which were prepared in conjunction with the same program. In those cases, there was no other written text. In other cases, my remarks were extemporaneous. Where there was a separate written text, it is submitted herewith. I am not aware of any press reports about these speeches.

of incivility, ethical considerations, civility and discovery.

6. Appellate Advocacy in the District of Columbia, October 23, 1992, Washington, D.C., D.C. Bar/George Washington University CLE Program, D.C. Bar and U.S. Court of Appeals for the D.C. Circuit, panelist. Topic: "On Paper: Appellate Briefs." (See Published Writings, Tab 4).
7. Sympathy or Cynicism? Homelessness, The Press and The Public, August 9, 1992, San Francisco, California, American Bar Association Commission on Homelessness and Poverty, moderator. Topics: Media coverage of homelessness, public perceptions of the homeless, and reactions of government officials.
8. The Impact of Civil Justice Reform on Litigants and Practitioners: Is D.C. The Next Rocket Docket?, February 19, 1992, Washington, D.C., D.C. Bar Winter Convention. Topics: Civil justice reform, proposed amendments to the Federal Rules of Civil Procedure.
9. The Civil Justice Reform Act, October 26, 1991, Chicago, Illinois, American Bar Association Section of Litigation Fall Meeting. Topics: Alternative dispute resolution and settlement.
10. Appellate Advocacy in the District of Columbia, October 11, 1991, Washington, D.C., D.C. Bar/G.W. University CLE Program and U.S. Court of Appeals for the D.C. Circuit, panelist. Topic: "From the Lectern: Appellate Argument." (See Published Writings, Tab 4).
11. Assault on the Citadel, Fifteenth Annual Fall Meeting, American Bar Association Section of Litigation, October 19, 1990, Philadelphia, Pennsylvania, ABA, moderator and panelist. Topic: "Subpoenas to Defense Lawyers in Criminal Cases: A Part of the Assault on the Citadel." (See Published Writings, Tab 6).
12. Forfeiture of Attorneys' Fees, Subpoenas to Criminal Defense Lawyers, Prosecutors' Direct Communications with Persons Represented by Counsel, and Other Intrusions into the Attorney-Client Relationship, May 22, 1990, Hershey, Pennsylvania, Proceedings of the Fifty-first Judicial Conference of the District of Columbia

Circuit, 134 F.R.D. 321, 416. Topics: Forfeitures, subpoenas, prosecutors' direct communication with represented individuals. (See Speeches, Tab 1).

13. Federal Enforcement 1990: A New Era in Trial Tactics, Enforcement Priorities and Defense Strategies, May 17, 1990, Washington, D.C., Georgetown University Law Center Continuing Legal Education Division. Topic: "Grand Jury Practice in Complex Corporate Criminal Investigations." (See Published Writings, Tab 5).
14. Effective Argument to the Court, May 4-6, 1989, Washington, D.C. American Bar Association Section of Litigation, panelist. Topics: "Briefwriting: A Lawyer's and Judge's Perspective"; "Arguments to the United States Court of Appeals." (comments available on videotape)
15. Banks Under Attack: Criminal Prosecutions and Civil Proceedings, April 6-7, 1989, Dallas, Texas, ABA Section of Litigation. Topic: "Problems and Opportunities in Parallel Civil and Criminal Proceedings" (including discovery, stays, global settlements, collateral consequences). (See Published Writings, Tab 7).
16. U.S. Attorney's Office Training Program for New Assistant U.S. Attorneys, October 18, 1988 and January 10, 1989, Washington, D.C., U.S. Attorney's Office for the District of Columbia. Topics: Ethics and professional obligations of a prosecutor.
17. The Lawyer As Counsellor, Witness and Defendant, October 19, 1988, Washington, D.C., ABA Litigation Section Fall Meeting. Topic: "Unique Problems Facing the Defense Bar in the 1980s."
18. Dispute Resolution: Exploring the Bar Association's Role, September 8-9, 1988, Chicago, Illinois, ABA Standing Committee on Dispute Resolution, panelist. Topic: "Conducting A Court Settlement Week."
19. Federal Enforcement 1988: Defending Corporations, Their Officers, Directors and Employees, April 7-8, 1988, Washington, D.C., D.C. Bar/American Bar Association. Topics: "Relationship with the Government During Investigations and Representing Foreign

Corporations in Grand Jury Proceedings." (See Published Writings, Tab 8).

20. Judicial Selection: How it Works and How the Bar Can Effectively Participate, May 13, 1988, Washington, D.C., The Sixth Annual Judicial Conference of the United States Court of Appeals for the Federal Circuit, 122 F.R.D. 281, 296. (See Speeches, Tab 2).
21. Appellate Advocacy and Practice, May 11, 1988, Washington, D.C., Georgetown University Law Center/D.C. Bar Continuing Legal Education Program, panelist. Topic: Brief writing.
22. The AIDS Epidemic: Appropriate Roles for Lawyers, March 16, 1988, Washington, D.C., D.C. Bar Health Law Section/D.C. Medical Society, speaker. Topic: Responsibilities of the legal profession in response to the AIDS epidemic. (See Speeches, Tab 3).
23. Fundamentals of Grand Jury Practice -- and Critical Practical Problems, February 29, 1988, Washington, D.C., Georgetown University Law Center/D.C. Bar Continuing Legal Education, faculty. Topics: Rule 6, representing corporations and individuals before grand juries, immunity, grand jury abuse.
24. AIDS: The Bar Faces the Crisis, National Conference of Bar Presidents, American Bar Association, August 8, 1987, San Francisco, California, speaker. Topic: Contributions the organized Bar can make with respect to the AIDS crisis. (See Speeches, Tab 4).
25. Legal Issues Affecting Homeless People: The D.C. Bar Homeless Project, American Bar Association Section of Individual Rights and Responsibilities, 1987 ABA Annual Meeting, August 10, 1987, San Francisco, California, panelist. Topics: Legal and other related issues facing the homeless, the D.C. Bar's homeless program. (See Speeches, Tab 5).
26. Rule 11 and Other Sanctions, Proceedings of the Forty-eighth Judicial Conference of the District of Columbia Circuit, May 30, 1987, Hot Springs, Virginia, panelist. Topic: Interpretations, proposed uses, and potential abuses of amended

Rule 11 and other court imposed sanctions. (See Speeches, Tab 6).

27. Statement at Press Conference Announcing the Creation of Washington Lawyers Against Drugs, January 28, 1987, Washington, D.C., The D.C. Bar. Topic: Creation of Bar organization to assist D.C. students in halting the distribution and use of illegal drugs. (See Speeches, Tab 7).
28. Statement on Establishment of Settlement Week, November 12, 1986, Washington, D.C., District of Columbia Courthouse. Topic: Establishment of Court Settlement Week, alternative dispute resolution. (See Speeches, Tab 8).
29. Directions for the Bar in 1986-87, Installation as the Fifteenth President of the D.C. Bar, June 25, 1986, Washington, D.C., The D.C. Bar. (See Speeches, Tab 9).

13. Health: What is the present state of your health? List the date of your last physical examination.

My health is excellent. My last complete physical examination was on February 14, 1994.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have never held judicial office.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

I have never held judicial office.

16. **Public Office:** State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

I have never held or run for public office.

17. **Legal Career:**

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

**Judge and court:**

The Honorable Aubrey E. Robinson, Jr.  
 United States District Court for the  
 District of Columbia  
 United States Courthouse  
 333 Constitution Avenue, N.W.  
 Washington, D.C. 20001  
 202-273-0470

**Dates of employment:**

August, 1968-July, 1969

**Judge and court:**

The Honorable Roger Robb<sup>5/</sup>  
 United States Court of Appeals  
 for the District of Columbia Circuit

**Dates of employment:**

July, 1969 to August, 1970

2. whether you practiced alone, and if so, the addresses and dates;

I have not practiced alone.

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<sup>5/</sup> Judge Robb is deceased.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

**Employer:**

Office of the United States Attorney for the District of Columbia

**Address:**

555 4th Street, N.W.  
Washington, D.C. 20001

**Position:**

Assistant United States Attorney

**Nature of work:**

Prosecution and trial of criminal cases in the United States District Court for the District of Columbia and the Superior Court of the District of Columbia. Argument of civil and criminal appeals in the U.S. Court of Appeals and the D.C. Court of Appeals. Presentation of matters before the grand jury. As Administrative Assistant United States Attorney (1973-74), advised U.S. Attorney on policy, legal and management issues; directed development of training programs; and represented U.S. Attorney on District of Columbia Criminal Justice Coordinating Board and on District of Columbia Advisory Committee on Drug Abuse Prevention.

**Dates of employment:**

October, 1970-August, 1974

**Employer:**

Office of the Solicitor General  
United States Department of Justice

**Address:**

10th Street and Constitution Avenue, N.W.  
Washington, D.C. 20530

**Position:**

Assistant to the Solicitor General of  
the United States

**Nature of work:**

Preparation of petitions for writs of certiorari and oppositions and briefs on the merits for filing in the Supreme Court of the United States on behalf of the United States and various government departments and agencies. Argued five cases in the United States Supreme Court.

**Dates of employment:**

August, 1974-May, 1976

**Employer:**

White & Case

**Address:**

1747 Pennsylvania Avenue, N.W.  
Suite 500  
Washington, D.C. 20006

**Position:**

Associate (1976-79)  
Partner (1979-present)  
Executive Partner, Washington Office (1987-present)

**Type of practice or nature of work:**

Litigation primarily in United States District Courts and United States Courts of Appeals and before administrative agencies, as well as counseling and advising clients, with respect to a wide range of subject areas, including white collar crime matters and related debarment and suspension proceedings, civil litigation involving securities, banking, insurance and commercial matters, administrative agency proceedings and investigations, and appellate advocacy.

**Dates of employment:**

May, 1976-present  
Associate, May, 1976-October, 1979



Partner, October, 1979-present

**Employer:**

Office of Independent Counsel/Iran-Contra  
Investigation

**Address:**

1726 M Street, N.W.  
Suite 300  
Washington, D.C. 20036

**Position:**

Associate Independent Counsel

**Nature of work:**

Investigation and prosecution of the Iran-Contra matter during the pre-indictment phase. Served as a principal deputy to Independent Counsel Lawrence E. Walsh in the early stages of the investigation and handled most pre-indictment motions respecting the grand jury and the validity of the Independent Counsel statute and regulations in the U.S. District Court and most appeals concerning those matters in the U.S. Court of Appeals.

**Dates of employment:**

January 6, 1987-May 26, 1988 (on a partial leave of absence from White & Case)

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

In my nearly eighteen years at White & Case (May 1976 to the present), I have specialized in part in the defense of federal white collar crime investigations and prosecutions, including grand jury representation, federal criminal antitrust cases, defense procurement fraud cases and the parallel civil and administrative proceedings that often result, including debarment and suspension from government contracting. I have also represented corporations and their officers in SEC enforcement and other administrative agency proceedings and investigations, and I have

conducted internal corporate investigations and have counseled corporate clients on various compliance matters.

My civil litigation experience in the United States District Courts has included general commercial litigation, matters arising from departments and agencies of the U.S. Government, constitutional litigation, and securities, banking, bankruptcy, insurance and antitrust litigation, including major corporate takeover cases under the federal securities laws. I have also maintained an active appellate practice in the United States Court of Appeals for the District of Columbia Circuit and in other federal appellate courts around the country. In the Supreme Court of the United States, I have prepared numerous petitions for certiorari and oppositions and briefs on the merits for parties and for clients who wished to participate as amicus curiae before the Court. I recently argued a case before the Court.

As an Assistant to the Solicitor General (1974 to 1976), I represented the United States and numerous federal agencies in both civil and criminal litigation in the Supreme Court. I drafted approximately 15 briefs on the merits, dozens of petitions for writs of certiorari and hundreds of briefs and memoranda in opposition. I argued five cases before the Supreme Court of the United States.

As an Assistant United States Attorney (1970 to 1974), I tried approximately 75 jury and non-jury misdemeanor cases while serving in the Superior Court Division of the United States Attorney's Office, presented hundreds of felony cases to the grand jury and conducted over 100 preliminary hearings in felony cases. I later tried cases in the United States District Court, appearing primarily before the late Judge William B. Jones and Judge Oliver Gasch and occasionally before other District Court judges, including Judge John H. Pratt, Judge William B. Bryant and the late Judge John J. Sirica. During this period, I tried murder cases before Judges Jones and Pratt and armed robbery, burglary, narcotics distribution and forgery cases, among others, before Judges Jones and Gasch. I had a total of approximately 30 jury trials in the United States District Court. In the Appellate Division of the

United States Attorney's Office, I argued both civil and criminal appeals in both the United States Court of Appeals for the District of Columbia Circuit and the District of Columbia Court of Appeals. I also handled special assignments for the U.S. Attorney's Office Watergate prosecutors.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

During my career in private practice, my typical clients have included corporations and their officers and employees, including financial institutions, insurance companies, and government contractors, among others.

I have specialized primarily in: (1) criminal antitrust, environmental, banking, defense procurement fraud and other white collar crime matters, including grand jury representation and related debarment and suspension proceedings; (2) civil litigation involving corporate takeovers, commercial, securities, insurance, banking, bankruptcy and constitutional matters; (3) administrative agency proceedings and investigations, including recent matters before the SEC, FTC and OTS; and (4) appellate advocacy, including briefing and oral argument in the U.S. Supreme Court and federal circuit courts of appeals.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I was in court frequently, almost daily, during a number of years as an Assistant United States Attorney. As noted above, as an Assistant United States Attorney (1970 to 1974), I tried approximately 75 jury and non-jury misdemeanor cases while serving in the Superior Court Division of the United States Attorney's Office, presented hundreds of felony cases to the grand jury and conducted over 100 preliminary hearings in felony cases. I later tried cases in the United States District Court, including murder, armed robbery, burglary, narcotics distribution and forgery cases, among others. I had a total

of approximately 30 jury trials in the United States District Court.

During my nearly eighteen years in private practice, my in-court experience was less frequent than during my years in the United States Attorney's Office. It has consisted of primarily non-jury trials, administrative agency proceedings, extensive motion practice and appellate arguments. In recent years, the nature of my practice required my appearance in court most often with respect to arguments on motions, hearings and appellate arguments. I was in court more frequently during my earlier years in private practice because of certain cases that required more in-court time.

By way of example, in 1987 and 1988, I was in court on behalf of clients on a criminal antitrust case which ended in a plea on the eve of trial, on post-trial proceedings in another criminal case and in several appellate arguments. During that period, I was also in court very frequently (both in the U.S. District Court and the U.S. Court of Appeals) on behalf of the Office of Independent Counsel/Iran-Contra Investigation.

In 1989, I was in court frequently with respect to a major corporate takeover case involving numerous requests for temporary restraining orders and preliminary injunctions and a wide range of substantive and procedural motions, including numerous discovery disputes. I also argued that case and others in the U.S. Court of Appeals. In 1990, I was in court less frequently on the same takeover litigation.

In 1991, I was in court occasionally on two significant matters involving the Foreign Sovereign Immunities Act and jurisdiction over foreign entities, one in federal court in Texas and one in New York. I also argued a major case in the United States Supreme Court and an appeal in the D.C. Circuit.

In 1992, I tried a significant case in the United States Bankruptcy Court in Delaware on behalf of the Pension Benefit Guaranty Corporation. The remainder of my work in 1992 and much of my work in 1993 was before administrative agencies or in dealings with

prosecutors and grand juries on behalf of clients and not in court.

2. What percentage of these appearances was in:
  - (a) federal courts: 80%
  - (b) state courts of record: 20%
  - (c) other courts: 0%
3. What percentage of your litigation was:
  - (a) civil: 60%
  - (b) criminal: 40%<sup>6/</sup>
4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Over the course of my career, I have tried over 100 cases to verdict or judgment, almost all as sole or lead counsel. Most of the cases in which I have been involved since I have been in private practice have not gone to trial. In the type of civil litigation practice in which I have specialized, most of the cases were resolved on motions for summary judgment or motions to dismiss or have been settled before trial. Cases I have handled that have gone to trial, such as the Air Micronesia/PBGC and AOV cases, discussed below, have been non-jury trials. I was lead counsel in these cases.

In my white collar criminal practice, the goal, from a client's standpoint, is to resolve the matter before indictment, either by persuading the government that there is insufficient evidence to indict or that the client is an important witness who (with or without immunity, depending on the circumstances) can assist the government at trial. In some cases, a plea is appropriate at a time very close to trial, after pre-trial hearings and trial preparation are nearly completed. As a result of my success

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<sup>6/</sup> Including grand jury proceedings and pre-indictment motions and negotiations.

in these matters, I have had no criminal cases that have gone to trial in recent years.

The pre-indictment, grand jury-related litigation that I have handled as part of my white collar criminal practice takes place in closed proceedings. Under Rule 6(e) of the Federal Rules of Criminal Procedure, I am bound to keep this information confidential. Similarly, the litigation I handled for the Office of Independent Counsel in the U.S. District Court was pre-indictment litigation that was closed to the public because it was related to the proceedings of the grand jury. I am bound to keep this information confidential as well under Rule 6(e), except in those cases where there later was a public appeal (discussed in responses to Question 18).

5. What percentage of these trials was:

- (a) jury: 50%
- (b) non-jury: 50%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. EEOC v. Aramco, 111 S.Ct. 1227 (1991)

The issue in this case, which I briefed and argued before the Supreme Court of the United States on behalf of Aramco, was whether the employment discrimination provisions (Title VII)

of the Civil Rights Act of 1964 apply to U.S. employers of U.S. citizens in workplaces outside the United States. In arguing that they did not, I emphasized the long-standing presumption of American law, based on notions of comity and respect for the sovereignty of other nations, that U.S. laws do not apply outside the territory of the United States unless Congress has clearly stated an affirmative intent to so extend them. This argument prevailed (6-3), and the Court reaffirmed the strong presumption against the application of American law extraterritorially in the absence of a clear, affirmative Congressional intent to do so expressed in the statute. The majority opinion was written by the Chief Justice, with a concurring opinion by Justice Scalia and a dissent by Justice Marshall. Because of the reaffirmation of this principle for the first time in more than 30 years, the case was quite significant in the field of international law. After this decision, Congress amended Title VII to make clear its present, affirmative intent to apply those protections to U.S. employees of U.S. companies in foreign workplaces.

- a. Dates: Argument, January 16, 1991  
Decision, March 26, 1991
- b. Judges and court: United States Supreme Court
- c. Co-counsel and principal counsel for other parties:<sup>2/</sup>

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2. In re Continental Airlines, Inc., Debtors,  
 Pension Benefit Guaranty Corp. v. Continental  
 Airlines, Inc., Air Micronesia, Inc. and the  
 Continental/Air Micronesia Joint Venture, Civil  
 Action No. 92-37, Adv. Proc. No. 92-2, U.S.  
 Bankruptcy Court for the District of Delaware

This case, which I tried before the United  
 States Bankruptcy Court for the District of  
 Delaware, involved claims by our client, the



Pension Benefit Guaranty Corporation ("PBGC"), a U.S. Government agency established by Congress to administer the pension plan insurance program created under ERISA, that Continental's Pacific business, operated through a joint venture with Air Micronesia, Inc., constituted a separate entity liable to PBGC for the unfunded pension liabilities of Continental of approximately \$700 million. The PBGC also claimed that it held a lien on all of the assets of the joint venture, valued at between approximately \$214 million and \$570 million. A substantial portion of that value, perhaps the airline's most valuable single asset, was attributable to the international route authorities used by the joint venture.

The case was significant because, as acknowledged by Continental during the trial, the PBGC claims placed a "cloud" over Continental's most valuable assets. Without resolving the claims by the PBGC relating to the joint venture, Continental was not able to emerge from bankruptcy nor able to use those assets for an asset sale or financing necessary to continue operations. The case involved complex issues of the nature of a property right held by an airline in international route certificates issued by the Department of Transportation, the nature of those property rights as they relate to underlying international aviation agreements, the liability of joint venture partners for unfunded pension liabilities under ERISA and the extent of the rights of the PBGC to place a lien upon assets of a company with unfunded pension liabilities.

While PBGC did not prevail at trial, numerous issues were created for appeal and, soon after the trial, PBGC and Continental recommenced negotiation of a settlement valued at approximately \$130 million, including the transfer to PBGC of an interest in fifteen airplanes and a lien on Continental's Newark-to-Paris route. The settlement removed the cloud on the Continental assets, allowing Continental to conclude a substantial new capital investment and to emerge from bankruptcy.

- a. Dates: Trial, May 7-8, 1992
- b. Judge and court: Judge Helen S. Balick  
United States Bankruptcy Court  
for the District of Delaware

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3. Sea Containers Ltd. v. Stena AB, AB Stena Finans, Stena Finance B.V., Dan Sten Olsson and Sten Allan Olsson, Civil Action No. 89-0752, U.S. District Court for the District of Columbia

This corporate takeover litigation, in which I was lead counsel for Sea Containers in both the U.S. District Court for the District of Columbia and the U.S. Court of Appeals for the District of Columbia Circuit, arose out of the 1989 takeover attempt by Stena, a Swedish ferry corporation, of Sea Containers, a Bermuda corporation engaged in the container shipping and ferry businesses with its headquarters in London. Sea Containers' common stock is listed on the New York Stock Exchange, and the U.S. securities laws therefore applied to the takeover. Litigation relating to the takeover took place in the courts of Bermuda, the federal courts of the District of Columbia and, later, the courts of the United Kingdom.

There were several motions in the U.S. District Court for the District of Columbia for temporary restraining orders and preliminary injunctions, some involving complex legal issues vis-a-vis the corporate securities and corporate laws of three different sovereigns, and questions involving the overlapping jurisdiction of the courts of those different countries. In addition to preparing briefs and making all the legal arguments in court, I supervised and coordinated discovery of documents and witnesses in four different countries (the United States, the United Kingdom, Sweden and Bermuda), which involved simultaneous depositions in all of those countries and the presentation of numerous discovery disputes to the District Court. We prevailed on the most important issues in the District Court and on the Section 13(d) issues in the Court of Appeals; we ultimately lost in the Court of Appeals on issues relating to anti-suit injunctions. A negotiated solution was ultimately reached among the parties.

The case was of national and international significance for several reasons. First, it involved one of the first tests of the use of a U.S.-style "poison pill" by a foreign corporation and the first test of the legality of purchases by a subsidiary of a Bermuda corporation of its parent's stock. Because of Bermuda's growing importance as a place of incorporation for

multinational corporations, the case was watched closely by the international financial community, especially by those in the mergers and acquisitions field interested in the possibility of creating new international takeover defenses through use of Bermuda incorporation.

The case also involved novel issues relating to international comity, the respective jurisdictions of the U.S. courts and foreign courts in cases involving intertwined issues under U.S. securities laws and foreign corporate laws, and the reporting obligations of "groups" under Section 13(d) of the Securities Exchange Act of 1934. The case created new law under Section 13(d) of the Securities Exchange Act of 1934 and furthered the jurisprudence on anti-suit injunctions in the context of parallel U.S. and foreign litigation. Sea Containers Ltd. v. Stena AB, 890 F.2d 1205 (D.C. Cir. 1989).

- a. Dates: The initial complaint was filed on March 22, 1989. Motions for temporary restraining orders and preliminary injunctions, as well as discovery and discovery disputes, occurred from April through July, 1989. Additional motions practice occurred in October and November, 1989. The argument in the Court of Appeals took place on September 21, 1989, and the decision was issued on December 1, 1989. Parallel litigation in the Supreme Court of Bermuda occurred during June and July of 1989.
- b. Judges and courts: Judge John Garrett Penn  
United States District Court  
for the District of  
Columbia
- Judges Laurence H. Silberman,  
Stephen F. Williams and  
Douglas H. Ginsburg  
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4. Securities Industry Ass'n v. Board of Governors of the Federal Reserve System and Bankers Trust Co., 807 F.2d 1052 (D.C. Cir. 1986), cert. denied, 483 U.S. 1005 (1987)

In this case, I was lead counsel for Bankers Trust Company in the United States Court of Appeals for the District of Columbia Circuit and in the Supreme Court of the United States. (I

had been involved in the latter stages of the District Court proceedings but not as lead counsel.)

The issue was whether the Glass-Steagall Act, which has as its general purpose separating commercial banking from investment banking, permitted our client, Bankers Trust Company (and other commercial banks), to market commercial paper, short term IOUs issued by corporations. The Court of Appeals reversed the District Court's decision denying the right of commercial banks to engage in such activity and reinstated the decision of the Federal Reserve System granting the right. As a result of this case, commercial banks have emerged as major market players in placing commercial paper as agents for others, enabling them to engage in a multi-billion dollar business from which they had been excluded previously, and permitted them to help corporations nationwide raise working capital. The United States Supreme Court declined to hear the case on a writ of certiorari.

- a. Dates: Argued, April 4, 1986  
Decided, December 23, 1986  
Certiorari denied, June 22, 1987
- b. Judges and court: Judges Abner J. Mikva, Harry T. Edwards and Robert H. Bork  
United States Court of Appeals  
for the District of Columbia  
Circuit
- c. Co-counsel and principal counsel for other parties:<sup>8/</sup>

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5. In re Sealed Case (Oliver North), 666 F. Supp. 231 (D.D.C. 1987), affirmed, In re Sealed Case (Oliver North), 829 F.2d 50 (D.C. Cir. 1987), cert. denied, 484 U.S. 1027 (1987)

This case involved the authority of the Independent Counsel to act in the investigation and prosecution of criminal cases in certain circumstances in lieu of the United States Department of Justice. I handled the proceedings on behalf of Independent Counsel Lawrence E. Walsh in the United States District Court for the District of Columbia and in the United States Court of Appeals for the District of Columbia Circuit.

Oliver North had been held in contempt by the District Court for refusing to comply with a grand jury subpoena, maintaining that the subpoena was rendered unlawful by virtue of its having been issued upon application of the Office of the Independent Counsel, rather than upon application by the United States Department of Justice or the United States Attorney. The first question was whether the issue of the Independent Counsel's authority was appropriate for judicial resolution (that is, "ripe for review") at the time of the issuance of the grand jury subpoena resulting in a contempt citation. The U.S. Court of Appeals ruled that it was and remanded to the

District Court for further proceedings. In re Sealed Case (Oliver North), 827 F.2d 776 (D.C. Cir. 1987) (Judges Starr, Silberman and D.H. Ginsburg).

In the further proceedings, the District Court held that the Independent Counsel was constitutionally authorized to act on the basis of his appointment under a regulation issued by the Attorney General delegating the investigative and prosecutorial authority normally exercised by the Attorney General to Independent Counsel Walsh. In re Sealed Case (Oliver North), 666 F. Supp. 231 (1987). The District Court upheld the Independent Counsel's authority and the authority of his Associate Counsel under the Attorney General's appointment but found it unnecessary to address the question of the constitutionality of the Independent Counsel provisions of the Ethics in Government Act. The decision was affirmed on appeal. In re Sealed Case (Oliver North), 829 F.2d 50 (D.C. Cir. 1987), cert. denied, 484 U.S. 1027 (1988).

- a. District Court proceedings: May 8, 1987 and  
July 10, 1987

Court of Appeals proceedings in No. 87-5168:

Argued, June 3, 1987  
Decided, June 8, 1987

Court of Appeals proceedings in No. 87-5247:

Argued, August 5, 1987  
Decided, August 20, 1987

- b. Judges and courts: Judge Aubrey E. Robinson,  
Jr.  
United States District Court  
for the District of  
Columbia
- Judges Ruth Bader Ginsburg,  
Stephen F. Williams and  
Douglas H. Ginsburg  
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6. United States v. Paradyne Corp., Criminal No. 85-202-Cr-T-17, U.S. District Court for the Middle District of Florida (Tampa Division), mandamus issued, In re Paradyne Corp., In re Siegrist, 803 F.2d 604 (11th Cir. 1986).

This criminal case against Paradyne and eight of its officers involved alleged fraud respecting a contract for computer terminals entered into between Paradyne and the Social Security Administration. I was lead counsel for

William R. Siegrist, a senior vice president of Paradyne. After protracted grand jury proceedings and litigation with the government, the case was resolved before trial. In addition to representing my client in the District Court before and after indictment, I argued a petition for a writ of mandamus in the U.S. Court of Appeals for the Eleventh Circuit. In re Paradyne Corp., In re F. William Siegrist, 803 F.2d 604 (11th Cir. 1986).

The mandamus petition challenged the district court judge's announced plans to interview in camera and outside the presence of counsel, individual defendants, witnesses and attorneys in order to determine whether certain defense counsel and former defense counsel received information protected by the attorney-client privilege of various individuals. It also sought an order directing the district court to conduct a hearing to permit one defendant to waive his right to conflict-free counsel and to release a sealed transcript of an ex parte presentation made by the government to the district court. The Court of Appeals found that the procedures proposed by the District Judge would constitute "serious and unwarranted incursions on the constitutional rights of defendants" and issued the writ of mandamus.

- a. Dates: The indictment was returned on December 12, 1985. Proceedings in the District Court took place at various times from January 2, 1986 through July 8, 1986. The petitions for writs of mandamus were filed on August 13, 1986. The argument in the Court of Appeals took place soon thereafter and the decision was issued on October 14, 1986.
- b. Judges and courts: Judge Elizabeth A. Kovachevich  
United States District Court  
for the Middle District of  
Florida

Judges James C. Hill, Phyllis  
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7. In re AOV Industries, Inc., Consolidated Bankr. Case No. 81-00617, U.S. Bankruptcy Court for the District of Columbia, affirmed, 31 Bankr. 1005 (D.D.C. 1983), 43 Bankr. 468 (D.D.C. 1984), affirmed, 792 F.2d 1140 (D.C. Cir. 1986)

I was lead counsel for AOV Industries in the Bankruptcy Court, the U.S. District Court and the U.S. Court of Appeals for the District of Columbia Circuit. At the time, this was the largest bankruptcy case in the history of the District of Columbia. There were several adversary proceedings tried before Bankruptcy Judge Roger Whelan at which testimony was taken. There were a variety of other motions and proceedings in the Bankruptcy Court resulting in numerous oral opinions from the Bankruptcy Judge. There were two published opinions in the District Court, the most significant being the District Court's confirmation of the debtors' Chapter 11 reorganization plan. See In re AOV Industries, Inc., 31 Bankr. 1005 (D.D.C. 1983); see also AOV Industries, Inc., 43 Bankr. 468 (D.D.C. 1984). The confirmation of the plan was affirmed by the U.S. Court of Appeals. In re AOV Industries, Inc., 792 F.2d 1140 (D.C. Cir. 1986).

Not only did the confirmation of this complex reorganization plan involve novel and interesting questions under the Bankruptcy Code,

it also involved fundamental questions of Bankruptcy Court jurisdiction in view of the then recent decision of the Supreme Court in Northern Pipeline Construction Co. v. Marathon Pipe Line, 458 U.S. 50 (1982), in which the Supreme Court held that many of the jurisdictional provisions of the Bankruptcy Reform Act of 1978 were unconstitutional. This case was the first case to test the emergency bankruptcy rule adopted in this District after Northern Pipeline. The District Court and the Court of Appeals found that that emergency rule struck a permissible constitutional balance between the proper roles of the Bankruptcy Court and the District Court. The procedures that we recommended to the District Court and that were adopted in the confirmation of the AOV reorganization plan were found appropriate and constitutional by the Court of Appeals. The plan was confirmed by the District Court and the confirmation was approved by the Circuit Court.

- a. Dates: Proceedings in the Bankruptcy Court took place during 1982 and early 1983. Proceedings in the District Court took place in 1983 and 1984, with decisions being issued by the District Court on July 26, 1983 and September 27, 1984. The argument in the Court of Appeals took place on March 8, 1985 and the decision was issued on June 6, 1986.
- b. Judges and courts: Judge Judge Roger Whelan  
United States Bankruptcy  
Court for the District  
of Columbia
- Judge Charles R. Richey  
United States District Court  
for the District of  
Columbia
- Judges Patricia M. Wald,  
Abner J. Mikva and  
Kenneth W. Starr  
United States Court of  
Appeals for the District  
of Columbia Circuit

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8. United States v. The Progressive, Inc., 467 F. Supp. 990 (W.D. Wisc., 1979), appeal dismissed as moot after oral argument, United States v. The Progressive, Inc., Erwin Knoll, Samuel Day, Jr. and Howard Morland, Nos. 79-1428, 79-1664 (7th Cir. 1979)

I represented Howard Morland, the author of "The H-Bomb Secret: How We Got It -- Why We're Telling It," which ultimately was published in The Progressive magazine, in the later stages of the District Court litigation and in the United States Court of Appeals for the Seventh Circuit. I worked on the preparation of the briefs and shared oral argument with Bruce J. Ennis (now of Jenner & Block).

The District Court had entered what turned out to be the longest prior restraint order in the nation's history, what we called in our brief "the first preliminary injunction against press publication of political speech in the nation's history." Morland, an honorably discharged Air Force pilot, a commercial pilot and a free-lance writer, had pieced together from publicly available sources what many termed the "secret" of how to build a hydrogen bomb. On the basis of affidavits alone and without an evidentiary hearing, the District Court issued first a temporary restraining order and then a preliminary injunction. On appeal, we argued that the prior restraint was a violation of the First Amendment, that the Atomic Energy Act of 1954 was unconstitutional, and that the injunction would not be effective. The case was mooted after oral argument before the Seventh Circuit when another individual wrote a letter to a Congressman setting forth much of the same information and the letter was published. No appellate opinion ever issued.

- a. Dates: Argument in Seventh Circuit:  
September 13, 1979
- b. Judges and courts: Judge Robert W. Warren  
United States District Court  
for the Western District  
of Wisconsin

Judges Walter Cummings,  
Wilbur Pell and William  
Bauer  
United States Court of  
Appeals for the Seventh  
Circuit

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9. Gerstein v. Pugh, 420 U.S. 103 (1975)

The issue in this criminal case, which I briefed and argued in the Supreme Court on behalf of the United States, was whether the due process clause of the Fourteenth Amendment requires a system of preliminary hearings before a judicial officer after the filing of a formal criminal charge by a prosecutor by way of information and, if so, whether the determination must be made at an adversary hearing with live testimony. The Supreme Court held that the Fourth Amendment requires a judicial determination of probable cause as a prerequisite to any extended restraint of liberty following arrest (a prosecutor's determination was found not to be sufficient), but that an evidentiary, adversary hearing is not required. Probable cause under the Fourth Amendment may be decided by a magistrate in a non-adversary proceeding on hearsay and written testimony. The "Gerstein hearing" is now standard procedure in state courts around the country and in federal courts in misdemeanor cases.

- a. Dates: Argument, March 25, 1974  
 Reargued, October 21, 1974  
 Decided, February 18, 1975
- b. Judges and court: United States Supreme Court

- c. Co-counsel and principal counsel for other parties:<sup>9</sup>

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Leonard R. Mellon, Esq. (argued)<sup>10</sup>

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1351 Northwest 12th Street  
8th Floor  
Miami, FL 33125  
tel. no. 305-545-3078

10. United States v. Nobles, 422 U.S. 225 (1975)

The issue in this case, which I briefed and argued in the Supreme Court on behalf of the United States, was whether in a criminal trial after the completion by the government of its case-in-chief and following the direct examination of a defense witness, the court may require the defense to provide the prosecutor, for the purpose of possible impeachment on cross-examination, with prior written statements of the

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<sup>9</sup> I have not included the names of counsel for the numerous amici on both sides.

<sup>10</sup> I can find no current address and telephone number for Leonard R. Mellon, Esq., who argued the case for the State of Florida.

defense witness relating to the subject matter of the witness' testimony. In this so-called "reverse Jencks" case, the Court unanimously ruled that the prosecution as well as the defense could invoke the court's inherent power to require the production of such statements and that no privilege prevents such disclosure once the defense has chosen to call the individual as a witness. The decision was later codified as Rule 26.2 of the Federal Rules of Criminal Procedure.

- a. Dates: Argument: April 23, 1975:  
Decided: June 23, 1975
- b. Judges and court: United States Supreme Court
- c. Co-counsel and principal counsel for other parties:

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19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

Among the more significant legal activities in which I have been involved has been my work for numerous individuals who have been the subjects or targets of white collar criminal investigations. As noted in response to Question 17(c)(4), in my opinion it is a significant achievement for a white collar criminal defense lawyer to be able to resolve matters on behalf of clients without indictment, preferably by showing the government that the client does not merit prosecution or would be more valuable as a witness than as a defendant. Most of the cases I have handled in this field did not progress to trial (at least with respect to my own clients) because I have often been able to persuade the government that its interests are better served through alternative means. The role of counsel is to develop strategy and plan a course of action, with the goal of achieving the best legal and personal result for the client, at a time when he or she is under great professional, psychological and family stress. The particular challenge and satisfaction in white collar defense work lies in the personal nature of the work involved.

Another very satisfying aspect of my practice has been the appellate litigation I have done, particularly my oral arguments involving significant issues in the U.S. Supreme Court and in federal appellate courts. A number of these cases are discussed in answer to the previous question.

Some of the legal activities in which I have taken the greatest pleasure have been in the areas of public interest, bar activities and pro bono work. While many of these are mentioned elsewhere in this questionnaire, I wish to note here those in which I take particular pride.

As a member and now Chair of the District of Columbia Judicial Nomination Commission, which recommends to the President three persons for each vacancy on the Superior Court of the District of Columbia and on the District of Columbia Court of Appeals, I have worked to recruit and recommend highly qualified lawyers of diverse backgrounds in terms of race, ethnicity, gender and types of background, experience and practice areas. I believe

the work of the Commission has made the Superior Court and the D.C. Court of Appeals among the very best state level trial and appellate courts in the country.

I also take great satisfaction from my work as a founder and Board member of the Washington Legal Clinic for the Homeless, which provides volunteer legal services and advice to individual homeless persons in soup kitchens and shelters in the District of Columbia. When created, there were only a handful of bar-sponsored or bar-related homeless programs throughout the country, and there was great diversity among them as to purpose, means and quality. Since then, our program has, because of its success, been replicated in dozens of cities. I have been equally proud of my work as Chair of the American Bar Association Commission on Homelessness and Poverty in furthering the involvement of lawyers nationwide in undertaking personal and organized efforts to help the homeless.

As Chair of the Civil Justice Reform Act Advisory Group for the United States District Court for the District of Columbia, I have worked with an extremely talented group of 25 lawyers from diverse areas of practice to study the court's practices and procedures in a systematic way and to make recommendations for improvements to the system and to reduce the expense and delay inherent in civil litigation. Many of our recommendations were adopted by the Court in its plan.

PAUL L. FRIEDMAN

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

White & Case Savings and Investment Plan, a profit-sharing plan with a Section 401(k) component to which I have voluntarily contributed, from which I will be entitled to receive my account balance upon reaching age 59-1/2.

White & Case Retirement Income Pension Plan for Eligible Partners (a qualified defined benefit plan) (to which both the firm and I have contributed), from which I will be entitled to be paid a fixed sum annually upon reaching age 65.

My White & Case partnership capital contribution account (based on contributions I have already made), which will be paid out in equal installments on a monthly basis over six years once I leave the firm.

I also am (and will continue to be) a general partner with other White & Case partners and former partners (and, in some cases, their spouses) in Wallpark Investors, an investment general partnership which in turn is a limited partner in three separate limited investment partnerships in which I have invested through Wallpark: Advent V, Advent VI and Media/Communications Partners II. Each is invested in a portfolio of venture capital companies and is managed by an outside investment adviser which is the general partner of each.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I will not participate in any cases where a party is represented by White & Case. I will recuse myself from any and all cases where I have a potential personal or pecuniary conflict of interest, or where there is an appearance of one, including cases involving clients I have represented on a regular basis, companies in which I am aware my wife or I have substantial stock holdings, partnerships in which we have a financial or personal interest, or companies that invest or manage our personal funds. I will also recuse myself from any litigation directly involving my wife's employer or a specific previous employer of hers, INSLAW. I intend to follow the guidelines set forth in the Code of Judicial Conduct and in any Ethics Opinions of which I am aware that govern conflicts of interest.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I have no such plans.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

I am attaching a copy of my Financial Disclosure Report, required under the Ethics Reform Act of 1989, dated March 28, 1994.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

I am attaching a financial net worth statement (as of February 28, 1994), with schedules, and independent accountant's report.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

In 1990 and again in 1992, I was involved in Eleanor Holmes Norton's campaign to become the District of Columbia's Delegate to Congress. In 1990, I was listed as one of the co-chairs of her campaign and in 1992 I was one of the sponsors of a fundraiser for her among lawyers.

In 1990, I was also involved in John Ray's campaign for Mayor of the District of Columbia, and my wife and I hosted a small cocktail reception for him in our home. I also hosted a small reception for him at the offices of my firm.



AO-10  
Rev. 1/84FINANCIAL DISCLOSURE REPORT  
NOMINATIONReport Required by the Ethics  
Reform Act of 1989, Pub. Law  
101-18, November 30, 1989, No.  
15 U.S.C.A. App. 6, 101-112

|   |   |   |
|---|---|---|
| 1. Person Reporting (Last name, first, middle initial)<br><b>Friedman, Paul L.</b>  | 2. Court or Organization<br><b>United States District Court</b>   | 3. Date of Report<br><b>03/28/94</b>              |
| 4. Title (Article III Judges indicate active or<br>senior status; Magistrate Judges indicate<br>full- or part-time)<br><b>Nominee, U. S. District Court</b>   | 5. Report Type (check appropriate type)<br><input checked="" type="checkbox"/> Nomination, Date <b>03/22/94</b><br><input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final          | 6. Reporting Period<br><b>01/01/93 - 02/28/94</b> |
| 7. Chambers or Office Address<br><b>1747 Pennsylvania Avenue, N.W.<br/>Suite 500<br/>Washington, D.C. 20006</b>   | 8. On the basis of the information contained in this Report and<br>any modifications pertaining thereto, it is, in my opinion,<br>in compliance with applicable laws and regulations.<br>Reviewing Officer _____ Date _____ |   |
| IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts,<br>checking the NONE box for each section where you have no reportable information. Sign on last page. |   |   |

## I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

POSITIONNAME OF ORGANIZATION/ENTITY **NONE** (No reportable positions)See attached rider A.

## II. AGREEMENTS. (Reporting individual only; see pp. 8-9 of Instructions.)

DATEPARTIES AND TERMS **NONE** (No reportable agreements)See attached rider B.

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

DATESOURCE AND TYPEGROSS INCOME  
(years, not spouse's) **NONE** (No reportable non-investment income)

|   |                 |   |                     |
|---|-----------------|---|---------------------|
| 1 | <u>1992</u>     | <u>Compensation as Partner in law firm - White &amp; Case</u> | <u>\$ 445493.00</u> |
| 2 | <u>1993</u>     | <u>Compensation as Partner in law firm - White &amp; Case</u> | <u>\$ 444452.00</u> |
| 3 | <u>02/28/94</u> | <u>Compensation as Partner in law firm - White &amp; Case</u> | <u>\$ 40194.00</u>  |
| 4 | <u>1992</u>     | <u>(S) Compensation from Kelley, Dnye &amp; Warren</u>        | <u>\$ 0.00</u>      |
| 5 | <u>1993</u>     | <u>(S) Compensation from Peabody &amp; Brown</u>              | <u>\$ 0.00</u>      |

**FINANCIAL DISCLOSURE REPORT**

|   |                            |
|---|----------------------------|
| Name of Person Reporting<br>Friedman, Paul L. | Date of Report<br>03/28/94 |
|---|----------------------------|

**IV. REIMBURSEMENTS and GIFTS – transportation, lodging, food, entertainment.**  
(Includes those to spouse and dependent children; use the parentheticals '(S)' and '(DC)' to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp. 12-14 of Instructions.)

| <input type="checkbox"/> NONE (No such reportable reimbursements or gifts) | SOURCE | DESCRIPTION |
|--|--------|-------------|
| 1  |        | EXEMPT      |
| 2  |        |             |
| 3  |        |             |
| 4  |        |             |
| 5  |        |             |
| 6  |        |             |
| 7  |        |             |

**V. OTHER GIFTS.** (Includes those to spouse and dependent children; use the parentheticals '(S)' and '(DC)' to indicate other gifts received by spouse and dependent children, respectively. See pp. 15-16 of Instructions.)

| <input type="checkbox"/> NONE (No such reportable gifts) | SOURCE | DESCRIPTION | VALUE   |
|--|--------|-------------|---------|
| 1  |        | EXEMPT      | \$ 0.00 |
| 2  |        |             | \$      |
| 3  |        |             | \$      |
| 4  |        |             | \$      |

**VI. LIABILITIES.** (Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical '(S)' for separate liability of the spouse, '(J)' for joint liability of reporting individual and spouse, and '(DC)' for liability of a dependent child. See pp. 16-17 of Instructions.)

| <input type="checkbox"/> NONE (No reportable liabilities) | CREDITOR           | DESCRIPTION                        | VALUE CODE* |
|---|--------------------|------------------------------------|-------------|
| 1   | Wallpark Investors | Remaining Capital Contribution Due | J           |
| 2   |                    |                                    |             |
| 3   |                    |                                    |             |
| 4   |                    |                                    |             |
| 5   |                    |                                    |             |
| 6   |                    |                                    |             |
| 7   |                    |                                    |             |

\* VALUE CODES: A = \$15,000 or less; B = \$15,001 - \$50,000; C = \$50,001 - \$100,000; D = \$100,001 to \$250,000; E = \$250,001 or more; F = \$500,001 - \$1,000,000; G = \$1,000,001 - \$5,000,000; H = \$5,000,001 - \$10,000,000; I = More than \$10,000,000; J = \$100,001 to \$250,000

**FINANCIAL DISCLOSURE REPORT**

|  |                                   |
|--|-----------------------------------|
| Name of Person Reporting<br><b>Friedman, Paul L.</b> | Date of Report<br><b>03/28/54</b> |
|--|-----------------------------------|

**VII. INVESTMENTS and TRUSTS -- income, value, transactions** (Includes those of spouse and dependent children; See pp. 18-26 of instructions.)

| <b>A.</b><br>Description of Assets<br>(Including trust Assets)<br><br><small>Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of the reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.<br/><br/>                     Place an "X" after each asset exempt from prior disclosure.</small> | <b>B.</b><br>Income during reporting period |                                 | <b>C.</b><br>Gross value at end of reporting period |                          | <b>D.</b><br>Transactions during reporting period |                    |                       |                      |   |
|--|---|---------------------------------|---|--------------------------|---|--------------------|-----------------------|----------------------|---|
|  | (1)   | (2)                             | (1)   | (2)                      | If not exempt from disclosure                     |                    |                       |                      |   |
|  | Amt. 1 Code (A-H)                           | Type (e.g., div., rent or int.) | Value2 Code (J-P)                                   | Value Method3 Code (Q-W) | (1) Type (e.g., buy, sell, merger, redemp. etc.)  | (2) Date Month Day | (3) Value2 Code (J-P) | (4) Gain1 Code (A-H) | (5) Identity of buyer/seller (if private transaction) |
| <input type="checkbox"/> <b>NONE</b> (No reportable income, assets, or transactions)   |   |                                 |   |                          |   |                    |                       |                      |   |
| <b>Listed Common Stocks:</b>   |   |                                 |   |                          |   |                    |                       |                      |   |
| 1 Amer Software A  | J   | None                            | J   | T                        | Exempt  |                    |                       |                      |   |
| 2 Anthem Electronics   |   | None                            | J   | T                        | Exempt  |                    |                       |                      |   |
| 3 Digital Equipment  | J   | None                            | J   | T                        | Exempt  |                    |                       |                      |   |
| 4 Gtech Holdings Corp  | J   | None                            | J   | T                        | Exempt  |                    |                       |                      |   |
| 5 Scios Nova   | J   | None                            | J   | T                        | Exempt  |                    |                       |                      |   |
| 6 Varity Corp New  | J   | None                            | J   | T                        | Exempt  |                    |                       |                      |   |
| 7 WMS Ind  | J   | None                            | J   | T                        | Exempt  |                    |                       |                      |   |
| 8 Abbott Laboratories  | A   | Dividend                        | J   | T                        | Exempt  |                    |                       |                      |   |
| 9 Abbott Labs  | J A   | Dividend                        | J   | T                        | Exempt  |                    |                       |                      |   |
| 10 Air Express Intl  | A   | Dividend                        | J   | T                        | Exempt  |                    |                       |                      |   |
| 11 American Precision Ind Dela.  | J A   | Dividend                        | J   | T                        | Exempt  |                    |                       |                      |   |
| 12 Amoco Corp  | J A   | Dividend                        | J   | T                        | Exempt  |                    |                       |                      |   |
| 13 AMP Inc PA  | J A   | Dividend                        | J   | T                        | Exempt  |                    |                       |                      |   |
| 14 Arvin Industries  | A   | Dividend                        | J   | T                        | Exempt  |                    |                       |                      |   |
| 15 Arvin Industries Inc.   | J A   | Dividend                        | J   | T                        | Exempt  |                    |                       |                      |   |
| 16 AT&T  | J A   | Dividend                        | J   | T                        | Exempt  |                    |                       |                      |   |
| 17 Baker Hughes Inc  | J A   | Dividend                        | J   | T                        | Exempt  |                    |                       |                      |   |
| 18 Baxter Intl Inc   | J A   | Dividend                        | J   | T                        | Exempt  |                    |                       |                      |   |
| 19 Bear Stearns Co   | J A   | Dividend                        | J   | T                        | Exempt  |                    |                       |                      |   |
| 20 Bell Atlantic Corp  | J A   | Dividend                        | J   | T                        | Exempt  |                    |                       |                      |   |
| 21 Bergen Brunswig Cl  | A   | Dividend                        | J   | T                        | Exempt  |                    |                       |                      |   |

## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

Friedman, Paul L

Date of Report

03/28/94

## VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; See pp. 18-26 of instructions.)

| A.<br>Description of Assets<br>(Including trust Assets)<br><br>Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of the reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.<br><br>Place an "X" after each asset exempt from prior disclosure. | B.<br>Income during reporting period |                                 | C.<br>Gross value at end of reporting period |                          | D.<br>Transactions during reporting period |                               |                   |                  |   |  |
|---|--------------------------------------|---------------------------------|--|--------------------------|--|-------------------------------|-------------------|------------------|---|--|
|   | (1)                                  | (2)                             | (1)  | (2)                      | (1)  | If not exempt from disclosure |                   |                  |   |  |
|   | Am. I Code (A-H)                     | Type (e.g., div., rent or int.) | Value2 Code (J-P)                            | Value Method3 Code (Q-W) | Type (e.g., buy, sell, margin, redemption) | Date Month Day                | Value2 Code (J-P) | Gain1 Code (A-H) | Identity of buyer/seller (if private transaction) |  |
| <input type="checkbox"/> NONE (No reportable income, assets, or transactions)   |                                      |                                 |  |                          |  |                               |                   |                  |   |  |
| Listed Common Stocks:   |                                      |                                 |  |                          |  |                               |                   |                  |   |  |
| 22 Boeing Co  | A                                    | Dividend                        | J  | T                        | Exempt                                     |                               |                   |                  |   |  |
| 23 Boeing Co.   | J A                                  | Dividend                        | J  | T                        | Exempt                                     |                               |                   |                  |   |  |
| 24 Boise Cascade  | A                                    | Dividend                        | J  | T                        | Exempt                                     |                               |                   |                  |   |  |
| 25 Borden Inc.  | J A                                  | Dividend                        | J  | T                        | Exempt                                     |                               |                   |                  |   |  |
| 26 Bristol Myers Squibb Co  | J A                                  | Dividend                        | J  | T                        | Exempt                                     |                               |                   |                  |   |  |
| 27 British Petroleum PLC ADR  | J A                                  | Dividend                        | J  | T                        | Exempt                                     |                               |                   |                  |   |  |
| 28 Circuit City Stores  | A                                    | Dividend                        | J  | T                        | Exempt                                     |                               |                   |                  |   |  |
| 29 Circuit City Stores  | J A                                  | Dividend                        | J  | T                        | Exempt                                     |                               |                   |                  |   |  |
| 30 Computer Associates  | A                                    | Dividend                        | J  | T                        | Exempt                                     |                               |                   |                  |   |  |
| 31 Coming Inc   | J A                                  | Dividend                        | J  | T                        | Exempt                                     |                               |                   |                  |   |  |
| 32 Crane Co   | J A                                  | Dividend                        | J  | T                        | Exempt                                     |                               |                   |                  |   |  |
| 33 Cubic Corp   | J A                                  | Dividend                        | J  | T                        | Exempt                                     |                               |                   |                  |   |  |
| 34 Delux Corp   | J A                                  | Dividend                        | J  | T                        | Exempt                                     |                               |                   |                  |   |  |
| 35 Dreyfus Corp   | J A                                  | Dividend                        | J  | T                        | Exempt                                     |                               |                   |                  |   |  |
| 36 Duracell Intl  | J A                                  | Dividend                        | J  | T                        | Exempt                                     |                               |                   |                  |   |  |
| 37 Eastman Kodak Co   | J A                                  | Dividend                        | J  | T                        | Exempt                                     |                               |                   |                  |   |  |
| 38 Edwards AG Incorporated  | J A                                  | Dividend                        | J  | T                        | Exempt                                     |                               |                   |                  |   |  |
| 39 Entergy Corp New   | J A                                  | Dividend                        | J  | T                        | Exempt                                     |                               |                   |                  |   |  |
| 40 Exxon Corp   | J A                                  | Dividend                        | J  | T                        | Exempt                                     |                               |                   |                  |   |  |
| 41 First Brands   | A                                    | Dividend                        | J  | T                        | Exempt                                     |                               |                   |                  |   |  |
| 42 Fleet Financial Group  | J A                                  | Dividend                        | J  | T                        | Exempt                                     |                               |                   |                  |   |  |

## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting  
Friedman, Paul LDate of Report  
03/28/94

## VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; See pp. 18-26 of instructions.)

| A.<br>Description of Assets<br>(including trust Assets)<br><br>Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of the reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.<br><br>Place an "(X)" after each asset exempt from prior disclosure. | B.<br>Income during reporting period |                                 | C.<br>Gross value at end of reporting period |                    | D.<br>Transactions during reporting period |                               |                    |                   |   |
|---|--------------------------------------|---------------------------------|--|--------------------|--|-------------------------------|--------------------|-------------------|---|
|   | (1)                                  | (2)                             | (1)  | (2)                | (1)  | If not exempt from disclosure |                    |                   |   |
|   | Asset 1 Code (A-H)                   | Type (e.g., div, int, or inst.) | Value 2 Code (J-P)                           | Value 1 Code (Q-W) | Type (e.g., buy, sell, merger, redemption) | Date Month Day                | Value 2 Code (J-P) | Gain 1 Code (A-H) | Identity of buyer/seller (if private transaction) |
| <input type="checkbox"/> NONE (No reportable income, assets, or transactions)   |                                      |                                 |  |                    |  |                               |                    |                   |   |
| Listed Common Stocks:   |                                      |                                 |  |                    |  |                               |                    |                   |   |
| 43 Ford Motor Co  | J A                                  | Dividend                        | J T  |                    | Exempt                                     |                               |                    |                   |   |
| 44 Huffy Corp   | J A                                  | Dividend                        | J T  |                    | Exempt                                     |                               |                    |                   |   |
| 45 Huffy Corp   | A                                    | Dividend                        | J T  |                    | Exempt                                     |                               |                    |                   |   |
| 46 Humana Inc   | J A                                  | Dividend                        | J T  |                    | Exempt                                     |                               |                    |                   |   |
| 47 Intl Business Machines Corp  | A                                    | Dividend                        | J T  |                    | Exempt                                     |                               |                    |                   |   |
| 48 JP Morgan  | J A                                  | Dividend                        | J T  |                    | Exempt                                     |                               |                    |                   |   |
| 49 K Mart Corp  | J A                                  | Dividend                        | J T  |                    | Exempt                                     |                               |                    |                   |   |
| 50 Limited Inc  | J A                                  | Dividend                        | J T  |                    | Exempt                                     |                               |                    |                   |   |
| 51 Liz Claiborne  | J A                                  | Dividend                        | J T  |                    | Exempt                                     |                               |                    |                   |   |
| 52 Loral Corp   | J A                                  | Dividend                        | J T  |                    | Exempt                                     |                               |                    |                   |   |
| 53 Mark IV Ind Inc  | J A                                  | Dividend                        | J T  |                    | Exempt                                     |                               |                    |                   |   |
| 54 Maytag   | J A                                  | Dividend                        | J T  |                    | Exempt                                     |                               |                    |                   |   |
| 55 Medicine Shoppe Int  | J A                                  | Dividend                        | J T  |                    | Exempt                                     |                               |                    |                   |   |
| 56 Monsanto   | J A                                  | Dividend                        | J T  |                    | Exempt                                     |                               |                    |                   |   |
| 57 National Data Corp   | J A                                  | Dividend                        | J T  |                    | Exempt                                     |                               |                    |                   |   |
| 58 National Health Labs   | J A                                  | Dividend                        | J T  |                    | Exempt                                     |                               |                    |                   |   |
| 59 Nations Bank   | J A                                  | Dividend                        | J T  |                    | Exempt                                     |                               |                    |                   |   |
| 60 Nike Corp  | A                                    | Dividend                        | J T  |                    | Exempt                                     |                               |                    |                   |   |
| 61 Nike Inc. B  | J A                                  | Dividend                        | J T  |                    | Exempt                                     |                               |                    |                   |   |
| 62 NY Times CL A Common   | J A                                  | Dividend                        | J T  |                    | Exempt                                     |                               |                    |                   |   |
| 63 Panhandle Eastern Corp   | J A                                  | Dividend                        | J T  |                    | Exempt                                     |                               |                    |                   |   |

## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

Friedman, Paul L.

Date of Report

03/28/94

## VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; See pp. 18-26 of instructions.)

| A.<br>Description of Assets<br>(including trust Assets)<br><br>Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of the reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.<br><br>Place an "X" after each asset exempt from prior disclosure. | B.<br>Income during reporting period |  | C.<br>Gross value at end of reporting period |                                 | D.<br>Transactions during reporting period        |                               |                         |  |  |
|---|--------------------------------------|--|--|---------------------------------|---|-------------------------------|-------------------------|--|--|
|   | (1)<br>Amt. 1 Code (A-H)             | (2)<br>Type (e.g., div., rent or int.) | (1)<br>Value2 Code (J-P)                     | (2)<br>Value Method3 Code (Q-W) | (1)<br>Type (e.g., buy, sell, merger, redemption) | If not exempt from disclosure |                         |  |  |
|   |                                      |  |  |                                 | (2)<br>Date Month Day                             | (3)<br>Value2 Code (J-P)      | (4)<br>Gain1 Code (A-H) | (5)<br>Identity of buyer/seller (if private transaction) |  |
| <input type="checkbox"/> NONE (No reportable income, assets, or transactions)   |                                      |  |  |                                 |   |                               |                         |  |  |
| Listed Common Stocks:   |                                      |  |  |                                 |   |                               |                         |  |  |
| 64 PHH Corp   | J                                    | A                                      | Dividend                                     | J                               | T   | Exempt                        |                         |  |  |
| 65 Philip Morris Co Inc   | J                                    | A                                      | Dividend                                     | J                               | T   | Exempt                        |                         |  |  |
| 66 Philip Morns Co Inc  | J                                    | A                                      | Dividend                                     | J                               | T   | Exempt                        |                         |  |  |
| 67 Polaroid Corp  |                                      | A                                      | Dividend                                     | J                               | T   | Exempt                        |                         |  |  |
| 68 Praxair Inc  | J                                    | A                                      | Dividend                                     | J                               | T   | Exempt                        |                         |  |  |
| 69 Quaker State CP  | J                                    | A                                      | Dividend                                     | J                               | T   | Exempt                        |                         |  |  |
| 70 Raymond JMS Fincl  |                                      | A                                      | Dividend                                     | J                               | T   | Exempt                        |                         |  |  |
| 71 Sprint Corp  | J                                    | A                                      | Dividend                                     | J                               | T   | Exempt                        |                         |  |  |
| 72 Stanmore Inc   |                                      | A                                      | Dividend                                     | J                               | T   | Exempt                        |                         |  |  |
| 73 Stride Rite Corp   | J                                    | A                                      | Dividend                                     | J                               | T   | Exempt                        |                         |  |  |
| 74 Super Food Service   | J                                    | A                                      | Dividend                                     | J                               | T   | Exempt                        |                         |  |  |
| 75 Syntex Corp  | J                                    | A                                      | Dividend                                     | J                               | T   | Exempt                        |                         |  |  |
| 76 United Technologies Corp   | J                                    | A                                      | Dividend                                     | J                               | T   | Exempt                        |                         |  |  |
| 77 W R Grace & Co   | J                                    | A                                      | Dividend                                     | J                               | T   | Exempt                        |                         |  |  |
| 78 Walt Disney Co   | J                                    | A                                      | Dividend                                     | J                               | T   | Exempt                        |                         |  |  |
| 79 Westinghouse Electric  | J                                    | A                                      | Dividend                                     | J                               | T   | Exempt                        |                         |  |  |
| 80 Westinghouse Electric  | J                                    | A                                      | Dividend                                     | J                               | T   | Exempt                        |                         |  |  |
| 81 Apple Computer Inc.  | J                                    | A                                      | Cap Gain                                     |                                 |   | Exempt                        |                         |  |  |
| 82 AT & T   | J                                    | A                                      | Cap Gain                                     |                                 |   | Exempt                        |                         |  |  |
| 83 AT & T   | J                                    | A                                      | Cap Gain                                     |                                 |   | Exempt                        |                         |  |  |
| 84 Bear Strens Inc  | J                                    | A                                      | Cap Gain                                     |                                 |   | Exempt                        |                         |  |  |

FINANCIAL DISCLOSURE REPORT

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| Name of Person Reporting<br>Friedman, Paul L | Date of Report<br>03/28/94 |
|--|----------------------------|

VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; See pp. 18 - 26 of instructions.)

| A.<br>Description of Assets<br>(including trust Assets)<br><br>Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of the reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.<br><br>Place an "(X)" after each asset exempt from prior disclosure. | B.<br>Income during reporting period |                               | C.<br>Gross value at end of reporting period |                         | D.<br>Transactions during reporting period |                               |                  |                 |   |
|---|--------------------------------------|-------------------------------|--|-------------------------|--|-------------------------------|------------------|-----------------|---|
|   | (1)                                  | (2)                           | (1)  | (2)                     | (1)  | If not exempt from disclosure |                  |                 |   |
|   | Asset Code (A-H)                     | Type (E-F, div, rest or int.) | Value Code (J-P)                             | Value Method Code (Q-W) | Type (e.g., buy, sell, merger, redemption) | Date Month Day                | Value Code (J-P) | Gain Code (A-H) | Identity of buyer/seller (if private transaction) |
| <input type="checkbox"/> NONE (No reportable income, assets, or transactions)   |                                      |                               |  |                         |  |                               |                  |                 |   |
| Listed Common Stocks:   |                                      |                               |  |                         |  |                               |                  |                 |   |
| 85 Bear Stearns Inc   | J A                                  | Cap Gain                      |  |                         | Exempt                                     |                               |                  |                 |   |
| 86 Boston Tech Inc  | J A                                  | Cap Gain                      |  |                         | Exempt                                     |                               |                  |                 |   |
| 87 Computer Associates  | C                                    | Cap Gain                      |  |                         | Exempt                                     |                               |                  |                 |   |
| 88 Crown Cork and Seal  | J A                                  | Cap Gain                      |  |                         | Exempt                                     |                               |                  |                 |   |
| 89 Duracell Intl Inc  | J A                                  | Cap Gain                      |  |                         | Exempt                                     |                               |                  |                 |   |
| 90 Duracell Intl Inc  | J A                                  | Cap Gain                      |  |                         | Exempt                                     |                               |                  |                 |   |
| 91 Eastman Kodak  | J A                                  | Cap Gain                      |  |                         | Exempt                                     |                               |                  |                 |   |
| 92 Ford Motor Co  | J A                                  | Cap Gain                      |  |                         | Exempt                                     |                               |                  |                 |   |
| 93 Galen Health Care Inc  | J A                                  | Cap Gain                      |  |                         | Exempt                                     |                               |                  |                 |   |
| 94 Gap Inc  | J A                                  | Cap Gain                      |  |                         | Exempt                                     |                               |                  |                 |   |
| 95 JP Morgan  | J B                                  | Cap Gain                      |  |                         | Exempt                                     |                               |                  |                 |   |
| 96 Mark IV Ind Inc  | J A                                  | Cap Gain                      |  |                         | Exempt                                     |                               |                  |                 |   |
| 97 Mark IV Ind Inc  | J A                                  | Cap Gain                      |  |                         | Exempt                                     |                               |                  |                 |   |
| 98 Mark IV Ind Inc  | J A                                  | Cap Gain                      |  |                         | Exempt                                     |                               |                  |                 |   |
| 99 MCI Communications   | J B                                  | Cap Gain                      |  |                         | Exempt                                     |                               |                  |                 |   |
| 100 Medco Containment Svc   | J A                                  | Cap Gain                      |  |                         | Exempt                                     |                               |                  |                 |   |
| 101 Nationsbank Corp  | J A                                  | Cap Gain                      |  |                         | Exempt                                     |                               |                  |                 |   |
| 102 Panhandle Eastern Corp  | J A                                  | Cap Gain                      |  |                         | Exempt                                     |                               |                  |                 |   |
| 103 Panhandle Eastern Corp  | J A                                  | Cap Gain                      |  |                         | Exempt                                     |                               |                  |                 |   |
| 104 Paramount Commun.   | J B                                  | Cap Gain                      |  |                         | Exempt                                     |                               |                  |                 |   |
| 105 Paychex Inc   | J A                                  | Cap Gain                      |  |                         | Exempt                                     |                               |                  |                 |   |

## FINANCIAL DISCLOSURE REPORT

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| Name of Person Reporting<br>Friedman, Paul L | Date of Report<br>03/28/94 |
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**VII. INVESTMENTS and TRUSTS -- income, value, transactions** (Includes those of spouse and dependent children; See pp. 18-26 of instructions.)

| A.<br>Description of Asset<br>(Including trust assets)<br><br>Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of the reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.<br><br>Place an "X" after each asset exempt from prior disclosure. | B.<br>Income during reporting period |                                 | C.<br>Gross value at end of reporting period |                         | D.<br>Transactions during reporting period           |                               |                 |   |  |
|--|--------------------------------------|---------------------------------|--|-------------------------|--|-------------------------------|-----------------|---|--|
|  | (1)                                  | (2)                             | (1)  | (2)                     | (1)<br>Type<br>(e.g., buy, sell, merger, redemption) | If not exempt from disclosure |                 |   |  |
|  | Am. I Code (A-H)                     | Type (e.g., div., rent or int.) | Value Code (J-P)                             | Value Method Code (Q-W) | Date: Month Day                                      | Value Code (J-P)              | Gain Code (A-H) | Identity of buyer/seller (if private transaction) |  |
| <input type="checkbox"/> NONE (No reportable income, assets, or transactions)  |                                      |                                 |  |                         |  |                               |                 |   |  |
| Listed Common Stocks:  |                                      |                                 |  |                         |  |                               |                 |   |  |
| 106 Pepsico Inc  | J                                    | A                               | Cap Gain                                     |                         |  | Exempt                        |                 |   |  |
| 107 Perrigo CO   | J                                    | B                               | Cap Gain                                     |                         |  | Exempt                        |                 |   |  |
| 108 Philip Morris Co   | J                                    | A                               | Cap Gain                                     |                         |  | Exempt                        |                 |   |  |
| 109 Pyxis Corp   | J                                    | A                               | Cap Gain                                     |                         |  | Exempt                        |                 |   |  |
| 110 Tandy Corp   | J                                    | A                               | Cap Gain                                     |                         |  | Exempt                        |                 |   |  |
| 111 Telefonos DE MX  | J                                    | A                               | Cap Gain                                     |                         |  | Exempt                        |                 |   |  |
| 112 Telefonos DE MX  | J                                    | A                               | Cap Gain                                     |                         |  | Exempt                        |                 |   |  |
| 113 Texas Instruments  | J                                    | A                               | Cap Gain                                     |                         |  | Exempt                        |                 |   |  |
| 114 Travelers Corp   | J                                    | A                               | Cap Gain                                     |                         |  | Exempt                        |                 |   |  |
| 115 Union Carbide Corp   | J                                    | A                               | Cap Gain                                     |                         |  | Exempt                        |                 |   |  |
| 116 Walt Disney Corp   | J                                    | C                               | Cap Gain                                     |                         |  | Exempt                        |                 |   |  |
| 117 Wendys Intl  | J                                    | A                               | Cap Gain                                     |                         |  | Exempt                        |                 |   |  |
| 118 Wendys Intl  | J                                    | A                               | Cap Gain                                     |                         |  | Exempt                        |                 |   |  |
| 119 Wheelabrator Tech  | J                                    | A                               | Cap Gain                                     |                         |  | Exempt                        |                 |   |  |
| 120 York Intl CP   | J                                    | A                               | Cap Gain                                     |                         |  | Exempt                        |                 |   |  |



## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting  
Friedman, Paul L.Date of Report  
03/28/94

## VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; See pp. 18-26 of instructions.)

| A<br>Description of Asset<br>(Including trust assets)<br><br>Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of the reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.<br><br>Place an "X" after each asset except for a prior disclosure. | B<br>Income during reporting period |  | C<br>Gross value at end of reporting period |                                  | D<br>Transactions during reporting period                          |                               |                           |                          |  |
|--|-------------------------------------|--|---|----------------------------------|--|-------------------------------|---------------------------|--------------------------|--|
|  | (1)<br>Amt. 1 Code (A-H)            | (2)<br>Type (e.g., div., rent or int.) | (1)<br>Value 2 Code (J-P)                   | (2)<br>Value Method 3 Code (Q-W) | (1)<br>Type (e.g., buy, sell, merger, dividend) (see instructions) | If not exempt from disclosure |                           |                          | (7)<br>Identity of buyer/seller (if private transaction) |
|  |                                     |  |   |                                  |  | (2)<br>Date Month Day         | (3)<br>Value 2 Code (J-P) | (4)<br>Gain 1 Code (A-H) |  |
| <input type="checkbox"/> NONE (No reportable income, assets, or transactions)  |                                     |  |   |                                  |  |                               |                           |                          |  |
| Listed Investment Funds:   |                                     |  |   |                                  |  |                               |                           |                          |  |
| 1 Columbia Futures   |                                     | None                                   | J   | T                                | Exempt   |                               |                           |                          |  |
| 2 Cornerstone Fund 03  |                                     | None                                   | J   | T                                | Exempt   |                               |                           |                          |  |
| 3 Cornerstone Fund 04  |                                     | None                                   | K   | T                                | Exempt   |                               |                           |                          |  |
| 4 Dean Witter Capital Growth   |                                     | None                                   | J   | T                                | Exempt   |                               |                           |                          |  |
| 5 Dean Witter Dividend Growth  |                                     | None                                   | K   | T                                | Exempt   |                               |                           |                          |  |
| 6 Dean Witter Pacific Growth   |                                     | None                                   | K   | T                                | Exempt   |                               |                           |                          |  |
| 7 Diversified Fund 02  |                                     | None                                   | J   | T                                | Exempt   |                               |                           |                          |  |
| 8 Diversified Fund 03  |                                     | None                                   | J   | T                                | Exempt   |                               |                           |                          |  |
| 9 Global PP Fund 01  |                                     | None                                   | K   | T                                | Exempt   |                               |                           |                          |  |
| 10 Intl Access Fund  |                                     | None                                   | J   | T                                | Exempt   |                               |                           |                          |  |
| 11 Intl Fund Access Fund   |                                     | None                                   | J   | T                                | Exempt   |                               |                           |                          |  |
| 12 PRN Secured Fund 01   |                                     | None                                   | K   | T                                | Exempt   |                               |                           |                          |  |
| 13 World Currency Fund   |                                     | None                                   | J   | T                                | Exempt   |                               |                           |                          |  |
| 14 Cornerstone Fund 04   | J                                   | None                                   | J   | T                                | Exempt   |                               |                           |                          |  |
| 15 Dean Witter Capital Growth  | J A                                 | Dividends                              | J   | T                                | Exempt   |                               |                           |                          |  |
| 16 Dean Witter Dividend Growth   | J A                                 | Dividends                              | J   | T                                | Exempt   |                               |                           |                          |  |
| 17 Dean Witter European Growth   | J A                                 | Dividends                              | K   | T                                | Exempt   |                               |                           |                          |  |
| 18 Dean Witter Pacific Growth  | J A                                 | Dividends                              | K   | T                                | Exempt   |                               |                           |                          |  |
| 19 Diversified Fund 03   | J                                   | None                                   | K   | T                                | Exempt   |                               |                           |                          |  |
| 20 Latin American Growth Fund  | J                                   | None                                   | J   | T                                | Exempt   |                               |                           |                          |  |
| 21 Pincipal Secured Fund 01  | J                                   | None                                   | K   | T                                | Exempt   |                               |                           |                          |  |







## FINANCIAL DISCLOSURE REPORT

|   |                            |
|---|----------------------------|
| Name of Person Reporting<br>Friedman, Paul L. | Date of Report<br>03/28/94 |
|---|----------------------------|

## VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

## III. NON-INVESTMENT INCOME (Cont'd.)

| <u>DATE</u>           | <u>SOURCE AND TYPE</u>                | <u>GROSS INCOME</u> |
|-----------------------|---------------------------------------|---------------------|
| <sup>6</sup> 02/28/94 | (S) Compensation from Peabody & Brown | \$ 0.00             |

## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting  
Friedman, Paul L.Date of Report  
03/28/94

## IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature

Paul L. Friedman

Date

March 29, 1994

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, 104, AND 18 U.S.C. 1001.)

## FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure  
Administrative Office of the  
United States Courts  
Washington, D.C. 20544

FINANCIAL DISCLOSURE REPORT

Friedman, Paul L.

3/28/94

RIDER A

|                                    |  |
|------------------------------------|--|
| Partner                            | White & Case   |
| Director                           | Stuart Stiller Memorial Foundation   |
| Director                           | Frederick B. Abramson Memorial Foundation  |
| Director                           | American Judicature Society  |
| Trustee                            | David M. Schwarz Irrevocable Trust   |
| Co-Trustee                         | The Potomac Trust  |
| Personal Representative (Executor) | Estate of Frederick B. Abramson  |
| Executor                           | Estate of Cecil A. Friedman  |
| General Partner                    | Wallpark Investors, an investment general partnership made up of some partners and former partners of White & Case. Wallpark in turn is a Limited Partner in three separate limited investment partnerships in which I have invested through Wallpark. |

FINANCIAL DISCLOSURE REPORT

Friedman, Paul L.

3/28/94

RIDER B

Upon my appointment to the United States District Court for the District of Columbia, I will withdraw from my partnership in the law firm of White & Case. I have and will have no agreements with respect to future employment or for a leave of absence during government service.

With respect to continuation of payments by White & Case and continuing participation in employee welfare or benefit plans, I report the following:

1. Under the White & Case partnership agreement to which I became a party on October 1, 1979, I am entitled to be paid in equal installments on a monthly basis over six years what is due me from my capital contribution account, based on contributions I have already made.

2. Under the White & Case Retirement Income Pension Plan for Eligible Partners, a qualified defined benefit plan, effective January 1, 1989, I will be entitled to be paid a fixed sum annually upon reaching the age of 65.

3. Under the White & Case Savings & Investment Plan, a profit-sharing plan with a Section 401(k) component, which became effective on January 1, 1983, I will be entitled to receive my account balance upon reaching age 59½.

4. I also am, and will continue to be, a general partner with other White & Case partners and former partners (and, in some cases, their spouses) in Wallpark Investors, an investment general partnership which in turn is a limited partner in three separate limited investment partnerships in which I have invested through Wallpark: Advent V, Advent VI and Media Communications II. Each is invested in a portfolio of venture capital companies and is managed by an outside investment adviser which is the general partner of each.

~~\_\_\_\_\_  
Paul L. Friedman~~



Financial Net Worth Statement  
And  
Independent Accountants Report

Paul L. Friedman and Elizabeth A. Friedman

February 28, 1994

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**Reznick Fedder & Silverman**

Certified Public Accountants • Business Consultants

A Professional Corporation

4520 East-West Highway • Suite 300 • Bethesda, MD 20814-3319 • (301) 652-9100 • Fax (301) 652-1848

Independent Accountants' Report

Paul L. Friedman and Elizabeth A. Friedman

We have compiled the accompanying financial net worth statement of Paul L. Friedman and Elizabeth A. Friedman as of February 28, 1994, in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. The statement of financial condition is intended to present the assets of Paul L. Friedman and Elizabeth A. Friedman at estimated current values and their liabilities at estimated current amounts.

A compilation is limited to presenting in the form of financial statements information that is the representation of the individuals whose financial statements are presented. We have not audited or reviewed the accompanying financial net worth statement and sources of income and, accordingly, do not express an opinion or any other form of assurance on it. However, we did become aware of a departure from generally accepted accounting principles that is described in the following paragraph.

Generally accepted accounting principles require that personal financial statements include a provision for estimated income taxes on the differences between the estimated current values of assets and the estimated current amounts of liabilities and their tax bases. The accompanying financial net worth statement and sources of income does not include such a provision, and the effect of this departure from generally accepted accounting principles has not been determined.

*Reznick Fedder & Silverman*Bethesda, Maryland  
February 28, 1994

## Net Worth Financial Statement

for Paul L. and Elizabeth A. Friedman  
as of February 28, 1994

### ASSETS

### LIABILITIES

|                                      |                           |  |                           |
|--------------------------------------|---------------------------|--|---------------------------|
| Cash on Hand – Bank Accounts         | \$4,834                   | Notes Payable – Secured                | \$0                       |
| Money Market Accounts                | \$301,818                 | Notes Payable – Unsecured              | \$0                       |
| U.S. Government Securities           | \$0                       | Notes Payable to Relatives             | \$0                       |
| Listed Securities (B)                | \$350,543                 | Notes Payable to Others                | \$0                       |
| Listed Funds                         | \$396,510                 | Accounts and Bills Due                 | \$2,000                   |
| Unlisted Securities (C)              | \$4,816                   | Unpaid Income Tax                      | \$0                       |
| Retirements and Pension Plans (D)    | \$748,160                 | Other Unpaid tax and Interest          | \$0                       |
| Partnerships (E)                     | \$1,120,737               | Real Estate Mortgages Payable (J)      | \$46,716                  |
| Accounts and Notes Receivable        | \$0                       | Other Mortgages and Liens              | \$0                       |
| Real Estate Owned (F)                | \$650,000                 | Other Liabilities (K)                  | <u>\$14,250</u>           |
| Real Estate Mortgages Receivable (G) | \$135,000                 |  |                           |
| Auto and Personal Property           | \$120,000                 |  |                           |
| Cash Value of Life Insurance (H)     | \$49,441                  |  |                           |
| Other Assets (I)                     | \$65,000                  |  |                           |
| <b>Total Assets</b>                  | <b><u>\$3,946,859</u></b> | <b>Total Liabilities</b>               | <b><u>\$62,966</u></b>    |
|                                      |                           | <b>NET WORTH</b>                       | <b><u>\$3,883,893</u></b> |
| <b>Total Assets</b>                  | <b><u>\$3,946,859</u></b> | <b>Total Liabilities and Net Worth</b> | <b><u>\$3,946,859</u></b> |

Schedules attached.

Other Items**Contingent Liabilities**

Endorsor, Comaker, Guarantor:

Guarantor to pay certain nursing home costs of late father.  
Estimated to be \$3,150 – \$35 a day for 90 days.

Leases or Contracts:

None

Legal Claims:

None

Other Special Debt:

None

**General Information**

Assets pledged:

None

Defendant in legal suits or actions:

No

Ever filed bankruptcy:

No

Detail Schedule – Paul L and Elizabeth A. Friedman

Paul L. Friedman & Elizabeth A. Friedman

NOTES TO STATEMENT OF FINANCIAL CONDITION

February 28, 1994

(See accountants' compilation report)

**NOTE A - BASIS OF VALUATION AND PRESENTATION**

The accompanying financial statement includes the assets and liabilities of Paul L. Friedman & Elizabeth A. Friedman. Assets are stated at their estimated current values, and liabilities at their estimated current amounts.

**NOTE B - LISTED SECURITIES**

The estimated current values of marketable securities are either (a) their quoted closing prices or (b) for securities not traded on the financial statement date, amounts that fell within the range of quoted bid and asked price.

**NOTE C - UNLISTED SECURITIES**

The estimated current value of unlisted securities is based on estimated realizable value.

**NOTE D - RETIREMENT AND PENSION PLANS**

The estimated current value of Retirement and Pension Plans is based on estimated realizable value.

**NOTE E - INVESTMENTS IN PARTNERSHIPS**

The estimated current values of investments in partnerships are determined based on estimated realizable value.

**NOTE F - REAL ESTATE OWNED**

The estimated current value of the personal residence is stated at an amount which Paul L. Friedman and Elizabeth A. Friedman considers to be realizable upon sale and is based on comparable sales in the area.

**NOTE G - REAL ESTATE MORTGAGES RECEIVABLE**

A 10% mortgage in the amount of \$135,000 with the balance due on the earlier of October 31, 1996 or the sale of the underlying property.

Paul L. Friedman & Elizabeth A. Friedman

NOTES TO STATEMENT OF FINANCIAL CONDITION

February 28, 1994

(See accountants' compilation report)

**NOTE H - CASH VALUE OF LIFE INSURANCE POLICIES**

The estimated current cash values of life insurance policies are determined based on estimated realizable value.

**NOTE I - OTHER ASSETS**

The estimated current values of other assets is based on the original cost.

**NOTE J - REAL ESTATE MORTGAGES PAYABLE**

The 9.5% mortgage is payable in monthly installments of principal and interest of \$2,822.83 through July 31, 2016. The personal residence is pledged as collateral for the mortgage.

**NOTE K - OTHER LIABILITIES**

The \$14,250 in other liabilities represents the remaining balance on a commitment to Wallpark Investors in Media/Communications Partners II partnership.

## Detail Schedule – Paul L. and Elizabeth A. Friedman

|                              |         |
|------------------------------|---------|
| Cash on Hand – Bank Accounts | \$4,834 |
|------------------------------|---------|

---

| NAME                       | VALUE   |
|----------------------------|---------|
| Merrill Lynch Cash Balance | \$104   |
| First Union (Checking)     | \$3,000 |
| Nations Bank (Checking)    | \$1,730 |

## Detail Schedule – Paul L. and Elizabeth A. Friedman

|                       |           |
|-----------------------|-----------|
| Money Market Accounts | \$301,818 |
|-----------------------|-----------|

---

| NAME                             | VALUE     |
|----------------------------------|-----------|
| Dean Witter Liquid Asset         | \$8       |
| Dean Witter US Govt Money Market | \$20,009  |
| Dean Witter Liquid Asset IRA     | \$185     |
| Merrill Lynch Floating Fund      | \$15,030  |
| Dean Witter Liquid Asset         | \$9,267   |
| Dean Witter Liquid Asset Fund    | \$2,310   |
| Dean Witter Liquid Asset Fund    | \$9       |
| T. Rowe Price Tax Exempt Fund    | \$255,000 |

## Detail Schedule – Paul L. and Elizabeth A. Friedman

|                            |     |
|----------------------------|-----|
| U.S. Government Securities | \$0 |
|----------------------------|-----|

---

| NAME | VALUE |
|------|-------|
|------|-------|

Detail Schedule – Paul L and Elizabeth A. Friedman  
 Listed Securities – (Con't) (B) \$350,543  
 Including Those held in Individual Retirement Accounts

---

| NAME                        | VALUE    |
|-----------------------------|----------|
| Scios Nova                  | \$8,832  |
| Bergen Brunswig Cl          | \$5,925  |
| Mark IV Ind Inc             | \$4,844  |
| Boeing Co                   | \$4,675  |
| Circuit City Stores         | \$4,750  |
| K Mart Corp                 | \$2,660  |
| First Brands                | \$5,381  |
| Nike Corp                   | \$5,175  |
| Intl Business Machines Corp | \$2,115  |
| Raymond JMS Fincl           | \$7,369  |
| Huffy Corp                  | \$4,813  |
| Polaroid Corp               | \$6,300  |
| Amoco Corp                  | \$4,703  |
| Edwards AG Incorporated     | \$11,125 |
| National Data Corp          | \$4,121  |
| Huffy Corp                  | \$6,738  |
| Loral Corp                  | \$11,588 |
| W R Grace & Co              | \$5,370  |
| Boise Cascade               | \$5,200  |
| United Technologies Corp    | \$3,400  |
| Computer Associates         | \$7,350  |
| PHH Corp                    | \$7,800  |
| Arvin Industries Inc.       | \$7,938  |
| Air Express Intl            | \$5,156  |
| Circuit City Stores         | \$6,650  |
| Stanmore Inc                | \$7,150  |
| Sprint Corp                 | \$4,810  |
| Arvin Industries            | \$5,556  |
| Crane Co                    | \$11,400 |
| American Precision Ind Dela | \$3,200  |
| Praxair Inc                 | \$3,938  |
| Westinghouse Electric       | \$4,313  |
| Cubic Corp                  | \$8,450  |
| Exxon Corp                  | \$4,541  |
| NY Times CL A Common        | \$4,200  |
| Entergy Corp New            | \$3,325  |
| Abbott Laboratories         | \$5,525  |
| Eastman Kodak Co            | \$2,580  |
| Liz Claiborne               | \$4,575  |
| Dreyfus Corp                | \$4,241  |
| Medicine Shoppe Int         | \$9,300  |



## Listed Securities – (Con't) (B)

Including Those held in Individual Retirement Accounts

---

|                           |          |
|---------------------------|----------|
| Philip Morris Co Inc      | \$8,400  |
| Stride Rite Corp          | \$10,275 |
| Coming Inc                | \$3,038  |
| Quaker State CP           | \$3,850  |
| British Petroleum PLC ADR | \$3,256  |
| Philip Morris Co Inc      | \$4,480  |
| Bristol Myers Squibb Co   | \$2,763  |
| Nike Inc. B               | \$4,140  |
| Borden Inc.               | \$3,600  |
| Westinghouse Electric     | \$3,738  |
| Bell Atlantic Corp        | \$4,380  |
| Boeing Co.                | \$9,350  |
| Walt Disney Co            | \$9,600  |
| Baxter Intl Inc           | \$4,095  |
| Baker Hughes Inc          | \$2,660  |
| Super Food Service        | \$6,125  |
| Syntex Corp               | \$3,255  |
| AMP Inc PA                | \$3,810  |
| Anthem Electronics        | \$4,781  |
| WMS Ind                   | \$3,623  |
| Varity Corp New           | \$3,640  |
| Gtech Holdings Corp       | \$3,878  |
| Digital Equipment         | \$3,204  |
| Amer Software A           | \$3,525  |

Detail Schedule – Paul L and Elizabeth A. Friedman  
 Listed Funds \$396,510  
 Including Those held in Individual Retirement Accounts

| NAME                            | VALUE    |
|---------------------------------|----------|
| Intl Access Fund                | \$2,000  |
| Diversified Fund 02             | \$4,338  |
| Columbia Futures                | \$3,031  |
| PRN Secured Fund 01             | \$5,170  |
| Dean Witter Capital Growth      | \$1,964  |
| Comerstone Fund 04              | \$18,636 |
| Diversified Fund 03             | \$8,555  |
| Intl Access Fund                | \$12,960 |
| Comerstone Fund 03              | \$3,582  |
| World Currency Fund             | \$1,478  |
| Transamerica Tax Free Bond Fund | \$33,970 |
| Dean Witter Pacific Growth      | \$43,370 |
| Columbia Futures                | \$3,031  |
| Comerstone Fund 03              | \$3,582  |
| Diversified Fund 03             | \$23,788 |
| Comerstone Fund 04              | \$20,220 |
| Latin American Growth Fund      | \$2,139  |
| Diversified Fund 02             | \$4,338  |
| Dean Witter European Growth     | \$29,004 |
| Diversified Fund 03             | \$5,079  |
| Dean Witter Pacific Growth      | \$32,522 |
| Global PP Fund 01               | \$29,665 |
| Dean Witter Dividend Growth     | \$30,342 |
| Intl Fund Access Fund           | \$2,000  |
| Comerstone Fund 04              | \$11,402 |
| PRN Secured Fund 01             | \$23,685 |
| Dean Witter Dividend Growth     | \$2,926  |
| World Currency Fund             | \$1,478  |
| Pincipal Secured Fund 01        | \$27,645 |
| Dean Witter Capital Growth      | \$1,755  |
| Dean Witter Capital Growth      | \$2,855  |

Detail Schedule – Paul L. and Elizabeth A. Friedman  
 Unlisted Securities (C) \$4,816

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| NAME                          | VALUE   |
|-------------------------------|---------|
| Nuveen Tax Exempt Unit Trusts | \$4,816 |

Detail Schedule – Paul L. and Elizabeth A. Friedman  
 Retirements and Pension Plans (D) \$748,160

---

| NAME                                | VALUE     |
|-------------------------------------|-----------|
| Kelly Dry Defined Benefit Plan      | \$17,864  |
| White & Case Savings & Invest. Plan | \$501,812 |
| MLLIC Annuity                       | \$67,206  |
| MLLIC Annuity                       | \$39,534  |
| Connecticut General Annuity         | \$28,744  |
| White & Case Retirement Plan        | \$93,000  |

Detail Schedule – Paul L. and Elizabeth A. Friedman  
 Partnerships (E) \$1,120,737

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| NAME                             | VALUE     |
|----------------------------------|-----------|
| Hybritech Clinical Partners      | \$25,000  |
| American Leasing LP              | \$10,000  |
| Winthrop Financial Associates    | \$10,000  |
| Crystal Hill Associates          | \$11,415  |
| Spartansburg–Oxford              | \$1       |
| White & Case Capital Contrib     | \$850,100 |
| Ares–Serono R&D                  | \$2,080   |
| Cohoes Redevelopment Associates  | \$25,000  |
| Wallpark Investment Partnerships | \$136,500 |
| Zond Wind Systems                | \$1       |
| Cohoes Redevelopment Associates  | \$25,000  |
| Carlyle Real Estate LP           | \$15,000  |
| Oxford Tax Exempt Fund           | \$8,440   |
| DW Realty Income 1 LP            | \$2,200   |

Detail Schedule – Paul L. and Elizabeth A. Friedman  
 Accounts and Notes Receivable \$0

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| NAME | VALUE |
|------|-------|
|------|-------|

Detail Schedule – Paul L. and Elizabeth A. Friedman  
 Real Estate Owned (F) \$650,000

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| NAME              | VALUE     |
|-------------------|-----------|
| Primary Residence | \$650,000 |

Detail Schedule – Paul L. and Elizabeth A. Friedman  
 Real Estate Mortgages Receivable (G) \$135,000

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| NAME                                 | VALUE     |
|--------------------------------------|-----------|
| Aaron & Florence Zicherman (Parents) | \$135,000 |

Detail Schedule – Paul L. and Elizabeth A. Friedman  
 Auto and Personal Property \$120,000

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| NAME                               | VALUE    |
|------------------------------------|----------|
| Jewelry                            | \$25,000 |
| Auto                               | \$20,000 |
| Clothing/Furniture/Art/Decoratives | \$75,000 |

Detail Schedule – Paul L. and Elizabeth A. Friedman  
 Cash Value of Life Insurance (H) \$49,441

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| NAME                               | VALUE    |
|------------------------------------|----------|
| Whole Life Policy                  | \$35,000 |
| Connecticut Mutual Group Uni Insur | \$14,441 |

Detail Schedule – Paul L. and Elizabeth A. Friedman  
 Other Assets (I) \$65,000

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| NAME                       | VALUE    |
|----------------------------|----------|
| Jumby Bay Club Memebership | \$65,000 |

Detail Schedule – Paul L. and Elizabeth A. Friedman  
 Notes Payable – Secured \$0

---

| NAME | VALUE |
|------|-------|
|------|-------|

Detail Schedule – Paul L. and Elizabeth A. Friedman  
 Notes Payable – Unsecured \$0

---

| NAME | VALUE |
|------|-------|
|------|-------|

Detail Schedule – Paul L. and Elizabeth A. Friedman  
 Notes Payable to Relatives \$0

---

| NAME | VALUE |
|------|-------|
|------|-------|

Detail Schedule – Paul L. and Elizabeth A. Friedman  
 Notes Payable to Others \$0

---

| NAME | VALUE |
|------|-------|
|------|-------|

Detail Schedule – Paul L. and Elizabeth A. Friedman  
 Accounts and Bills Due \$2,000

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| NAME      | VALUE   |
|-----------|---------|
| Bills Due | \$2,000 |

Detail Schedule – Paul L. and Elizabeth A. Friedman  
 Unpaid Income Tax \$0

---

| NAME | VALUE |
|------|-------|
|------|-------|

Detail Schedule – Paul L. and Elizabeth A. Friedman  
 Other Unpaid tax and Interest \$0

---

| NAME | VALUE |
|------|-------|
|------|-------|

Detail Schedule – Paul L. and Elizabeth A. Friedman  
 Real Estate Mortgages Payable (J) \$46,716

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| NAME                          | VALUE    |
|-------------------------------|----------|
| Mortgage on Primary Residence | \$46,716 |

Detail Schedule – Paul L. and Elizabeth A. Friedman  
 Other Mortgages and Liens \$0

---

| NAME | VALUE |
|------|-------|
|------|-------|

Detail Schedule – Paul L. and Elizabeth A. Friedman  
 Other Liabilities (K) \$14,250

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| NAME                             | VALUE    |
|----------------------------------|----------|
| Wallpark Investment Partnerships | \$14,250 |

PAUL L. FRIEDMAN

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I have always been committed to and involved in pro bono activities, both on a personal basis and on institutional levels. During my D.C. Bar presidency I focused one of my regular columns on Canon 2 of the Code of Professional Responsibility and Ethical Consideration 2-25. The Washington Lawyer, November/December 1986, p. 6. I also was involved in the creation and development of programs for the homeless and for those seeking relief under the then-recent amendments to the immigration laws.

I was a founder and long-time board member of the Washington Legal Clinic for the Homeless, which has mobilized the Washington legal community to provide pro bono services to homeless people who live in shelters and in the streets. In part through my efforts, the Clinic has served as a model for the creation of other programs around the country. As Chair first of the American Bar Association Representation of the Homeless Project and then as Chair of the ABA Commission on Homelessness and Poverty, I devoted hundreds of hours to crafting ABA policy to help the homeless and to speaking to and advising other bar groups to encourage them to follow the lead of the D.C. Bar. In 1986 the D.C. Bar program was one of only eight homeless programs of this kind around the country (it won the coveted ABA Harrison Tweed Award that year); there are now more than 80.

I also served for two years as a member of the ABA Standing Committee on Legal Aid and Indigent Defendants. The Committee proposes policies on behalf of the ABA concerning the Legal Services Corporation and local legal services programs, and works with state and local bar associations in their efforts to assist in providing legal services for the poor in civil and criminal matters. Locally, I served for three years as a member of the Board of Trustees of the District of Columbia Public Defender Service and



participated in the selection of a new Director and a new Deputy Director for the agency.

Because of my personal commitment to pro bono representation by lawyers, I established the pro bono program of the Washington office of White & Case over a decade ago. Despite the small size of the office, we have twice won awards from the District of Columbia Bar for our efforts in the area of pro bono work, and White & Case is one of the charter members of the D.C. Bar Pro Bono Attorney Recruitment Team program. In 1991 alone, our small group devoted approximately 4,000 hours to pro bono matters.

As for my personal pro bono work, within the past year, for example, I advised a minority contractor on a pro bono basis in his efforts to settle a contract dispute with an agency of the United States Government. In 1991 and 1992, I was one of two partners who supervised the trial team in a pro bono death penalty case handled by White & Case. I attended some of the trial where I assisted in witness preparation and provided advice to the trial team before and during trial.

In the mid-1980s, I represented two Liberian women who were seeking political asylum in the United States. They were relatives of Cabinet-level officials in Liberia who had been ousted from power during a violent coup and executed by the new government. All of the women's property had been seized and they were threatened with further economic sanctions and physical violence. After coming to the United States and while waiting for resident alien status to be granted, they applied for political asylum, and we represented them in administrative and court proceedings.

In 1983 and 1984, I represented on a pro bono basis the Conference of Chief Justices, a group made up of the chief justices of all the state courts in the United States, in preparing and filing an amicus brief in the Supreme Court of the United States in the case of Gladys Pulliam v. Richmond R. Allen and Jesse W. Nicholson, 466 U.S. 522 (1984). The case raised questions involving immunity for judges in actions for declaratory or injunctive relief.

In the early 1980s, I represented an individual who had been convicted in the Superior Court of the District of Columbia for armed robbery. He had three different lawyers during the course of his

representation and there were questions raised involving ineffective assistance of counsel. I represented him both in the District of Columbia Court of Appeals and in the Superior Court of the District of Columbia in a post-trial evidentiary hearing on his motion for a new trial.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

No. I have consistently declined membership in all such organizations.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Yes. The District of Columbia Federal Judicial Nominating Commission recommended my nomination. After Delegate Eleanor Holmes Norton created the Commission, appointed its members and announced that it was accepting applications, I obtained a copy of the application form, completed it and submitted the application and exhibits on May 14, 1993. A number of individuals and groups subsequently sent letters of endorsement to the Commission on my behalf, some at my request, some spontaneously. I was interviewed by the full Commission on June 16, 1993. Early in the week of August 16, 1993, Delegate Norton called to say I had been recommended by the Commission and to invite me for an interview. I was interviewed by Delegate Norton on August 20, 1993. On September 28, 1993 Delegate Norton called to say that she had decided to recommend me to the President for nomination to the District Court.

In October 1993, I received and completed numerous forms sent to me by the White House, including forms for the American Bar Association, the Justice Department, the FBI and the Senate Judiciary

Committee. In December 1993, I received a telephone call from a representative of the Department of Justice who asked a number of questions in that and in subsequent telephone conversations and then invited me for an interview. On December 17, 1993, I was interviewed by representatives of the Department of Justice. On January 19, 1994, I was interviewed by an agent of the Federal Bureau of Investigation; this interview was followed by two or three telephone conversations with her over the next several weeks. On February 2, 1994, I was interviewed by a representative of the American Bar Association Committee on the Federal Judiciary. On March 22, 1994 I was called by White House Counsel Bernard Nussbaum to say that President Clinton was sending my nomination to the Senate.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No one involved in the process has discussed with me any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how I would rule on such case, issue or question.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Probably since reading Alexander Bickel's The Least Dangerous Branch in a political science course in college, I have believed that the federal judiciary has an important but limited role to play within the federal government and within society generally. The two judges for whom I clerked reinforced my understanding of that circumscribed role. They both believed, and I agree, that courts should not make policy; that is the role of the Legislature and the Executive. The courts should resolve disputes between litigants and try to apply as conscientiously as possible the law as enacted by the Congress.

When a statute is clear, I believe a judge must apply it as written; obviously, where there is some ambiguity or area of gray, a judge must try to interpret the statute consistent with the statutory scheme and the overall purpose of the law as written. I believe a consideration of legislative history is sometimes appropriate in this process. A court should take a similar approach to an Executive Branch or independent agency regulation or directive, so long as it is consistent with statutory enactments and promulgated in accordance with due process. While a judge must interpret and apply the law, he or she should never re-write it or ignore it in order to achieve a desired result.

The trial judge is particularly constrained in this regard. Even if a District Court judge personally or philosophically disagrees with a decision of the United States Court of Appeals or of the United States Supreme Court, it is the judge's professional obligation to follow and apply precedent if the decision is clearly on point. It is not the judge's role to make policy or otherwise usurp the prerogatives of the Executive or Legislative Branches. My approach therefore would be to apply the law as written (including laws relating to standing or ripeness, for example) and to follow the precedents set forth by the higher courts.

**AFFIDAVIT**

I, Paul L. Friedman, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

March 28, 1997

(DATE)

Paul L. Friedman

(NAME)

Robert J. Hanlon

(NOTARY)

MY COMMISSION EXPIRES  
JANUARY 14, 1995

**UNITED STATES SENATE (COMMITTEE ON THE JUDICIARY)**

**L BIOGRAPHICAL INFORMATION (PUBLIC)**

1. Full name (include any former names used.)

**ANSWER:**

William F. Downes

2. Address. List current place of residence and office address(es).

**ANSWER:**

Office address - 123 West First St., Suite 800, Casper, WY 82601

Home address - 1110 Bella Vista Dr., Casper, WY 82601

3. Date and place of birth.

**ANSWER:**

July 24, 1946 at Boston, Massachusetts

4. Marital Status: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

**ANSWER:**

Date of marriage: September 20, 1977; spouse's name is Catherine L. (Blahnik) Downes. Wife is not presently employed outside the home.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

**ANSWER:**

The University of Houston Law Center, Houston, Texas from August 1971 to August 1974, J.D.; Graduated August 1974.

University of North Texas, Denton, Texas from September 1965 through August 1968, BA.; Graduated August 1968.

Quincy Junior College, Quincy, Massachusetts from September 1964 to May 1965 (transferred to University of North Texas)

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

**ANSWER:**

1968-1973 - United States Marine Corps  
 1/73 to 6/74 - Steak & Ale Restaurant Corp., Dallas, Texas (waiter)  
 10/74 to 2/75 - Holiday Inn, Laramie, Wyoming (waiter)  
 11/74 to 1/75 - Underwriter's Services, Inc. (now defunct) (agent)  
 3/75 to 5/75 - Allied Chemical Corp., Green River, WY (laborer)  
 5/76 to 9/78 - Clark and Downes, Attorneys, Green River, WY (Partner)  
 9/78 to present - Brown & Drew, Casper, WY (Partner)

7. **Military Service:** Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

**ANSWER:**

Branch of service: U.S. Marine Corps;

Dates of service:

September 1968 through August 1971; July 1972 to August 1972; July 1973 to August 1973; (Note: In addition to the aforementioned dates of active duty I have had several brief periods of active duty associated with reserve training activities. None of those periods of active service extended beyond two weeks.)

Highest rank attained: Captain

Serial # 0108594/Social Security #021-36-6399

Present status: Honorably discharged (1980)

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

**ANSWER:**

None

9. **Bar Associations:** List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

**ANSWER:**

American Bar Association  
 Defense Research Institute  
 Defense Lawyers Association of Wyoming (President 1988-1991)  
 Wyoming State Bar (Chairman - Continuing Legal Education Committee (1986-1990; Unauthorized Practice of Law Committee, 1986-1992)  
 Natrona County Bar Association  
 Standing Committee on Local Rules of the United States District Court, District of Wyoming (1992-Present)

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

**ANSWER:**

Member of Defense Lawyers Association which occasionally lobbies the state legislature.

Past Director, and present member of Casper Area Chamber of Commerce  
 Director, St. Vincent DePaul Thrift Store  
 Member, Casper Petroleum Club  
 Member, Casper Country Club  
 Member, Wyoming Athletic Club  
 Member, State Committee for Employer Support of the Guard and Reserve

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

**ANSWER:**

Wyoming 1975, Colorado 1988, U.S. District Court for District of Wyoming 1975, U.S. Court of Appeals, Tenth Circuit, 1986.

12. Published Writings: List the titles, publishers and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

**ANSWER:**

None

13. Health: What is the present state of your health? List the date of your last physical examination.

**ANSWER:**

Excellent; July 2, 1993

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

**ANSWER:**

None



15. **Citations:** If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

**ANSWER:**

Not applicable

16. **Public Office:** State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

**ANSWER:**

On March 10, 1989 I announced my intention to seek the Democratic party nomination for U.S. House of Representatives. A special election had been called because of the resignation of Congressman Dick Cheney. Under Wyoming law, each political party must hold a convention for the purpose of nominating an individual to represent the party in a special election. The Democratic party held its special nominating convention in Casper on March 25, 1989. I obtained 15 delegate votes (out of 60 cast) and was defeated by John Vinich.

17. **Legal Career:**

- (a) Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;
2. whether you practiced alone, and if so, the addresses and dates;
3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

**ANSWER:**

1. I did not serve as a clerk to a judge.
2. I did not practice alone.

## 3. See below:

**Clark and Downes (1975 to 1978)**

I was admitted to practice in Wyoming on May 9, 1975. On May 10th I commenced my association with attorney Dean Clark of Green River, Wyoming. At first, I was employed by Mr. Clark but after a period of one year I became his law partner. Our law firm was known as Clark and Downes. Our mailing address was P. O. Box 590, Green River, Wyoming 82935.

At the time of my association with Mr. Clark he served as the city attorney for Green River and also as school board attorney for School District #2 (Green River), Sweetwater County, Wyoming. Consequently, I served as an assistant city attorney and assistant school board attorney during my association with Mr. Clark.

**Brown & Drew, 123 West First St., Suite 800, Casper, Wyoming 82601, (1978 to present)**

I joined the law firm of Brown & Drew in 1978. Initially, I worked directly under the auspices of Mike Sullivan who was a partner and one of the principal trial lawyers for the firm. Upon Mr. Sullivan's departure from the firm in 1986 I assumed much of the responsibility previously held by him. I became a partner with the firm in 1984 and in 1991 became one of the three managing partners of the firm. I relinquished this position in February, 1994 in anticipation of my nomination.

- (b) 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?
2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

**ANSWER:**

From 1975 until September 1978 my practice was essentially a general practice with emphasis in domestic relations, contracts, business organizations, real estate transactions, municipal law and general trial practice, mostly in my capacity as deputy city attorney and in handling the defense of criminal matters in district court.

From October 1978 until January 1986 my practice was a general civil litigation practice with emphasis in personal injury and product liability defense. I also assisted in the defense of medical malpractice cases. Most of my cases were referred to me by our firm's liability insurance clients and the defendant's included oil companies, drilling companies, manufacturers and physicians.

From January 1986 to the present, 90% of my time has been devoted to the defense of physicians in malpractice cases. On several occasions, I served as plaintiff's counsel in personal injury cases.

- (c) 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

**ANSWER:**

From the period of 1975 to September 30, 1978, I appeared frequently in Green River Municipal Court as a City Prosecutor, primarily in the prosecution of traffic violations and DWUI cases. I also appeared occasionally in State District Court in criminal cases (defense counsel), and domestic relations cases.

With Brown & Drew, from October 1, 1978 through December 31, 1986, I appeared frequently in Federal and State District Courts.

From January 1, 1987 through July 30, 1993, I have appeared frequently in the State and Federal Courts of Wyoming. With the exception of 1992, I have tried an average of two cases a year during this period. However, during that same period, I was assigned the defense of numerous medical malpractice, personal injury and product liability law suits. Some of these suits were resolved by summary judgment and others were settled after protracted discovery. I also appeared in many motion hearings regarding procedural and substantive issues.

From July 1, 1993 to the present I have not had any trials, although I have continued to appear occasionally in motion practice before federal and state courts. I have continued to be frequently involved in litigation, almost exclusively in medical malpractice defense.

2. What percentage of these appearances was in:

- (a) federal courts;
- (b) state courts of record;
- (c) other courts.

**ANSWER:**

- a) Federal courts: approximately 25%
- b) State courts of record: approximately 70%
- c) Other courts: 5%

3. What percentage of your litigation was:

- (a) civil;
- (b) criminal.

**ANSWER:**

- (a) Civil - 95%;
  - (b) Criminal - 5%
4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

**ANSWER:**

I have tried approximately 32 cases in Federal or State District Courts of Wyoming. In ten cases I was sole counsel. I was associate counsel in six and chief counsel in all others.

5. What percentage of these trials was:
- (a) jury;
  - (b) non-jury

**ANSWER:**

- (a) jury           72%
- (b) non-jury     28%

18. **Litigation:** Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
- (a) the date of representation;
  - (b) the name of the court and the name of the judge or judge before whom the case was litigated; and
  - (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

**ANSWER:**

|                        |   |
|------------------------|---|
| <b>Case #1</b>         | United States of America vs. Floyd A. Rummel, Jr.                                     |
| <b>Trial Court:</b>    | U.S. District Court, District of Wyoming<br>Civil Action No. CR78-1018                |
| <b>Judge:</b>          | Honorable Ewing T. Kerr (deceased)  |
| <b>Trial Period(s)</b> | December 11 to December 16, 1978  |
| <b>Co-counsel:</b>     | Ronald L. Brown<br>425 West Mulberry Street, Suite 105<br>Ft. Collins, Colorado 80521 |

303/484-7314  
 and  
 Robert Bloom  
 Last known address: 1 Farragut Square So.  
 Washington, D.C. 20006  
 202-347-1631 (Mr. Bloom is no longer listed in the  
 Washington, D.C. directory and I have had no  
 contact with him in ten years.)

**Opposing  
 Counsel:**

Mr. Charles Graves (formerly the U.S. Attorney for the  
 District of Wyoming)  
 408 West 23rd Street  
 Cheyenne, Wyoming 82001-3519  
 307/638-8885

**Party Repre-  
 sented:**

Floyd A. Rummel

**Nature of  
 Participation:**

Ron Brown was the chief defense counsel in this case, however, I played a major role in the case to include conducting voir dire (which had been permitted in a limited fashion by Judge Kerr), opening statement and, most significantly, cross examination of the principal government witness against Mr. Rummel. I also played a significant role in the preparation of motions and briefs and I worked closely with attorney Bloom in preparation of post-trial motions.

**Summary of  
 Case:**

Mr. Rummel was indicted by a grand jury in 1978. The criminal indictment contained seven counts, five charging violations of 18 U.S.C. Section 656, willful misapplication of bank funds, and two charging violations of 18 U.S.C. Section 215, accepting fees for the making of loans.

**Disposition of  
 the Case:**

The Section 656 counts were dismissed prior to trial. Commencing on December 11, 1978 the defendant was tried by the jury on the remaining Section 215 counts. The jury was unable to reach a unanimous decision and the Court declared a mistrial on December 16, 1978 after having taken under advisement defendant's motion for a judgment of acquittal pursuant to Rule 29.

On January 4, 1979, the Court granted defendant's motion and ordered that judgment of acquittal be entered as to the Section 215 counts of the indictment.

**Significance of  
 the Case:**

This case was one of a series of cases prosecuted by the Justice Department in the late 70's and early 80's

dealing with misapplication of bank funds and other abuse involving lending practices of federally insured banks. The case against Floyd Rummel was a "showcase" trial in this region.

**Case #2:** Lisa Ann Wilson vs. Raja Chandra, M.D.  
**Trial Court:** Second Judicial District, Carbon County, WY  
 Civil Case No. 82C-572  
**Judge:** Honorable Robert A. Hill (deceased)  
**Trial Period(s):** October 3-17, 1983  
**Co-Counsel:** None  
**Opposing Counsel:** Richard Meyer  
 Meyer & Williams  
 350 East Broadway  
 P.O. Box 2608  
 Jackson, WY 83001-2608  
 307733-8300

**Party Represented:** Dr. Chandra

**Nature of Participation:** I was the sole defense counsel for Doctor Chandra and participated in all aspects of the trial.

**Summary of the Case:** The Plaintiffs sued Dr. Chandra for the death of their infant son, Austin Wilson. They contended that the Doctor had failed to diagnose the existence of an infection of the umbilical cord and of the abdominal wall and that, as a proximate cause of his failure to diagnose the existence of the infection, the child had died. The plaintiffs also contended that the doctor was negligent in failing to leave understandable orders with his nursing staff at the hospital and his office.

Defendant, Dr. Chandra, denied the allegations of negligence and asserted that the parents themselves had been negligent in failing to follow routine instructions for umbilical cord cleaning and further that they failed to seek timely medical assistance when the child's abdomen became red and distended.

**Final****Disposition:**

The jury found in favor of the defendant physician and, significantly, determined that 100% of the negligence was attributable to the parents.

**Significance  
of the Case:**

Plaintiff did not appeal and, therefore, its significance to the legal community is limited. However, at that time, Mr. Meyer was a partner of Gerry Spence, and the case had received a great deal of notoriety in the City of Rawlins where it was tried. Of particular concern to the defense was the fact that Dr. Chandra was an immigrant from Madras, India, and he was being sued by the children of prominent local residents. The suggestion that Dr. Chandra had not left "understandable" instructions with medical staff was predicated on the fact that he spoke English with a thick Indian accent.

**Case #3:****Trial Court:**

Husman vs. Batty, Mussel & Batty  
District Court, Fourth Judicial District, Sheridan  
County, WY

**Judge:****Trial Period(s):****Co-Counsel:**

Civil Case No. C38-2-84  
Honorable James Wolfe  
February 11-20, 1987  
None

**Counsel for****Co-defendants:**

Joseph E. Vlastos  
Vlastos, Brooks & Henley  
300 South Wolcott, Suite 320  
P.O. Box 10  
Casper, WY 82602-0010  
307/235-6613

**Opposing****Counsel:**

Frank D. Neville  
Williams, Porter, Day & Neville  
Durbin Center  
145 South Durbin, Suite 300  
Casper, WY 82601-2567  
307/265-0700, and  
Terry W. Mackey  
American National Bank Bldg.  
1912 Capitol Avenue, Suite 400

Cheyenne, WY 82001-3660  
307/637-7841

- Party Represented:** Jake Batty, M.D. and Hugh Batty, M.D. and their professional corporation
- Nature of Participation:** I was the sole defense counsel for Doctors Jake and Hugh Batty and participated in all aspects of the trial.
- Summary of the Case:** Mrs. Husman brought her medical malpractice action against the defendants alleging negligent treatment by the defendants in March of 1982. The plaintiff was seen by Dr. Hugh Batty in the emergency room of the Sheridan County Memorial Hospital on or about March 24, 1982, with complaints of severe abdominal pain. After examination, Dr. Batty determined that a surgical consultation was necessary and defendant, Dr. Howard Mussell, was consulted. Exploratory laparotomy, performed by Dr. Mussell, revealed a twist in the bowel (volvulus), which had caused an obstruction. Unfortunately, the plaintiff had to undergo two subsequent surgical procedures to remove necrotic bowel.
- After these procedures, it was alleged that Dr. Batty prescribed treatment for leg pain in a negligent fashion. Specifically, it was asserted that he had failed to diagnose the possible complication of clotting in the legs. A subsequent angiogram determined that the patient had a total obstruction of the abdominal aorta and a total obstruction of the left femoral artery. These obstructions required another surgical procedure in which Dr. Mussel removed numerous thrombi from both the left and right common iliac artery. Unfortunately, the plaintiff did not regain satisfactory pulses in her left leg and her condition continued to deteriorate until the leg was amputated below the knee on March 31, 1982.
- Among other things, the plaintiff alleged that the application of a hot water bottle by defendant Batty fell below the standard of care and was a proximate cause of the clotting.
- Final Disposition:** The jury found in favor of the defendant physicians.
- Significance of the Case:** This case received notoriety in the Sheridan community because it involved a suit against a father and son physician team and a prominent Sheridan surgeon.



**Case #4:** Hamilton vs. Batty  
**Trial Court:** District Court, Fourth Judicial District, Sheridan County, WY  
 Civil Case No. C-552-86  
**Judge:** Honorable James Wolfe  
**Trial Period(s):** December 10-23, 1987  
**Co-Counsel:** C. John Cotton  
 Law Firm of J. Stan Wolfe  
 500 First Interstate Bank  
 222 South Gillette Avenue  
 Gillette, WY 82716-3743  
 307/682-2151

**Opposing Counsel:**

|   |  |
|---|--|
| John E. Stanfield<br>Smith, Stanfield & Scott<br>515 Ivinson Avenue<br>P.O. Box 971<br>Laramie, WY 82070-0971<br>307/745-7358 | Douglas G. Madison<br>Dray, Madison & Thompson<br>240 East 22nd St.<br>Cheyenne, WY 82001-3799<br>307/634-8891 |
|---|--|

**Party Represented:** Hugh K. Batty, M.D.  
**Nature of Participation:** I served as chief defense counsel for Dr. Batty and I did the vast majority of the direct and cross examination of witnesses, as well as jury selection, opening statement and closing argument.

**Summary of Case:**

Plaintiffs Patsy Hamilton and her son, Kelly, brought this medical malpractice action against Memorial Hospital of Sheridan County and Dr. Hugh Batty, alleging that the defendants had been negligent in the management and care of Mrs. Hamilton, failed to diagnose the presence of a staph infection, and misdiagnosed the disease of sarcoidosis as lymphoma. She further alleged improper management of her diabetic condition. The defendant hospital settled with the plaintiffs prior to trial (counsel for the hospital was Patrick Dixon, Dixon & Despain, 111 West 2nd, Suite 400, Casper, WY 82601-2467, 307/266-2949). Defendant, Dr. Batty, denied all allegations of negligence. He asserted that he had properly managed Mrs. Hamilton's care and specifically in making a preliminary alternative diagnosis of lymphoma after a lymphangiogram showed abnormal findings. He further contended that he promptly advised Mrs. Hamilton of the appropriate diagnosis as soon as subsequent diagnostic tests allowed

him to rule out the presence of lymphoma. He also asserted that he adhered to the standard of care by promptly referring the plaintiff to a Billings, Montana, hospital for follow-up diagnostic tests concerning her leg pain, tests which eventually revealed the presence of staph infection.

**Final  
Disposition:**

The jury found in favor of the defendant physician.

**Significance  
of the Case:**

Again, this case had significance primarily to the parties involved, and no appeal was taken from the verdict. However, the case had local significance because this was the second time in twelve months that Dr. Hugh Batty had stood trial in his home town for medical negligence.

**Case #5:**

**Trial Court:**

Coulton vs. Mark Brann, M.D. & Smith's Food King  
Third Judicial District, Uinta County, WY  
Civil Case No. 88-0176

**Judge:**

Honorable John Troughton

**Trial Period(s):**

(approximately a two-week trial in August of 1989)

**Co-Counsel:**

None

(Counsel for co-defendant was Lisa A. Yerkovich, Ray Quinney & Nebeker, 79 South Main Street, P.O. Box 45385, Salt Lake City, UT 84145-0385, 801/532-7543. Ms. Yerkovich's client settled with the plaintiff prior to trial.)

**Opposing  
Counsel:**

Robert J. Reese  
Reese & Mathey  
160 East Flaming Gorge Way  
P.O. Box 1060  
Green River, WY 82935-1060  
307/875-5175

**Party**

**Represented:**

Mark Brann, M.D.

**Nature of**

**Participation:**

I served as sole defense counsel for Dr. Brann.

**Summary of**

**Case:**

The plaintiff sued Dr. Brann alleging negligence for prescribing phenobarbital from January through September of 1986. She also alleged that the drugstore at Smith's Food King was negligent in filling the phenobarbital prescriptions without consulting Dr. Brann and without questioning the excessive dosage of medication. The plaintiff alleged that the prolonged excess dosage of phenobarbital caused severe physical

symptoms, including mental disorientation, drowsiness, dizziness and severe memory loss. She contended that she lost her job because of the symptoms, and she also contended that treatment of a pre-existing benign brain tumor was complicated by the overdose.

Prior to the trial, Dr. Brann conceded that he overdosed the patient from January to September of 1986 because of an erroneous entry made in the patient's chart following her first office visit. The defendant contended that the phenobarbital dosage could not cause the symptoms described by the plaintiff and that it was not a proximate cause of her alleged injuries.

**Final**

**Disposition:**

The jury found in favor of the defendant physician.

**Significance  
of the Case:**

This case was not reported and it therefore has no significance in Wyoming law. Its significance to the parties was that Dr. Brann had to admit, in the presence of the jury, that he deviated from the standard of care by prescribing excessive dosages of phenobarbital for a prolonged period of time. There was grave concern that this fact alone would cause a jury to overlook the causation defense.

**Case #6:**

**Trial Court:**

Mathern vs. Duvall  
U.S. District Court, District of Wyoming  
Civil Case No. C89-0192

**Judge:**

Honorable Clarence Brimmer

**Trial Period(s):**

April 16-28, 1990

**Co-Counsel:**

David G. Lewis  
P. O. Box 7736  
Jackson, WY 83001  
307/739-8900

**Opposing  
Counsel:**

Gary D. Jensen  
Lynn, Jackson, Shulz & Lebrun, P.C.  
P.O. Box 8250  
Rapid City, SD 57701-8250  
Telephone # 605/342-2592  
and  
Terry W. Mackey  
American National Bank Bldg.  
1912 Capitol Avenue, Suite 400

Cheyenne, WY 82001-3660  
307/637-7841

**Party  
Represented:  
Nature of  
Participation:**

Kirby Duvall, M.D.

I served as chief defense counsel for Dr. Duvall. Although I shared responsibilities for examining witnesses with Mr. Lewis, I cross-examined the plaintiff's principal medical experts and conducted the direct or cross-examination of at least half of the remaining witnesses. I also gave the closing argument.

**Summary of  
Case:**

The plaintiffs sued Dr. Duvall for medical malpractice, alleging that he had improperly performed a rectal examination and subsequent sigmoidoscopy. The plaintiffs also contended that Dr. Duvall was negligent in managing the follow-up care of Mr. Mathern, specifically alleging that he ignored signs of rectal bleeding and that he mis-diagnosed frank rectal cancer as internal hemorrhoids.

Dr. Duvall denied the allegations and insisted that he had properly managed the care of Mr. Mathern. Dr. Duvall also asserted that Mr. Mathern had been negligent in failing to seek medical care for prolonged rectal bleeding.

**Final  
Disposition:**

The jury rendered a defense verdict. Post-trial motions filed by the plaintiff were denied.

**Significance  
of the Case:**

This case was not appealed to the Tenth Circuit and so no case law was established. However, it was significant in that, by the time of the trial, the plaintiff was obviously ill and dying. It was of great concern to the defense that the sympathy factor would override the jury's ability to objectively assess the evidence.

**Case #7**

**Trial Court:**

Wardell vs. McMillan, et al.  
Fifth Judicial District, Park County, Wyoming  
Civil Case No. 16524

**Judge:**

Honorable Hunter Patrick

**Trial Period(s):**

November 13-December 7, 1990

**Co-Counsel:**

Jeffrey C. Brinkerhoff  
Brown & Drew  
123 West First Street, Suite 800  
Casper, WY 82601-2486  
307/234-1000

**Counsel for****Co-Defendants:**

Robert M. Shively  
 Murane & Bostwick  
 201 North Wolcott  
 Casper, WY 82601-1930  
 307/234-9345  
 (attorney for defendant, Stan Peters, M.D.)  
 and  
 Michael K. Davis  
 Redle, Yonkee & Toner  
 319 West Dow Street  
 P. O. Box 6288  
 Sheridan, WY 82801-6288  
 307/674-7451

(Mr. Davis was attorney for defendant, West Park Hospital. The hospital settled prior to trial.)

**Opposing  
Counsel:**

James E. Fitzgerald  
 Fitzgerald Law Offices  
 2108 Warren Avenue  
 Cheyenne, WY 82001-3740  
 307/634-4000

**Party****Represented:**

Jon McMillan, M.D.

**Nature of****Participation:**

I served as chief defense counsel for Dr. McMillan.

**Summary of****Case:**

The plaintiffs sued the defendant physicians and West Park Hospital District. The cause of action arose from the care and treatment of the plaintiffs' minor child, Neil Wardell. It was alleged that Neil Wardell had fallen in a school yard while playing with his playmates. Within minutes he began to feel pain in his back and extremities. He was able to walk to the office of the principal. There he was seen by EMT's who immobilized him and transported him to the West Park Hospital in Cody, Wyoming.

Defendant, Dr. Peters, ordered x-ray films which showed no abnormality of the spinal column and he allowed the collar to be removed from the child's neck. During this period, the child was seen in consultation by Dr. McMillan, a Cody orthopedic surgeon. The child's condition continued to deteriorate and he was transported to a Billings, Montana, hospital and subsequently to Children's Hospital in Denver, Colorado. His condition worsened until he became a quadriplegic.

Plaintiffs contended that the defendants had been negligent in failing to maintain immobilization of the child's neck and that the failure to do so caused a subsequent trauma to the spinal cord resulting in paralysis.

The defendants denied the allegations, contending that they had followed all appropriate protocol for management of this injury. Additionally, the defendants asserted that the spinal cord injury was complete at the time the child suffered his injury in the school yard and that the subsequent events demonstrated only the tragic progression of a serious spinal cord injury.

**Final  
Disposition:**

The jury rendered a defense verdict on December 7, 1990, but the plaintiffs appealed this decision and on December 31, 1992, the Wyoming Supreme Court reversed on the following grounds: The Supreme Court determined that under Wyoming Rules of Civil Procedure a trial court must afford each party an additional peremptory challenge when an alternate juror is seated. The Supreme Court also found that the trial court had erred in instructing the jury that there was a presumption that a doctor or physician had exercised due care. However, the Supreme Court did not reach the issue of whether the error warranted reversal. The Court also found that, under Wyoming's comparative negligence statute, disclosure of settlements is not required. The Supreme Court also addressed several other issues related to discovery and the permissibility of *voir dire* of potential jurors concerning the alleged 'insurance crisis' and 'medical malpractice crisis'. See, *Wardell v. McMillan*, 844 P.2d 1052 at 1065 (Wyo. 1992).

The case was remanded for a trial, consistent with the Supreme Court's findings. Subsequently, the case settled for an undisclosed sum.

**Significance  
of the Case:**

This case involved substantial issues on appeal which will have far-reaching repercussions in Wyoming.

**Case #8:  
Trial Court:  
Judge:**

Shepperson vs. Christensen and Vigneri, M.D.'s  
Seventh Judicial District, Natrona County, Wyoming  
Civil Case No. 65433  
Honorable Dan Spangler

**Trial Period(s):** January 28-February 5, 1991  
**Co-Counsel:** David G. Lewis  
P. O. Box 7736  
Jackson, WY 83002  
307/733-8900

**Opposing Counsel:** Bryan E. Sharratt  
Sharratt & Sharratt P.C.  
9th & Water Streets  
P.O. Box 159  
Wheatland, WY 82201-0159  
307/322-9211

**Party Represented:** Kent Christensen and Joseph Vigneri, M.D.'s  
**Nature of Participation:** I served as chief defense counsel.

**Summary of Case:**

The plaintiff filed suit alleging negligence in failing to diagnose cancer of her larynx. She contended that Dr. Christensen had negligently failed to identify the presence of cancer in his examination of her larynx, and that, as an a proximate cause, she was required to have more radical surgery, resulting in the loss of her natural voice. She also claimed disfigurement, loss of enjoyment of life, medical expenses and loss of future income.

The defendant physicians denied the allegations of negligence. They contended that Dr. Christensen had exercised reasonable care in performing his examination and that the cancer, which may have been present at that time, was difficult to diagnose because of its location. Further, they asserted that even if the cancer had been diagnosed months earlier, the plaintiff would have undergone the surgical removal of her larynx.

**Final Disposition:**

Dr. Vigneri was granted a directed verdict at the close of plaintiff's case in chief, and, subsequently, the jury granted a defense verdict on behalf of Dr. Christensen on February 5, 1991.

**Significance of the Case:**

This case was not reported and therefore has no general significance in Wyoming law. However, the case presented a grave challenge to the defense because it was necessary for the defense to concede that, in all likelihood, the cancer of the larynx was present at the

time Dr. Christensen performed his first laryngoscopy procedure. Also, the issue of staging of the cancer and the growth of cancer cells were significant issues requiring substantial medical expert testimony.

**Case #9**

Bedonie vs. I. Laurence Gee, M.D., Lander Medical Clinic, P.C., D. R. Phipps, M.D., H. D. Thomason, M.D., P.R. Gilbertson, M.D., L. G. Gill, III, M.D., D. A. Gullickson, M.D., H. B. Tipton, M.D., and Edward Dowie, P.A.

**Trial Court:** United States District Court, District of Wyoming  
Civil Action No. 91-CV-1008-B

**Judge:** Honorable Clarence Brimmer

**Trial Period(s):** August 26, 1991 to September 12, 1991

**Counsel for  
Co-Defendant:** Robert M. Shively

**Opposing  
Counsel:** Jack Gage, P. O. Box 1223, Cheyenne, WY 82003  
307/632-1112

**Parties Represented:** Lander Medical Clinic, P.C., Doctors Gee, Phipps, Thompson, Gilbertson, Gill, Gullickson, and Tipton and Edward Dowie, P.A.

**Nature of  
Participation:** I served as chief defense counsel for all the defendants except Dr. Laurence Gee

**Summary of  
Case:**

The plaintiff charged medical negligence against Ed Dowie, Doctors Gee, Phipps, Thomason, Gilbertson, Gill, Gullickson, Tipton and The Lander Medical Clinic stemming from the fact that the plaintiff's child, Andrea Bedonie, suffered from what plaintiffs alleged was an unrecognized case of spinal meningitis. Plaintiff asserted that Dr. Gee and, subsequently, Ed Dowie an employee of the Lander Medical Clinic, Dr. Phipps and Dr. Lang failed to recognize and timely intervene during the initial stages of the spinal meningitis infection.

The child suffered seizures and was admitted to the emergency room of the Lander Valley Regional Medical Center. She was subsequently transferred to Children's Hospital. As a consequence of her illness, the child was paralyzed and suffered from severe mental disorders which caused mental retardation. The defendants generally denied the allegations and asserted that the plaintiff had been negligent in the management of her child's care and had delayed in seeking medical care



and, instead, sought the services of an Indian Medicine Man.

**Disposition of  
Case:  
Significance  
of the Case:**

The jury rendered a defense verdict.

This case was not appealed and so the case will have no long-term implications. However, it was the first time that I know of that a Federal District Judge in Wyoming had to deal with the question of the admissibility of evidence concerning plaintiff's use of the drug, payote. The defendants had contended that the issue was relevant to the question of negligence on the part of the mother, who had admitted in her discovery deposition that she had used payote as part of a religious ritual in praying for her daughter's recovery. Judge Brimmer determined that it was not permissible inquiry by the defendants and refused to allow any reference to the use of payote during trial.

**Case #10:**

**Trial Court:**

Kerr McGee vs. ANR  
Eighth Judicial District, Converse County, Wyoming  
Civil Case 11117

**Judge:**

Honorable Gary Hartman

**Trial Period(s):**

June 7-28, 1993

**Co-Counsel:**

Craig Newman  
Brown & Drew  
123 West First Street, Suite 800  
Casper, WY 82601-2486  
307/234-1000

**Kerr McGee's  
In-house  
Counsel:**

Jack Brandon  
Chris Tytanic  
Kerr McGee Corporation  
Kerr McGee Center  
Oklahoma City, OK 73125  
405/270-2851

**Opposing  
Counsel:**

Michael S. Yauch  
ANR Production Company  
Coastal Tower, Suite 882  
9 Greenway Plaza  
Houston, TX 7704  
713/877-6849  
and  
J. Scott Burnworth

Petroleum Building  
 111 West 2nd Street, Suite 400  
 Casper, WY 82601-2467  
 307/266-2949  
 and  
 Cameron S. Walker  
 Schwartz, Bon, McCrary & Walker  
 Conroy Building  
 141 South Center, Suite 505  
 Casper, WY 82601-2588  
 307/235-6681

**Party****Represented:**

Kerr McGee Corporation

**Nature of****Participation:**

I was responsible for either the direct or cross-examination of approximately half of the witnesses presented at trial. I also argued pre-trial motions and motions during the trial. Also, I participated in closing argument.

**Summary of****Case:**

Plaintiff, Kerr McGee Corporation, on behalf of working interest owners in the Powell Pressure Maintenance Unit, Converse County, Wyoming, filed this lawsuit, asserting claims for trespass, conversion, breach of contract, bad faith and punitive damages.

The plaintiff contended that for a period of approximately two years, defendant had drained oil and associated hydrocarbons from the Powell Pressure Maintenance Unit. Kerr McGee Corporation is the designated operator of an aggregation of individually-owned oil and gas leases for the conduct of enhanced recovery operations in the first bench of the First Frontier formation, (the aggregation of leases is known as the Powell Pressure Maintenance Unit). Kerr McGee contended that the improper drainage of the unit occurred when ANR drilled to completion a well in the second bench of the First Frontier and, in the process of completing the well, fracture-treated it in such a way as to cause extensive communication between the two productive zones (the second bench underlies the first bench unitized formation and is separated only by a 50' sandy shale formation). The plaintiff contended that the fracture treatment performed on the well was far in excess of what was appropriate and that the materials used for the fracture treatment, intermediate strength proppant, or ISP, allowed the created fractures to remain open, thus permitting hydrocarbons to flow from the higher pressure zone unitized formation into the

second bench. The plaintiff also contended that subsequent tests performed on ANR's well (the South Powell Federal 2-1) confirmed this communication between the two zones. Kerr McGee alleged that as a consequence of this communication between the first and second bench, five to eight million dollars of the unitized fields' hydrocarbons were improperly converted by defendant.

**Final****Disposition:**

On December 14, 1993 Judge Hartman granted judgment for the plaintiff in the amount of \$6,038,075.02. Post trial motions by defendant are pending.

**Significance  
of the Case:**

This case is significant, in part, because the Wyoming Supreme Court had earlier issued a decision affirming the findings of the Wyoming Oil & Gas Commission, which had ordered the shut-in of the South Powell 2-1 because it was causing irreparable harm to the unitized formation (the PPMU). As a consequence, the trial judge ordered that the defendant was collaterally estopped from offering a defense, which would have the effect of questioning the essential findings of the Oil and Gas Commission (the Wyoming Supreme Court decision is entitled *ANR Production v. Wyoming Oil & Gas Comm.*, 800 P.2d 492 (Wyo. 1990).

19. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

**I. Significant litigation which did not progress to trial:****Case #1:**

*Murray vs. Pacificorp, et al.*,  
Civil Action No. C86-0236

**Court:**

United States District Court, District of Wyoming

**Nature of my  
participation:**

My partner, Mark W. Gifford, and I served as plaintiff's counsel.

**Factual  
background:**

On June 10, 1986 Nicholas J. and Rilla K. Murray sued the Pacificorporation alleging negligence by the defendant in the operation of the Dave Johnston Power

Plant in Converse County, Wyoming. Specifically, the plaintiffs asserted that the pulverizer unit of the plant was being operated in a manner which the defendants knew or should have known posed imminent risk of serious injury to those working in the vicinity of it.

Plaintiff Nicholas Murray had been injured on June 3, 1985 when, as an employee of a subcontractor named Foster Wheeler, he was severely burned when the pulverizer caught fire and exploded. The explosion was caused by coal dust build-up in the primary air fan of the pulverizer. Methane flames emanating from the inboard side of the primary air fan was the source of the ignition.

Mr. Murray sustained burns over 30% of his body with 12-15 percent of those burns being third degree burns of the dorsum of both hands and forearms. He also suffered second degree burns to the should, back, neck, face and ears.

**Resolution:** After many months of discovery, the Pacificorporation agreed to settle this case. The amount of the settlement is confidential. The settlement agreement was reached in February, 1987.

**Case #2:** *Dehnert vs. CNA Insurance Company and Larry Lawton*, Civil Action No. 23925

**Court:** Ninth Judicial District Court, Fremont County, Wyoming

**Nature of participation:** I served as chief plaintiffs' counsel.

**Factual background:** The plaintiffs, Eugene F. Dehnert and Dehnert, Richardson and Bensman, P.C., brought this action against their malpractice insurance company, CNA, asserting that the insurance company had exercised bad faith in the manner in which it handled the defense of a suit against the plaintiffs. Mr. Lawton, the defense attorney in the prior lawsuit, was sued for legal malpractice.

In 1983 Arrow Sprinklers, Inc., a Utah Corporation, sued Mr. Dehnert on theories of negligence and intentional interference with a contractual relationship. Mr. Dehnert, it was alleged, had wrongfully interfered

with a contract between Arrow Sprinklers and Fremont County School District #1 when Mr. Dehnert had recommended the cancellation of a contract with Arrow Sprinklers for the installation of a substantial sprinkler system. Mr. Dehnert and the architectural firm asserted as their defense their obligation to advise their client, the School District, concerning deficiencies they had observed during the construction phase of the sprinkler system.

CNA Insurance Company, after obtaining the dismissal of negligence claims covered by its liability insurance policy, issued a reservation of rights letter with respect to the remaining claim prior to the commencement of the jury trial. After the entry of an adverse verdict of \$400,000, CNA refused to perfect the appeal, thus forcing the defendants into bankruptcy. It was at this point that I became counsel for the defendants.

With the assistance of my partner, Kenneth Barbe, we perfected an appeal to the Wyoming Supreme Court. On August 29, 1985 the Supreme Court held that sufficient evidence existed to find that the architect and his firm acted without malice or bad faith when they advised the school board to terminate its contract with Arrow Sprinklers, despite their preliminary approval in the planning stage of the installation of the system.

The Court stated that an architect who acts within the scope of his contractual obligation to protect the interests of his principal cannot be held liable for intentional interference with a contract relationship if he advises his principal to terminate a contractor's performance, unless there is clear finding of malice or bad faith. Since no malice or bad faith were found in this case, the Supreme Court reversed the judgment of the District Court and remanded the case for entry of a judgment consistent with its opinion. See *Dehnert vs. Arrow Sprinklers, Inc.*, 705 P.2d 846 (Wyo. 1985).

After our successful appeal, I sued CNA and Mr. Lawton. As against CNA, the plaintiffs asserted an action based upon breach of contract by CNA for failing to honor the provisions of its insurance policy. Elements of the claim included CNA's breach of its duty to adequately defend, including its failure to appeal. Plaintiffs also asserted a breach of the implied covenant of good faith and fair dealing and for bad faith. Mr. Lawton was sued for legal malpractice.

**Resolution:** The case was settled in 1988 on terms which remain confidential.

**Case #3:** *Katherine I. Wimpy-Payne , et al. vs. David F. Crowder, M.D., Davol and C. R. Bard, et al.*  
Civil Action No. 17793

**Court:** Wyoming Sixth Judicial District Court, Campbell County, Wyoming

**Nature of participation:** I served as a chief defense counsel for defendants Davol, C. R. Bard and Bard Access Systems.

**Factual background:** On June 30, 1992, Plaintiffs filed their first amended complaint. The complaint asserted a claim of negligence against defendant, Dr. Crowder, for the manner in which in inserted a Groshong valve and catheter in the right ventricle of Mr. Wimpy's heart. The complaint asserted that on April 26, 1989, Dr. Crowder undertook to remove the Groshong valve and catheter and, during the process, the catheter transected and a dangerously large piece of the catheter was left in the subclavian vein and the right atrium of the plaintiff's heart.

The plaintiffs asserted that leaving the fragmented catheter in the venous system of the plaintiff unreasonably increased the risk of harm to Mr. Wimpy and, as a direct and proximate result, he died of multiple organ failure, including right heart failure and pulmonary artery thrombo-emboli on July 1, 1990.

In addition to his claim of medical negligence, which had been asserted in its initial complaint filed on April 24, 1991, the plaintiffs now brought a cause of action against Bard Access Systems, Inc. and its parent companies, C. R. Bard and Davol, Inc., asserting claims of strict liability and negligence in the design and manufacture of the Groshong valve and catheter.

**Resolution:** This case was settled on March 29, 1993 for a sum of money which remains confidential.

**Case #4:** *Neville, et al. vs. Fogarty, et al.*  
Civil Action No. 8584

**Court:** Ninth Judicial District Court, Teton County, Wyoming

**Nature of participation:** I served as chief defense counsel for defendant James J. Avakian in my capacity as Special Assistant Attorney General for the State of Colorado.

**Factual background:** This was a medical malpractice action brought by Susan M. Neville in her capacity as personal representative of the estate of Charles D. Walker, her deceased husband, and her minor children, Jennifer Walker and Shawn D. Walker. In addition to Dr. Fogarty, plaintiffs also sued James J. Avakian, M.D. Dr. Avakian, at all relevant times, had been serving in a locum tenens capacity with Dr. Fogarty in Jackson Hole, Wyoming. During this locum tenens service Dr. Avakian was still a resident in pathology at the University of Colorado Health Sciences Center in Denver. When the suit was filed the State of Colorado agreed to accept a tender of defense on behalf of Dr. Avakian. The Attorney General of Colorado appointed me as a Special Assistant Attorney General to defend the State's interest in this suit.

In her complaint, the plaintiff asserted that defendant, Dr. Avakian, committed medical negligence when he allegedly failed to diagnose a malignant melanoma.

Mr. Walker had a mole resected from his back on May 10, 1985 and the tissue had been sent for interpretation by Dr. Bill Fogarty. Dr. Fogarty was not present at the time the tissue was submitted and, instead, the interpretation was made by Dr. Avakian. Dr. Avakian made a pathology slide of the tissue and on May 13, 1985 interpreted the slide to show a benign nevus.

Mr. Walker had no additional problems until late summer 1989 when he began to experience increasing discomfort on the right side of his upper extremity extending from the shoulder to the distal forearm. Subsequent examinations and exploratory surgery revealed the presence of a metastatic melanoma to the right axilla. The cancerous lesion was totally excised but, unfortunately, metastasis to other organs of the body had already taken place. Despite aggressive oncological treatment, Mr. Walker died in January of 1990.

We defended the case by asserting that Dr. Avakian's misread of the tissue was irrelevant because the surgeon

who had excised the lesion had taken the entire cancerous tissue--the exact procedure which would have been followed had Dr. Avakian diagnosed malignancy. Further, we contended that, since medical science had not yet developed any other acceptable method of treatment for malignant melanoma except total excision, no follow-up treatment could have arrested the progression of this virulent cancer.

**Resolution:** The case proceeded to trial in August of 1993. However, after three days of jury selection, a confidential settlement was reached between the plaintiffs and all of the defendants.

## II. Other significant legal activities:

1. Member of the Standing Committee on Local Rules for the U.S. District Court, District of Wyoming, (1992-Present). During my tenure the committee has rewritten the local rules of the U.S. District Court for the District of Wyoming for civil and criminal cases. These rules implemented a plan to meet the requirements of the Civil Justice Reform Act of 1990, which required each federal district to institute a civil justice expense and delay reduction plan. The revised rules became effective on December 2, 1992. Subsequently, the committee further refined the rules and issued its revised local rules on November 30, 1993.
2. Former Member Wyoming State Bar Continuing Legal Education Committee (Chairman 1988-92). The committee was charged with the responsibility of organizing all of the State Bar's continuing legal education programs.
3. Member Defense Lawyers Association of Wyoming (President 1989-91). When I became president of the Defense Lawyers Association, the organization had almost ceased to exist. It had approximately thirty dues paying members and had met infrequently during the previous four years. It had never offered a convention or CLE program and it had never had a registered lobbyist to represent the association at the State Legislature. During my tenure, membership was increased to approximately 110 lawyers. Annual conventions, including CLE programs were instituted. In addition, a newsletter was published and a brief bank was established. The services of a non-paid registered lobbyist and a paid part-time executive director were obtained.
4. Wyoming Intergovernmental Judicial Study Commission (1989). In April 1989, the commission, formed by an agreement between the Governor, the Wyoming Supreme Court and the Wyoming State Bar, with representation from the Wyoming Legislature, undertook a one



year study which addressed the following issues: judicial districting; equalization of case loads; centralization of judicial administration; judicial compensation; and improving court efficiency. The twelve member commission held meetings throughout the State of Wyoming compiling information from the executive, legislative and judicial branches and also seeking input from the general public.

The committee issued its final report during the 1990 legislative session. Although most of the reform measures recommended by the commission in its February 1990 report were not adopted by the legislature, the commissions efforts did lead to substantial increases in judicial salaries, which were enacted during the 1991 legislative session.

**II. FINANCIAL DATA AND CONFLICT OF INTEREST**

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

**ANSWER:**

The only entity with which I have a continuing financial interest is my law firm, Brown & Drew. The firm participates in the American Bar Retirement Association's Retirement Plan, administered by the State Street Bank & Trust of Boston, Plan 001. My retirement account is 100% vested.

Article VIII, §3, of the Brown & Drew Partnership Agreement provides that a partner who withdraws from the firm is entitled only to that portion of the annual partnership net income in the year of withdrawal. The withdrawing partner's fractional share is to be determined as of the date of withdrawal, with appropriate adjustments and allocations made for fees not yet received, uncollectible accounts and expenses incurred. Once the fractional share is determined, the departing partner is paid that amount, together with the book value of his or her capital account. The executive committee of the firm can select the method of payment provided that payment is completed within two years of the date of the partner's departure. I would request an immediate payment of all cash due me under the partnership agreement so as to bring to an end all financial ties with the firm as soon as possible.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

**ANSWER:**

In the event any conflict or potential conflict arises, I would immediately inform counsel of the nature of the conflict and take whatever steps are necessary to resolve the conflict in accordance with the guidelines of the *Code of Judicial Conduct*. I currently am not aware of any potential conflicts of interest.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

**ANSWER:** No

4. List sources and amount of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

**ANSWER:** See Financial Disclosure Report attachment.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

**ANSWER:** See attached asset and liability statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

**ANSWER:**

Yes, I have worked in numerous political campaigns as a volunteer, however, only in the following campaigns did I have a formal role to play:

1. Presidential campaign of Governor Terry Sanford (1972 - Democratic presidential candidate). I worked for Governor Sanford's campaign as an advance man in Iowa, Oklahoma and Texas from the middle of May 1972 until the end of June. My function was to meet with delegates and would-be delegates to the National Convention in their home towns. I also assisted Bob Wise, now congressman from West Virginia in preparation for Governor Sanford's appearance at the Oklahoma Democratic Party Convention in Oklahoma City in June, 1972.

2. Co-chair of the Sweetwater County (Wyoming), Carter for President Campaign Committee (1976); and, Co-chair of the Teno Roncolio (U.S. Congressman) re-election committee (1976).

As co-chair of the above campaigns in Sweetwater County, Wyoming, I was responsible for maintaining the campaign office and for running an aggressive door-to-door campaign for the candidates. I also organized a telephone calling campaign and arranged rides for the elderly to the poles on election day.

3. Committee To Elect Mike Sullivan Governor (1986)

I was one of four or five individuals charged with the responsibility of managing Governor Sullivan's first campaign for public office. This task

involved fund raising, assisting in the management of the campaign office, speaking for the candidate when he was unavailable to do so, issuing press releases, coordinating campaign activities with other candidates for public office, advising the candidate on certain political issues of significance and coordinating activities of volunteer workers.

Finally, I served as a member of the Governor-elect's transition team. My chief function was to review qualifications of applicants for administrative posts within the new administration and to make recommendations to the Governor-elect.

4. 1990 Sullivan Re-election Campaign effort.

My role in this campaign was not as extensive as in the 1986 campaign, but I still assisted the campaign in fund-raising efforts and by speaking on behalf of the Governor at campaign rallies and before civic organizations. I also served in an informal capacity to the Governor, offering advice on political issues of significance to the campaign.

5. 1992 Presidential Campaign

I assisted the Wyoming Clinton Campaign by coordinating an effort to encourage supporters to write letters to the editors of local newspapers, responding to Republican attacks and supporting the Clinton platform. I also served as a spokesperson, along with Bryan Sharratt, on the occasion of Vice President Quayle's campaign visit to Casper in late October, 1992.

### III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

**ANSWER:**

I have tried to meet this obligation by my service on the boards of Meals on Wheels, St. Vincent DePaul Thrift Store, The City of Casper Housing Advisory Commission and the Central Wyoming Counseling Center. I attended as many of the meetings of the boards that I could. The Meals on Wheels and Counseling Center boards met on a monthly basis and I attended those meetings routinely. Less frequent were the meetings of the Casper Housing Advisory Commission. That commission met usually when there was a specific issue to address, such as to make recommendations to the City Council concerning allocation of federal funds for various housing projects. The St. Vincent DePaul board meets infrequently, usually at least twice a year, and I attend those meetings and assist in establishing policy for the store's operations.

The most significant role I played in the Central Wyoming Counseling Center board was to assist in the establishment of a low-cost rehabilitation center for drug and alcohol abusers.

My service on the Meals on Wheels board required my attendance at the monthly board meetings as well as my involvement in sub-committee assignments and fund raising efforts.

In the last five years, I have also represented three individuals on minor legal matters without charge to them for my services. I have also expressed a willingness to accept referrals from Legal Aid Services.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates--through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?

**ANSWER:**

Until 1991 the Casper Country Club, of which I've been a member since 1989, operated under by-laws which did not grant women voting rights as

members. A group of members began plans to file suit against the club to force a change in this policy. I became involved in an effort to persuade the club's board of directors to support amendments to the by-laws which would grant women equal rights, to include providing for comparable tee times. I also enlisted the support of other active members in this effort. One of those individuals is Ed Boland (3840 Alpine Dr., Casper, WY 82601, Telephone 307/234-4221). At the 1991 annual meeting the voting members overwhelmingly approved the new by-laws, thus putting an end to the discriminatory practices.

To my knowledge none of the other organizations with which I am associated discriminate on the basis of sex, race or religion. At the time I joined the Casper Country Club I was unaware of the discrimination on the basis of sex.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

**ANSWER:**

There is no selection commission in this jurisdiction for recommending candidates. Soon after the election of President Clinton, Governor Sullivan and Secretary of State Kathy Karpan issued statements encouraging interested individuals to apply for various posts, including U. S. District Judge. To my knowledge, a number of lawyers applied for the present vacancy. While there was no formal application process, each individual was encouraged to submit a letter to the Governor and Secretary of State and attach whatever information they deemed relevant to their expression of interest in the appointment. There was no formal interviewing process, however, I am advised that the Governor did speak with a number of individuals who expressed interest in the nomination. I also know that Secretary of State Kathy Karpan spoke with interested individuals on an informal basis, myself included. The Governor and Secretary of State consulted with other Democratic party leaders before deciding upon applicants for U. S. District Judge, U. S. Attorney and U. S. Marshal.

After my name was forwarded to the White House I was interviewed by lawyers from the Department of Justice and White House. I have also been investigated by the FBI and ABA. In conjunction with the investigation I was interviewed by an FBI agent and an ABA investigator.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

**ANSWER:** No

5. Please discuss your views on the following criticism involving "judicial activism":

The role of the federal judiciary within the federal government, and within society, generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

**ANSWER:**

In general, I believe that it is the function of a trial judge to apply the law in accord with legislative intent, and to interpret such law with due regard for judicial precedent. In my judgment, it is not the role a trial judge to be a lawmaker.

It must also be recognized that the role of a federal district judge is not always as simple as applying a rule of law. Often, there are conflicting rules of law which may or may not apply to a given factual situation. Sometimes, critics of the federal courts define the legitimate exercise of judicial discretion as activism when the decision of the court does not suit them. "Judicial activism" is often in the eyes of the beholder. Yet, judicial discretion requires restraint. A federal judge must be mindful of the fact that the doctrine of separation of powers applies to the judiciary as well as to the other branches of government.

NO-10  
Rev. 1/83

## FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics  
Reform Act of 1989, Pub. L. No.  
101-194, November 30, 1989  
(5 U.S.C.A. App. 5, §§101-112)

|   |  |  |
|---|--|--|
| 1. Person Reporting (Last name, first, middle initial)<br>Downes, William F.  | 2. Court or Organization<br>U.S. District Court,<br>District of Wyoming  | 3. Date of Report<br>5/5/94            |
| 4. Title (Article III judges indicate active or<br>senior status; Magistrate Judges indicate<br>Full- or part-time)<br>U.S. District Judge  | 5. Report Type (check appropriate type)<br><input checked="" type="checkbox"/> Nomination, Date <u>5/5/94</u><br><input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final | 6. Reporting Period<br>1/1/93 - 5/5/94 |
| 7. Chambers or Office Address<br>123 West First Street, Suite 800<br>Casper, WY 82601   | 8. On the basis of the information contained in this Report, it<br>is, in my opinion, in compliance with applicable laws and<br>regulations _____<br>Reviewing Officer Signature _____                           |  |
| IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts,<br>checking the NONE box for each section where you have no reportable information. Sign on last page. |  |  |

## I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

POSITIONNAME OF ORGANIZATION/ENTITY

NONE (No reportable positions)

Partner

Law Offices of Brown Drew

## II. AGREEMENTS. (Reporting individual only; see p. 8-9 of Instructions.)

DATEPARTIES AND TERMS

NONE (No reportable agreements)

Brown Drew Partnership and William F. Downes as Partner

(See attached copy)

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

DATESOURCE AND TYPEGROSS INCOME

(Honorary only)

(yours, not spouse's)

NONE (No reportable non-investment income)

1

Brown Drew - Partner's share of income

\$ 124,102

2

\$

3

\$

4

\$

5

\$



## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Downes, William F.

Date of Report

5/5/94

## IV. REIMBURSEMENTS and GIFTS - transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

SOURCEDESCRIPTION

| <input type="checkbox"/> NONE (No such reportable reimbursements or gifts) |  |
|--|--|
| 1 Exempt   |  |
| 2  |  |
| 3  |  |
| 4  |  |
| 5  |  |
| 6  |  |
| 7  |  |
| 8  |  |

## V. OTHER GIFTS. (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp.15-16 of Instructions.)

SOURCEDESCRIPTIONVALUE

| <input type="checkbox"/> NONE (No such reportable gifts) |  |    |
|--|--|----|
| 1 Exempt   |  | \$ |
| 2  |  | \$ |
| 3  |  | \$ |
| 4  |  | \$ |

## VI. LIABILITIES. (Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp.16-18 of Instructions.)

CREDITORDESCRIPTIONVALUE CODE\*

| <input type="checkbox"/> NONE (No reportable liabilities) |                              |  |   |
|---|------------------------------|--|---|
| 1 American Bar Association                                | Loan from retirement account |  | J |
| 2   |                              |  |   |
| 3   |                              |  |   |
| 4   |                              |  |   |
| 5   |                              |  |   |
| 6   |                              |  |   |
| 7   |                              |  |   |

\* VALUE CODES: J = \$15,000 or less    K = \$15,001 to \$50,000    L = \$50,001 to \$100,000    M = \$100,001 to \$250,000  
 N = \$250,001 to \$500,000    O = \$500,001 to \$1,000,000    P = More than \$1,000,000

FINANCIAL DISCLOSURE REPORT (cont'd)

|  |                          |
|--|--------------------------|
| Name of Person Reporting<br>Downes, William F. | Date of Report<br>5/5/94 |
|--|--------------------------|

VII. INVESTMENTS and TRUSTS -- income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

| A.<br>Description of Assets<br>(including trust assets)<br><br>Indicate, where applicable, owner of the asset by using the parenthetical (J) for joint ownership of reporting individual and spouse, (S) for separate ownership by spouse, (DC) for ownership by dependent child.<br><br>Place "(X)" after each asset exempt from prior disclosure. | B.<br>Income during reporting period |                      | C.<br>Gross Value at end of reporting period |                         | D.<br>Transactions during reporting period |                     |                      |                     |   |
|---|--------------------------------------|----------------------|--|-------------------------|--|---------------------|----------------------|---------------------|---|
|   | (1)                                  | (2)                  | (1)  | (2)                     | If not exempt from disclosure              |                     |                      |                     |   |
|   | AMT. Code (A-E)                      | Type (S, D, J, Int.) | Value Code (J-F)                             | Value Method Code (Q-W) | (1) Type (C, S, D, J, Int., M, R, W, X)    | (2) Dates Month-Day | (3) Value Code (J-F) | (4) Gain Code (A-E) | (5) Identity of Buyer/Seller (if private transaction) |
| <input type="checkbox"/> NONE (No reportable income, assets, or transactions)   |                                      |                      |  |                         |  |                     |                      |                     |   |
| 1 Law Office of Brown Drew Pts  | G                                    |                      | J  | U                       |  |                     | Exempt               |                     |   |
| 2 ABA Retirement Plan   |                                      | None                 | M  | T                       |  |                     | Exempt               |                     |   |
| 3 Public Svc. Co. of Colo. (J)  | A                                    | Div                  | J  | T                       |  |                     | Exempt               |                     |   |
| 4 Great Hall Rocky Mtn. TR (S)  |                                      | None                 | J  | T                       |  |                     | Exempt               |                     |   |
| 5 Goldman Sachs Equity (S)  |                                      | None                 | J  | T                       |  |                     | Exempt               |                     |   |
| 6 Great Hall Rocky Mtn. TR  |                                      | None                 | J  | T                       |  |                     | Exempt               |                     |   |
| 7 Great Hall Fund   |                                      | None                 | J  | T                       |  |                     | Exempt               |                     |   |
| 8 Great Hall Fund   |                                      | None                 | J  | T                       |  |                     | Exempt               |                     |   |
| 9 PEPSICO, Inc.   |                                      | None                 | J  | T                       |  |                     | Exempt               |                     |   |
| 10 Goldman Sachs Equity   |                                      | None                 | J  | T                       |  |                     | Exempt               |                     |   |
| 11  |                                      |                      |  |                         |  |                     |                      |                     |   |
| 12  |                                      |                      |  |                         |  |                     |                      |                     |   |
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| 17  |                                      |                      |  |                         |  |                     |                      |                     |   |
| 18  |                                      |                      |  |                         |  |                     |                      |                     |   |
| 19  |                                      |                      |  |                         |  |                     |                      |                     |   |
| 20  |                                      |                      |  |                         |  |                     |                      |                     |   |

1 Income/Gain Codes: A-\$1,000 or less; B-\$1,001 to \$2,500; C-\$2,501 to \$5,000; D-\$5,001 to \$10,000; E-\$10,001 to \$25,000; F-\$25,001 to \$50,000; G-\$50,001 to \$100,000; H-\$100,001 to \$250,000; I-\$250,001 to \$500,000; J-\$500,001 to \$1,000,000; K-\$1,000,001 to \$2,500,000; L-\$2,500,001 to \$5,000,000; M-\$5,000,001 to \$10,000,000; N-\$10,000,001 to \$25,000,000; O-\$25,000,001 to \$50,000,000; P-\$50,000,001 to \$100,000,000; Q-\$100,000,001 to \$250,000,000; R-\$250,000,001 to \$500,000,000; S-\$500,000,001 to \$1,000,000,000; T-\$1,000,000,001 to \$2,500,000,000; U-\$2,500,000,001 to \$5,000,000,000; V-\$5,000,000,001 to \$10,000,000,000; W-\$10,000,000,001 to \$25,000,000,000; X-\$25,000,000,001 to \$50,000,000,000; Y-\$50,000,000,001 to \$100,000,000,000; Z-\$100,000,000,001 to \$250,000,000,000; AA-\$250,000,000,001 to \$500,000,000,000; AB-\$500,000,000,001 to \$1,000,000,000,000; AC-\$1,000,000,000,001 to \$2,500,000,000,000; AD-\$2,500,000,000,001 to \$5,000,000,000,000; AE-\$5,000,000,000,001 to \$10,000,000,000,000; AF-\$10,000,000,000,001 to \$25,000,000,000,000; AG-\$25,000,000,000,001 to \$50,000,000,000,000; AH-\$50,000,000,000,001 to \$100,000,000,000,000; AI-\$100,000,000,000,001 to \$250,000,000,000,000; AJ-\$250,000,000,000,001 to \$500,000,000,000,000; AK-\$500,000,000,000,001 to \$1,000,000,000,000,000; AL-\$1,000,000,000,000,001 to \$2,500,000,000,000,000; AM-\$2,500,000,000,000,001 to \$5,000,000,000,000,000; AN-\$5,000,000,000,000,001 to \$10,000,000,000,000,000; AO-\$10,000,000,000,000,001 to \$25,000,000,000,000,000; AP-\$25,000,000,000,000,001 to \$50,000,000,000,000,000; AQ-\$50,000,000,000,000,001 to \$100,000,000,000,000,000; AR-\$100,000,000,000,000,001 to \$250,000,000,000,000,000; AS-\$250,000,000,000,000,001 to \$500,000,000,000,000,000; AT-\$500,000,000,000,000,001 to \$1,000,000,000,000,000,000; AU-\$1,000,000,000,000,000,001 to \$2,500,000,000,000,000,000; AV-\$2,500,000,000,000,000,001 to \$5,000,000,000,000,000,000; AW-\$5,000,000,000,000,000,001 to \$10,000,000,000,000,000,000; AX-\$10,000,000,000,000,000,001 to \$25,000,000,000,000,000,000; AY-\$25,000,000,000,000,000,001 to \$50,000,000,000,000,000,000; AZ-\$50,000,000,000,000,000,001 to \$100,000,000,000,000,000,000; BA-\$100,000,000,000,000,000,001 to \$250,000,000,000,000,000,000; BB-\$250,000,000,000,000,000,001 to \$500,000,000,000,000,000,000; BC-\$500,000,000,000,000,000,001 to \$1,000,000,000,000,000,000,000; BD-\$1,000,000,000,000,000,000,001 to \$2,500,000,000,000,000,000,000; BE-\$2,500,000,000,000,000,000,001 to \$5,000,000,000,000,000,000,000; BF-\$5,000,000,000,000,000,000,001 to \$10,000,000,000,000,000,000,000; BG-\$10,000,000,000,000,000,000,001 to \$25,000,000,000,000,000,000,000; BH-\$25,000,000,000,000,000,000,001 to \$50,000,000,000,000,000,000,000; BI-\$50,000,000,000,000,000,000,001 to \$100,000,000,000,000,000,000,000; BJ-\$100,000,000,000,000,000,000,001 to \$250,000,000,000,000,000,000,000; BK-\$250,000,000,000,000,000,000,001 to \$500,000,000,000,000,000,000,000; BL-\$500,000,000,000,000,000,000,001 to \$1,000,000,000,000,000,000,000,000; BM-\$1,000,000,000,000,000,000,000,001 to \$2,500,000,000,000,000,000,000,000; BN-\$2,500,000,000,000,000,000,000,001 to \$5,000,000,000,000,000,000,000,000; BO-\$5,000,000,000,000,000,000,000,001 to \$10,000,000,000,000,000,000,000,000; BP-\$10,000,000,000,000,000,000,000,001 to \$25,000,000,000,000,000,000,000,000; BQ-\$25,000,000,000,000,000,000,000,001 to \$50,000,000,000,000,000,000,000,000; BR-\$50,000,000,000,000,000,000,000,001 to \$100,000,000,000,000,000,000,000,000; BS-\$100,000,000,000,000,000,000,000,001 to \$250,000,000,000,000,000,000,000,000; BT-\$250,000,000,000,000,000,000,000,001 to \$500,000,000,000,000,000,000,000,000; BU-\$500,000,000,000,000,000,000,000,001 to \$1,000,000,000,000,000,000,000,000,000; BV-\$1,000,000,000,000,000,000,000,000,001 to \$2,500,000,000,000,000,000,000,000,000; BV-Other (real estate only); W-Estimated.

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Downes, William F.

Date of Report

5/5/94

## VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

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## IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature



Date

5/5/94

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, § 104, AND 18 U.S.C. § 1001.)

## FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Judicial Ethics Committee  
Administrative Office of the  
United States Courts  
Washington, DC 20544

**FIRST AMENDED  
AND RESTATED  
PARTNERSHIP AGREEMENT  
OF BROWN & DREW**

**Dated as of January 1, 1991**

**FIRST AMENDED AND RESTATED  
PARTNERSHIP AGREEMENT  
OF BROWN & DREW**

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This Table of Contents is not part of the First Amended and Restated Partnership Agreement of Brown & Drew to which it is attached but is inserted for convenience only.

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**FIRST AMENDED AND RESTATED  
PARTNERSHIP AGREEMENT OF BROWN & DREW**

THIS FIRST AMENDED AND RESTATED PARTNERSHIP AGREEMENT is made and entered into as of the 1st day of January, 1991, by and among Morris R. Massey, B. J. Baker, Harry B. Durham, III, Craig Newman, William F. Downes, W. Thomas Sullins, II, Donn J. McCall, Thomas F. Reese, J. Kenneth Barbe, and Jeffrey C. Brinkerhoff (collectively, the "Partners") to amend and restate an existing Partnership Agreement dated as of January 1, 1987 (the "Partnership Agreement"). Each of the Partners are parties to and have accepted the terms and conditions of the Partnership Agreement.

All references in this Agreement to the term "Partners" shall collectively refer to and mean the Partners who are parties to this Agreement and any attorneys who may become partners from time to time pursuant to Section 4 of ARTICLE I. All references in this Agreement to the term "Partner" shall refer to and mean any attorney who is or becomes a partner under this Agreement.

**ARTICLE I**

**FORMATION OF PARTNERSHIP**

**Section 1. Name.** The name of the partnership shall be Brown & Drew.

**Section 2. Principal Place of Business.** The principal place of business of the partnership, subject to change from time to time by the Partners, shall be 123 West First Street, Suite 800, Casper, Wyoming 82601.

**Section 3. Term of Partnership.** The partnership has previously been formed pursuant to oral agreement, as restated, ratified, and confirmed by the Partnership Agreement, and shall continue until dissolved by act of the Partners, by operation of law, or as otherwise provided in this Agreement.

**Section 4. Additional Partners.** Attorneys may be admitted as Partners from time to time by the consent of two-thirds (2/3) of the then Partners and upon the written agreement of such additional Partner or Partners to accept all terms and conditions of this Agreement, as the same may be modified and amended from time to time. Every Partner shall be a person duly licensed by the Supreme Court of the State of Wyoming to practice law in the State of Wyoming.

## ARTICLE II

## PURPOSES AND AUTHORITY OF THE PARTNERSHIP

**Section 1. Purpose and Conduct of Partnership.** The purpose of the partnership shall be to conduct the practice of law through persons licensed by the Supreme Court of the State of Wyoming to practice law in the State of Wyoming. Such persons shall practice the profession of law in accordance with all rules for professional conduct promulgated by the State of Wyoming and the Supreme Court of the State of Wyoming. The partnership shall at all times comply with standards of professional conduct and ethics promulgated by the State of Wyoming or the Supreme Court of the State of Wyoming, and with any other ethical standard or requirement established by any professional regulatory group having jurisdiction.

**Section 2. General Authority.** The partnership shall have the authority to borrow and loan money, as well as the authority to purchase, lease, or in any manner hold, own, improve, develop, sell, convey, lease, or mortgage real or personal property, or any interest therein.

## ARTICLE III

CAPITAL ACCOUNTS, ALLOCATION OF PARTNERSHIP  
INCOME, DRAWS, ACCOUNTING, AND PARTNER BENEFITS

**Section 1. Capital Accounts.** A separate capital account shall be maintained for each Partner, which shall be adjusted annually to reflect capital contributions by each Partner, income allocated to each Partner, and draws taken by each Partner.

**1.1. Contributions to Capital.** The Partners recognize that it may be necessary for each of them to contribute additional capital to fund operations of the partnership from time to time. Such contributions may consist of a contribution of a Partner's funds to the partnership, but will more typically consist of funds reserved by the partnership which the Partners would otherwise be entitled to draw. The amount of required capital contributions shall be determined on an annual basis and shall be shared equally among the Partners. A Partner's capital contribution shall be credited to his capital account.

**1.2. Determination of Partnership Net Income.** The net income of the partnership ("Partnership Net Income") shall be determined on an annual basis by the accounting method adopted by the partnership. Partnership Net Income shall be allocated to each Part-

ner, and credited to his or her capital account, according to the method prescribed by Section 1.3 of this ARTICLE III.

**1.3. Allocation of Partnership Net Income.** The allocation of the annual Partnership Net Income shall be determined on the basis of income generation, longevity, and discretionary units assigned to each Partner. A final allocation shall be made each year after the close of business for the year. The annual Partnership Net Income shall be allocated among the Partners as follows:

i. **Income Generation Units.** Seventy percent (70%) of the Partnership Net Income shall be allocated on the basis of the value of the gross legal fees billed on behalf of each Partner during the year. The amount of the Partnership Net Income allocable to each Partner in respect of his or her income generation unit shall be determined by dividing the collectible, gross legal fees billed by that Partner by the total, collectible legal fees billed by all Partners, and multiplying the quotient by seventy percent (70%) of the Partnership Net Income. The amount of the legal fees to be credited to the account of each Partner shall be determined after a review by the Compensation Committee and the affected Partner of the collectibility of the gross amount of legal fees billed on his or her behalf during the year. In such review, appropriate consideration shall be given to the gross amount of legal fees received on behalf of each Partner during the year.

For purposes of this Section 1.3.i., legal fees payable for services in contingent fee and probate matters and legal fees collected for services previously determined by the Compensation Committee to be uncollectible shall be deemed to be billed upon receipt of the legal fees for such services, and the uncollected legal fees attributable to each Partner for the previous year shall be deducted from his or her collectible, gross fees for the current year to the extent such uncollected fees were included in such Partner's income generation unit for such previous year.

ii. **Longevity Units.** Ten percent (10%) of the Partnership Net Income shall be allocated to each partner on the basis of the longevity units attributable to each Partner at the beginning of the year. Subject to the provisions of this Section 1.3.ii., the amount of the Partnership Net Income allocable to each Partner in respect of longevity units shall be determined by dividing the longevity units attributable to each Partner by the total longevity units attributable to all Partners, and multiplying the quotient by ten percent (10%) of the Partnership Net Income. The number of longevity units attributable to each Partner, as of January 1, 1991, shall be as follows:

|                        |          |
|------------------------|----------|
| Morris R. Massey       | 30 Units |
| B. J. Baker            | 28 Units |
| Harry B. Durham, III   | 18 Units |
| Craig Newman           | 13 Units |
| William F. Downes      | 12 Units |
| W. Thomas Sullins, II  | 12 Units |
| Dona J. McCall         | 11 Units |
| Thomas F. Reese        | 8 Units  |
| J. Kenneth Barbe       | 7 Units  |
| Jeffrey C. Brinkerhoff | 6 Units  |

Upon admission of any new Partner to the partnership, he or she shall be credited with five (5) longevity units. The number of longevity units attributable to each Partner shall be increased by one (1) unit for each year of service to the partnership subsequent to the calendar year in which this Agreement becomes effective, provided that no Partner shall be credited with more than thirty (30) longevity units, notwithstanding his or her actual tenure with the partnership.

If (a) the gross amount of collectible legal fees billed on behalf of a Partner in any year should fail to total at least \$110,000 (or such other amount as the partnership may from time to time determine) and (b) the Compensation Committee should find insufficient mitigating circumstances for the failure of that Partner to satisfy such requirement, then the distributable income attributable to that Partner's longevity units shall be forfeited and reduced dollar for dollar to the extent of the shortfall. The amount of any distributable income that is forfeited in any year under this Section 1.3.ii. shall be added to the amount of Partnership Net Income allocable under Section 1.3.iii. of this ARTICLE III. If the gross amount of collectible legal fees billed on behalf of a Partner should fail to total at least \$110,000 per year (or such other amount as the partnership may from time to time determine) for three (3) consecutive years without a concomitant finding of sufficient mitigating circumstances, the affected Partner shall immediately forfeit his status as a Partner of the partnership, and he or she shall be deemed to be retired from the partnership subject to the provisions of Section 4 of this ARTICLE III.

**iii. Discretionary Units.** Twenty percent (20%) of the Partnership Net Income shall be allocated by the Compensation Committee to deserving Partners for committee participation, cooperation with administrative policies, practice development, and meritorious service to the partnership and the legal profession during the year. The final determination of the amount of the Partnership Net Income allocable to each Partner in respect of discretionary units shall be made after the Compensation Committee has received input

from all Partners. The Compensation Committee shall give written notice of its decision on the allocation of discretionary units to all partners at least fifteen (15) days before the date set for the allocation of the Partnership Net Income. Such written notice shall include the name of each recipient of discretionary units, the amount of the discretionary units allocated to each recipient, and a brief statement summarizing the activities of each recipient which support the recommendation. Absent written objection by at least one-third (1/3) of all Partners, submitted to the Executive Committee within five (5) business days from the date of the written notice from the Compensation Committee, the recommendations of the Compensation Committee shall be final.

If the requisite number of Partners timely file a written objection to the recommendation of the Compensation Committee, the Executive Committee shall then convene a meeting of the partnership to consider and vote upon the recommendation and the objection. The decision of the majority of all Partners voting at the meeting shall be final.

**1.4 Distribution of Partnership Net Income.** After final approval is given to the allocation of the annual Partnership Net Income, the allocation to each Partner shall be credited to his or her capital account. The Executive Committee shall distribute the amount of the Partnership Net Income allocable to each Partner, less his or her share of (a) the capital contributions required by Section 1.1 of this ARTICLE III and (b) any adjustments determined by the partnership's accountants. Such distributions shall be made to all Partners from available funds.

**1.5. Partner Draws.** During each year, each Partner shall be entitled to monthly and quarterly draws in such amounts as are established by the Executive Committee. Prior to the establishment of the monthly and quarterly draws for all Partners, the Executive Committee shall prepare an operating and capital budget for the year. After preparation of the operating and capital budget and the associated review of the financial condition of the partnership, the Executive Committee shall make a determination of what percentage of the budgeted net income of the partnership shall be distributed to the Partners in the form of monthly and quarterly draws. The distributable amount of monthly and quarterly draws shall be established at the beginning of each calendar or fiscal year of the partnership and shall be allocated to each Partner as follows:

- (a) Seventy percent (70%) shall be allocated on the basis of the ratio of each Partner's projected legal fees to the total of legal fees projected by all Part-

ners. Final determination of projected fees for the individual Partners shall be made by the Executive Committee.

- (b) Ten percent (10%) shall be allocated on the basis of the ratio of the longevity units attributable to each Partner to the total longevity units attributable to all Partners.
- (c) Twenty percent (20%) shall be allocated on a discretionary basis as determined by the Compensation Committee according to the method prescribed by Section 1.3.iii. of this ARTICLE III.

The determination of whether a particular monthly or quarterly draw is payable to all or any of the Partners shall be the responsibility of the Executive Committee. Each Partner's draws are subject to reduction by the Executive Committee if, in the opinion of the Executive Committee, the anticipated total allocation of profits to that Partner for the year will not equal or exceed the scheduled monthly and quarterly draws for that Partner. The draws distributed to each Partner shall be debited against his or her capital account.

**Section 2. Accounting Method.** The partnership shall keep its accounting records and shall report its income for income tax purposes on the cash or accrual method of accounting as the Partners shall determine from time to time.

**Section 3. Year End.** The fiscal and the taxable year of the partnership shall be such fiscal or calendar year as is determined by the partners.

**Section 4. Retirement, Death, and Disability.** Any Partner who has at least twenty (20) longevity units and who will not be engaged in the practice of law in competition with the partnership may retire from the partnership. For a period equal to one (1) year for every seven and one-half (7-1/2) longevity units then held by the retiring Partner, but for not longer than four (4) years (including the year of retirement), the retiring Partner shall be entitled to an annual payment of an amount which shall be determined by dividing the Partner's longevity units by the total of all of the Partners' longevity and income generation units, and multiplying the quotient by the Partnership Net Income for the year. A retiring Partner shall, in addition, be entitled to an annual payment, for two (2) years after the effective date of his or her retirement, of an amount which shall be determined by dividing the retiring Partner's income generation units (which are attributable to legal fees not billed or accrued on the effective date of retirement but which are billed, accrued, and received in the two-year period)

by the total of all of the Partners' income generation and longevity units, and multiplying the quotient by the Partnership Net Income for the year. For purposes of the calculations made under this Section 4, one (1) income generation unit shall be equal to \$2,000 in legal fees, rounded up or down to the nearest whole unit.

If a Partner suffers a disability which, in the opinion of the Executive Committee, renders the Partner permanently unable to practice law, the disabled Partner shall be entitled to receive the same benefits as would have been payable had the disabled Partner voluntarily retired.

The partnership shall pay to the estate or the designated beneficiaries or devisees of a deceased Partner, as the purchase price for the deceased Partner's interest in the partnership, the same amounts as would have been payable to a voluntarily retiring Partner or the unpaid portion of such amounts if death occurs after retirement or a determination of permanent disability. The representatives of the estate of a deceased Partner shall have the right to examine the books and records of the partnership and to make reasonable inquiries into the work in process as of the date of death, provided such inquiry does not offend professional ethics. The estate of a deceased Partner shall not be entitled to any of the records or files of the partnership, except records and files relating to the personal matters of such Partner. The death of any Partner shall have no effect upon the continuance of the partnership.

With the approval of the partnership, a Partner attaining the age of sixty-five (65) who has not yet retired may continue the practice of law as an active general Partner pursuant to the provisions of this Agreement or in the status as "of counsel" to the partnership under such arrangements as shall be mutually satisfactory to the Partner and the partnership.

**Section 5. Maximum Retirement, Death, and Disability Payments.** The payments due under Section 4 of ARTICLE III with respect to retirement, death, or disability of all eligible Partners shall in no event exceed an aggregate of ten percent (10%) of the annual Partnership Net Income. In the event the total amount of such payments would exceed ten percent (10%) of the Partnership Net Income in a particular year, the excess amount attributable to each Partner entitled to receive the same shall be calculated, and the payout extended into succeeding years until the excess amounts due each Partner shall be paid in full.

**Section 6. Sabbatical Leave.** With approval of the Executive Committee, each Partner shall be entitled and encouraged to take a noncumulative sabbatical leave of three (3) months for each ten (10) years of partnership service. A Partner electing to take a sabbatical shall be entitled to receive a guaranteed monthly payment attributable to general firm expense of \$2,000 per month.

## ARTICLE IV

## ADMINISTRATION OF PARTNERSHIP

**Section 1. Annual Meeting.** The annual meeting of the partnership shall be held during the month of January of each year, beginning with the year 1992, for the purpose of the election of the Executive Committee in the manner set forth in Section 8 of this ARTICLE IV, the election of the at large members of the Compensation Committee in the manner set forth in Section 11 of this ARTICLE IV, the approval of the operating and capital budget of the partnership for the ensuing year, and the transaction of such other business as may come before the meeting. If the election of the members of the Executive Committee and of the Compensation Committee shall not be held on the day designated herein for any annual meeting of the Partners or at any adjournment thereof, the Executive Committee shall cause the election to be held at a special meeting of the Partners to be held as soon thereafter as practicable.

**Section 2. Regular Meetings.** A regular meeting of the Partners shall be held at least quarterly at such time and place as the Executive Committee may determine. Notice of each quarterly meeting shall be given to each Partner in writing at least five (5) working days before the date of the meeting. The notice shall include an agenda for the meeting which shall be prepared by the Executive Committee.

**Section 3. Special Meetings.** Special meetings of the Partners may be called by or at the request of the Executive Committee or any three (3) Partners. The person or persons authorized to call special meetings of the Partners may fix the time and place for holding any special meeting of the Partners called by them. Notice of any special meeting shall be given to each Partner in writing at least three (3) working days before the date of the meeting. The notice shall include an agenda for the meeting which shall be prepared by the Executive Committee.

**Section 4. Quorum.** A majority of the number of Partners shall constitute a quorum for the transaction of business at any meeting of the partnership; provided, however, if the agenda or subject of the meeting, as determined by this Agreement, shall require the affirmative vote of at least two-thirds (2/3) of the Partners, then a quorum shall exist if two-thirds (2/3) of the Partners are in attendance either in person or by proxy.

In the absence of a quorum, any Partner entitled to preside at the meeting or a majority of those Partners present, in person or by proxy, may adjourn the meeting from time to time without notice other than announcement at the meeting. At such adjourned meeting at which a quo-



rum shall be present, any business may be transacted which might have been transacted at the meeting as originally notified.

**Section 5. Proxies.** A proxy, to be valid, must be executed in writing by the Partner. The proxy shall be valid for a period of one (1) month following the partnership meeting at which it is utilized. No Partner shall be allowed to vote at a meeting of the partnership by proxy unless his or her absence from the meeting has been excused by the Executive Committee.

**Section 6. Voting.** Each Partner shall have an equal vote in the management of the partnership. A majority vote of those present shall decide any matter which does not affect capitalization, borrowing, the admission of new partners, the removal of a member of the Executive Committee, the dismissal of a Partner, or the amendment, alteration, or revocation of this Agreement. A two-thirds (2/3) vote of all Partners shall decide any management decision which affects capitalization, borrowing, the admission of new Partners, the removal of a member of the Executive Committee, the dismissal of a Partner, or the amendment, alteration, or revocation of this Agreement.

**Section 7. Executive Committee.** The affairs of the partnership shall be managed by the Executive Committee; however, the Executive Committee shall have authority to act only within the terms of the partnership's yearly budget determined by all of the Partners. All items not within the budget shall be submitted to a vote of the Partners. The Executive Committee shall be elected by a vote of the Partners. The Executive Committee shall consist of three (3) Partners who shall be divided into three (3) classes in respect of term of office. Except as otherwise provided in Section 8 of this ARTICLE IV, each member of the Executive Committee shall serve a staggered term of three (3) years. There shall be no limitation on the number of terms that a member of the Executive Committee may serve.

**Section 8. Election, Tenure, Resignation, and Removal of Executive Committee.** Commencing with the first annual meeting of the Partners to be held after the adoption of this Agreement, the members of the Executive Committee shall be elected as follows:

- (a) The member of the first class shall be elected and serve for a term of one (1) year.
- (b) The member of the second class shall be elected and serve for a term of two (2) years.
- (c) The member of the third class shall be elected and serve for a term of three (3) years.

At each annual meeting of the Partners following the first annual meeting held after the adoption of this Agreement, one (1) class of the Executive Committee shall be elected to serve for a term of three (3) years next following such annual meeting and until his or her successor shall be elected and shall qualify. The current members of the Executive Committee shall continue to serve until their successors shall be elected and shall qualify.

Each member of the Executive Committee shall at all times be subject to removal, with or without cause, by the affirmative vote of two-thirds (2/3) of the Partners. Any member of the Executive Committee may resign at any time by giving written notice to the Executive Committee. Such resignation shall take effect on the date of the receipt of such notice, or at a later time as shall be specified in such notice of resignation. Unless the notice of resignation specifies otherwise, the acceptance of the resignation shall not be necessary to make it effective. When a vacancy occurs on the Executive Committee by reason of death, resignation, or otherwise, it shall be filled by the affirmative vote of the partnership for the unexpired period of time remaining for such office.

**Section 9. Chairman of Executive Committee.** The Chairman of the Executive Committee, who shall be selected by the members of the Executive Committee, shall be the chief executive officer of the partnership, shall preside at all meetings of the Partners, and shall see that all orders and resolutions of the Partners are carried into effect. In addition, the Chairman of the Executive Committee shall preside at all meetings of the Executive Committee.

**Section 10. Duties of Executive Committee.** The Executive Committee shall be responsible to the partnership for the sound administration of the firm. The Executive Committee shall implement all policies of the firm as, from time to time, the Partners may enact by resolution.

The Executive Committee shall be responsible for the preparation of the operating and capital budget of the partnership, the payment of operating expenses, the collection of fees, and the supervision of personnel.

The Executive Committee shall execute bonds, mortgages, and other contracts, except where required or permitted by law to be otherwise signed and executed, and except where the signing and execution thereof shall be expressly delegated by the Partners to some other member of the Executive Committee or Partner. All bonds, mortgages, leases, and contracts executed for the benefit of the partnership shall be executed by at least two (2) of the three (3) members of the Executive Committee.

**Section 11. Compensation Committee.** The Compensation Committee shall be established as a standing committee of the partnership and

shall be responsible for the allocation of the annual Partnership Net Income to Partners in accordance with the provisions of ARTICLE III and for the performance of such other duties specified in that Article.

The Compensation Committee shall consist of five (5) Partners, three (3) of whom shall be the members of the Executive Committee and two (2) of whom shall be at large members elected by the Partners. Each at large member shall serve a term of one (1) year. There shall be no limitation on the number of terms that an at large member of the Compensation Committee may serve.

The initial at large members of the Compensation Committee shall be elected at a special meeting of the partnership to be held after the adoption of this Agreement. The at large members elected to the Compensation Committee shall serve in their official capacities until the next annual meeting of the Partners and until their respective successors are elected and shall qualify.

**Section 12. Appointment of Management.** The Executive Committee may appoint such other committees as it deems necessary.

**Section 13. Partnership Funds.** All funds of the partnership shall be deposited in the partnership's name in such bank account or accounts as shall be designated in writing by the Partners. All withdrawals from such account or accounts shall be made upon such signatures as the Executive Committee may designate in writing.

**Section 14. Restrictions on Partners.** No Partner, other than the Executive Committee acting in the ordinary course of partnership business, may without the written consent of the other Partners: (a) Borrow or lend money on behalf of the partnership (other than costs advanced pursuant to guidelines adopted by the Executive Committee); (b) Assign, transfer, pledge, compromise, or release any claim of the partnership for debts due to the partnership, except upon payment in full; (c) Make, execute, or deliver any assignment for the benefit of creditors, confession of judgment, petition for bankruptcy or other reorganization, mortgage or deed of trust, deed, guaranty, bond, or contract for sale of all or substantially all of the property of the partnership, including its good will; (d) Lease or mortgage any partnership real or personal property, or any interest therein, or enter into any contract for such purpose; (e) Cause the partnership to become a surety or guarantor of, or an accommodation party to, any obligation; or (f) Engage in any act which would make it impossible to carry on the ordinary business of the partnership.

**ARTICLE V****DUTIES AND RESPONSIBILITIES OF ALL PARTNERS**

**Section 1. Duties and Responsibilities.** Each Partner is a member of the partnership in order to practice the profession of law on behalf of the partnership and agrees to devote substantially all of his or her time and energy to such practice. During the term of the partnership, each Partner agrees that he or she shall not, without the written consent of the Executive Committee:

- (a) Subject to the single exception noted below, render professional services to or for any person, partnership, firm, corporation, or other organization for compensation, except as a Partner of the partnership. Each Partner, however, shall be authorized, subject to the prior consent and approval of the partnership, to serve and receive compensation for service as members of corporate boards of directors if time demands do not substantially impact upon the time available for partnership requirements.
- (b) Engage in any activity that competes with the interests of the partnership, whether the partner is acting alone or as an officer, director, employee, shareholder, partner, or fiduciary of another entity.

**Section 2. Ethical Standards.** The Partners recognize that professional, regulatory, and advisory groups and bodies may from time to time establish ethical standards and requirements with regard to the practice of the legal profession. All restrictions contained herein with respect to the duties and obligations of the Partners shall be subject to such standards and requirements of such groups and bodies.

**Section 3. Working Facility.** Each Partner shall be furnished with facilities and services suitable to his position and adequate for the performance of the duties required by this Agreement.

**ARTICLE VI****DISSOLUTION AND LIQUIDATION**

**Section 1. Voluntary Dissolution.** The partnership may be dissolved upon the written consent of all of the Partners. Upon any voluntary

dissolution of the partnership, the partnership shall immediately commence to wind up its affairs. The Partners shall continue to share profits and losses during the liquidation in the same proportion as before dissolution. The proceeds from liquidation of partnership assets shall be applied as follows:

**First:** To pay or make provision for all debts of the partnership, other than to Partners.

**Second:** To pay or make provision for all debts of the partnership owed to the Partners, including retirement benefits to deceased or retired Partners.

**Third:** To pay the Partners for the balance of any unpaid compensation.

**Fourth:** The remainder, if any, to be divided among, and paid to, the Partners in accordance with their proportionate share of profits and losses, determined on the basis provided in ARTICLE III.

**Section 2. Gains or Losses in Winding Up.** Any gain or loss on disposition of partnership property in the process of liquidation shall be credited and charged to Partners on the basis provided in ARTICLE III (determined as of the year of dissolution). The value of any property not disposed of in the process of liquidation shall be determined by agreement of a majority of the Partners. Such property shall then be distributed in time to the Partners based upon the agreed value on the basis provided in ARTICLE III.

## ARTICLE VII

### GENERAL RESTRICTIONS ON TRANSFER OF PARTNERSHIP INTEREST

At all times during the term of this Agreement, no Partner shall directly or indirectly transfer, sell, encumber, or otherwise deal with, or dispose of, all or any part of the partnership interest now owned or hereafter acquired by him or her without the prior written consent of all of the Partners.

**ARTICLE VIII****WITHDRAWAL OR DISMISSAL OF PARTNER**

**Section 1. Withdrawal of Partner.** Should a Partner, not eligible to retire under Section 8 of ARTICLE III desire to withdraw as a partner in the partnership, such Partner shall immediately serve written notice of his or her intention to withdraw to the Executive Committee. Such notice shall be served at least three (3) months prior to the effective date of such Partner's withdrawal. The withdrawal of any Partner shall have no effect upon the continuance of the partnership.

**Section 2. Dismissal of Partner.** A Partner shall be subject to dismissal from the partnership upon the vote of two-thirds (2/3) of the Partners.

**Section 3. Distribution of Partnership Income to Departing Partners.** A Partner who has withdrawn or has been dismissed from the partnership under this ARTICLE VIII shall be entitled only to that portion of the annual Partnership Net Income in the year of withdrawal or dismissal as the fractional share determined under ARTICLE III entitles said partner. The withdrawing or dismissed Partner's fractional share shall be determined as of the date of withdrawal or dismissal with appropriate adjustments and allocations made for fees not yet received, uncollectible accounts, and expenses incurred, and such departing Partner shall be paid such amounts, together with the book value of his or her capital account, over a period selected by the Executive Committee not to exceed two (2) years.

**ARTICLE IX****TERMINATION**

This Agreement shall terminate upon the occurrence of any of the following events:

- (a) The written agreement of the Partners to that effect;
- (b) The death of all Partners within any period of thirty (30) days;
- (c) If one Partner becomes the owner of the entire partnership;

- (d) The bankruptcy or insolvency of the partnership;  
or
- (e) The dissolution or termination of the partnership  
for whatever reason.

## ARTICLE X

### AMENDMENT

This Agreement may be amended, altered, or revoked at any time, in whole or in part, by the vote of two-thirds (2/3) of the Partners at any regular or special meeting of the partnership, provided that the Partners shall be notified in writing of the proposed alteration, amendment, or revocation of this Agreement before any action can be taken.

## ARTICLE XI

### AMENDMENT AND RESTATEMENT OF PARTNERSHIP AGREEMENT

This Agreement is an amendment, modification, and restatement of the Partnership Agreement, and the Partnership Agreement, as amended, modified, and restated by this Agreement, is hereby ratified and confirmed by the parties hereto in all respects.

## ARTICLE XII

### GENERAL PROVISIONS

This Agreement: (a) Contains the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all other prior agreements, consents, and understandings relating to such subject matter; (b) Except as provided in ARTICLE X, may not be amended, changed, waived, modified, or terminated orally, but only by an instrument in writing signed by all Partners; (c) Shall be governed by, and construed and interpreted in accordance with, the laws of the State of Wyoming; and (d) Shall be binding upon and shall inure to the benefit of the Partners, and their respective heirs, personal representatives, administrators, successors, and permitted assigns.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement on the dates set forth beside their respective signatures to be effective for all purposes as of the 1st day of January, 1991.

Morris R. Massey  
Morris R. Massey

11/26/91  
Date

B. J. Baker  
B. J. Baker

8/27/91  
Date

Harry B. Durham, III  
Harry B. Durham, III

8/23/91  
Date

Craig Newman  
Craig Newman

8/27/91  
Date

William F. Downes  
William F. Downes

8/23/91  
Date

W. Thomas Sullins, II  
W. Thomas Sullins, II

8/23/91  
Date


Donn J. McCall  
Donn J. McCall

8/23/91  
Date

Thomas F. Reese  
Thomas F. Reese

8/23/91  
Date



  
\_\_\_\_\_  
d. Kenneth Barbe

8/26/91  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Jeffrey C. Brinkerhoff

8/23/91  
\_\_\_\_\_  
Date

## FINANCIAL STATEMENT May 5, 1994

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

| ASSETS  |         | LIABILITIES  |         |
|---|---------|--|---------|
| Cash on hand and in banks                                 | 5,260   | Notes payable to banks—secured: MFEB                       | 4,341   |
| U.S. Government securities—add schedule                   | -0-     | Notes payable to banks—unsecured: MBNA                     | 4,069   |
| Listed securities—add schedule                            | 17,260  | Notes payable to relatives                                 | -0-     |
| Unlisted securities—add schedule                          | -0-     | Notes payable to others                                    | -0-     |
| Accounts and notes receivable:                            | -0-     | Accounts and bills due                                     | 1,270   |
| Due from relatives and friends                            | 31,134  | Unpaid income tax  | -0-     |
| Due from others   | -0-     | Other unpaid tax and interest                              | -0-     |
| Doubtful (see *ABA LOAN TO SELF attached)                 | -0-     | Real estate mortgages payable—add schedule: 1st Comm. Mort | 99,800  |
| Real estate owned—add schedule (Personal residence only): | 185,000 | Chattel mortgages and other liens payable                  | -0-     |
| Real estate mortgages receivable                          | -0-     | Other debts—itemize:                                       |         |
| Autom and other personal property                         | 68,000  | MAZDA CREDIT (Lease)                                       | 10,037  |
| Cash value—life insurance                                 | -0-     | ABA (Loan to self from retirement acct.)                   | 31,134  |
| Other assets—itemize:                                     |         |  |         |
| ABA (Am. Bar Assoc.)                                      | 156,460 |  |         |
| LAW FIRM (Brown & Drew)                                   | 15,000  |  |         |
|   |         | Total Liabilities  | 150,651 |
|   |         | Net Worth  | 327,463 |
| Total Assets  | 478,114 | Total Liabilities and net worth                            | 478,114 |
| CONTINGENT LIABILITIES                                    |         | GENERAL INFORMATION  |         |
| As endorser, comaker or guarantor                         | -0-     | Are any assets pledged? (Add schedule.)                    | No      |
| On leases or contracts                                    | -0-     | Are you defendant in any suits or legal actions?           | No      |
| Legal Claims  | -0-     | Have you ever taken bankruptcy?                            | No      |
| Provision for Federal Income Tax                          | -0-     |  |         |
| Other special debt  | -0-     |  |         |



## AMERICAN BAR ASSOCIATION MEMBERS RETIREMENT PROGRAM

**CONFIRMATION NOTICE**  
 ABRA MASTER PROFIT SHARING PLAN

DIRECT INQUIRIES TO OUR TOLL-FREE TELEPHONE NUMBER 1-800-348-2272

PAGE 1 OF 2

 ATTN: DONALD E. MANN  
 BROWN & DREW  
 CASPER BUSINESS CENTER  
 123 WEST FIRST STREET, STE 800  
 CASPER WY 82601

|                       |              |                   |                   |
|-----------------------|--------------|-------------------|-------------------|
| NAME: WILLIAM F DOWNS | SOC.SEC.NO.: | EMPLOYER TAX ID.: | IRS PLAN NO.: 001 |
|-----------------------|--------------|-------------------|-------------------|

**ALLOCATION %**

|                        | <u>FUTURE CONTRIBUTIONS</u> |                 |                        | <u>GRA/IIC MATURITY OPTION</u> |                 |
|------------------------|-----------------------------|-----------------|------------------------|--------------------------------|-----------------|
|                        | <u>EMPLOYER</u>             | <u>EMPLOYEE</u> |                        | <u>EMPLOYER</u>                | <u>EMPLOYEE</u> |
| ESTIF                  | 40%                         | 40%             | ESTIF                  | 100%                           | 100%            |
| BLENDED RATE FUND      | 20                          | 20              | BLENDED RATE FUND      | 0                              | 0               |
| BALANCED FUND          | 40                          | 40              | BALANCED FUND          | 0                              | 0               |
| GROWTH EQUITY FUND     | 0                           | 0               | GROWTH EQUITY FUND     | 0                              | 0               |
| AGGRESSIVE EQUITY FUND | 0                           | 0               | AGGRESSIVE EQUITY FUND | 0                              | 0               |
| 3 YEAR WEEKLY IIC      | 0                           | 0               | 3 YEAR WEEKLY IIC      | 0                              | 0               |
| 5 YEAR WEEKLY IIC      | 0                           | 0               | 5 YEAR WEEKLY IIC      | 0                              | 0               |

**TRANSACTION DETAILS EFFECTIVE 04/20/94**

| <u>ACCOUNT/MATURITY</u> | <u>TRANSACTION</u> | <u>DOLLAR AMOUNT</u> | <u>UNIT VALUE/RATE</u> | <u>UNITS</u> |
|-------------------------|--------------------|----------------------|------------------------|--------------|
| ESTIF                   | CONTRIBUTION       | 4,326.00             |                        |              |
|                         | EMPLOYER           |                      |                        |              |
| BLENDED RATE FUND       | CONTRIBUTION       | 2,163.00             | 11.200458              | 193.1171     |
|                         | EMPLOYER           |                      |                        |              |
| BALANCED FUND           | CONTRIBUTION       | 4,326.00             | 24.200449              | 178.7570     |
|                         | EMPLOYER           |                      |                        |              |

**ACCOUNT BALANCE INFORMATION BY INVESTMENT AS OF 04/20/94**

| <u>INVESTMENT ACCOUNTS</u> | <u>CLOSING BALANCE</u> | <u>INVESTMENT ACCOUNTS</u> | <u>CLOSING BALANCE</u> |
|----------------------------|------------------------|----------------------------|------------------------|
| ESTIF                      | 125,946.71             | 3 YEAR WEEKLY GRA          | 927.02                 |
| BLENDED RATE FUND          | 7,297.13               |                            |                        |
| BALANCED FUND              | 14,242.20              |                            |                        |
| AGGRESSIVE EQUITY FUND     | 8,046.60               |                            |                        |

TOTAL CLOSING ACCOUNT BALANCE AS OF 04/20/94

|                     |
|---------------------|
| <b>\$156,459.66</b> |
|---------------------|

William Downes  
IRA

Portfolio Valuation  
May 2, 1994

| Quantity                    | Description                                | Purchase Date | Purchase Price | Net Cost | Market Price | Market Value | Gain/(Loss) | Current Yield | Original YTM/YTC | Annual Income | % of Portfolio |
|-----------------------------|--|---------------|----------------|----------|--------------|--------------|-------------|---------------|------------------|---------------|----------------|
| <b>Cash and Equivalents</b> |  |               |                |          |              |              |             |               |                  |               |                |
| 83                          | GREAT HALL FUND                            | 04/29/94      |                | 83       |              | 83           |             | 2.41%         |                  | 2             | 0.65%          |
|                             | Cash and Equivalents Subtotal              |               | \$             | 83       |              | \$ 83        | \$          | 0             |                  | 2             | 0.66%          |
| <b>Equity Investments</b>   |  |               |                |          |              |              |             |               |                  |               |                |
| <i>Common Stocks</i>        |  |               |                |          |              |              |             |               |                  |               |                |
| 120                         | GREAT HALL ROCKY MTN TR                    | 03/28/94      | 9.675          | 1,161    | 8.650        | 1,038        | (123)       | 0.00%         |                  | 0             | 8.20%          |
| 200                         | PEPSICO INCORPORATED                       | 04/11/91      | 33.795         | 6,759    | 36.500       | 7,300        | 541         | 1.75%         |                  | 128           | 57.69%         |
|                             | Equity Investments Subtotal                |               | \$             | 7,920    |              | \$ 8,338     | \$ 418      | 1.54%         |                  | 128           | 65.90%         |
| <b>Mutual Funds</b>         |  |               |                |          |              |              |             |               |                  |               |                |
| 275.000                     | GOLDMAN SACHS EQUITY PORTFOLIOS INC SELECT | 05/24/91      | 15.000         | 4,125    | 15.390       | 4,232        | 107         | 1.10%         |                  | 47            | 33.45%         |
|                             | Mutual Funds Subtotal                      |               | \$             | 4,125    |              | \$ 4,232     | \$ 107      | 1.11%         |                  | 47            | 33.45%         |
| <b>TOTAL</b>                |  |               |                | 12,128   |              | 12,653       | 525         | 1.40%         |                  | 177           | 100.00%        |

This report is for illustration purposes only; it is not, and should not, be construed as a substitute for your Dain Bosworth Incorporated monthly statement. Positions may be shown which are not held at Dain Bosworth Incorporated. Security valuations have been obtained from reliable sources but do not represent guaranteed bids, offers or markets for the securities. Dividend/interest calculations are approximations and are subject to change.

\* = Security not held at Dain Bosworth Incorporated

Portfolio Valuation  
May 2, 1994

Catherine L Downes  
IRA

| Quantity                    | Description                                | Purchase Date | Purchase Price | Net Cost     | Market Price | Market Value | Gain/(Loss) | Current Yield | Original YTM/YTC | Annual Income | % of Portfolio |
|-----------------------------|--|---------------|----------------|--------------|--------------|--------------|-------------|---------------|------------------|---------------|----------------|
| <b>Cash and Equivalents</b> |  |               |                |              |              |              |             |               |                  |               |                |
| 74                          | GREAT HALL FUND                            | 04/29/94      |                | 74           |              | 74           |             | 2.70%         |                  | 2             | 1.70%          |
|                             | Cash and Equivalents Subtotal              |               |                | \$ 74        |              | \$ 74        | \$ 0        | 2.70%         |                  | 2             | 1.70%          |
| <b>Equity Investments</b>   |  |               |                |              |              |              |             |               |                  |               |                |
| <b>Common Stocks</b>        |  |               |                |              |              |              |             |               |                  |               |                |
| 140                         | GREAT HALL ROCKY MTN TR                    | 03/28/94      | 9.679          | 1,355        | 8.650        | 1,211        | (144)       | 0.00%         |                  | 0             | 27.76%         |
|                             | Equity Investments Subtotal                |               |                | \$ 1,355     |              | \$ 1,211     | \$ (144)    | 0.00%         |                  | 0             | 27.76%         |
| <b>Mutual Funds</b>         |  |               |                |              |              |              |             |               |                  |               |                |
| 200.000                     | GOLDMAN SACHS EQUITY PORTFOLIOS INC SELECT | 05/24/91      | 15.000         | 3,000        | 15.390       | 3,078        | 78          | 1.10%         |                  | 34            | 70.55%         |
|                             | Mutual Funds Subtotal                      |               |                | \$ 3,000     |              | \$ 3,078     | \$ 78       | 1.10%         |                  | 34            | 70.55%         |
| <b>TOTAL</b>                |  |               |                | <b>4,429</b> |              | <b>4,363</b> | <b>(66)</b> | <b>0.83%</b>  |                  | <b>36</b>     | <b>100.00%</b> |

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▶ = Security not held at Dain Bosworth Incorporated

Dain Bosworth Incorporated

May 2, 1994

Portfolio Valuation Page: 1

MORRIS R. HASBEY  
 HARRY B. DURHAM, III  
 WILLIAM F. DOWNES  
 W. THOMAS SULLING, II  
 DONN J. MCCALL  
 JOHN A. WARNICK  
 THOMAS F. REESE  
 RUSSELL M. BLOOD  
 J. KENNETH BARBE  
 JEFFREY C. BRINKERHOFF

WILLIAM N. BROWN  
 (813-1001)

LAW OFFICES OF  
**BROWN & DREW**  
 CASPER BUSINESS CENTER  
 SUITE 600  
 123 WEST FIRST STREET  
 CASPER, WYOMING 82601-2498  
 TELEPHONE (307) 234-1000  
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JON B. HUSE  
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June 7, 1994

The Honorable Joseph R. Biden, Jr., U.S.S.  
 Chairman  
 Committee on the Judiciary  
 United States Senate  
 Washington, DC 20510-6275

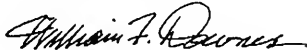
*Re: Additional Questions from Senator Metzenbaum*

Dear Chairman Biden:

Enclosed are my responses to Senator Metzenbaum's written questions.

I thank the Committee, and Senator Metzenbaum in particular, for allowing me the opportunity to expand upon answers I gave to the Senate Judiciary Committee on May 25.

Very truly yours,



William F. Downes

WFD/kc

Enclosure

Answers of William F. Downes to Written Questions Proffered by the Honorable Howard Metzenbaum:

1. Opponents of the right to choose have sought to impose restrictions on abortion such as mandatory waiting periods and biased counseling requirements. For many years the Court, in cases following *Roe v. Wade*, struck down such obstacles to a woman's right to choose. In the 1992 *Planned Parenthood of Southeastern Pennsylvania v. Casey* decision, the Supreme Court abandoned the strict scrutiny standard articulated in *Roe v. Wade*, and adopted a less protective standard that allows states to impose abortion restrictions as long as they do not "unduly burden" a woman's right to choose.
  - a. What is your understanding of the differences between the Court's decisions in *Roe v. Wade* and in *Planned Parenthood of Southeastern Pennsylvania v. Casey*?

ANSWER:

Any discussion of the differences between the Supreme Court's decisions in *Roe v. Wade* and *Planned Parenthood v. Casey* should be prefaced with the observation that both of these cases articulate clearly and unequivocally the principle that a woman's right to privacy, including her right to reproductive choice, is a fundamental right protected by the Constitution and, in particular, the 9th and 14th Amendments. Both cases stand for the proposition that the 14th Amendment's principle of personal liberty is broad and encompasses a woman's right to choose whether or not to terminate her pregnancy.

*Roe* established a trimester framework which provided that, prior to the end of the first trimester of pregnancy, the government may not interfere or regulate the woman's right to terminate a pregnancy and that from and after the end of the first trimester until the point of viability of the fetus, the government may promulgate regulations only to the extent that they relate to the protection of the woman's health. After the point of viability a state may prohibit abortions, except those which are deemed necessary to preserve the life and health of the woman.

In *Planned Parenthood v. Casey*, the Supreme Court acknowledged that a state can enact some regulations concerning abortion, but it cannot establish a statutory provision that has the purpose or effect of putting an undue burden on a woman seeking an abortion. To that end, it specifically rejected Pennsylvania's statutory provision which

required a woman to notify her husband of her pregnancy before she terminated it. In applying the "undue burden," standard, the Court upheld a state statute concerning obtaining parental consent before an unemancipated child could obtain an abortion, provided there existed an adequate judicial bypass procedure guaranteeing the protection of the due process rights of the minor under the 14th Amendment.

- b. Without indicating how you rule in any future case, as a federal district court judge, how would you determine whether a restrictive abortion law before your court was constitutional?

**ANSWER:**

In deciding upon the Constitutionality of a statute which purports to place a restriction on a woman's right to an abortion, I would address the facts which give rise to the case in the context of all applicable case law. Of course, *Roe v. Wade*, *Planned Parenthood v. Casey*, and other U. S. Supreme Court decisions, as well as applicable or germane decisions of the Tenth Circuit Court of Appeals, would control my decision, and I would reach my decision in such a way as to be in complete accord with the holdings of these relevant decisions.

- c. As a federal district court judge, what factors would you take into account in order to determine whether a certain restriction constituted an undue burden?

**ANSWER:**

In determining whether a certain statutory provision restricting abortion constituted an undue burden, I would focus upon the legislative intent and the impact or likely impact of the restrictive provision. Any statutory provision which had either the purpose or effect of imposing an undue burden on a woman's right to reproductive freedom is proscribed and, as a Federal District Judge, I would follow Supreme Court precedent in reaching my decision.

2. According to an article published on May 8, 1988 in the Star-Tribune of Casper, Wyoming, you supported efforts to drop from the state party's platform a plank supporting the 1973 *Roe v. Wade* decision. According to the account, you stated: "I think it's morally reprehensible to force this on us."
- a. Please discuss how you would judge a case in which you strongly disagreed with the controlling precedent.



**ANSWER:**

Prior to responding directly to Question 2(a), I wish to make two points. First, the issue at the 1988 Wyoming Democratic Convention was not the rightness or wrongness of abortion but whether to change the platform, which had not included an abortion plank for several years in recognition of the divisiveness of the issue in Wyoming, by adding such a plank. Second, the statement quoted in the Casper Star Tribune is inaccurate. I was upset not by the views of the delegates who were pro-choice but by the manner in which certain delegates were attempting to insert an abortion plank in contravention of the party's settled practice. I have never called anyone's views on this subject "morally reprehensible" and have tried all my life to consider and respect the views of others.

As to how I would judge a case in which I strongly disagreed with controlling precedent, I would uphold my oath as a judge and do my best to ascertain and follow the controlling precedent and constitutional principles, putting aside personal preferences or philosophies.

- b. Do you believe that you would be able to put aside your personal views about issues such as abortion and apply the governing federal law?

**ANSWER:**

It is the sworn responsibility of each federal judge to apply the governing federal law. I can and will abide by that standard if confirmed as a Federal District Judge.

3. Through a long series of cases, the Supreme Court has held that the Constitution contains a fundamental right to privacy that protects certain aspects of individuals' lives against governmental interference. In *Griswold v. Connecticut*, the Court held that a state statute prohibiting the use of contraceptives violated the constitutional right to privacy that includes the right of married people to make their own decisions regarding contraception. The Court subsequently held in *Eisenstadt v. Baird* that the constitutional guarantee of privacy protects the reproductive decisions of married and unmarried persons, overturning a state law prohibiting the distribution of contraceptives to unmarried people. In *Roe v. Wade* and in *Planned Parenthood v. Casey*, the Court held that the right to privacy protects a woman's decision whether or not to have an abortion.

- a. Do you believe that the Court was correct in *Griswold and Eisenstadt* that the Constitution includes a fundamental right to privacy?

**ANSWER:**

The *Griswold* and *Eisenstadt* decisions clearly and unequivocally articulate that the right to privacy is a fundamental right established by the 14th Amendment. My views—and the personal views of any judge—are not relevant.

- b. Do you believe that the Court was correct in *Roe v. Wade* in finding that the right to privacy includes the right to choose abortion?

**ANSWER:**

In my answer to Question 1(a), I have addressed my understanding of the essential provisions of *Roe v. Wade* and, therefore, I think any discussion as to my personal beliefs on this or any other U. S. Supreme Court decision is not relevant. I believe that I have a clear understanding of the precedent established by *Roe v. Wade*, and if confirmed as a Federal Judge, I have every intention of following the letter and the spirit of the law.

- c. What is your understanding of the extent and boundaries of the fundamental constitutional right to privacy?

**ANSWER:**

I have previously touched upon my understanding of the constitutional right to privacy in my response to question 1(a). However, to expand briefly on that answer, I would state that the Supreme Court, in *Roe v. Wade*, instructed us that the right to privacy has its roots in the First, Fourth, Fifth, Ninth and Fourteenth Amendments and further, that the right to privacy is based upon the Fourteenth Amendment's concept of personal liberty and the concomitant restriction upon state action. The right to privacy has been extended to certain activities relating to procreation and contraception. The Court has also observed that where "fundamental rights" are at stake, statutory regulations limiting those rights can only be justified by "compelling state interests."



